

WYDEN), the Senator from Hawaii (Mr. AKAKA), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Illinois (Mr. DURBIN), and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 530, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind.

S. 532

At the request of Mr. DORGAN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 532, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

S. 543

At the request of Mr. WELLSTONE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 543, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 570

At the request of Mr. BIDEN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 570, a bill to establish a permanent Violence Against Women Office at the Department of Justice.

S. 583

At the request of Mr. KENNEDY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 583, a bill to amend the Food Stamp Act of 1977 to improve nutrition assistance for working families and the elderly, and for other purposes.

S. 590

At the request of Mr. JEFFORDS, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 590, a bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for health insurance costs, and for other purposes.

S. 627

At the request of Mr. GRASSLEY, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 627, a bill to amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

S. 670

At the request of Mr. DASCHLE, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 670, a bill to amend the Clean Air Act to eliminate methyl tertiary butyl ether from the United States fuel supply and to increase production and use of ethanol, and for other purposes.

S. 677

At the request of Mr. HATCH, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a

cosponsor of S. 677, a bill to amend the Internal Revenue Code of 1986 to repeal the required use of certain principal repayments on mortgage subsidy bond financing to redeem bonds, to modify the purchase price limitation under mortgage subsidy bond rules based on median family income, and for other purposes.

S. 678

At the request of Mr. BOND, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 678, a bill to amend the Federal Water Pollution Control Act to establish a program for fisheries habitat protection, restoration, and enhancement, and for other purposes.

S. 756

At the request of Mr. GRASSLEY, the names of the Senator from Idaho (Mr. CRAPO), the Senator from California (Mrs. FEINSTEIN), and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 756, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for electricity produced from biomass, and for other purposes.

S. 860

At the request of Mr. GRASSLEY, the names of the Senator from North Carolina (Mr. HELMS), the Senator from Illinois (Mr. FITZGERALD), the Senator from Maine (Ms. SNOWE), the Senator from Michigan (Ms. STABENOW), the Senator from Mississippi (Mr. COCHRAN), and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 860, a bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers.

S. 887

At the request of Mr. WELLSTONE, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 887, a bill to amend the Torture Victims Relief Act of 1986 to authorize appropriations to provide assistance for domestic centers and programs for the treatment of victims of torture.

S. 908

At the request of Mr. BROWNBACK, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 908, a bill to require Congress and the President to fulfill their Constitutional duty to take personal responsibility for Federal laws.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1003

At the request of Mr. JEFFORDS, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1003, a bill to ensure the safety of children placed in child care

centers in Federal facilities, and for other purposes.

S. 1004

At the request of Mr. JEFFORDS, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1004, a bill to provide for the construction and renovation of child care facilities, and for other purposes.

S. 1019

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1019, a bill to provide for monitoring of aircraft air quality, to require air carriers to produce certain mechanical and maintenance records, and for other purposes.

S. RES. 71

At the request of Mr. HARKIN, the names of the Senator from North Carolina (Mr. EDWARDS), the Senator from Maryland (Mr. SARBANES), the Senator from California (Mrs. FEINSTEIN), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

AMENDMENT NO. 516

At the request of Mr. WELLSTONE, his name was added as a cosponsor of amendment No. 516.

At the request of Mrs. CLINTON, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of amendment No. 516, *supra*.

AMENDMENT NO. 604

At the request of Mr. SESSIONS, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Missouri (Mr. BOND), and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of amendment No. 604.

AMENDMENT NO. 648

At the request of Mr. DOMENICI, his name was added as a cosponsor of amendment No. 648.

At the request of Mr. HELMS, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of amendment No. 648, *supra*.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON (for herself, Mr. INOUE, Mr. HUTCHINSON, and Mr. STEVENS):

S. 1037. A bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes; to the Committee on Armed Services.

Mrs. HUTCHISON. Mr. President, I am pleased to be joined by Senator INOUE and Senator HUTCHINSON to offer legislation on a very important issue for those military men and women who serve our country every day. Our current military retirement

system, I have come to understand, has a serious flaw on it.

We often memorialize those soldiers, sailors, and airmen who died in combat, but too often we forget that service men and women die frequently during daily operations or while training. In the past five years, 2,206 military families lost their spouse, father or mother while serving their country. In just the past year we have mourned the loss of the sailors on the USS *Cole*, Air Force pilots in Scotland, and soldiers in helicopter crashes in Hawaii, and Vietnam. What is not fully understood is that their families do not receive their full retirement pensions in many cases. Because service members are not vested in their retirement system until the day they retire active duty personnel do not qualify for a retirement pension unless the services medically retire them before death. This has caused hardships to families and necessitated extraordinary efforts by commanders and medical and manpower personnel.

Most Americans, and even many in uniform, do not understand that this affects those with one year of service as well as those with thirty. If these military members were in the Federal service system, or a policeman in Arizona, their family would be able to receive part of their pension. This bill will correct that inequity by amending Sections 1222 and 1448 of Title 10 U.S.C. and allowing members of the armed forces on active duty who die while serving in the line of duty to be posthumously retired. In addition, the bill would allow the services to ensure the family is given the best choice of benefits based on their individual situation. This is the least we can do when they make the ultimate sacrifice for their country.

Though we have not been involved in a major conflict in more than ten years, every day we deploy our military to many more places than we did just a decade ago. The day-to-day activities of our armed forces are inherently dangerous. If we are going to maintain and recruit a quality force, we must reassure those who serve that we are going to provide for their family. I believe that Brigadier General William Caldwell, Assistant Division Commander of the 25th Infantry Division, said it best, "Everything we do is complex." BG Caldwell made this comment after the crash of two helicopters in Hawaii that killed six members of the 25th Infantry Division. That sums up the situation perfectly.

This bill will be a step in the right direction and is a way to help repay our debt to our military and their families. Not only is it the right thing and fair thing to do, but during these times of increased deployments and personnel shortages, it is in our national interest to continue to show our dedicated service members that we appreciate their sacrifice and commitment.

I commend the Senator from Hawaii for his support on this issue and urge other Senators to join us in this effort.

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. 1037

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

**SECTION 1. POSTHUMOUS DISABILITY RETIREMENT FOR MEMBERS OF THE ARMED FORCES WHO DIE IN THE LINE OF DUTY WHILE ON ACTIVE DUTY.**

(a) **AUTHORITY.**—Chapter 61 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 1222. Posthumous retirement: retroactive effective date; related elections**

"(a) **AUTHORITY.**—Upon a determination by the Secretary concerned that it is advantageous for the survivors of a member of the armed forces who dies in the line of duty while on active duty, the Secretary concerned may—

"(1) posthumously retire the member under section 1201 of this title effective immediately before the member's death; and

"(2) make for the deceased member any election with respect to survivor benefits under laws referred to in subsection (c) that the deceased member would have been entitled to make upon being retired under that section.

"(b) **CONSTRUCTION WITH SECTION 1201 REQUIREMENTS.**—Nothing in this section modifies the requirements set forth in section 1201 of this title regarding determinations or eligibility.

"(c) **ADMINISTRATION OF BENEFITS LAWS.**—A retirement and election under subsection (a) shall be effective for the purposes of laws administered by the Secretary of Defense or any Secretary concerned and laws administered by the Secretary of Veterans Affairs.

"(d) **NONREVIEWABILITY OF DETERMINATIONS.**—A determination or election made by a Secretary concerned under subsection (a) is not subject to judicial review."

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1222. Posthumous retirement: retroactive effective date; related elections."

**SEC. 2. SURVIVOR BENEFIT PLAN.**

(a) **SURVIVING SPOUSE ANNUITY.**—Section 1448(d) of title 10, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) **SURVIVING SPOUSE ANNUITY.**—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who—

"(A) dies in the line of duty while on active duty after—

"(i) becoming eligible to receive retired pay;

"(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

"(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

"(B) dies in the line of duty while on active duty and is posthumously retired under section 1201 of this title pursuant to section 1222 of this title."

(b) **DEPENDENT CHILD ANNUITY.**—Paragraph (2) of such section is amended by striking "or if the member's surviving spouse subsequently dies" and inserting "or if the pay-

ment of an annuity to the member's surviving spouse under that paragraph subsequently terminates".

(c) **COMPUTATION OF SURVIVOR ANNUITY.**—Section 1451(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(5) **SERVICE MEMBERS POSTHUMOUSLY RETIRED.**—In the case of an annuity provided under section 1448(d)(1)(B) of this title, the retired pay to which the member would have been entitled when the member died shall be determined for purposes of paragraph (1) based upon the retired pay base computed for the member under section 1406(b) or 1407 of this title as if the member had been retired under section 1201 of this title on the date of the member's death."

(d) **CONFORMING AMENDMENT.**—Section 1451(c)(3) of such title is amended by striking "section 1448(d)(1)(B) or 1448(d)(1)(C)" and inserting "clause (ii) or (iii) of section 1448(d)(1)(A)".

**SEC. 3. EFFECT DATE AND APPLICABILITY.**

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply with respect to deaths of members of the Armed Forces occurring on or after that date.

By Mr. JEFFORDS (for himself and Mr. LEAHY):

S. 1038. A bill to amend the Internal Revenue Code of 1986 to improve access to tax-exempt debt for small nonprofit health care and educational institutions; to the Committee on Finance.

Mr. JEFFORDS. Mr. President, today I am introducing the Health and Higher Education Facilities Improvement Act of 2001. This legislation will help small non-profit health and educational institutions more effectively finance the cost of essential services, and lead to new facility construction. By modifying the laws that restrict deductibility or "bank financing for small non-profit organizations that need it the most: small local hospitals and colleges.

The Tax Reform Act of 1986 unintentionally discriminated against small non-profit educational and health care facilities that want to sell small amounts of tax-exempt debt to community banks. Before 1986, banks and financial institutions could deduct the interest incurred to carry tax-exempt bonds. This allowed banks to purchase tax-exempt bonds at attractive rates. The 1986 tax act repealed bank deductibility, but an exception was retained for small governmental issuers that issue bonds of \$10 million or less each year.

This exception was designed to preserve bank deductibility for small local governments, but does not help small non-profit institutions. The small issuer exception to be of little value in many States, like Vermont where statewide health care and higher education bond issuing authorities typically issue many millions of dollars of debt each year. The legislation I am introducing today will modify the small issuer exception by granting bond issuers the right to apply the small issuer exception at the level of the ultimate beneficiary of the funding. Consequently, a small college or health

care facility borrowing less than \$10 million in tax-exempt debt in any one year could elect tax-exempt status for that debt, even if it is issued by a statewide authority. This would make the debt more attractive to local banks, and could result in significant savings for beneficiary institutions over the life of the bond.

The Health and Higher Education Facilities Improvement Act of 2001 focuses the benefit of the small issuer exemption on smaller non-profits, without regard to whether the bond issuer is a government entity issuing more than \$10 million in bonds per year. Small non-profits are important community institutions; they stand to benefit from greater access to tax-exempt debt. Wall Street and large money center banks may have little interest in small amounts of debt from small institutions. The bank across the street from a local college or health care clinic, however, may have greater confidence and insight into the community value of the institution. This bill would allow those banks to carry tax-exempt debt at attractive rates and maintain commitments to the people and institutions in their local communities.

I urge my colleagues to support this bill.

By Mr. SHELBY:

S. 1040. A bill to promote freedom, fairness, and economic opportunity for families by reducing the power and reach of the Federal establishment; to the Committee on Finance.

Mr. SHELBY. Mr. President, Congress recently passed a tax bill that provides much-needed relief for all Americans. While I am pleased that the tax bill included marriage penalty relief, a reduction in marginal rates and a phase out of the estate tax, these changes unfortunately increase the tax code's complexity. Furthermore, despite the positive changes made this year, the current code still retains the alternative minimum tax, the taxation of Social Security benefits, and marginal rates that increase with income.

I rise today to introduce legislation that takes tax reform to the next level and addresses the fundamental problems of the current code. My bill accomplishes this by repealing the current Internal Revenue Code and replacing it with a flat tax, where all taxpayers pay the same rate.

As with current law, not all wage earners will pay a Federal income tax under a flat tax. In order to assist lower income Americans, I have included large standard deductions. For example, a family of four would need to make more than \$35,200 before paying a single penny in taxes.

Some argue that it's fair to tax wealthier people at higher rates. I believe that nothing can be further from the truth. Not only is this type of tax policy fundamentally unfair, it also prevents our economy from realizing its full potential.

A flat tax does not mean that a school teacher will have the same tax liability as Bill Gates. The principles of math dictate that people who make more will still pay more in taxes with a single rate. The difference is that with a flat tax those who earn more will no longer be penalized by rising marginal rates.

My bill also increases tax fairness by eliminating itemized deductions and credits. While these tax breaks benefit those who are lucky enough to claim them, they consequently hurt the taxpayers who are not. As a result, people with the same yearly salaries can pay very different Federal income taxes depending on whether they have children, they decide to own or rent a home, or decide to finance a family vacation through a credit card or a home equity loan.

Over time the tax code has evolved from a way to collect Federal revenue into a way to encourage and reward behavior the government deems important. I believe that the American people are intelligent enough that they do not need the Federal Government dangling a carrot in front of them when they make life decisions. Furthermore, I believe that people should not be punished for deciding to make these decisions in ways that are contrary to what the government decides is right.

Simplification is yet another reason our country needs the flat tax. The National Taxpayer Advocate cited complications in the tax code as the number one issue taxpayers faced in 2001. As the IRS publishes more and more regulations, and new tax laws are enacted, the complexity of the tax code will only grow.

The complexity of the tax code forces many Americans to seek the advice of tax professionals at the cost of many millions of dollars. No tax code should be so puzzling that the average person has to spend his hard-earned money to hire a tax preparer or an accountant. Those who decide to brave the tax code and file their own returns do not fare better. These people face conflicting IRS advice and many hours of completing confusing tax forms. All of these needless hassles results in taxpayer frustration and apathy and less time spent on more productive endeavors.

Under the flat tax, a taxpayers would be able to be quickly and accurately file their returns. There would be no itemized deductions or credits to calculate, no capital gains tabulations and no alternative minimum tax. With this new simplicity, taxpayers would be able to complete their personal income tax return in virtually no time at all compared to the 13 hours the IRS estimates it takes to complete a 1040 form.

I understand that my bill is a major change from the current tax code. Many people have become complacent with the status quo. Still others enjoy using the tax to implement social policy. I on the other hand believe though

that a tax code should have one purpose and that is to collect revenue.

I hope that my colleagues will begin to seriously look at alternatives to the current code. The legislation I have introduced today is an excellent opportunity to bring this debate to the floor of the Senate. The combination of freedom, simplicity and fairness make the flat tax the ultimate goal of true tax reform. I urge my colleagues to join me in support of meaningful and comprehensive tax reform.

By Mr. FEINGOLD:

S. 1041. A bill to establish a program for an information clearinghouse to increase public access to defibrillation in schools; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine, Senator COLLINS, to introduce the Automatic Defibrillators in Adam's Memory Act, or the ADAM Act, which would help schools across America implement public access defibrillation programs.

I am especially proud that the concept of this legislation came from my home state of Wisconsin, where a similar program has saved the lives of a number of students.

Heart disease is not only a problem among adults. I recently learned the story of Adam Lemel, a 17-year-old high school student and a star basketball and tennis player in southeastern Wisconsin. Tragically, during a timeout while playing basketball at a neighboring Milwaukee high school, Adam suffered sudden cardiac arrest, and died before the paramedics arrived.

The following November, a Milwaukee Technical High School football player died of Sudden Cardiac Arrest while playing basketball with his friends. And in April 2000, two more Milwaukee-area deaths were attributed to sudden cardiac arrest: a Marquette University senior and a visiting 12-year old from Illinois who was playing basketball.

These stories are incredibly tragic. These young people had their whole lives before them, and could have been saved. In fact, we have seen a number of examples in Wisconsin where early CPR and access to defibrillation have saved lives.

Seventy miles away from Milwaukee, a 14-year-old boy, collapsed while playing basketball. Within three minutes, the emergency team arrived and began CPR. Within five minutes of his collapse, the paramedics used an automated external defibrillator to jump start his heart. Not only has this young man survived, they have identified his father and brother to have the same heart condition. To prevent cardiac deaths, internal defibrillators were implanted in both men.

I also recently met Heather Rahn who on March 19, was at a church concert in the gymnasium of Good Hope Christian Academy. She told her friends that her heart was racing, and

she felt nervous. In the middle of running across the gym, she collapsed on the ground from cardiac arrest. She was down for about three and a half minutes when an ambulance arrived, bringing a defibrillator that would save her life. It took two shocks to bring her back.

These tragic stories help to underscore three issues. First, although cardiac arrest is most common among adults, it can occur at any age, even in apparently healthy children and adolescents. Second, early intervention is essential, a combination of CPR and use of AEDs can save lives. Third, some individuals who are at risk for sudden cardiac arrest, can be identified to prevent cardiac arrest.

After Adam Lemel tragically suffered his cardiac arrest two years ago, his friend David Ellis joined forces with Children's Hospital of Wisconsin to initiate Project ADAM to: bring CPR training and public access defibrillation into schools, educate communities about preventing sudden cardiac deaths, and save lives.

Today, Project ADAM has introduced AEDs into several Wisconsin schools, and has been a model for programs in Washington, Florida, Michigan and elsewhere.

I had the chance to visit with Dave Ellis, Adam's parents, and the dedicated people at Children's Hospital of Wisconsin, especially Karen Bauer and Dr. Stu Berger. And let me tell you, there are no better advocates for saving the lives of cardiac arrest victims. I want to commend them for their service, and efforts to save the lives of sudden cardiac arrest victims.

I strongly believe that the Federal Government should support local efforts to equip more people in our communities, including younger generations, with the necessary skills to deal with life-threatening emergencies like cardiac arrest. And there is no better way to support local efforts than by following the lead of a successful local effort such as Project ADAM.

Over two hundred twenty thousand Americans die each year of sudden cardiac arrest, including between 5000 and 7000 children. About 50,000 of these victims lives could be saved each year if more people implemented the "Chain of Survival," which includes an immediate call to 911, early CPR and defibrillation, and early advanced life support.

According to the Centers for Disease Control, the number of sudden cardiac deaths of people between the ages of 15 and 34 years old has increased over 10 percent in the past 10 years. The research also shows that sudden cardiac death has increased by 30 percent in young women.

Without any training, kids would never know what to do in the face of such an emergency.

As a matter of fact, many adults wouldn't know what to do either. That lack of knowledge is a break in the chain of survival, but that break can be

repaired through the right training. A number of localities have pushed for increased CPR training and public access to defibrillation in schools.

The ADAM Act will help strengthen the Chain by establishing a national Project ADAM resource center. The center would provide schools with information to help them implement public access defibrillation programs.

The ADAM Center would also provide support to CPR and AED training programs, and help foster new community partnerships among public and private organizations to promote public access to defibrillation in schools.

Finally, the ADAM Act would create a way to track cardiac arrest among children and to conduct further research into this serious health threat.

This clearinghouse responds to the growing number of schools that have the desire to set up a public access defibrillation program, but often don't know where to start.

If the ADAM Act becomes law, schools across the country will have a place to turn as they work to establish public access to defibrillation programs in more schools across America. The Project ADAM resource center will help schools give victims of cardiac arrest a fighting chance.

By Mr. INOUE:

S. 1042. A bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes; to the Committee on Veterans' Affairs.

Mr. INOUE. Mr. President, I rise to introduce the Filipino Veterans' Benefits Improvement Act of 2001. This bill provides our country the opportunity to right a wrong committed decades ago, by providing Philippine-born veterans of World War II who served in the United States Armed Forces their hard-earned, due compensation.

Our Nation is now at peace, and our prosperity has reached levels never before seen by any Nation in history. We are on the top of the world in terms of economic power and military might, and much of this unprecedented success is due to the tremendous sacrifices made by our fighting forces during World War II. We trampled tyranny in Europe and in the Pacific, and when we raised our flag proudly over hostile lands, we were greeted enthusiastically by the millions we liberated from the grasp of terrible aggression.

I take this opportunity today to remind everyone of an injustice that persists as a blemish on one of history's greatest success stories.

The Philippines became a United States possession in 1898, when it was ceded from Spain following the Spanish-American War. In 1934, the Congress enacted the Philippine Independence Act, Public Law 73-127, which provided a 10-year time frame for the independence of the Philippines. Between 1934 and final independence in 1946, the United States retained certain powers over the Philippines, including the

right to call all military forces organized by the newly-formed Commonwealth government into the service of the United States Armed Forces.

On July 26, 1941, President Roosevelt issued an Executive Order calling members of the Philippine Commonwealth Army into the service of the United States Armed Forces of the Far East. Under this order, Filipinos were entitled to full veterans' benefits. More than 100,000 Filipinos volunteered for the Philippine Commonwealth Army and fought alongside the United States Armed Forces.

The United States Armed Forces of the Far East fought to reclaim control of the entire Western Pacific. Filipinos, under the command of General Douglas MacArthur, fought in the front lines of the Battle of Corregidor and at Bataan. They served in Okinawa, on occupied mainland Japan, and in Guam. They were part of what became known as the Bataan Death March, and were held and tortured as prisoners of war. Through these hardships, the men of the Philippine Commonwealth Army remained loyal to the United States during the Japanese occupation of the Philippines, and the valiant guerilla war they waged against the Japanese helped to delay the Japanese advance across the Pacific.

Despite all of their sacrifices, on February 18, 1946, Congress betrayed these veterans by enacting the Rescission Act of 1946 and declaring the service performed by the Philippine Commonwealth Army veterans as not "active service," thus denying many benefits to which these veterans were entitled.

Then, shortly after Japan's surrender, Congress enacted the Armed Forces Voluntary Recruitment Act of 1945 for the purpose of sending American troops to occupy enemy lands, and to oversee military installations at various overseas locations. A provision included in the Recruitment Act called for the enlistment of Philippine citizens to constitute a new body of Philippine Scouts. The New Scouts were authorized to receive pay and allowances for services performed throughout the Western Pacific. Although hostilities had ceased, wartime service of the New Philippine Scouts continued as a matter of law until the end of 1946.

On May 27, 1946, the Congress enacted the Second Supplemental Surplus Appropriation Rescission Act, which included a provision to limit veterans' benefits to Filipinos. This provision duplicated the language that had eliminated veterans' benefits under the First Rescission Act, and placed similar restrictions on veterans of the New Philippine Scouts. Thus, the Filipino veterans that fought in the service of the United States during World War II have been precluded from receiving most veterans' benefits that had been available to them before 1946, and that are available to all other veterans of our armed forces regardless of race, national origin, or citizenship status.

The Congress tried to rectify the wrong committed against the Filipino veterans of World War II by amending the Nationality Act of 1940 to grant the veterans the privilege of becoming United States citizens for having served in the United States Armed Forces of the Far East.

The law expired at the end of 1946, but not before the United States had withdrawn its sole naturalization examiner from the Philippines for a nine-month period. This effectively denied Filipino veterans the opportunity to become citizens during this nine-month window. Forty-five years later, under the Immigration Act of 1990, certain Filipino veterans who served during World War II became eligible for United States citizenship. Between November, 1990, and February, 1995, approximately 24,000 veterans took advantage of this opportunity and became United States citizens.

For many years, Filipino veterans of World War II, who are now in their twilight years, have sought to correct the injustice caused by the Rescission Acts by seeking equal treatment of their valiant military service in our Armed Forces. They stood up to the same aggression that American-born soldiers did, and many Filipinos sacrificed their lives in the war for democracy and liberty.

Heroes should never be forgotten or ignored, so let us not turn our backs on those who sacrificed so much. Many of the Filipinos who have fought so hard for us have been honored with American citizenship, but let us now work to repay all of these brave men for their sacrifices by providing them the full veterans' benefits they have earned.

By Mr. REID:

S. 1043. A bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Nevada; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, today I am introducing a simple bill that would extend the deadline under the Federal Power Act for the commencement of construction of the Blue Diamond hydroelectric project in southern Nevada. The bill will allow the Federal Government to extend the project permit for as many as three consecutive two-year periods. At this time, serious concerns remain about the environmental impacts of the project and where power generated at the facility would be sold. These important questions merit additional dialogue and introduction of this bill provides for further examination of this project.

By Mr. SARBANES (for himself, Mr. WARNER, Mr. ALLEN, and Ms. MIKULSKI):

S. 1044. A bill to amend the Federal Water Pollution Control Act to provide assistance for nutrient removal technologies to States in the Chesapeake Bay watershed; to the Committee on Environment and Public Works.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. WARNER, and Mr. ALLEN):

S. 1045. A bill to amend the National Oceanic and Atmospheric Administration Authorization Act of 1992 to revise and enhance authorities, and to authorize appropriations, for the Chesapeake Bay Office, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. SARBANES. Mr. President, today I am introducing two measures to expand restoration and protection efforts in the Chesapeake Bay watershed. Joining me in sponsoring these measures are my colleagues Senators WARNER, ALLEN, and MIKULSKI.

Nearly two decades ago, the Bay area States and the Federal Government signed an historic agreement to work together to restore the Chesapeake Bay, our Nation's largest estuary and one of the most productive ecosystems in the world. In 1987, the Governors of Maryland, Virginia, Pennsylvania, the Chesapeake Bay Commission, the Mayor of the District of Columbia and the Administrator of the EPA, on behalf of the Federal Government, reaffirmed their commitment to that compact and agreed to 29 specific goals and action plans including the unprecedented goal of a 40 percent reduction of nitrogen and phosphorous loads to the main stem of the Bay by the year 2000. Last year, the State and the Federal Government conducted an extensive evaluation of cleanup progress since the 1980s and determined that, despite important advances, efforts must be redoubled to restore the integrity of the Chesapeake Bay ecosystem. A new Chesapeake 2000 agreement was signed to serve as a blueprint for the restoration effort over the next decade.

To meet the goals established in the new agreement, it is estimated that the local, State and Federal Governments must invest \$8.5 billion over the course of the next ten years. Thousands of acres of watershed property must be preserved, buffer zones to protect rivers and streams need to be created, and pollution from all sources will have to be further reduced. While \$8.5 billion seems like an enormous sum, we should remember that the health of Chesapeake is vital not only to the more than 15 million people who live in the watershed, but to the nation. The Chesapeake Bay watershed is one of our Nation's and the world's greatest natural resources covering 64,000 square miles within six States. It is a world-class fishery that still produces a significant portion of the fin fish and shellfish catch in the United States. It provides vital habitat for living resources, including more than 3600 species of plants, fish and animals. It is a major resting area for migratory waterfowl and birds along the Atlantic including many endangered and threatened species. It is also a one-of-a-kind recreational asset enjoyed by millions of people, a major commercial waterway and shipping center for much of

the eastern United States, and provides jobs for thousands of people. In short, the Chesapeake Bay is a magnificent, multifaceted resource worthy of the highest levels of protection and restoration.

Over the years, human activities have profoundly impacted the Bay. Untreated sewage, deforestation, toxic chemicals, runoff and increased development have degraded the Bay's water quality and contributed to the decline of such key species as oysters and blue crabs and the underwater grasses they favor for habitat. We have lost not only thousands of jobs in the fishing industry but much of the wilderness that defined the watershed. By the year 2020, an additional three million people are expected to settle in the watershed and this growth could eclipse the nutrient reduction and habitat protection gains of the past. Not meeting the investment needs of the next 10 years risks reversing all that has been achieved over the past two decades in cleaning up the Bay.

The first measure we are introducing would establish a grant program in the Environmental Protection Agency to support the installation of nutrient reduction technologies at major wastewater treatment facilities in the Chesapeake Bay watershed. Despite important water quality improvements over the past decade, nutrient over-enrichment remains the most serious pollution problem facing the Bay. The overabundance of the nutrients nitrogen and phosphorous continues to rob the Bay of life sustaining oxygen. Recent modeling of EPA's Bay Program has found that total nutrient discharges must be reduced by more than 35 percent from current levels to restore the Chesapeake Bay and its major tributaries to health. To do so, nitrogen discharges from all sources must be reduced drastically below current levels. Annual nitrogen discharges into the Bay will need to be cut by at least 110 million pounds from the current 300 million pounds to less than 190 million pounds. Municipal wastewater treatment plants, in particular, will have to reduce nitrogen discharges by nearly 75 percent.

There are 288 major wastewater treatment plants in the Chesapeake Bay watershed: Pennsylvania, 124, Maryland, 62, Virginia, 70, New York, 18, Delaware, 3, Washington, D.C., 2, and West Virginia, 9. These plants contribute about 60 million pounds of nitrogen per year, one fifth, of the total loads of nitrogen to the Bay. Upgrading these plants with nutrient removal technologies to achieve nitrogen reductions of 3 mg/liter would remove 46 million pounds of nitrogen in the Bay each year or 40 percent of the total nitrogen reductions needed. Nutrient removal technologies have other benefits as well, they provide significant savings in energy usage, 20 to 30 percent, in chemical usage, more than 50 percent, and in the amount of sludge produced, five to 15 percent. They are one of the

most cost-effective methods of reducing nutrients discharged to the Bay.

My legislation would provide grants for 55 percent of the capital cost of upgrading all 288 plants with nutrient removal technologies capable of achieving nitrogen reductions of 3 mg/liter. The total cost of these upgrades is estimated at \$1.2 billion, with a federal share of \$660 million. Any publically owned wastewater treatment plant which has a permitted design capacity to treat an annual average of 0.5 million gallons per day within the Chesapeake Bay watershed portion of New York, Pennsylvania, Maryland, West Virginia, Delaware, Virginia and the District of Columbia would be eligible to receive these grants. As a signatory to the Chesapeake Bay Agreement, the EPA has an important responsibility to assist the states with financing these water infrastructure needs.

The second measure would reauthorize the National Oceanic and Atmospheric, NOAA, Chesapeake Bay Office. I first introduced a similar measure in June, 2000, but unfortunately it was not acted upon prior to the adjournment of the 106th Congress.

The NOAA Chesapeake Bay office, NCBO, was first established in 1992 pursuant to Public Law 102-567. It serves as the focal point for all of NOAA's activities within the Chesapeake Bay watershed and is a vital part of the effort to achieve the long-term goal of the Bay Program, restoring the Bay's living resources to healthy and balanced levels. During the past nine years, the NCBO has made great strides in realizing the objectives of the NOAA Authorization Act of 1992 and the overall Bay Program living resource goals. Working with other Bay Program partners, important progress has been made in surveying and assessing fishery resources in the Bay, developing fishery management plans for selected species, undertaking habitat restoration projects, removing barriers to fish passage, and undertaking important remote sensing and data analysis activities.

NOAA's responsibilities to the Bay restoration effort are far from complete, however. Some populations of major species of fish and shellfish in Chesapeake Bay such as shad and oysters, remain severely depressed, while others, such as blue crab are at risk. Bay-wide, some 16 of 25 ecologically important species are in decline or severe decline, due to disease, habitat loss, over-fishing and other factors. The underwater grasses that once sustained these fisheries are only at a fraction of their historic levels. Research and monitoring must be continued and enhanced to track living resource trends, evaluate the responses of the estuary's biota to changes in their environment and establish clear management goals and progress indicators for restoring the productivity, diversity and abundance of these species. Chesapeake 2000, the new Bay Agreement, has identified several living re-

source goals which will require strong NOAA involvement to achieve.

The legislation which we are introducing would provide NOAA with additional resources and authority necessary to ensure its continued full participation in the Bay's restoration and in meeting with goals and objectives of Chesapeake 2000. First, the legislation authorizes and directs NOAA to undertake a special five-year study, in cooperation with the scientific community of the Chesapeake Bay and appropriate other federal agencies, to develop the knowledge base required for understanding multi-species interactions and developing multi-species management plans. To date, fisheries management in Chesapeake Bay and other waters, has been largely based upon single-species plans that often ignore the critical relationships between water and habitat quality, ecosystem health and the food webs that support the Bay's living resources. There is a growing consensus between scientific leaders and managers alike that we must move beyond the one-species-at-a-time approach toward a wider, multi-species and ecosystem perspective. Chesapeake 2000 calls for developing multi-species management plans for targeted species by the year 2005 and implementing the plans by 2007. In order to achieve these goals, NOAA must take a leadership role and support a sustained research and monitoring program.

Second, the legislation authorizes NOAA to carry out a small-scale fishery and habitat restoration grant and technical assistance program to help citizens organizations and local governments in the Chesapeake Bay watershed undertake habitat, fish and shellfish restoration projects. Experience has shown that, with the proper tools and training, citizens' groups and local communities can play a tremendous role in fisheries and habitat protection and restoration efforts. The Chesapeake Bay Foundation's oyster gardening program, for example, has proven to be highly successful in training citizens to grow oysters at their docks to help restore oysters' populations in the Bay. The new Bay Agreement has identified a critical need to not only to expand and promote community-based programs but to restore historic levels of oyster production, restore living resource habitat and submerged aquatic vegetation. The NOAA small-grants program, which this bill would authorize, would complement EPA's Chesapeake Bay small watershed program, and make "seed" grants available on a competitive, cost-sharing basis to local governments and nonprofit organizations to implement hands-on projects such as improvement of fish passageways, creating artificial or natural reefs, restoring wetlands and seagrass beds, and producing oysters for restoration projects.

Third, the legislation would establish an internet-based Coastal Predictions Center for the Chesapeake Bay. Re-

source managers and scientists alike agree that we must make better use of the various modeling and monitoring systems and new technologies to improve prediction capabilities and response to physical and chemical events within the Bay and tributary rivers. There are substantial amounts of data collected and compiled by Federal, state and local government agencies and academic institutions including information on weather, tides, currents, circulation, climate, land use, coastal environmental quality, aquatic living resources and habitat conditions. Unfortunately, little of this data is coordinated and organized in a manner that is useful to the wide range of potential users. The Coastal Predictions Center would serve as a knowledge bank for assembling monitoring and modeling data from relevant government agencies and academic institutions, interpreting that data, and organizing it into products that are useful to resource managers, scientists and the public.

Finally, the legislation would direct NOAA to implement an education program targeted toward the 3 million pupils in kindergarten through 12th grade in the Chesapeake Bay watershed. One of the key goals of the Chesapeake 2000 Agreement is to expand education and public awareness of the Bay and local watersheds. Among other activities, the Agreement calls for providing meaningful Bay or stream outdoor experiences for every school student in the watershed before graduation from high school, incorporating the Chesapeake Bay watershed into school curricula, and providing students and teachers alike with information to increase awareness of Bay living resource and other issues. Our legislation would enable NOAA to enter into partnerships with non-profit environmental organizations in the region experienced in conducting environmental education programs, the Chesapeake Bay Foundation and the Living Classrooms Foundation, for example, and to expand opportunities for students and teachers to participate in Bay and other field and classroom learning experiences which support Chesapeake Bay restoration and protection efforts.

The legislation increases the authorization for the NOAA Bay Program from the current level of \$2.5 million to \$8.5 million per year to enhance current activities and to carry out these new initiatives. For more than a decade, funding for NOAA's Bay Program has remained static at an annual average of \$1.9 million. If we are to achieve the ultimate, long-term goal of the Bay Program, protecting, restoring and maintaining the health of the living resources of the Bay, additional financial resources must be provided.

These two measures would provide an important boost to our efforts to save the Chesapeake Bay. They are strongly supported by the Chesapeake Bay Commission, the Chesapeake Bay Foundation, and other organizations in the



watershed. I ask unanimous consent that the full text of the measures and supporting letters be printed in the RECORD. I urge my colleagues to join with us in supporting the two measures and continue the momentum contributing to the improvement and enhancement of our Nation's most valuable and treasured natural resource.

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

S. 1044

*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 "Chesapeake Bay Watershed Nutrient Removal Assistance Act".

#### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) nutrient pollution from point sources and nonpoint sources continues to be the most significant water quality problem in the Chesapeake Bay watershed;

(2) a key commitment of the Chesapeake 2000 agreement, an interstate agreement among the Administrator, the Chesapeake Bay Commission, the District of Columbia, and the States of Maryland, Virginia, and Pennsylvania, is to achieve the goal of correcting the nutrient-related problems in the Chesapeake Bay by 2010;

(3) by correcting those problems, the Chesapeake Bay and its tidal tributaries may be removed from the list of impaired bodies of water designated by the Administrator of the Environmental Protection Agency under section 303(d) of the Federal Water Pollution Control Act (33 U.S.C. 1313(d));

(4) nearly 300 major sewage treatment plants located in the Chesapeake Bay watershed annually discharge approximately 60,000,000 pounds of nitrogen, or the equivalent of 20 percent of the total nitrogen load, into the Chesapeake Bay; and

(5) nutrient removal technology is 1 of the most reliable, cost-effective, and direct methods for reducing the flow of nitrogen from point sources into the Chesapeake Bay.

(b) PURPOSES.—The purposes of this Act are—

(1) to authorize the Administrator of the Environmental Protection Agency to provide financial assistance to States and municipalities for use in upgrading publicly-owned wastewater treatment plants in the Chesapeake Bay watershed with nutrient removal technologies; and

(2) to further the goal of restoring the water quality of the Chesapeake Bay to conditions that are protective of human health and aquatic living resources.

#### SEC. 3. SEWAGE CONTROL TECHNOLOGY GRANT PROGRAM.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended by adding at the end the following:

##### "TITLE VII—MISCELLANEOUS

#### "SEC. 701. SEWAGE CONTROL TECHNOLOGY GRANT PROGRAM.

"(a) DEFINITION OF ELIGIBLE FACILITY.—In this section, the term 'eligible facility' means a municipal wastewater treatment plant that—

"(1) as of the date of enactment of this title, has a permitted design capacity to treat an annual average of at least 500,000 gallons of wastewater per day; and

"(2) is located within the Chesapeake Bay watershed in any of the States of Delaware, Maryland, New York, Pennsylvania, Virginia, or West Virginia or in the District of Columbia.

"(b) GRANT PROGRAM.—

"(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this title, the Administrator shall establish a program within the Environmental Protection Agency to provide grants to States and municipalities to upgrade eligible facilities with nutrient removal technologies.

"(2) PRIORITY.—In providing a grant under paragraph (1), the Administrator shall—

"(A) consult with the Chesapeake Bay Program Office;

"(B) give priority to eligible facilities at which nutrient removal upgrades would—

"(i) produce the greatest nutrient load reductions at points of discharge; or

"(ii) result in the greatest environmental benefits to local bodies of water surrounding, and the main stem of, the Chesapeake Bay; and

"(iii) take into consideration the geographic distribution of the grants.

"(3) APPLICATION.—

"(A) IN GENERAL.—On receipt of an application from a State or municipality for a grant under this section, if the Administrator approves the request, the Administrator shall transfer to the State or municipality the amount of assistance requested.

"(B) FORM.—An application submitted by a State or municipality under subparagraph (A) shall be in such form and shall include such information as the Administrator may prescribe.

"(4) USE OF FUNDS.—A State or municipality that receives a grant under this section shall use the grant to upgrade eligible facilities with nutrient removal technologies that are designed to reduce total nitrogen in discharged wastewater to an average annual concentration of 3 milligrams per liter.

"(5) COST SHARING.—

"(A) FEDERAL SHARE.—The Federal share of the cost of upgrading any eligible facility as described in paragraph (1) using funds provided under this section shall not exceed 55 percent.

"(B) NON-FEDERAL SHARE.—The non-Federal share of the costs of upgrading any eligible facility as described in paragraph (1) using funds provided under this section may be provided in the form of funds made available to a State or municipality under—

"(i) any provision of this Act other than this section (including funds made available from a State revolving fund established under title VI); or

"(ii) any other Federal or State law.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$132,000,000 for each of fiscal years 2003 through 2007, to remain available until expended.

"(2) ADMINISTRATIVE COSTS.—The Administrator may use not to exceed 4 percent of any amount made available under paragraph (1) to pay administrative costs incurred in carrying out this section."

S. 1045

*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 "NOAA Chesapeake Bay Office Reauthorization Act of 2001".

#### SEC. 2. CHESAPEAKE BAY OFFICE.

(a) ESTABLISHMENT.—Section 307(a) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d(a)) is amended—

(1) in paragraph (1), by striking "Estuarine Resources"; and

(2) by amending paragraph (2) to read as follows:

"(2) The Secretary of Commerce shall appoint as Director of the Office an individual who has knowledge of and experience in research or resource management efforts in the Chesapeake Bay."

(b) FUNCTIONS.—

(1) Section 307(b)(3) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d(b)(3)) is amended to read as follows:

"(3) facilitate coordination of the programs and activities of the various organizations and facilities within the National Oceanic and Atmospheric Administration, the Chesapeake Bay units of the National Estuarine Research Reserve System, the Chesapeake Bay Regional Sea Grant Programs, and the Cooperative Oxford Lab, including—

"(A) programs and activities in—

"(i) coastal and estuarine research, monitoring, and assessment;

"(ii) fisheries research and stock assessments;

"(iii) data management;

"(iv) remote sensing;

"(v) coastal management;

"(vi) habitat conservation and restoration; and

"(vii) atmospheric deposition; and

"(B) programs and activities of the Cooperative Oxford Laboratory of the National Ocean Service with respect to—

"(i) nonindigenous species;

"(ii) marine species pathology;

"(iii) human pathogens in marine environments; and

"(iv) ecosystems health;".

(2) Section 307(b)(7) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d(b)(7)) is amended by striking the period at the end and inserting the following: "which report shall include an action plan consisting of—

"(A) a list of recommended research, monitoring, and data collection activities necessary to continue implementation of the strategy described in paragraph (2); and

"(B) proposals for—

"(i) continuing and new National Oceanic and Atmospheric Administration activities in the Chesapeake Bay; and

"(ii) the integration of those activities with the activities of the partners in the Chesapeake Bay Program to meet the commitments of the Chesapeake 2000 agreement and subsequent agreements."

(c) CONFORMING AMENDMENT.—Section 307 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d) is amended by striking the section heading and inserting the following:

"SEC. 307. CHESAPEAKE BAY OFFICE."

#### SEC. 3. MULTIPLE SPECIES MANAGEMENT STRATEGY; CHESAPEAKE BAY FISHERY AND HABITAT RESTORATION SMALL GRANTS PROGRAM; COASTAL PREDICTION CENTER.

The National Oceanic and Atmospheric Administration Authorization Act of 1992 is amended by inserting after section 307 (15 U.S.C. 1511d) the following:

#### "SEC. 307A. MULTIPLE SPECIES MANAGEMENT STRATEGY.

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration shall commence a 5-year study, in cooperation with the scientific community of the Chesapeake Bay and appropriate Federal agencies—

"(1) to determine and expand the understanding of the role and response of living resources in the Chesapeake Bay ecosystem; and

"(2) to develop a multiple species management strategy for the Chesapeake Bay.

“(b) REQUIRED ELEMENTS OF STUDY.—In order to improve the understanding necessary for the development of the strategy under subsection (a), the study shall—

“(1) determine the current status and trends of fish and shellfish that live in the Chesapeake Bay estuary and are selected for study;

“(2) evaluate and assess interactions among the fish and shellfish described in paragraph (1) and other living resources, with particular attention to the impact of changes within and among trophic levels; and

“(3) recommend management actions to optimize the return of a healthy and balanced ecosystem for the Chesapeake Bay.

**“SEC. 307B. CHESAPEAKE BAY FISHERY AND HABITAT RESTORATION SMALL GRANTS PROGRAM.**

“(a) IN GENERAL.—The Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (referred to in this section as the ‘Director’), in cooperation with the Chesapeake Executive Council (as defined in section 307(e)), shall carry out a community-based fishery and habitat restoration small grants and technical assistance program in the Chesapeake Bay watershed.

“(b) PROJECTS.—

“(1) SUPPORT.—The Director shall make grants under the program under subsection (a) to pay the Federal share of the cost of projects that are carried out by eligible entities described in subsection (c) for the restoration of fisheries and habitats in the Chesapeake Bay.

“(2) FEDERAL SHARE.—The Federal share of the cost of a project under paragraph (1) shall not exceed 75 percent of the total cost of that project.

“(3) TYPES OF PROJECTS.—Projects for which grants may be made under the program include—

“(A) the improvement of fish passageways;

“(B) the creation of natural or artificial reefs or substrata for habitats;

“(C) the restoration of wetland or sea grass;

“(D) the production of oysters for restoration projects; and

“(E) the identification and characterization of contaminated habitats, and the development of restoration plans for those habitats in the Chesapeake Bay watershed.

“(c) ELIGIBLE ENTITIES.—The following entities are eligible to receive grants under the program under this section:

“(1) The government of a political subdivision of a State in the Chesapeake Bay watershed and the Government of the District of Columbia.

“(2) An organization in the Chesapeake Bay watershed (such as an educational institution or a community organization) that is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of the Code.

“(d) ADDITIONAL REQUIREMENTS.—The Director may prescribe any additional requirements, including procedures, that the Director considers necessary to carry out the program under this section.

**“SEC. 307C. COASTAL PREDICTION CENTER.**

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (referred to in this section as the ‘Director’), in collaboration with regional scientific institutions, shall establish a coastal prediction center for the Chesapeake Bay (referred to in this section as the ‘center’).

“(2) PURPOSE OF CENTER.—The center shall serve as a knowledge bank for—

“(A) assembling, integrating, and modeling coastal information and data from appropriate government agencies and scientific institutions;

“(B) interpreting the data; and

“(C) organizing the data into predictive products that are useful to policy makers, resource managers, scientists, and the public.

“(b) ACTIVITIES.—

“(1) INFORMATION AND PREDICTION SYSTEM.—The center shall develop an Internet-based information system for integrating, interpreting, and disseminating coastal information and predictions concerning—

“(A) climate;

“(B) land use;

“(C) coastal pollution;

“(D) coastal environmental quality;

“(E) ecosystem health and performance;

“(F) aquatic living resources and habitat conditions; and

“(G) weather, tides, currents, and circulation that affect the distribution of sediments, nutrients, and organisms, coastline erosion, and related physical and chemical events within the Chesapeake Bay and the tributaries of the Chesapeake Bay.

“(2) AGREEMENTS TO PROVIDE DATA, INFORMATION, AND SUPPORT.—The Director may enter into agreements with other entities of the National Oceanic and Atmospheric Administration, other appropriate Federal, State, and local government agencies, and academic institutions, to provide and interpret data and information, and provide appropriate support, relating to the activities of the center.

“(3) AGREEMENTS RELATING TO INFORMATION PRODUCTS.—The Director may enter into grants, contracts, and interagency agreements with eligible entities for the collection, processing, analysis, interpretation, and electronic publication of information products for the center.”.

**SEC. 4. ENVIRONMENTAL EDUCATION.**

The National Oceanic and Atmospheric Administration Authorization Act of 1992 is amended by inserting after section 307C (as added by section 3) the following:

**“SEC. 307D. ENVIRONMENTAL EDUCATION PILOT PROGRAM.**

“(a) PILOT PROGRAM ESTABLISHED.—Not later than 180 days after the date of enactment of this section, the Director, in cooperation with the Chesapeake Executive Council, shall establish the Chesapeake Bay Environmental Education Program to improve the understanding of elementary and secondary school students and teachers of the living resources of the ecosystem of the Chesapeake Bay, and to meet the educational goals of the Chesapeake 2000 agreement.

“(b) GRANT PROGRAM.—

“(1) IN GENERAL.—The Director, through the pilot program established under subsection (a), shall make grants to not-for-profit institutions (or consortia of such institutions) to pay the federal share of the cost of programs described in paragraph (3).

“(2) CRITERIA.—The Director shall award grants under this subsection based on the experience of the applicant in providing environmental education and training programs regarding the Chesapeake Bay watershed to a range of participants and in a range of settings.

“(3) FUNCTIONS AND ACTIVITIES.—Grants awarded under this subsection may be used to support education and training programs that—

“(A) provide classroom education, including the use of distance learning technologies, on the issues, science, and problems of the living resources of the Chesapeake Bay watershed;

“(B) provide meaningful outdoor experience on the Chesapeake Bay, or on a stream or in a local watershed of the Chesapeake Bay, in the design and implementation of field studies, monitoring and assessments, or restoration techniques for living resources;

“(C) provide professional development for teachers related to the science of the Chesapeake Bay watershed and the dissemination of pertinent education materials oriented to varying grade levels;

“(D) demonstrate or disseminate environmental educational tools and materials related to the Chesapeake Bay watershed;

“(E) demonstrate field methods, practices and techniques including assessment of environmental and ecological conditions and analysis of environmental problems; and

“(F) develop or disseminate projects designed to—

“(i) enhance understanding and assessment of a specific environmental problem in the Chesapeake Bay watershed or of a goal of the Chesapeake Bay Program; or

“(ii) protect or restore living resources of the Chesapeake Bay watershed.

“(4) FEDERAL SHARE.—The Federal share of the cost of a program under paragraph (1) shall not exceed 75 percent of the total cost of that program.

“(5) PROGRAM REVIEW.—Not later than 1 year after the date on which the Director awards the first grant under this subsection, and annually thereafter, the Director shall conduct a detailed review and evaluation of the programs supported by grants awarded under this subsection to determine whether the quality of the content, delivery, and outcome of the program warrants continued support.

“(c) PROCEDURES.—The Director shall establish procedures, including safety protocols, as necessary for carrying out the purposes of this section.

“(d) TERMINATION AND REPORT.—

“(1) TERMINATION.—The program established under this section shall be effective during the 4-year period beginning on October 1, 2001.

“(2) REPORT.—Not later than December 31, 2005, the Director, in consultation with the Chesapeake Executive Council, shall submit a report through the Administrator of National Oceanic and Atmospheric Administration to Congress regarding this program and, on the appropriate role of Federal, State and local governments in continuing the program established under this section.

“(e) DEFINITION.—In this section, the term ‘Chesapeake 2000 agreement’ means the agreement between the United States, the States of Maryland, Pennsylvania, and Virginia, and the District of Columbia entered into on June 28, 2000.”.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—Section 307(d) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d(d)) is amended to read as follows:

“(d) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to the Department of Commerce for the Chesapeake Bay Office \$8,000,000 for each of fiscal years 2002 through 2005.

“(2) AMOUNTS FOR PROGRAMS.—Of the amount authorized to be appropriated for each fiscal year under paragraph (1)—

“(A) not more than \$2,500,000 shall be available to operate the Chesapeake Bay Office and to carry out section 307A;

“(B) not more than \$1,000,000 shall be available to carry out section 307B; and

“(C) not more than \$500,000 shall be available to carry out section 307C.

“(D) not more than \$2,000,000 shall be available to carry out section 307D.



(c) CONFORMING AMENDMENT.—Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (97 Stat. 1409) is amended by striking subsection (e), as added by section 307(d) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (106 Stat. 4285).

#### SEC. 6. TECHNICAL CORRECTION.

Section 307(b) of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d(b)) is amended by striking “Chesapeake Bay Executive Council” and inserting “Chesapeake Executive Council”.

CHESAPEAKE BAY FOUNDATION,  
Annapolis, MD, May 15, 2001.

Hon. PAUL SARBANES,  
U.S. Senate, Hart Office Building, Washington,  
DC.

DEAR SENATOR SARBANES: Last year, a few Members claimed that the Florida Everglades was a national treasure. I know you agree with me that the Chesapeake Bay, which drains six states and the District, has more claim to being a national treasure than the Florida Everglades.

I am writing to thank you for your steadfast support for the Bay. I am also writing to urge you to pass new legislation that will fund wastewater treatment plant upgrades to reduce nutrient pollution in the Bay. Nutrient pollution is the Bay's number one problem. The Bay and its tributaries receive about twice as much nitrogen and phosphorus as they should. Sewage plants are not the sole source, but new technology makes them the low-hanging fruit as we seek reductions.

First, let me give credit where it is due. Over 70 large wastewater treatment plants have been upgraded with technology that dramatically reduces the amount of nitrogen and phosphorus in the treated discharge. Some plants, like the Blue Plains facility in DC, have gone beyond what was asked of them. Virginia and Maryland and the local municipalities have shouldered that cost so far.

Nevertheless, to make a real dent in nutrient pollution, we need to get serious about getting all the major plants to remove nitrogen and phosphorus from the effluent. Another 218 major plants await upgrades. These plants need to install state-of-the-art technology, which would cut 85% of the nitrogen and phosphorus pollution from the treated discharge. That would slash nutrients in the Bay by more than 50 million pounds each year. I've attached a copy of a letter from my staff to yours that provides a detailed background briefing on this subject.

The Clean Water Act promised citizens that they would have clean waters by now. Sadly, the Bay is still polluted thirty years later. If we fail to greatly reduce nutrient pollution in the next few years, the Bay will not be the only loser. Commercial fishermen and their families will suffer. Waterfront property owners will not realize a gain in their investment. Recreational opportunities—so important in this workaholic world—will be diminished. And certainly, an unhealthy Bay imperils human health.

The Chesapeake Bay Foundation stands ready to galvanize public support behind your effort to fund these upgrades. With 92,000 members, a dedicated professional staff and a volunteer board, we are determined to do whatever it takes to save the Bay. Thank you again for all of your hard work on behalf of the Bay.

Sincerely,

WILLIAM C. BAKER,  
President.

CHESAPEAKE BAY COMMISSION,  
Annapolis, MD, May 23, 2001.

Hon. PAUL S. SARBANES,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR SARBANES: We write in support of your efforts to reduce the environmental and public health impacts of one of the major point sources of nutrient pollution to the Chesapeake Bay—municipal wastewater treatment plants. As you know, nearly 300 major sewerage treatment plants located in the Chesapeake Bay watershed discharge approximately 60 million pounds of nitrogen, amounting to 20 percent of the total nitrogen load, into the Chesapeake Bay.

Nutrient pollution has been a particularly difficult and persistent problem in our efforts to protect and restore the Chesapeake Bay's ecosystem. In 1987, the Chesapeake Bay Commission and our Bay partners committed to achieving a 40 percent reduction in controllable nutrient loads to the Bay by the year 2000. While measurable pollution reductions were achieved despite continued population growth and development, the Chesapeake Bay Program estimates that at least an additional 100 million lbs. of nitrogen must be removed in order to correct the Bay's nutrient-related problems by 2010.

Fortunately, the Bay states have led the way in the application of advanced nutrient removal technologies. For example, of Maryland's 66 wastewater treatment plants, biological nutrient removal (BNR) technology is in operation at 34 plants, under construction at 9 plants, and all but one of the remaining wastewater treatment plants have signed cost-share agreements for implementation of BNR. While this technology is one of the most reliable and cost-effective means of reducing nutrient loads to the Bay, it is prohibitively expensive without the combined contribution of local, state, and Federal funds. To date, the financial burden for upgrading aging sewerage infrastructure has rested largely upon local governments, which have a limited capacity to support such expensive capital improvements. The Chesapeake Bay Foundation has derived a rough estimate of \$1.2 billion for the application of BNR at treatment plants within the Bay watershed over a 10-year period.

By establishing the proposed grant program under the “Chesapeake Bay Watershed Nutrient Removal Assistance Act,” state and local funds could be matched with Federal funds to initiate urgently needed upgrades to eligible wastewater treatment facilities. By prioritizing those facilities that would produce the greatest nutrient load reductions at points of discharge and the greatest environmental benefits to local bodies of water, this program would ensure significant and measurable improvements to the water quality and living resources of the Chesapeake Bay. We commend you and your colleagues for addressing this important issue and offer our assistance in your endeavor.

Sincerely,

BRIAN E. FROSH,  
Chairman (Senate of  
Maryland).

ROBERT S. BLOXOM,  
Vice-Chairman (Virginia House of Delegates).

RUSS FAIRCHILD,  
Vice-Chairman (Pennsylvania House of Representatives).

MARYLAND DEPARTMENT  
OF THE ENVIRONMENT,  
Baltimore, MD, June 12, 2001.

Hon. PAUL SARBANES,  
U.S. Senate, Hart Building,  
Washington, DC.

DEAR SENATOR SARBANES: The State of Maryland has been pursuing an aggressive program of reducing nutrients from publicly owned wastewater treatment plants through its Biological Nutrient Removal (BNR) Cost-Share Program. This State funded program provides 50% of the costs to upgrade existing wastewater treatment plants with pollutant removal technologies that go beyond regulatory requirements to help meet the goal of cleaning up the Chesapeake Bay and its tributaries.

This State funded program has benefited from your efforts as well as those of Senator Mikulski through the earmarking of special federal appropriations to some of the wastewater treatment plants targeted for these BNR upgrades. This assistance has made the needed improvements affordable to the citizens served by these treatment plants and advanced the goals of the Chesapeake Bay Program.

I am writing to you today to request your continued support of the BNR Program. Maryland has accomplished much in this program. Of the 66 targeted plants, 34 are in operation and 9 are under construction. The remaining plants are in planning and design. Maryland has provided \$163 million to fund these improvements, with another \$73 to \$100 million estimated to be needed to complete the program. The local governments have committed an equal share, and have the need for additional funding to implement BNR. With full implementation of the BNR Program, nitrogen loadings to the Bay will be reduced from 32 to 15.2 million pounds per year.

Achieving this level of nutrient reduction is more critical than ever, as the new goals being evaluated for the Chesapeake 2000 Agreement are refined. It is already clear that we will have to do much more to reduce both point sources and non-point sources of nutrient pollution to restore the Bay.

BNR will remain the cornerstone of the point survey strategy to achieve the needed nutrient reductions. While the BNR program has targeted a nitrogen concentration of 8 mg/l, many of the plants designed with BNR will be able to achieve even lower concentrations. The plants currently in planning and design are being evaluated and designed to be able to achieve lower concentrations, in anticipation of more ambitious Bay goals. In some cases, this may increase project costs, but is a reasonable investment to protect the Bay and its tributaries.

In the interest of maintaining the leadership of the Chesapeake Bay restoration effort by providing a nationally significant demonstration effort, I am asking for your continuing assistance in helping Maryland, and the other jurisdictions in the Chesapeake Bay region, meet these ambitious yet critical nutrient reduction goals. The creation of a special grant program to help local governments upgrade their wastewater treatment plants to reach the lowest possible nutrient discharge levels would ensure that the large publicly owned wastewater treatment plants in the region are maximizing pollutant removals to the benefit of the Chesapeake Bay.

The beneficiaries of this capital investment will be not only the future residents in the Chesapeake Bay region, who will be able to enjoy the environment and economic wealth of the Bay and the living resources with which we share this unique resource, but also the nation which will benefit from

the knowledge gained from the Chesapeake Bay restoration effort.

Sincerely,

JANE NISHIDA,  
Secretary.

By Mr. DEWINE (for himself, Mr. LEAHY, Mr. VOINOVICH, Mr. BREAUX, Mr. CONRAD, Mr. LUGAR, Mr. SANTORUM Ms. LANDRIEU, and Mr. HATCH):

S. 1048. A bill to amend the Internal Revenue Code of 1986 to provide relief for payment of asbestos-related claims; to the Committee on Finance.

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

There being no objection the text of the bill was ordered to be printed in the RECORD.

S. 1048

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

#### SECTION. 1. EXEMPTION FOR ASBESTOS-RELATED SETTLEMENT FUNDS.

(a) EXEMPTION FOR ASBESTOS-RELATED SETTLEMENT FUNDS.—Subsection (b) of section 468B of the Internal Revenue Code of 1986 (relating to special rules for designated settlement funds) is amended by adding at the end the following new paragraph:

“(6) EXEMPTION FROM TAX FOR ASBESTOS-RELATED SETTLEMENT FUNDS.—Notwithstanding paragraph (1), no tax shall be imposed under this section or any other provision of this subtitle on any settlement fund to which this section or the regulations thereunder applies that is established for the principal purpose of resolving and satisfying present and future claims relating to asbestos.”.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 468B(b) of such Code is amended by striking “There” and inserting “Except as provided in paragraph (6), there”.

(2) Subsection (g) of section 468B of such Code is amended by inserting “(other than subsection (b)(6))” after “Nothing in any provision of law”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after December 31, 2000.

#### SEC. 2. MODIFY TREATMENT OF ASBESTOS-RELATED NET OPERATING LOSSES.

(a) ASBESTOS-RELATED NET OPERATING LOSSES.—Subsection (f) of section 172 of the Internal Revenue Code of 1986 (relating to net operating loss deduction) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) SPECIAL RULES FOR ASBESTOS LIABILITY LOSSES.—

“(A) IN GENERAL.—At the election of the taxpayer, the portion of any specified liability loss that is attributable to asbestos may, for purposes of subsection (b)(1)(C), be carried back to the taxable year in which the taxpayer, including any predecessor corporation, was first involved in the production or distribution of products containing asbestos and each subsequent taxable year. In determining its specified liability losses attributable to asbestos, the taxpayer may elect to take into account payments of related parties attributable to asbestos-related products produced or distributed by the taxpayer.

“(B) COORDINATION WITH CREDITS.—If a deduction is allowable for any taxable year by reason of a carryback described in subparagraph (A)—

“(i) the credits allowable under part IV (other than subpart C) of subchapter A shall

be determined without regard to such deduction, and

“(ii) the amount of taxable income taken into account with respect to the carryback under subsection (b)(2) for such taxable year shall be reduced by an amount equal to—

“(I) the increase in the amount of such credits allowable for such taxable year solely by reason of clause (i), divided by

“(II) the maximum rate of tax under section 1 or 11 (whichever is applicable) for such taxable year.

“(C) CARRYFORWARDS TAKEN INTO ACCOUNT BEFORE ASBESTOS-RELATED DEDUCTIONS.—For purposes of this section—

“(i) in determining whether a net operating loss carryforward may be carried under subsection (b)(2) to a taxable year, taxable income for such year shall be determined without regard to the deductions referred to in paragraph (1)(A) with respect to asbestos, and

“(ii) if there is a net operating loss for such year after taking into account such carryforwards and deductions, the portion of such loss attributable to such deductions shall be treated as a specified liability loss that is attributable to asbestos.

“(D) LIMITATION.—The amount of reduction in income tax liability arising from the election described in subparagraph (A) that exceeds the amount of reduction in income tax liability that would have resulted if the taxpayer utilized the 10-year carryback period under subsection (b)(1)(C) shall be devoted by the taxpayer solely to asbestos claimant compensation and related costs, through a settlement fund or otherwise.

“(E) COORDINATION WITH OTHER CARRYBACK LIMITATIONS.—The amount of asbestos-related specified liability loss that may be absorbed in a prior taxable year (and the amount of refund attributable to such loss absorption) shall be determined without regard to any limitation under section 381, 382, or 1502 or the regulations thereunder.

“(F) PREDECESSOR CORPORATION.—For purposes of this paragraph, a predecessor corporation shall include a corporation that transferred or distributed assets to the taxpayer in a transaction to which section 381(a) applies or that distributed the stock of the taxpayer in a transaction to which section 355 applies.”.

(b) CONFORMING AMENDMENT.—Paragraph (7) of section 172(f) of such Code, as redesignated by this section, is amended by striking “10-year”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after December 31, 2000.

Mr. LEAHY. Mr. President, I am pleased to join with Senator DEWINE in introducing bipartisan legislation to provide common-sense tax incentives to help address asbestos liability issues.

First, our legislation would exempt investment income in an asbestos-related designated settlement funds from Federal income tax, much as the investment income in a 401(k) savings plan is exempt from Federal income tax under current law. To qualify for this exemption from Federal taxation, the principal purpose of the asbestos-related designated settlement fund must be to pay present and future claims to asbestos victims and their families. This tax incentive encourages businesses to create settlement funds to meet their asbestos-related liabilities, just as the tax incentive for 401(k) savings plans encourages workers to invest for their retirement.

Second, our legislation recognizes the unique nature of asbestos-related diseases by providing a special “carry-back” rule for a company’s losses from paying claims to asbestos victims and their families. Under current law, a company may carry back these costs from products sold in the last ten years. This carry-back period, however, fails to match the realities of asbestos-related diseases, which are often latent for forty or more years. In many cases, companies are paying asbestos-related claims for exposure to products that were produced a half-century ago.

Our legislation would permit companies for whom the ten-year period provides no relief to carry back their current expenses from asbestos payments to victims and their families to the years in which the company produced the asbestos product. This extension of the carry-back tax rule is only fair given the long latency period of asbestos-related diseases.

I agree with Supreme Court Justice Ruth Bader Ginsburg in the *Amchem Products* decision that Congress can provide a secure, fair and efficient means of compensating victims of asbestos exposure. The appropriate role for Congress is to provide incentives for private parties to reach settlements, not to take away the legal rights of asbestos victims and their families. Our bipartisan bill provides these tax incentives for private parties involved in asbestos-related litigation to reach global settlements and for asbestos victims and their families to receive the full benefit of the incentives.

Encouraging fair settlements while still preserving the legal rights of all parties involved is a win-win situation for business and asbestos victims. For example, Rutland Fire Clay Company, a family-run, 118-year-old small business in my home state of Vermont, recently reached a settlement with its insurers and the trial bar concerning the firm’s asbestos problems. Unlike some big businesses that are trying to avoid any accountability for their asbestos responsibilities through national “tort reform” legislation, the Rutland Fire Clay Company and its President, Tom Martin, are doing the right thing within the legal system. The tax incentives in our bipartisan bill will support the Rutland Fire Clay Company and its employees while providing financial security for its settlement with asbestos victims and their families.

I believe it is in the national interest to encourage fair and expeditious settlements between companies and asbestos victims. The legislation we are introducing today will encourage payments to victims while ensuring defendant firms remain solvent.

I thank Senator DEWINE for his leadership on this issue. I urge my colleagues to support our bipartisan approach to provide a secure and fair

means of compensating victims of asbestos exposure and to permit businesses with asbestos liabilities to efficiently meet their responsibilities.

By Mr. TORRICELLI:

S. 1049. A bill to provide for an election to exchange research-related tax benefits for a refundable tax credit, for the recapture of refunds in certain circumstances, and for other purposes; to the Committee on Finance.

Mr. TORRICELLI. Mr. President, I rise today to introduce a vital piece of legislation that will encourage the growth of some of the most innovative companies in the world. I refer to the small biotechnology firms throughout the country which on a daily basis perform breakthrough research that enhances our daily lives.

Indeed, biotechnology research over the years has benefitted greatly from successful initiatives such as the R&D tax credit. The R&D credit is of particular importance to my State of New Jersey because there are over 100 companies who spend \$20 billion a year in R&D. In fact, over 50 percent of all the prescription drug research in the world is conducted in my State.

Going hand in hand with the R&D tax credit are the contributions of the biotechnology industry. My colleagues are well aware of the importance of this segment of industry and the beneficial role biotechnology plays in improving our quality of life and protecting the environment. In fact, the Senate unanimously approved a resolution acknowledging the benefits of biotech research earlier this Congress.

The Senate has recognized these benefits that are seen in the drugs and vaccines developed over the last 20 years, which have already enabled over 270 million people throughout the world live healthier and longer lives. Today, a breast cancer, leukemia or diabetes patient has a fighting chance to survive their illness through treatments developed by biotech research.

The record number of biotech drug approvals by the FDA over the past five years demonstrates the potential of this industry to develop new therapies which may someday lead to cures and vaccines for debilitating diseases such as heart disease, Alzheimer's, AIDS and cancer.

While the R&D credit has been responsible for enabling much of this breakthrough research, the irony is that many small firms who are performing the most advanced, cutting edge research and experimentation, who desperately need the R&D credit are unable to utilize it because they have failed to turn a profit. These small companies often dedicate all of their resources to one or two major initiatives to conduct long term R&D projects benefitting our medical, agricultural and industrial sectors.

In many instances, these projects are time consuming, expend much capital, and unfortunately are unsuccessful or unmarketable. Consequently, the long

term unprofitability of these companies make them unable to take advantage of tax breaks and incentives such as the R&D credit. Therefore, many small firms are forced to abandon their research, sell their innovations to larger companies or simply go out of business.

I firmly believe that these industry failures are our failures because the firm that ends its research today, may have been the company that provides the cure for Parkinson's or Lou Gherig's disease tomorrow.

In order to address this situation, it is time for Congress to adopt a straightforward proposal that would build on the success of the R&D credit to provide these small research companies with the resources they need to continue their vital work. Specifically, I am introducing a proposal to allow these small firms to elect to take a refundable tax credit, equal to 75 percent of the nominal value of their current-year research credits or deductions or 75 percent of the value of the current-year net operating losses multiplied by the highest marginal tax rate for corporations (currently 35 percent).

I have also included safeguard provisions to ensure that the government's investment in these companies is put to good use. Any company that elects to take this refundable tax credit would become ineligible for normal R&D tax credits and normal corporate tax deductions until they are able to payback the original amount of the refundable tax credit in federal income taxes after they turn a profit. Furthermore, my proposal requires that the proceeds from the refundable tax credit must be used towards ongoing research-related activities. My legislation also maintains that if it is determined that a company claiming this credit is not using the proceeds for research, the IRS can recapture that portion of the credit.

This proposal does not seek to supersede or replace the R&D tax credit. Rather, it complements the tremendous success of the R&D credit. It helps the struggling companies that the R&D credit doesn't reach. I am hopeful that my colleagues will recognize, as I do, the magnificent potential of the biotech industry and make this investment in its future.

By Mr. SANTORUM (for himself, Mr. FITZGERALD, and Mr. VOINOVICH):

S. 1050. A bill to protect infants who are born alive; to the Committee on the Judiciary.

Mr. SANTORUM. Mr. President, today I am introducing the Born Alive Infants Protection Act.

When I was first elected to the Senate in 1994, I never imagined that the bill I am offering today would be necessary. Simply stated, this measure gives legal status to a fully born living infant, regardless of the circumstances of his or her birth. I am deeply saddened that we must clarify Federal law

to specify that a living newborn baby is, in fact, a person.

One could ask, "Why do you need Federal legislation to state the obvious? What else could a living baby be, except a person?" I will begin my explanation with events in 1995, when the Senate began its attempts to outlaw a horrifying, inhumane, and barbaric abortion procedure: partial birth abortion. In this particular abortion method, a living baby is killed when he or she is only inches from being fully born. Twice, the House and Senate stood united in sending a bill to President Clinton to ban this procedure. Twice, President Clinton vetoed the bill; and twice, the House courageously voted to override his veto. Although support in the Senate grew each time the ban came to a vote, the Senate fell a few votes shy of overriding the veto.

Then, on June 28, 2000, the U.S. Supreme Court struck down Nebraska's partial birth abortion ban. The Supreme Court's ruling in *Stenberg v. Carhart*, as well as subsequent rulings in lower courts, are disturbing on a number of levels. First, the Supreme Court struck down Nebraska's attempt to ban a grotesque procedure the American Medical Association has called "bad medicine," and thousands of physicians who specialize in high risk pregnancies have called "never medically necessary." Further, the Court said it did not matter that the baby is killed when it is almost totally outside the mother's body in this abortion method. In other known abortion methods, the baby is killed in utero. Finally, the U.S. Supreme Court, and the Third Circuit Court have stated it does not matter where the baby is positioned when it is aborted. This assertion, to me, is the most horrifying of all.

In the years of debates on partial birth abortion, I have asked Senators a very simple question: If a partial birth abortion were being performed on a baby, and for some reason the head slipped out and the baby were delivered, would it be o.k. to kill that baby? Not one Senator who defended the procedure has ever provided a straightforward "yes" or "no" response. They would not answer my question. I believe it is important to define when a child is protected by the Constitution; so, I revised my question. I asked whether it would be alright to kill a baby whose foot is still inside the mother's body, or what if only a toe is inside? Again, I did not receive an answer.

Unfortunately, evidence uncovered last year at a hearing before the House Judiciary Subcommittee on the Constitution suggests my questions were not so hypothetical. In fact, two nurses testified to seeing babies who were born alive as a result of induced labor abortions being left to die in soiled utility rooms. Furthermore, the intellectual framework for legalization of

killing unwanted babies is being constructed by a prominent bioethics professor at Princeton University. Professor Peter Singer has advocated allowing parents a 28-day waiting period to decide whether to kill a disabled or unhealthy newborn. In his widely disseminated book, *Practical Ethics*, he asserts, "killing a disabled infant is not morally equivalent to killing a person. Very often it is not wrong at all."

In response to these events, the Born Alive Infants Protection Act grants protection under Federal law to newborns who are fully outside of the mother. Specifically, it states that Federal laws and regulations referring to a "person," "human being," "child," and "individual" include "every infant member of the species *homo sapiens* who is born alive at any stage of development." "Born alive" means "the complete expulsion or extraction from its mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, caesarean section, or induced abortion." The definition of "born alive" is derived from a World Health Organization definition of "live birth" that has been enacted in approximately 30 states and the District of Columbia.

Again, all this bill says is that a living baby who is completely outside of its mother is a person, a human being, a child, an individual. Similar legislation passed by the House of Representatives last year by an overwhelming vote of 380-15. I am hopeful that Senators on both sides of the general abortion debate can agree that once a baby is completely outside of its mother, it is a person, deserving the protections and dignity afforded to all other Americans.

I ask unanimous consent that the text of the Born Alive Infants Protection Act be printed in the RECORD.

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

S. 1050

*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 "Born-Alive Infants Protection Act".

#### SEC. 2. DEFINITION OF BORN-ALIVE INFANT.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

**"§ 8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant**

"(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the words 'person', 'human being', 'child', and 'individual', shall include every infant member of the species *homo sapiens* who is born alive at any stage of development.

"(b) As used in this section, the term 'born alive', with respect to a member of the species *homo sapiens*, means the complete expulsion or extraction from its mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, caesarean section, or induced abortion.

"(c) Nothing in this section shall be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species *homo sapiens* at any point prior to being born alive as defined in this section."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

"8. 'Person', 'human being', 'child', and 'individual' as including born-alive infant."

By Mr. WARNER (for himself and Mr. ALLEN):

S. 1051. A bill to expand the boundary of the Booker T. Washington National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. WARNER. Mr. President, today I rise to introduce a bill which will expand the borders of the Booker T. Washington National Monument in Virginia. This extraordinary 224 acres of rolling hills, woodlands, and agricultural fields preserves and protects the birth site and childhood home of Booker T. Washington. It interprets both his life experiences and significance in American history.

On April 2, 1956 the Monument was authorized by Congress to create a "public national memorial to Booker T. Washington, noted Negro educator and apostle of good will . . .". Mr. Washington was widely considered the most powerful African American of his time. This park provides a focal point for the continuing discussions on the context of race in American society, a resource for public education, and the continuation of his legacy today.

The agricultural landscape surrounding the Monument plays a critical role in the park's interpretation of Washington's life as an enslaved child during the Civil War era. Many of his most significant experiences center on this small tobacco farm located near the rapidly developing recreational area of Smith Mountain Lake. It is remarkable that the area immediately surrounding the national monument remains relatively unchanged since the time of Booker T. Washington's birth.

As part of the park's strategic plan, a viewshed study was conducted in 1998. Its purpose was to survey the surrounding lands in the most highly visited areas of the park and determine what visual effects urban development would have on the preservation of this historic site. The study identified a 15-acre parcel of land to be the most critical addition for this park because of its proximity to Booker T. Washington's birth site.

Several private landowners now wish to sell some of the surrounding farmland, including the 15-acre tract identified in the viewshed study. I believe that in order to maintain this unique historic setting, the Park Service should acquire this property so that visitors will be able to experience the same pastoral setting that was so crucial to Booker T. Washington's life. I urge my colleagues to join me in preserving this important landmark in our nation's history for all future generations.

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. 1051

*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 "Booker T. Washington National Monument Boundary Adjustment Act of 2001".

#### SEC. 2. BOUNDARY OF BOOKER T. WASHINGTON NATIONAL MONUMENT EXPANDED.

The Act entitled "An Act to provide for the establishment of the Booker T. Washington National Monument", approved April 2, 1956 (16 U.S.C. 450*ll* et seq.), is amended by adding at the end the following new section:

#### "SEC. 5. ADDITIONAL LANDS.

"(a) LANDS ADDED TO MONUMENT.—The boundary of the Booker T. Washington National Monument is modified to include the approximately 15 acres, as generally depicted on the map entitled "Boundary Map, Booker T. Washington National Monument, Franklin County, Virginia", numbered BOWA 404/80,024, and dated February 2001. The map shall be on file and available for inspection in the appropriate offices of the National Park Service, Department of the Interior.

"(b) ACQUISITION OF ADDITIONAL LANDS.—The Secretary of the Interior is authorized to acquire from willing owners the land or interests in land described in subsection (a) by donation, purchase with donated or appropriated funds, or exchange.

"(c) ADMINISTRATION OF ADDITIONAL LANDS.—Lands added to Booker T. Washington National Monument by subsection (a) shall be administered by the Secretary of the Interior as part of the monument in accordance with applicable laws and regulations."

By Mr. HARKIN (for himself, Mr. AKAKA, Mr. BINGAMAN, Mr. MURKOWSKI, Mr. REID, Mr. DOMENICI, Mr. KYL, Mr. BAYH, Mr. INOUE, Mr. LIEBERMAN, and Mr. JEFFORDS):

S. 1053. A bill to reauthorize and amend the Spark M. Matsunaga Hydrogen Research Development, and Demonstration Act of 1990, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. HARKIN. Mr. President, I am pleased to introduce today the Hydrogen Future Act of 2001, a bill to reauthorize the Department of Energy's hydrogen energy programs. I am especially pleased that this bill has strong bipartisan support. I worked closely with my colleague from Hawaii, Senator AKAKA, in developing the bill, which builds on the great work of his

predecessor, Spark Matsunaga, and I thank him for his support. Other cosponsors include Senators BINGAMAN, MURKOWSKI, REID, DOMENICI, KYL, BAYH, INOUE, LIEBERMAN, and JEFFORDS.

There has been a wide-ranging and sometimes fierce debate recently over what should be in a national energy policy. But while there is significant disagreement over near-term strategies, there is a widely shared vision of where we need to end up. For the sake of both the economy and the environment, we need to develop clean, domestic renewable fuels, such as solar heat and power, wind turbines, geothermal power, hydroelectric power, and biomass and ethanol. These fuels are domestic, avoiding the risks of dependence on foreign sources; indeed several of these fuels are widely available in the U.S., so that many states, such as Iowa, that now import virtually all their fuel could bring that work home. The use of multiple fuels, and the local availability, should make supplies more reliable as well. And these renewable fuels are truly "green"—they cause almost no pollution and result in almost no global warming.

However, the sun, the wind, and even the rivers are not always available when you need them, and you can't store sunlight, wind, or the electricity you make from them. If they are to be major sources of power, you need a way to store the energy.

The need to store electricity is not just a hypothetical problem for an energy future. The California energy crisis this year has vividly demonstrated that electricity is not just another commodity. The terrible price spikes and rolling blackouts occur in part because customers need electricity but cannot store or stockpile it, during brief shortages purchasers have paid hundreds or thousands of dollars a kilowatt-hour, or found there was no electricity to buy. Californians hoped to create a free and fair market in electricity, but instead find themselves at the mercy of electricity providers.

The automobile industry has also recognized for some time that electric cars could be much more efficient than any combustion engine vehicle, as well as quieter and non-polluting. But they have lacked an effective way to generate electricity on board.

These issues may be even more important abroad. Our world population continues to increase at an almost alarming rate. Back when I was born in 1939, there were three billion people on the earth. When I turned 60 not long ago, there were 6 billion people. And 40 years from now, when my daughter turns 60, there will be 11 billion people on earth.

As countries like India, China and the African Nations become industrialized consumer societies, billions of additional people will want, and deserve to have, a better quality of life. That means heating in the winter and air conditioning in the summer, tele-

visions and microwave ovens and cars. But if they develop the same way we did, we are all in trouble. The air pollution, water pollution, and global warming could make our earth unlivable. And if China and other developing nations import oil to fuel a billion cars, our recent \$2 a gallon gasoline prices will look like bargains. For the sake of these countries and for our own sake, we've got to help these developing countries leap-frog fossil fuels and move directly to sustainable development based on renewable energy.

The Hydrogen Future Act is about the solution to the electricity storage problem. Hydrogen is a colorless, odorless, non-toxic gas that can be obtained from ordinary water using electricity or from plants such as switchgrass and trees. Hydrogen can be stored and transported much like natural gas. And it is an almost perfect fuel. When burned, the main waste product is water. But hydrogen can more efficiently be used to power fuel cells, making only electricity, heat, and pure water. And it's safe, escaping harmlessly into the air if there is a leak.

Because of these qualities, hydrogen has long been a technologist's dream. Jules Verne imagined hydrogen from water powering machinery, trains, and lights back in 1874. But in 1990, when the Hydrogen Research, Development, and Demonstration Act first became law, hydrogen was still used for energy more in space, by NASA, than on earth.

How things are changing. Hydrogen fuel cells are no longer a laboratory curiosity. Today, the First National Bank of Omaha, just outside my home state of Iowa, uses fuel cells to power its credit card service operations. They wanted fuel cells because of their reliability. They figure it costs them one million dollars for every hour their power is out, and that the \$3.8 million system has already paid for itself. The New York Central Park Police Station relies on a fuel cell for off-grid electricity because it would have cost over a million dollars to run power line extensions to the building. And at the Kirby Cove Campground in California, fuel cells have another advantage: they're quiet.

We've seen public buses running on hydrogen fuel cells in Chicago and Vancouver and Southern California. Every major car manufacturer has prototype fuel cell cars and vans on the roads. And there are hydrogen fueling stations in places such as Dearborn, Michigan; Las Vegas, Nevada, and Sacramento, CA. Some companies are developing fuel cells to power cell phones and personal computers, others for full-size power plants. Companies have announced plans to deliver commercial fuel cell products in the next few years in cars, buses, and homes.

Soon hydrogen may be powering the world. It's potential is so great that some people look forward to a "hydrogen economy," an economy in which hydrogen is the ubiquitous energy

"carrier" between renewable sources and all end uses. Larry Burns, a vice president of General Motors has said, "We believe hydrogen will be the fuel of the future." And Don Huberts, of Shell, said "The stone age did not end because the world ran out of stones, and the oil age will not end because we run out of oil." Saudi Arabian Oil Minister Ahmed Zaki Yamani has used almost the same words. Now Iceland has embarked on a visionary program to create the world's first hydrogen economy using their abundant hydroelectric and geothermal resources.

The Department of Energy hydrogen energy program is a critical part of this revolution. The program conducts research in the efficient and cost-effective production of hydrogen from renewable sources and from fossil fuels, in effective storage of hydrogen, and in potential uses such as reversible fuel cells, as well as in necessary infrastructure including hydrogen sensors. The program demonstrates technologies such as hydrogen fueling and remote off-grid power applications. The program also conducts invaluable process and market analyses, as well as doing necessary work on codes and regulations. They are working on ceramic membranes, combined electricity generation and hydrogen production, and niche markets such as vehicles in mines. Almost all projects are funded in part by industry.

The bill we are introducing today will extend, expand, and improve this DOE program. Because of the enormous promise of hydrogen energy, and the current rapid expansion of opportunities, the bill authorizes a significant increase in funding for the hydrogen program, to \$60 million next year, with a total of \$350 million over five years.

It also establishes a new program aimed at demonstrating hydrogen technologies and their integration with fuel cells at Federal, State, and local government facilities. The program would be based on a plan to be developed by an interagency task force. It would focus on hydrogen production, storage, and use in buildings and vehicles; on hydrogen-based infrastructure for buses and fleet transportation; and on distributed power generation, including the generation of combined heat, power, and hydrogen. This new demonstration program would be funded at an additional \$20 million next year, with a total of \$150 million over five years.

The bill makes other improvements, including: Modification of cost-sharing requirements to enable more participation in research projects by small companies and to exclude from cost-sharing analytical and service work that will not lead to commercial products. These changes are intended to conform more closely to the requirements in the Energy Policy Act of 1992 that govern the rest of the renewable energy program, without violating WTO rules; Language incorporating international activities where appropriate in the

DOE programs. A global perspective is necessary both to develop world markets for our products and to encourage international development on a sustainable path; Clarification of the composition of the Hydrogen Technical Advisory Panel that oversees the program for DOE; Reporting requirements to further enhance inter-agency and inter-governmental cooperation in the hydrogen program.

This bill has the support of the chairman and ranking members of the Energy Committee as well as the chairman and ranking member of the Energy and Water Subcommittee of the Appropriations Committee. I understand that a bill to reauthorize the Hydrogen Future Act will also be introduced today in the House by Representatives KEN CALVERT and SHERWOOD BOEHLERT, key members of the Science Committee. And the recent report of the administration's National Energy Policy Development Group recommended reauthorization of the hydrogen program. I hope with this strong bipartisan support we will be able to pass this bill quickly and to help realize hydrogen's potential in providing the clean, reliable energy we so desperately need.

Mr. AKAKA. Mr. President, I am pleased to join Senator HARKIN, Senator BINGAMAN and Senator MURKOWSKI, Chairman and Ranking Member of the Senate Committee on Energy and Natural Resources, my colleagues Senators BAYH, DOMENICI, JEFFORDS, KYL, LIEBERMAN, REID, and my senior colleague from Hawaii, Senator INOUE, in introducing legislation that will accelerate the ongoing efforts for the development of a fuel for the future—hydrogen. Hydrogen is an efficient and environmentally friendly energy carrier that can be obtained using conventional or renewable resources.

In these days of soaring energy prices, oil cartels, air pollution, global climate change and greenhouse gases, hydrogen is a dazzling alternative. We can have a zero-pollution fuel. It can be produced domestically, ending our dependence on foreign oil. The question is not whether there will be a hydrogen age but when.

Hydrogen as a fuel can help us resolve our energy problems and satisfy much of the world's energy needs. I am convinced that sometimes in the 21st century, hydrogen will join electricity as one of our Nation's primary energy carriers, and hydrogen will ultimately be produced from renewable sources. In the next twenty years, increasing concerns about global climate change and energy security will help bring about penetration of hydrogen in several niche markets. The growth of fuel cell technology will allow the introduction of hydrogen in both the transportation and electricity sectors.

I have a long-term vision for hydrogen energy as a renewable resource. Progress is being made and challenges and barriers are being surmounted at an accelerating pace on a global scale.

Fuel cells for distributed stationary power are being commercialized and installed in various locations in the United States and worldwide. Transit bus demonstration programs are underway in both the United States and Europe. Major automobile companies are poised to deploy fuel cell passenger cars within the next few years. All these activities involve government and private sector cooperation.

Industry is moving ahead with fuel cell developments at a rapid pace. Many companies are forming partnerships to bring new technologies to the marketplace. Daimler-Chrysler, Ford, and Ballard have formed a partnership and pledged \$1.5 billion for commercialization of automotive fuel cells. Edison Development Company, General Electric, SoCal Gas, and Plug Power have agreements to commercialize residential fuel cells.

National governments are turning to hydrogen as the fuel of the future. Iceland is making a strong bid to become the world's first hydrogen-based economy. According to its plans, hydrogen-powered cars and buses will transport people in Reykjavik, the country's capital within ten years. If all goes well there will be no need for oil in Iceland.

Closer to home, I am particularly pleased that the State of Hawaii is taking the lead in ushering in the hydrogen era. Our State Legislature is advancing bills that would authorize the formation of a public-private sector partnership for promoting hydrogen as an energy source. The partnership would involve the State, Counties, Federal Government, utilities, and private companies. The partnership would be charged with developing plans to promote investment in hydrogen infrastructure, begin pilot plants to produce hydrogen from geothermal and other sources on Oahu, study how to move hydrogen to other islands, and study how wind and other methods could be used to produce hydrogen. In California, the state's zero emissions vehicle requirements favor early introduction of hydrogen-powered vehicles.

These are very important initiatives. They may be small steps, but for the hydrogen future they are important steps forward.

My predecessor in the Senate, Senator Spark Matsunaga was one of the first to focus attention on hydrogen by sponsoring hydrogen research legislation. The Matsunaga Hydrogen Act, as the legislation became known, was designed to accelerate development of domestic capability to produce an economically renewable energy source in sufficient quantities to reduce the Nation's dependence on conventional fuels. As a result of Senator Matsunaga's vision, the Department of Energy has been conducting research that will advance technologies for cost-effective production, storage, and utilization of hydrogen.

The Hydrogen Future Act of 1996, which followed the Matsunaga Hydrogen Act, expanded the research, devel-

opment, and demonstration program under the original Act. It authorized activities leading to production, storage, transformation, and use of hydrogen for industrial, residential, transportation, and utility applications. It enjoyed bipartisan support in Congress.

Today we are introducing legislation that reauthorizes and amends the Hydrogen Future Act of 1996. It highlights the potential of hydrogen as an efficient and environmentally friendly source of energy, the need for a strong partnership between the Federal government, industry, and academia, and the importance of continued support for hydrogen research. It fosters collaboration between Federal agencies, State and local governments, universities, and industry, and it encourages private sector investment and cost sharing in the development of hydrogen as an energy source. It adds provisions for the demonstration of hydrogen technologies at government facilities to expedite wider application of these technologies.

The bill we are introducing today supports the recommendations of the President's Council of Advisors on Science and Technology, PCAST. In its report issued in November 1997, PCAST proposed a substantial increase in Federal spending for applied energy technology R&D, with the largest share going to energy efficiency and renewable energy technologies. The PCAST report, "Federal Energy Research and Development for the Challenges of the Twenty-First Century," acknowledged and supported advances in a wide range of both hydrogen-producing and hydrogen-using technologies.

The current Hydrogen Program, administered by the Department of Energy, supports a broad range of research and development projects in the areas of hydrogen production, storage, and use in a safe and cost-effective manner. Some of these new technologies may become available for wider use in the next few years. The most promising include advanced natural gas- and biomass-based hydrogen production technologies, high pressure gaseous and cryogenic storage systems, and reversible PEM fuel cell systems. Other projects lay the groundwork for long range opportunities. These activities need continued support if the nation is to enjoy the benefits of a clean energy source.

The Hydrogen Program utilizes the talents of our national laboratories and our universities. The National Renewable Energy Laboratory, Sandia, Lawrence Livermore, Los Alamos, and Oak Ridge National Laboratories, as well as Jet Propulsion Laboratory are involved in the program. The DOE Field Office at Golden, Colorado, and Nevada Operations Office in Nevada are also involved. University-led centers-of-excellence have been established at the University of Miami and the University of Hawaii. U.S. participation in the International Energy Agency contributes to



the advancement of DOE hydrogen research through international cooperation. The program has also built strong links with the industry. This has resulted in strong industry participation and cost sharing. Cooperation between government, industry, universities, and the national laboratories is key to the successful development and commercialization of new and environmentally friendly energy technologies.

The legislation we are introducing today authorizes \$350 million over the next five years for research and development for hydrogen production, storage and use. This will allow advancement of technologies such as smaller-scale production systems that are applicable to distributed-generation and vehicle applications, advanced pressure vessels, photobiological and photocatalytic production of hydrogen, and carbon nanotubes, graphite nanofibers, and fullerenes.

The bill also authorizes \$150 million for conducting integrated demonstrations of hydrogen technologies at government facilities. This provision will help secure industry participation through competitive solicitations for technology development and testing. It will test the viability of hydrogen production, storage, and use, and lead to the development of hydrogen-based operating experience acceptance to meet safety codes and standards.

By supporting this bill, we will be ushering in a new era of non-polluting energy. I urge my colleagues to support this important legislation.

By Mr. KOHL (for himself and Mr. REID):

S. 1054. A bill to amend titles XVIII and XIX of the Social Security Act to prevent abuse of recipients of long-term care services under the Medicare and Medicaid programs; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today to re-introduce the Patient Abuse Prevention Act. I am pleased to be joined in this effort by Senator REID, who has worked tirelessly with me on this important legislation.

There is absolutely no excuse for abuse or neglect of the elderly and disabled at the hands of those who are supposed to care for them. Our parents and grandparents made our country what it is today, and they deserve to live with dignity and the highest quality care.

Unfortunately, this is not always the case. We know that the majority of caregivers are dedicated, professional, and do their best under difficult circumstances. But we also know that too often, the elderly are starved, shamed, abused, neglected and exploited by the very people charged with their care. And the systems that are in place today are not enough to protect them.

It is estimated that more than 43 percent of Americans over the age of 65 will likely spend time in a nursing home. The number of people needing long-term care services will continue

to increase as the Baby Boom generation ages. While most long-term care workers do an excellent job, it only takes a few abusive staff to cast a dark shadow over what should be a healing environment.

A disturbing number of cases have been reported where workers with criminal backgrounds have been cleared to work in direct patient care, and have subsequently abused patients in their care. In 1997, the Milwaukee Journal-Sentinel ran a series of articles describing this problem, which led my home State of Wisconsin to pass a criminal background check law for health care workers. The legislation I introduce today follows their example and builds on their efforts.

Current State and National safeguards are inadequate to screen out abusive workers. All States are required to maintain registries of abusive nurse aides. But nurse aides are not the only workers involved in abuse, and other workers are not tracked at all. Even worse, there is no system to coordinate information about abusive nurse aides between States. A known abuser in Iowa would have little trouble moving to Wisconsin and continuing to work with patients there.

In addition, there is no Federal requirement that long-term care facilities conduct criminal background checks on prospective employees. People with violent criminal backgrounds, people who have already been convicted of murder, rape, and assault, could easily get a job in a nursing home or other health care setting without their past ever being discovered.

Our legislation will go a long way toward solving this problem. First, it will create a National Registry of abusive long-term care employees. States will be required to submit information from their current State registries to the National Registry. Facilities will be required to check the National Registry before hiring a prospective worker. Any worker with a substantiated finding of patient abuse will be prohibited from working in long-term care.

Second, the bill provides a second line of defense to protect patients from violent criminals. If the National Registry does not contain information about a prospective worker, the facility is then required to initiate an FBI background check. Any conviction for patient abuse or a relevant violent crime would bar that applicant from working with patients.

There is clear evidence that this is needed. In 1998, at my request, the Senate Special Committee on Aging held a hearing that focused on how easy it is for known abusers to find work in long-term care and continue to prey on patients. At that hearing, the HHS Inspector General presented a report which found that, in the two States they studied, between 5-10 percent of employees currently working in nursing homes had serious criminal convictions in their past. They also found that among aides who had abused pa-

tients, 15-20 percent of them had at least one conviction in their past.

But even more compelling, we heard from Richard Meyer of Libertyville, Illinois, whose 92-year old mother was raped by a nursing home worker who had a previous conviction for child sexual abuse. A criminal background check could have prevented this tragedy. But even more appalling, there is nothing in current law that prevents her assailant from travelling 50 miles to my home town of Milwaukee and finding another job in a home health agency.

There's no greater illustration of the need for background checks than this. But for those who need more hard data, there is more evidence. In 1998, I offered an amendment which became law that allowed long-term care providers to voluntarily use the FBI system for background checks. So far, 7 percent of those checks have come back with criminal convictions, including rape and kidnapping.

Clearly, this is a critical tool that long-term care providers should have, they don't want abusive caregivers working for them any more than families do. The current voluntary system was a good first step, but if we're serious about protecting our seniors, and I believe that every Member of the Senate is, then we have to do more than make it voluntary. We should make it a national priority to require all long-term care providers who participate in Medicare and Medicaid to conduct these checks. And we should make the investment necessary to cover the costs of the checks, just like we reimburse providers for other costs of providing care to Medicare and Medicaid beneficiaries. This is a common-sense, inexpensive step we can take to protect patients by helping long-term care providers thoroughly screen potential caregivers.

I realize that this legislation will not solve all instances of abuse. We still need to do more to stop abuse from occurring in the first place. But this bill will ensure that those who have already abused an elderly or disabled patient, and those who have committed violent crimes against people in the past, are kept away from vulnerable patients.

I want to repeat that I strongly believe that most long-term care providers and their staff work hard to deliver the highest quality care. However, it is imperative that Congress act immediately to get rid of those that don't. When a patient checks into a nursing home or hospice, or receives home health care, they should not have to give up their right to be free from abuse, neglect, or mistreatment.

This bill is the product of collaboration and input from the health care industry, patient and employee advocates who all have the same goal I do: protecting patients in long-term care. I look forward to continuing to work with my colleagues, the Administration, and the health care industry in

this effort. Our nation's seniors and disabled deserve nothing less than our full attention.

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. 1054

*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 "Patient Abuse Prevention Act".

## SEC. 2. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE OF NURSING FACILITY RESIDENTS.

(a) NURSING FACILITY AND SKILLED NURSING FACILITY REQUIREMENTS.—

(1) MEDICAID PROGRAM.—Section 1919(b) of the Social Security Act (42 U.S.C. 1396r(b)) is amended by adding at the end the following new paragraph:

"(8) SCREENING OF NURSING FACILITY WORKERS.—

"(A) BACKGROUND CHECKS ON APPLICANTS.—Subject to subparagraph (B)(ii), before hiring a nursing facility worker, a nursing facility shall—

"(i) give the worker written notice that the facility is required to perform background checks with respect to applicants;

"(ii) require, as a condition of employment, that such worker—

"(I) provide a written statement disclosing any conviction for a relevant crime or finding of patient or resident abuse;

"(II) provide a statement signed by the worker authorizing the facility to request the search and exchange of criminal records;

"(III) provide in person a copy of the worker's fingerprints or thumb print, depending upon available technology; and

"(IV) provide any other identification information the Secretary may specify in regulation;

"(iii) initiate a check of the data collection system established under section 1128E in accordance with regulations promulgated by the Secretary to determine whether such system contains any disqualifying information with respect to such worker; and

"(iv) if that system does not contain any such disqualifying information—

"(I) request that the State initiate a State and national criminal background check on such worker in accordance with the provisions of subsection (e)(8); and

"(II) furnish to the State the information described in subclauses (II) through (IV) of clause (ii) not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after completion of the check against the system initiated under clause (iii).

"(B) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

"(i) IN GENERAL.—A nursing facility may not knowingly employ any nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

"(ii) PROVISIONAL EMPLOYMENT.—After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a nursing facility may provide for a provisional period of employment for a nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct

supervision of the worker during the worker's provisional period of employment.

"(C) REPORTING REQUIREMENTS.—A nursing facility shall report to the State any instance in which the facility determines that a nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

"(D) USE OF INFORMATION.—

"(i) IN GENERAL.—A nursing facility that obtains information about a nursing facility worker pursuant to clauses (iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

"(ii) IMMUNITY FROM LIABILITY.—A nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information about such applicant provided by the State pursuant to subsection (e)(8) or section 1128E shall not be liable in any action brought by such applicant based on the employment determination resulting from the information.

"(iii) CRIMINAL PENALTY.—Whoever knowingly violates the provisions of clause (i) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

"(E) CIVIL PENALTY.—

"(i) IN GENERAL.—A nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

"(I) for the first such violation, \$2,000; and

"(II) for the second and each subsequent violation within any 5-year period, \$5,000.

"(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a nursing facility that—

"(I) knowingly continues to employ a nursing facility worker in violation of subparagraph (A) or (B); or

"(II) knowingly fails to report a nursing facility worker under subparagraph (C), shall be subject to a civil penalty in an amount not to exceed \$5,000 for the first such violation, and \$10,000 for the second and each subsequent violation within any 5-year period.

"(F) DEFINITIONS.—In this paragraph:

"(i) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

"(I) any offense described in paragraphs (1) through (4) of section 1128(a); and

"(II) such other types of offenses as the Secretary may specify in regulations, taking into account the severity and relevance of such offenses, and after consultation with representatives of long-term care providers, representatives of long-term care employees, consumer advocates, and appropriate Federal and State officials.

"(ii) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means information about a conviction for a relevant crime or a finding of patient or resident abuse.

"(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a nursing facility worker has committed—

"(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

"(II) such other types of acts as the Secretary may specify in regulations.

"(iv) NURSING FACILITY WORKER.—The term 'nursing facility worker' means any individual (other than any volunteer) that has direct access to a patient of a nursing facility under an employment or other contract,

or both, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and nonlicensed individuals providing such services, as defined by the Secretary, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants."

(2) MEDICARE PROGRAM.—Section 1819(b) of the Social Security Act (42 U.S.C. 1395i-3(b)) is amended by adding at the end the following:

"(8) SCREENING OF SKILLED NURSING FACILITY WORKERS.—

"(A) BACKGROUND CHECKS ON APPLICANTS.—Subject to subparagraph (B)(ii), before hiring a skilled nursing facility worker, a skilled nursing facility shall—

"(i) give the worker written notice that the facility is required to perform background checks with respect to applicants;

"(ii) require, as a condition of employment, that such worker—

"(I) provide a written statement disclosing any conviction for a relevant crime or finding of patient or resident abuse;

"(II) provide a statement signed by the worker authorizing the facility to request the search and exchange of criminal records;

"(III) provide in person a copy of the worker's fingerprints or thumb print, depending upon available technology; and

"(IV) provide any other identification information the Secretary may specify in regulation;

"(iii) initiate a check of the data collection system established under section 1128E in accordance with regulations promulgated by the Secretary to determine whether such system contains any disqualifying information with respect to such worker; and

"(iv) if that system does not contain any such disqualifying information—

"(I) request that the State initiate a State and national criminal background check on such worker in accordance with the provisions of subsection (e)(6); and

"(II) furnish to the State the information described in subclauses (II) through (IV) of clause (ii) not more than 7 days (excluding Saturdays, Sundays, and legal public holidays under section 6103(a) of title 5, United States Code) after completion of the check against the system initiated under clause (iii).

"(B) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

"(i) IN GENERAL.—A skilled nursing facility may not knowingly employ any skilled nursing facility worker who has any conviction for a relevant crime or with respect to whom a finding of patient or resident abuse has been made.

"(ii) PROVISIONAL EMPLOYMENT.—After complying with the requirements of clauses (i), (ii), and (iii) of subparagraph (A), a skilled nursing facility may provide for a provisional period of employment for a skilled nursing facility worker pending completion of the check against the data collection system described under subparagraph (A)(iii) and the background check described under subparagraph (A)(iv). Such facility shall maintain direct supervision of the covered individual during the worker's provisional period of employment.

"(C) REPORTING REQUIREMENTS.—A skilled nursing facility shall report to the State any instance in which the facility determines that a skilled nursing facility worker has committed an act of resident neglect or abuse or misappropriation of resident property in the course of employment by the facility.

"(D) USE OF INFORMATION.—

"(i) IN GENERAL.—A skilled nursing facility that obtains information about a skilled nursing facility worker pursuant to clauses

(iii) and (iv) of subparagraph (A) may use such information only for the purpose of determining the suitability of the worker for employment.

“(ii) IMMUNITY FROM LIABILITY.—A skilled nursing facility that, in denying employment for an applicant (including during the period described in subparagraph (B)(ii)), reasonably relies upon information about such applicant provided by the State pursuant to subsection (e)(6) or section 1128E shall not be liable in any action brought by such applicant based on the employment determination resulting from the information.

“(iii) CRIMINAL PENALTY.—Whoever knowingly violates the provisions of clause (i) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

“(E) CIVIL PENALTY.—

“(i) IN GENERAL.—A skilled nursing facility that violates the provisions of this paragraph shall be subject to a civil penalty in an amount not to exceed—

“(I) for the first such violation, \$2,000; and

“(II) for the second and each subsequent violation within any 5-year period, \$5,000.

“(ii) KNOWING RETENTION OF WORKER.—In addition to any civil penalty under clause (i), a skilled nursing facility that—

“(I) knowingly continues to employ a skilled nursing facility worker in violation of subparagraph (A) or (B); or

“(II) knowingly fails to report a skilled nursing facility worker under subparagraph (C), shall be subject to a civil penalty in an amount not to exceed \$5,000 for the first such violation, and \$10,000 for the second and each subsequent violation within any 5-year period.

“(F) DEFINITIONS.—In this paragraph:

“(i) CONVICTION FOR A RELEVANT CRIME.—The term ‘conviction for a relevant crime’ means any Federal or State criminal conviction for—

“(I) any offense described in paragraphs (1) through (4) of section 1128(a); and

“(II) such other types of offenses as the Secretary may specify in regulations, taking into account the severity and relevance of such offenses, and after consultation with representatives of long-term care providers, representatives of long-term care employees, consumer advocates, and appropriate Federal and State officials.

“(ii) DISQUALIFYING INFORMATION.—The term ‘disqualifying information’ means information about a conviction for a relevant crime or a finding of patient or resident abuse.

“(iii) FINDING OF PATIENT OR RESIDENT ABUSE.—The term ‘finding of patient or resident abuse’ means any substantiated finding by a State agency under subsection (g)(1)(C) or a Federal agency that a skilled nursing facility worker has committed—

“(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

“(II) such other types of acts as the Secretary may specify in regulations.

“(iv) SKILLED NURSING FACILITY WORKER.—The term ‘skilled nursing facility worker’ means any individual (other than any volunteer) that has direct access to a patient of a skilled nursing facility under an employment or other contract, or both, with such facility. Such term includes individuals who are licensed or certified by the State to provide such services, and nonlicensed individuals providing such services, as defined by the Secretary, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants.”.

(3) TECHNICAL AMENDMENTS.—Effective as if included in the enactment of section 941 of the Medicare, Medicaid, and SCHIP Benefits

Improvement and Protection Act of 2000 (114 Stat. 2763A-585), as enacted into law by section 1(a)(6) of Public Law 106-554, sections 1819(b) and 1919(b) of the Social Security Act (42 U.S.C. 1395i-3(b), 1396r(b)), as amended by such section 941 (as so enacted into law) are each amended by redesignating the paragraph (8) added by such section as paragraph (9).

(b) STATE REQUIREMENTS.—

(1) MEDICAID PROGRAM.—

(A) EXPANSION OF STATE REGISTRY TO COLLECT INFORMATION ABOUT NURSING FACILITY EMPLOYEES OTHER THAN NURSE AIDES.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking “NURSE AIDE REGISTRY” and inserting “NURSING FACILITY EMPLOYEE REGISTRY”; and

(II) in subparagraph (A)—

(aa) by striking “By not later than January 1, 1989, the” and inserting “The”; and

(bb) by striking “a registry of all individuals” and inserting “a registry of (I) all individuals”; and

(cc) by inserting before the period “, and (II) all other nursing facility employees with respect to whom the State has made a finding described in subparagraph (B)”;

(III) in subparagraph (B), by striking “involving an individual listed in the registry” and inserting “involving a nursing facility employee”; and

(IV) in subparagraph (C), by striking “nurse aide” and inserting “nursing facility employee or applicant for employment”; and

(ii) in subsection (g)(1)—

(I) in subparagraph (C)—

(aa) in the first sentence, by striking “nurse aide” and inserting “nursing facility employee”; and

(bb) in the third sentence, by striking “nurse aide” each place it appears and inserting “nursing facility employee”; and

(II) in subparagraph (D)—

(aa) in the subparagraph heading, by striking “NURSE AIDE REGISTRY” and inserting “NURSING FACILITY EMPLOYEE REGISTRY”; and

(bb) by striking “nurse aide” each place it appears and inserting “nursing facility employee”.

(B) FEDERAL AND STATE REQUIREMENT TO CONDUCT BACKGROUND CHECKS.—Section 1919(e) of the Social Security Act (42 U.S.C. 1396r(e)) is amended by adding at the end the following:

“(8) FEDERAL AND STATE REQUIREMENTS CONCERNING CRIMINAL BACKGROUND CHECKS ON NURSING FACILITY EMPLOYEES.—

“(A) IN GENERAL.—Upon receipt of a request by a nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

“(B) SEARCH AND EXCHANGE OF RECORDS BY ATTORNEY GENERAL.—Upon receipt of a submission pursuant to subparagraph (A), the Attorney General shall direct a search of the records of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints and other positive identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the State.

“(C) STATE REPORTING OF INFORMATION TO NURSING FACILITY.—Upon receipt of the information provided by the Attorney General

pursuant to subparagraph (B), the State shall—

“(i) review the information to determine whether the individual has any conviction for a relevant crime (as defined in subsection (b)(8)(F)(i));

“(ii) report to the nursing facility the results of such review; and

“(iii) in the case of an individual with a conviction for a relevant crime, report the existence of such conviction of such individual to the database established under section 1128E.

“(D) FEES FOR PERFORMANCE OF CRIMINAL BACKGROUND CHECKS.—

“(i) AUTHORITY TO CHARGE FEES.—

“(I) ATTORNEY GENERAL.—The Attorney General may charge a fee to any State requesting a search and exchange of records pursuant to this paragraph and subsection (b)(8) for conducting the search and providing the records. The amount of such fee shall not exceed the lesser of the actual cost of such activities or \$50. Such fees shall be available to the Attorney General, or, in the Attorney General’s discretion, to the Federal Bureau of Investigation, until expended.

“(II) STATE.—A State may charge a nursing facility a fee for initiating the criminal background check under this paragraph and subsection (b)(8), including fees charged by the Attorney General, and for performing the review and report required by subparagraph (C). The amount of such fee shall not exceed the actual cost of such activities.

“(ii) PROHIBITION ON CHARGING APPLICANTS OR EMPLOYEES.—An entity may not impose on an applicant for employment or an employee any charges relating to the performance of a background check under this paragraph.

“(E) REGULATIONS.—

“(i) IN GENERAL.—In addition to the Secretary’s authority to promulgate regulations under this title, the Attorney General, in consultation with the Secretary, may promulgate such regulations as are necessary to carry out the Attorney General’s responsibilities under this paragraph and subsection (b)(8), including regulations regarding the security, confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, and the imposition of fees.

“(ii) APPEAL PROCEDURES.—The Attorney General, in consultation with the Secretary, shall promulgate such regulations as are necessary to establish procedures by which an applicant or employee may appeal or dispute the accuracy of the information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant’s or employee’s criminal record.

“(F) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Attorney General shall submit a report to Congress on—

“(i) the number of requests for searches and exchanges of records made under this section;

“(ii) the disposition of such requests; and

“(iii) the cost of responding to such requests.”.

(2) MEDICARE PROGRAM.—

(A) EXPANSION OF STATE REGISTRY TO COLLECT INFORMATION ABOUT SKILLED NURSING FACILITY EMPLOYEES OTHER THAN NURSE AIDES.—Section 1819 of the Social Security Act (42 U.S.C. 1395i-3) is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking “NURSE AIDE REGISTRY” and inserting

"SKILLED NURSING CARE EMPLOYEE REGISTRY";

(II) in subparagraph (A)—

(aa) by striking "By not later than January 1, 1989, the" and inserting "The";

(bb) by striking "a registry of all individuals" and inserting "a registry of (I) all individuals"; and

(cc) by inserting before the period "and (II) all other skilled nursing facility employees with respect to whom the State has made a finding described in subparagraph (B)";

(III) in subparagraph (B), by striking "involving an individual listed in the registry" and inserting "involving a skilled nursing facility employee"; and

(IV) in subparagraph (C), by striking "nurse aide" and inserting "skilled nursing facility employee or applicant for employment"; and

(i) in subsection (g)(1)—

(I) in subparagraph (C)—

(aa) in the first sentence, by striking "nurse aide" and inserting "skilled nursing facility employee"; and

(bb) in the third sentence, by striking "nurse aide" each place it appears and inserting "skilled nursing facility employee"; and

(II) in subparagraph (D)—

(aa) in the subparagraph heading, by striking "NURSE AIDE REGISTRY" and inserting "NURSING FACILITY EMPLOYEE REGISTRY"; and

(bb) by striking "nurse aide" each place it appears and inserting "nursing facility employee".

(B) FEDERAL AND STATE REQUIREMENT TO CONDUCT BACKGROUND CHECKS.—Section 1819(e) of the Social Security Act (42 U.S.C. 1395i-3(e)) is amended by adding at the end the following:

"(6) FEDERAL AND STATE REQUIREMENTS CONCERNING CRIMINAL BACKGROUND CHECKS ON SKILLED NURSING FACILITY EMPLOYEES.—

"(A) IN GENERAL.—Upon receipt of a request by a skilled nursing facility pursuant to subsection (b)(8) that is accompanied by the information described in subclauses (II) through (IV) of subsection (b)(8)(A)(ii), a State, after checking appropriate State records and finding no disqualifying information (as defined in subsection (b)(8)(F)(ii)), shall submit such request and information to the Attorney General and shall request the Attorney General to conduct a search and exchange of records with respect to the individual as described in subparagraph (B).

"(B) SEARCH AND EXCHANGE OF RECORDS BY ATTORNEY GENERAL.—Upon receipt of a submission pursuant to subparagraph (A), the Attorney General shall direct a search of the records of the Federal Bureau of Investigation for any criminal history records corresponding to the fingerprints and other positive identification information submitted. The Attorney General shall provide any corresponding information resulting from the search to the State.

"(C) STATE REPORTING OF INFORMATION TO SKILLED NURSING FACILITY.—Upon receipt of the information provided by the Attorney General pursuant to subparagraph (B), the State shall—

"(i) review the information to determine whether the individual has any conviction for a relevant crime (as defined in subsection (b)(8)(F)(i));

"(ii) report to the skilled nursing facility the results of such review; and

"(iii) in the case of an individual with a conviction for a relevant crime, report the existence of such conviction of such individual to the database established under section 1128E.

"(D) FEES FOR PERFORMANCE OF CRIMINAL BACKGROUND CHECKS.—

"(i) AUTHORITY TO CHARGE FEES.—

"(I) ATTORNEY GENERAL.—The Attorney General may charge a fee to any State requesting a search and exchange of records pursuant to this paragraph and subsection (b)(8) for conducting the search and providing the records. The amount of such fee shall not exceed the lesser of the actual cost of such activities or \$50. Such fees shall be available to the Attorney General, or, in the Attorney General's discretion, to the Federal Bureau of Investigation until expended.

"(II) STATE.—A State may charge a skilled nursing facility a fee for initiating the criminal background check under this paragraph and subsection (b)(8), including fees charged by the Attorney General, and for performing the review and report required by subparagraph (C). The amount of such fee shall not exceed the actual cost of such activities.

"(ii) PROHIBITION ON CHARGING APPLICANTS OR EMPLOYEES.—An entity may not impose on an applicant for employment or an employee any charges relating to the performance of a background check under this paragraph.

"(E) REGULATIONS.—

"(i) IN GENERAL.—In addition to the Secretary's authority to promulgate regulations under this title, the Attorney General, in consultation with the Secretary, may promulgate such regulations as are necessary to carry out the Attorney General's responsibilities under this paragraph and subsection (b)(9), including regulations regarding the security confidentiality, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, and the imposition of fees.

"(ii) APPEAL PROCEDURES.—The Attorney General, in consultation with the Secretary, shall promulgate such regulations as are necessary to establish procedures by which an applicant or employee may appeal or dispute the accuracy of the information obtained in a background check conducted under this paragraph. Appeals shall be limited to instances in which an applicant or employee is incorrectly identified as the subject of the background check, or when information about the applicant or employee has not been updated to reflect changes in the applicant's or employee's criminal record.

"(F) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Attorney General shall submit a report to Congress on—

"(i) the number of requests for searches and exchanges of records made under this section;

"(ii) the disposition of such requests; and

"(iii) the cost of responding to such requests."

(c) APPLICATION TO OTHER ENTITIES PROVIDING HOME HEALTH OR LONG-TERM CARE SERVICES.—

(1) MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a) is amended—

(A) in paragraph (65), by striking the period and inserting "and"; and

(B) by inserting after paragraph (65) the following:

"(66) provide that any entity that is eligible to be paid under the State plan for providing home health services or long-term care services for which medical assistance is available under the State plan to individuals requiring long-term care complies with the requirements of subsections (b)(8) and (e)(8) of section 1919."

(2) MEDICARE.—Part D of title XVIII of the Social Security Act (42 U.S.C. 1395x et seq.) is amended by adding at the end the following:

"APPLICATION OF SKILLED NURSING FACILITY PREVENTIVE ABUSE PROVISIONS TO ANY PROVIDER OF SERVICES OR OTHER ENTITY PROVIDING HOME HEALTH OR LONG-TERM CARE SERVICES

"SEC. 1897. The requirements of subsections (b)(8) and (e)(6) of section 1819 shall apply to any provider of services or any other entity that is eligible to be paid under this title for providing home health services or long-term care services to an individual entitled to benefits under part A or enrolled under part B (including an individual provided with a Medicare+Choice plan offered by a Medicare+Choice organization under part C)."

(d) REIMBURSEMENT OF REASONABLE COSTS FOR BACKGROUND CHECKS.—The Secretary of Health and Human Services shall factor into any payment system under titles XVIII and XIX of the Social Security Act the reasonable costs of the requirements of sections 1819(b)(8) and 1919(b)(8) of such Act, as added by this section, incurred by any entity subject to such requirements.

### SEC. 3. INCLUSION OF ABUSIVE WORKERS IN THE DATABASE ESTABLISHED AS PART OF NATIONAL HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) INCLUSION OF ABUSIVE ACTS WITHIN A LONG-TERM CARE FACILITY OR PROVIDER.—Section 1128E(g)(1)(A) of the Social Security Act (42 U.S.C. 1320a-7e(g)(1)(A)) is amended—

(1) by redesignating clause (v) as clause (vi); and

(2) by inserting after clause (iv), the following:

"(v) A finding of abuse or neglect of a patient or a resident of a long-term care facility, or misappropriation of such a patient's or resident's property."

(b) COVERAGE OF LONG-TERM CARE FACILITY OR PROVIDER EMPLOYEES.—Section 1128E(g)(2) of the Social Security Act (42 U.S.C. 1320a-7e(g)(2)) is amended by inserting "and includes any individual of a long-term care facility or provider (other than any volunteer) that has direct access to a patient or resident of such a facility under an employment or other contract, or both, with the facility or provider (including individuals who are licensed or certified by the State to provide services at the facility or through the provider, and nonlicensed individuals, as defined by the Secretary, providing services at the facility or through the provider, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants)" before the period.

(c) REPORTING BY LONG-TERM CARE FACILITIES OR PROVIDERS.—

(1) IN GENERAL.—Section 1128E(b)(1) of the Social Security Act (42 U.S.C. 1320a-7e(b)(1)) is amended by striking "and health plan" and inserting "health plan, and long-term care facility or provider".

(2) CORRECTION OF INFORMATION.—Section 1128E(c)(2) of the Social Security Act (42 U.S.C. 1320a-7e(c)(2)) is amended by striking "and health plan" and inserting "health plan, and long-term care facility or provider".

(d) ACCESS TO REPORTED INFORMATION.—Section 1128E(d)(1) of the Social Security Act (42 U.S.C. 1320a-7e(d)(1)) is amended by striking "and health plans" and inserting "health plans, and long-term care facilities or providers".

(e) MANDATORY CHECK OF DATABASE BY LONG-TERM CARE FACILITIES OR PROVIDERS.—Section 1128E(d) of the Social Security Act (42 U.S.C. 1320a-7e(d)) is amended by adding at the end the following:

"(3) MANDATORY CHECK OF DATABASE BY LONG-TERM CARE FACILITIES OR PROVIDERS.—A long-term care facility or provider shall check the database maintained under this

section prior to hiring under an employment or other contract, or both, any individual as an employee of such a facility or provider who will have direct access to a patient or resident of the facility or provider (including individuals who are licensed or certified by the State to provide services at the facility or through the provider, and nonlicensed individuals, as defined by the Secretary, that will provide services at the facility or through the provider, including nurse assistants, nurse aides, home health aides, and personal care workers and attendants).''.

(f) DEFINITION OF LONG-TERM CARE FACILITY OR PROVIDER.—Section 1128E(g) of the Social Security Act (42 U.S.C. 1320a-7e(g)) is amended by adding at the end the following:

“(6) LONG-TERM CARE FACILITY OR PROVIDER.—The term ‘long-term care facility or provider’ means a skilled nursing facility (as defined in section 1819(a)), a nursing facility (as defined in section 1919(a)), a home health agency, a hospice facility, an intermediate care facility for the mentally retarded (as defined in section 1905(d)), or any other facility that provides, or provider of, long-term care services or home health services and receives payment for such services under the medicare program under title XVIII or the medicaid program under title XIX.”.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the amendments made by this section, \$10,200,000 for fiscal year 2002.

#### SEC. 4. PREVENTION AND TRAINING DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration program to provide grants to develop information on best practices in patient abuse prevention training (including behavior training and interventions) for managers and staff of hospital and health care facilities.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall be a public or private nonprofit entity and prepare and submit to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—

(1) examine ways to improve collaboration between State health care survey and provider certification agencies, long-term care ombudsman programs, the long-term care industry, and local community members;

(2) examine patient care issues relating to regulatory oversight, community involvement, and facility staffing and management with a focus on staff training, staff stress management, and staff supervision;

(3) examine the use of patient abuse prevention training programs by long-term care entities, including the training program developed by the National Association of Attorneys General, and the extent to which such programs are used; and

(4) identify and disseminate best practices for preventing and reducing patient abuse.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

#### SEC. 5. EFFECTIVE DATE.

The provisions of and amendments made by the Act shall apply, without regard to whether implementing regulations are in effect, to any individual applying for employment or hired for such employment—

(1) by any skilled nursing facility (as defined in section 1819(a) of the Social Security Act) or any nursing facility (as defined in section 1919(a) of such Act), on or after the date which is 6 months after the date of enactment of this Act,

(2) by any home health agency, on or after the date which is 12 months after such date of enactment, and

(3) by any hospice facility, any intermediate care facility for the mentally retarded (as defined in section 1905(d) of the Social Security Act), or any other facility that provides long-term care services and receives payment for such services under the medicare program under title XVIII of such Act or the medicaid program under title XIX of such Act, on or after the date which is 18 months after such date of enactment.

By Mrs. FEINSTEIN:

S. 1055. A bill to require the consent of an individual prior to the sale and marketing of such individual's personally identifiable information, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased today to introduce the Privacy Act of 2001.

This legislation combats the growing scourge of identity theft and other privacy abuses by setting a national standard for privacy protection.

The bill has a simple goal. It is designed to give back to ordinary citizens control over their personal information.

Under the Privacy Act of 2001, if a company intends to collect and sell a customer's address, phone number, or other non-sensitive information, the company must give the customer notice and an opportunity to opt-out of the sale if they so choose.

For especially sensitive personal information such as financial, health, driver's licenses, and Social Security Numbers, the legislation establishes more stringent privacy protections.

Specifically, the bill requires an individual's opt-in prior to the sale, licensing, or renting of their personal financial or health information.

In other words, opt-in means that a person must give their explicit and affirmative consent before an entity can use this type of personal information.

The bill would also close loopholes in the Driver's Privacy Protection Act, most recently amended last year, so that a State Department of Motor Vehicles can no longer disclose the most sensitive information on a driver's license, such as the driver's identification number or physical characteristics, without the driver's opt-in.

Finally, the bill would restrict the purchase, sale, and display of Social Security numbers to the general public.

Why do we need a Federal privacy law?

The new economy has exponentially increased the flow of personal information, but the protections for individual privacy have not kept pace.

With access to sensitive data so widely available, often just at the touch of a keyboard, identity theft has become one of the country's fastest growing crimes.

Identity theft is when a thief steals your personal information and then uses it to run up huge bills on your credit cards, bank accounts or other

accounts. In some cases, identity theft has also resulted in stalking and murder.

Recent statistics on the growth of identity theft suggest we have no time to waste in protecting personal privacy.

The Federal Bureau of Investigation estimates 350,000 cases of identity theft occur each year. That's one case every two minutes.

Not surprisingly, members of the public have flooded our Federal agencies with pleas for assistance. Reports to the Social Security Administration of Social Security number misuse have increased from 7,868 in 1997 to 46,839 in 2000, an astonishing increase of over 500 percent.

The Federal Trade Commission, FTC, has experienced a similar explosion of cases. If recent trends continue, reports of identity theft to the Federal Trade Commission will double between 2000 and 2001, to over 60,000 cases.

Fully 40 percent of all consumer fraud complaints received by the FTC in the first three months of 2001 involved identity theft.

Unfortunately, the State most affected by these complaints is California. Fully 17 percent of the identity theft complaints the FTC received this past winter came from my home state.

Let me give some real-world examples of privacy abuses:

Social Security Number Privacy: Amy Boyer, a 20-year-old dental assistant from Maine was killed in 1999 by a stalker who bought her Social Security number off the Internet for \$45, and then used it to locate her work address.

Identity Theft No. 1: Michelle Brown of Los Angeles, California, had her Social Security number stolen in 1999, and it was used to charge \$50,000 including a \$32,000 truck, a \$5,000 liposuction operation, and a year-long residential lease.

While assuming the victim's name, the perpetrator also became the object of an arrest warrant for drug smuggling in Texas.

Identity Theft No. 2: An identity theft ring in Riverside County allegedly bilked eight victims of \$700,000. The thieves stole personal information of employees at a large phone company and drained their on-line stock accounts.

One employee reportedly had \$285,000 taken from his account when someone was able to access his account by supplying the employee's name and Social Security number.

Financial Privacy: In a September 14, 1999 editorial, the Los Angeles Times described how a small San Fernando Valley bank, “sold 3.7 million credit card numbers to a felon, who then bilked cardholders out of millions of dollars.” According to the article, the bank was not held liable for this action.

It is also astonishing what some data marketers are now providing to their customers.

According to the Los Angeles Times, some marketing companies have started selling lists of as many as 120 million households which include names, addresses, and phone numbers, estimated income, marital status, buying habits and hobbies.

Similarly, a medical information service has made databases available to its customers which contain the phone number, gender and address of: 3.3 million people with allergies, 3.0 million people with heartburn, 850,000 with yeast infections, 450,000 people with incontinence, and 368,000 people who suffer clinical depression.

As a result, we have seen privacy become the top consumer protection issue.

The bill I am introducing today, the Privacy Act of 2001, contains two bedrock principles.

Privacy legislation should not discriminate against any system of communication.

If personal information deserves protection, it deserves protection however it is collected. It should not matter whether personal data is collected in person, over the phone, or on the Internet.

Nevertheless, some privacy bills have exclusively targeted Internet transactions. There is no justification for discriminating against high technology companies by imposing Internet-specific privacy rules.

Companies operating on the Internet should not have any more duties to protect privacy than businesses extracting information from warranty cards or mail catalogues.

Not all personal information deserves the same level of privacy protection.

Some information like Social Security numbers, motor vehicle records, personal financial information, and medical information deserve higher levels of privacy protection.

With regard to the first principle, the Privacy Act of 2001 protects the privacy of information regardless of the medium through which it is collected.

Other privacy proposals have tried to confine privacy legislation to the Internet.

These proposals unfairly discriminate against high technology users. Put simply, companies and other entities can misuse personal information from off-line sources just as easily as with on-line sources.

Why should a company extracting data from a warranty card have any less of a duty to protect personal privacy than a company collecting personal data on-line?

For example, telemarketers who besiege consumers with phone calls during the dinner hour get much of their personal information used from consumers filling out and mailing back warranty and registration cards. But these warranty cards give consumers no notice about how their personal information will be used.

Consider the case of Anne Marie Levine, a Virginia resident, who entered a raffle to win a new car.

The sponsor of the raffle, unbeknownst to Ms. Levine, sold the personal information on her raffle ticket. In the next two weeks, she received calls from a host of jeep dealers in the area.

While some may consider unsolicited marketing calls a mere annoyance, Ms. Levine was outraged, as I'm sure many Americans would be, that the auto dealer sold her personal information without her permission.

Moreover, with the advent of digital scanners, digital photography, and data processing, the distinctions between on-line and off-line transactions are already blurring.

With regard to the second principle, the Privacy Act of 2001 recognizes that not all categories of personal information merit the same level of protection.

The bill requires businesses intending to collect and sell nonsensitive personal information, eg. name, phone number, address, to nonaffiliated third parties to give customers notice and the opportunity to opt-out of the sale.

The opt-out standard for non-sensitive information ensures that if a person fills out a warranty card, sign-up for a computer service, or submit an entry for a sweepstakes, the business must notify him before it sells his personal information to other businesses or marketers.

This framework guarantees basic privacy protections for consumers without unduly impacting commerce.

To eliminate unnecessary burdens on businesses, the legislation sets up a safe harbor for businesses which appropriately use nonsensitive personal information. Industries and industry-sponsored seal programs which have already adopted Notice-and-Opt Out information policies will be exempt.

The bill also sets a national standard for the sale or marketing of nonsensitive personal information.

Federal preemption is needed because a jumbled patchwork of State privacy laws helps neither businesses nor consumers. Conflicting State laws lead to consumer confusion about privacy rights.

For example, if one logs onto an Internet site, which State law governs: the law of the State of the computer user, the law where the website is being operated, or the law of the State of the manufacturer of a product?

Similarly, a patchwork of 50 State privacy laws, would pose a logistical nightmare for corporate America.

Without Federal preemption, businesses will face the unsavory choice of either adopting, for consistency's sake, privacy guidelines that comply with the strictest state privacy law, or dealing with the costs and paperwork imposed by 50 different state privacy laws.

For especially sensitive personal data, like financial data, medical data, or a driver's license, the bill pushes for an opt-in model of consent.

I believe people should have control over how their most sensitive informa-

tion is used. In the absence of a customer's express permission, company's should not market or sell sensitive personal data.

To create this opt-in standard, this legislation builds upon the existing latitude-work of Federal privacy laws.

For example, the bill modifies the recently enacted Gramm-Leach-Bliley Financial Services Modernization Act by requiring an opt-in for the sale of personal financial information.

Presently, under the Gramm-Leach-Bliley Act, a bank must give a customer notice and the opportunity to opt-out before the bank can disclose private financial information to non-affiliated third parties.

This legislation would impose a stricter standard if the bank tries to sell the information. Any bank that sells personal financial information to non-affiliated third parties would have to get the prior consent of the customer, OPT-in.

Similarly, this bill strengthens the privacy protections for personal health data.

The newly enacted Department of Health and Human Services privacy regulations set a basic opt-in framework for disclosure of health information. I recognize that the rules are being revised by the Bush administration, so any discussion of health privacy must necessarily contemplate a moving target.

Nevertheless, the current version of the regulation has loopholes that limit patient privacy.

The regulations only prohibit "covered entities, namely health insurers, health providers, and health care clearinghouses, from selling a patient's health information without that patient's prior consent, an Opt-in Model.

Meanwhile, non-covered entities such as business associates, health researchers, schools or universities, and life insurers are not subject to this opt-in requirement, except through contractual arrangements.

My bill would preserve the privacy of health information wherever the information is sold. Any life insurer, school or non-covered entity trying to sell protected health information would have to get the patient's consent.

In addition, the bill would require entities to obtain a patient's approval before using "protected health information" for marketing purposes.

This legislation builds on existing law to protect the information on our drivers' licenses.

With its recent amendments, the Driver's Privacy Protection Act, DPPA, offers some meaningful protections for drivers privacy.

For example, under the DPPA, a State Department of Motor Vehicles must obtain the prior consent, Opt-in of the driver before "highly restricted personal information, defined as the driver's photograph, image, Social Security number, medical or disability information, can be disclosed to a third party.



However, loopholes remain. Other sensitive information found on a driver's license deserves equal protection.

This legislation would expand the definition of "highly restricted personal" to include a physical copy of a driver's license, the driver identification number, birth date, information on the driver's physical characteristics and any biometric identifiers like a fingerprint that are found on the driver's license.

Thus, this bill would ensure consumers have control over how their motor vehicle records and driver's license data are used.

I would like to take a moment to highlight Title II of this legislation, which reflects a compromise with Senator GREGG on the privacy of Social Security numbers.

It is so crucial to protect Social Security Numbers because these are the key to unlocking a person's identity.

Many identity theft cases start with the theft of a Social Security number.

Once a thief has access to a victim's Social Security number, it is only a short step to acquiring credit cards, driver's licenses, or other crucial identification documents.

The Feinstein/Gregg compromise bars the sale or display of Social Security numbers to the public except in a very narrow set of circumstances.

Display or sale is permitted if the Social Security Number holder gives consent or if there are compelling public safety needs.

For the first time, Federal, State, and local governments will have to redact Social Security numbers on government records before these records are provided to the public.

Thus, enterprising identity thieves no longer can scour bankruptcy records, liens, marriage certificates, or other public documents to steal Social Security Numbers.

Moreover, State governments will no longer be permitted to use the Social Security number as the default driver's license number.

The legislation, however, recognizes that some industries, like banks, rely on Social Security Numbers to exchange information between databases and complete identification verification necessary for certain transactions.

It permits the sale or purchase of Social Security Numbers to facilitate business-to-business transactions so long as businesses put appropriate safeguards in place and do not permit public access to the number.

Some critics of privacy legislation argue it will impede commerce. I disagree. A reasonable baseline of privacy laws will stimulate commerce. On the Internet, for example, fear of identity theft has impeded consumer transactions.

One study of e-commerce estimates consumer privacy fears prevented up to \$2.8 billion in online retail sales in 1999. Another study suggests that, by 2002, over \$18 billion of lost sales can be attributed to consumer privacy concerns.

This legislation codifies steps Congress can take to protect citizens from identity thieves and other predators of personal information.

It restores to individuals more control over their most sensitive personal information such as Social Security numbers, driver's license information, health information, and financial information.

The legislation sets reasonable guidelines for businesses that handle our personal information every day, like credit card companies, hospitals, and banks.

Our Nation is rushing toward an information economy that will yield unprecedented economic efficiencies.

The commercial benefits of the new economy are unquestionable. But, in our rush to embrace the new, we must remember to protect the core Democratic values on which our country depends.

Every American has a fundamental right to privacy, no matter how fast our technology grows or changes.

But our right to privacy only will remain vital, if we take strong action to protect it.

I look forward to working with my colleagues to enact the Privacy Act of 2001.

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. 1055

*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 "Privacy Act of 2001".

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

Sec. 1. Short title; table of contents.

#### **TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY IDENTIFIABLE INFORMATION**

Sec. 101. Collection and distribution of personally identifiable information.

Sec. 102. Enforcement.

Sec. 103. Safe harbor.

Sec. 104. Definitions.

Sec. 105. Preemption.

Sec. 106. Effective Date.

#### **TITLE II—LIMITATIONS ON USE OF SOCIAL SECURITY NUMBERS**

Sec. 201. Findings.

Sec. 202. Prohibition of the display, sale, or purchase of social security numbers.

Sec. 203. No prohibition with respect to public records.

Sec. 204. Rulemaking authority of the Attorney General.

Sec. 205. Treatment of social security numbers on government documents.

Sec. 206. Limits on personal disclosure of a social security number for consumer transactions.

Sec. 207. Extension of civil monetary penalties for misuse of a social security number.

#### **TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION**

Sec. 301. Definition of sale.

Sec. 302. Rules applicable to sale of non-public personal information.

Sec. 303. Exceptions to sale prohibition.

Sec. 304. Effective date.

#### **TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION**

Sec. 401. Definitions.

Sec. 402. Prohibition against selling protected health information.

Sec. 403. Authorization for sale of protected health information.

Sec. 404. Prohibition against retaliation.

Sec. 405. Prohibition against marketing protected health information.

Sec. 406. Rule of construction.

Sec. 407. Regulations.

Sec. 408. Enforcement.

#### **TITLE V—DRIVER'S LICENSE PRIVACY**

Sec. 501. Driver's license privacy.

#### **TITLE VI—MISCELLANEOUS**

Sec. 601. Enforcement by State Attorneys General.

Sec. 602. Federal injunctive authority.

#### **TITLE I—COMMERCIAL SALE AND MARKETING OF PERSONALLY IDENTIFIABLE INFORMATION**

##### **SEC. 101. COLLECTION AND DISTRIBUTION OF PERSONALLY IDENTIFIABLE INFORMATION.**

(a) **PROHIBITION.**—

(1) **IN GENERAL.**—It is unlawful for a commercial entity to collect personally identifiable information and disclose such information to any nonaffiliated third party for marketing purposes or sell such information to any nonaffiliated third party, unless the commercial entity provides—

(A) notice to the individual to whom the information relates in accordance with the requirements of subsection (b); and

(B) an opportunity for such individual to restrict the disclosure or sale of such information.

(2) **EXCEPTION.**—A commercial entity may collect personally identifiable information and use such information to market to potential customers such entity's product.

(b) **NOTICE.**—

(1) **IN GENERAL.**—A notice under subsection (a) shall contain statements describing the following:

(A) The identity of the commercial entity collecting the personally identifiable information.

(B) The types of personally identifiable information that are being collected on the individual.

(C) How the commercial entity may use such information.

(D) A description of the categories of potential recipients of such personally identifiable information.

(E) Whether the individual is required to provide personally identifiable information in order to do business with the commercial entity.

(F) How an individual may decline to have such personally identifiable information used or sold as described in subsection (a).

(2) **TIME OF NOTICE.**—Notice shall be conveyed prior to the sale or use of the personally identifiable information as described in subsection (a) in such a manner as to allow the individual a reasonable period of time to consider the notice and limit such sale or use.

(3) **MEDIUM OF NOTICE.**—The medium for providing notice must be—

(A) the same medium in which the personally identifiable information is or will be collected, or a medium approved by the individual; or

(B) in the case of oral communication, notice may be conveyed orally or in writing.

(4) **FORM OF NOTICE.**—The notice shall be clear and conspicuous.

(c) OPT-OUT.—

(1) OPPORTUNITY TO OPT-OUT OF SALE OR MARKETING.—The opportunity provided to limit the sale of personally identifiable information to nonaffiliated third parties or the disclosure of such information for marketing purposes, shall be easy to use, accessible and available in the medium the information is collected, or in a medium approved by the individual.

(2) DURATION OF LIMITATION.—An individual's limitation on the sale or marketing of personally identifiable information shall be considered permanent, unless otherwise specified by the individual.

(3) REVOCATION OF CONSENT.—After an individual grants consent to the use of that individual's personally identifiable information, the individual may revoke the consent at any time, except to the extent that the commercial entity has taken action in reliance thereon. The commercial entity shall provide the individual an opportunity to revoke consent that is easy to use, accessible, and available in the medium the information was or is collected.

(4) NOT APPLICABLE.—This section shall not apply to disclosure of personally identifiable information—

(A) that is necessary to facilitate a transaction specifically requested by the consumer;

(B) is used for the sole purpose of facilitating this transaction; and

(C) in which the entity receiving or obtaining such information is limited, by contract, to use such information for the purpose of completing the transaction.

#### SEC. 102. ENFORCEMENT.

(a) IN GENERAL.—In accordance with the provisions of this section, the Federal Trade Commission shall have the authority to enforce any violation of section 101 of this Act.

(b) VIOLATIONS.—The Federal Trade Commission shall treat a violation of section 101 as a violation of a rule under section 18a(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) TRANSFER OF ENFORCEMENT AUTHORITY.—The Federal Trade Commission shall promulgate rules in accordance with section 553 of title 5, United States Code, allowing for the transfer of enforcement authority from the Federal Trade Commission to a Federal agency regarding section 101 of this Act. The Federal Trade Commission may permit a Federal agency to enforce any violation of section 101 if such agency submits a written request to the Commission to enforce such violations and includes in such request—

(1) a description of the entities regulated by such agency that will be subject to the provisions of section 101;

(2) an assurance that such agency has sufficient authority over the entities to enforce violations of section 101; and

(3) a list of proposed rules that such agency shall use in regulating such entities and enforcing section 101.

(d) ACTIONS BY THE COMMISSION.—Absent transfer of enforcement authority to a Federal agency under subsection (c), the Federal Trade Commission shall prevent any person from violating section 101 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as provided to such Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Any entity that violates section 101 is subject to the penalties and entitled to the privileges and immunities provided in such Act in the same manner, by the same means, and with the same jurisdiction, power, and duties under such Act.

(e) RELATIONSHIP TO OTHER LAWS.—

(1) COMMISSION AUTHORITY.—Nothing contained in this title shall be construed to

limit authority provided to the Commission under any other law.

(2) COMMUNICATIONS ACT.—Nothing in section 101 requires an operator of a website to take any action that is inconsistent with the requirements of section 222 or 631 of the Communications Act of 1934 (47 U.S.C. 222 and 5551).

(3) OTHER ACTS.—Nothing in this title is intended to affect the applicability or the enforceability of any provision of, or any amendment made by—

(A) the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.);

(B) title V of the Gramm-Leach-Bliley Act;

(C) the Health Insurance Portability and Accountability Act of 1996; or

(D) the Fair Credit Reporting Act.

(f) PUBLIC RECORDS.—Nothing in this title shall be construed to restrict commercial entities from obtaining or disclosing personally identifying information from public records.

(g) CIVIL PENALTIES.—In addition to any other penalty applicable to a violation of section 101(a), a penalty of up to \$25,000 may be issued for each violation.

(h) ENFORCEMENT REGARDING PROGRAMS.—

(1) IN GENERAL.—A Federal agency or department providing financial assistance to any entity required to comply with section 101 of this Act shall issue regulations requiring that such entity comply with such section or forfeit some or all of such assistance. Such regulations shall prescribe sanctions for noncompliance, require that such department or agency provide notice of failure to comply with such section prior to any action being taken against such recipient, and require that a determination be made prior to any action being taken against such recipient that compliance cannot be secured by voluntary means.

(2) FEDERAL FINANCIAL ASSISTANCE.—The term "Federal financial assistance" means assistance through a grant, cooperative agreement, loan, or contract other than a contract of insurance or guaranty.

#### SEC. 103. SAFE HARBOR.

A commercial entity may not be held to have violated any provision of this title if such entity complies with self-regulatory guidelines that—

"(1) are issued by seal programs or representatives of the marketing or online industries or by any other person; and

"(2) are approved by the Federal Trade Commission, after public comment has been received on such guidelines by the Commission, as meeting the requirements of this title.

#### SEC. 104. DEFINITIONS.

In this title:

(1) COMMERCIAL ENTITY.—The term "commercial entity"—

(A) means any person offering products or services involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; and

(B) does not include—

(i) any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45);

(ii) any financial institution that is subject to title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.); or

(iii) any group health plan, health insurance issuer, or other entity that is subject to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 note).

(2) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(3) INDIVIDUAL.—The term "individual" means a person whose personally identifying information has been, is, or will be collected by a commercial entity.

(4) MARKETING.—The term "marketing" means to make a communication about a product or service a purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(5) MEDIUM.—The term "medium" means any channel or system of communication including oral, written, and online communication.

(6) NONAFFILIATED THIRD PARTY.—The term "nonaffiliated third party" means any entity that is not related by common ownership or affiliated by corporate control with, the commercial entity, but does not include a joint employee of such institution.

(7) PERSONALLY IDENTIFIABLE INFORMATION.—The term "personally identifiable information" means individually identifiable information about the individual that is collected including—

(A) a first, middle, or last name, whether given at birth or adoption, assumed, or legally changed;

(B) a home or other physical address, including the street name, zip code, and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a photograph or other form of visual identification;

(F) a birth date, birth certificate number, or place of birth for that person; or

(G) information concerning the individual that is combined with any other identifier in this paragraph.

(8) SALE; SELL; SOLD.—The terms "sale", "sell", and "sold", with respect to personally identifiable information, mean the exchanging of such information for any thing of value, directly or indirectly, including the licensing, bartering, or renting of such information.

(9) WRITING.—The term "writing" means writing in either a paper-based or computer-based form, including electronic and digital signatures.

#### SEC. 105. PREEMPTION.

The provisions of this title shall supersede any statutory and common law of States and their political subdivisions insofar as that law may now or hereafter relate to the—

(1) collection and disclosure of personally identifiable information for marketing purposes; and

(2) collection and sale of personally identifiable information.

#### SEC. 106. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act.

### TITLE II—LIMITATIONS ON USE OF SOCIAL SECURITY NUMBERS

#### SEC. 201. FINDINGS.

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of social security numbers has contributed to a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used social security numbers to confirm the identity of an individual, the general display to the public, sale, or purchase of these numbers has been used to commit crimes, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a social security number in order to pay taxes, to qualify for

social security benefits, or to seek employment. An unintended consequence of these requirements is that social security numbers have become tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit individuals to exempt themselves from those requirements, it is appropriate for the Federal Government to take steps to stem the abuse of this system.

(4) A social security number does not contain, reflect, or convey any publicly significant information or concern any public issue. The display, sale, or purchase of such numbers in no way facilitates uninhibited, robust, and wide-open public debate, and restrictions on such display, sale, or purchase would not affect public debate.

(5) No one should seek to profit from the display, sale, or purchase of social security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(6) Consequently, this Act offers each individual that has been assigned a social security number necessary protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

#### **SEC. 202. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.**

##### **(a) PROHIBITION.—**

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028 the following:

##### **“§ 1028A. Prohibition of the display, sale, or purchase of social security numbers**

“(a) DEFINITIONS.—In this section:

“(1) DISPLAY.—The term ‘display’ means to intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual’s social security number.

“(2) PERSON.—The term ‘person’ means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

“(3) PURCHASE.—The term ‘purchase’ means providing directly or indirectly, anything of value in exchange for a social security number.

“(4) SALE.—The term ‘sale’ means obtaining, directly or indirectly, anything of value in exchange for a social security number.

“(5) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

“(b) LIMITATION ON DISPLAY.—Except as provided in section 1028B, no person may display any individual’s social security number to the general public without the affirmatively expressed consent of the individual.

“(c) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual’s social security number without the affirmatively expressed consent of the individual.

“(d) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual’s social security number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

“(e) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or pur-

chasing or attempting to purchase, an individual’s social security number shall—

“(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and the scope of transactions permitted by the consent; and

“(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

“(f) EXCEPTIONS.—

“(1) IN GENERAL.—Except as provided in subsection (d), nothing in this section shall be construed to prohibit or limit the display, sale, or purchase of a social security number—

“(A) permitted, required, or excepted, expressly or by implication, under section 205(c)(2), 1124A(a)(3), or 1141(c) of the Social Security Act (42 U.S.C. 405(c)(2), 1320a-3a(a)(3), and 1320b-11(c)), section 7(a)(2) of the Privacy Act of 1974 (5 U.S.C. 552a note), section 6109(d) of the Internal Revenue Code of 1986, or section 6(b)(1) of the Professional Boxing Safety Act of 1996 (15 U.S.C. 6305(b)(1));

“(B) for a public health purpose, including the protection of the health or safety of an individual in an emergency situation;

“(C) for a national security purpose;

“(D) for a law enforcement purpose, including the investigation of fraud, as required under subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), and the enforcement of a child support obligation;

“(E) if the display, sale, or purchase of the number is for a business-to-business use, including, but not limited to—

“(i) the prevention of fraud (including fraud in protecting an employee’s right to employment benefits);

“(ii) the facilitation of credit checks or the facilitation of background checks of employees, prospective employees, and volunteers;

“(iii) compliance with any requirement related to the social security program established under title II of the Social Security Act (42 U.S.C. 401 et seq.); or

“(iv) the retrieval of other information from, or by, other businesses, commercial enterprises, or private nonprofit organizations,

except that, nothing in this subparagraph shall be construed as permitting a professional or commercial user to display or sell a social security number to the general public;

“(F) if the transfer of such a number is part of a data matching program under the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a note) or any similar computer data matching program involving a Federal, State, or local agency; or

“(G) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program.

“(g) CIVIL ACTION IN UNITED STATES DISTRICT COURT; DAMAGES; ATTORNEY’S FEES AND COSTS.—

“(1) IN GENERAL.—Any individual aggrieved by any act of any person in violation of this section may bring a civil action in a United States district court to recover—

“(A) such preliminary and equitable relief as the court determines to be appropriate; and

“(B) the greater of—

“(i) actual damages;

“(ii) liquidated damages of \$2,500; or

“(iii) in the case of a violation that was willful and resulted in profit or monetary gain, liquidated damages of \$10,000.

“(2) STATUTE OF LIMITATIONS.—No action may be commenced under this subsection

more than 3 years after the date on which the violation was or should reasonably have been discovered by the aggrieved individual.

“(3) NONEXCLUSIVE REMEDY.—The remedy provided under this subsection shall be in addition to any other remedy available to the individual.

“(h) CIVIL PENALTIES.—

“(1) IN GENERAL.—Any person who the Attorney General determines has violated this section shall be subject, in addition to any other penalties that may be prescribed by law—

“(A) to a civil penalty of not more than \$5,000 for each such violation; and

“(B) to a civil penalty of not more than \$50,000, if the violations have occurred with such frequency as to constitute a general business practice.

“(2) DETERMINATION OF VIOLATIONS.—Any willful violation committed contemporaneously with respect to the social security numbers of 2 or more individuals by means of mail, telecommunication, or otherwise, shall be treated as a separate violation with respect to each such individual.

“(3) ENFORCEMENT PROCEDURES.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a-7a), other than subsections (a), (b), (f), (h), (i), (j), (m), and (n) and the first sentence of subsection (c) of such section, and the provisions of subsections (d) and (e) of section 205 of such Act (42 U.S.C. 405) shall apply to a civil penalty under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act (42 U.S.C. 1320a-7a(a)), except that, for purposes of this paragraph, any reference in section 1128A of such Act (42 U.S.C. 1320a-7a) to the Secretary shall be deemed to be a reference to the Attorney General.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following:

“1028A. Prohibition of the display, sale, or purchase of social security numbers.”.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting “or” after the semicolon; and

(2) by inserting after paragraph (8) the following new paragraphs:

“(9) except as provided in paragraph (5) of section 1028A(a) of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in paragraph (1) of such section) any individual’s social security number (as defined in such paragraph) without the affirmatively expressed consent of that individual after having met the prerequisites for consent under paragraph (4) of such section, electronically or in writing, with respect to that individual; or

“(10) obtains any individual’s social security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose;”.

(c) EFFECTIVE DATE.—Section 1028A of title 18, United States Code (as added by subsection (a)), and section 208 of the Social Security Act (42 U.S.C. 408) (as amended by subsection (b)) shall take effect 30 days after the date on which the final regulations promulgated under section 204(b) are published in the Federal Register.

#### **SEC. 203. NO PROHIBITION WITH RESPECT TO PUBLIC RECORDS.**

(a) PUBLIC RECORDS EXCEPTION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code (as amended by section

202(a)(1)), is amended by inserting after section 1028A the following:

**“§ 1028B. No prohibition of the display, sale, or purchase of social security numbers included in public records**

“(a) IN GENERAL.—Nothing in section 1028A shall be construed to prohibit or limit the display, sale, or purchase of any public record which includes a social security number that—

“(1) is incidentally included in a public record, as defined in subsection (d);

“(2) is intended to be purchased, sold, or displayed pursuant to an exception contained in section 1028A(f);

“(3) is intended to be purchased, sold, or displayed pursuant to the consent provisions of subsections (b), (c), and (e) of section 1028A; or

“(4) includes a redaction of the nonincidental occurrences of the social security numbers when sold or displayed to members of the general public.

“(b) AGENCY REQUIREMENTS.—Each agency in possession of documents that contain social security numbers which are nonincidental, shall, with respect to such documents—

“(1) ensure that access to such numbers is restricted to persons who may obtain them in accordance with applicable law;

“(2) require an individual who is not exempt under section 1028A(f) to provide the social security number of the person who is the subject of the document before making such document available; or

“(3) redact the social security number from the document prior to providing a copy of the requested document to an individual who is not exempt under section 1028A(f) and who is unable to provide the social security number of the person who is the subject of the document.

“(c) RULE OF CONSTRUCTION.—Nothing in this section shall be used as a basis for permitting or requiring a State or local government entity or other repository of public documents to expand or to limit access to documents containing social security numbers to entities covered by the exception in section 1028A(f).

“(d) DEFINITIONS.—In this section:

“(1) INCIDENTAL.—The term ‘incidental’ means that the social security number is not routinely displayed in a consistent and predictable manner on the public record by a government entity, such as on the face of a document.

“(2) PUBLIC RECORD.—The term ‘public record’ means any item, collection, or grouping of information about an individual that is maintained by a Federal, State, or local government entity and that is made available to the public.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 202(a)(2)), is amended by inserting after the item relating to section 1028A the following:

“1028B. No prohibition of the display, sale, or purchase of social security numbers included in public records.”.

**SEC. 204. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.**

(a) IN GENERAL.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 202.

(b) BUSINESS-TO-BUSINESS COMMERCIAL DISPLAY, SALE, OR PURCHASE RULEMAKING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Social Security, the Federal Trade Commission, and such other Federal

agencies as the Attorney General determines appropriate, may conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code, as are necessary to promulgate regulations to implement and clarify the business-to-business provisions pertaining to section 1028A(f)(1)(E) of title 18, United States Code (as added by section 202(a)(1)). The Attorney General shall consult with other agencies to ensure, where possible, that these provisions are consistent with other privacy laws, including title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

(2) FACTORS TO BE CONSIDERED.—In promulgating the regulations required under paragraph (1), the Attorney General shall, at a minimum, consider the following factors:

(A) The benefit to a particular business practice and to the general public of the sale or purchase of an individual's social security number.

(B) The risk that a particular business practice will promote the use of the social security number to commit fraud, deception, or crime.

(C) The presence of adequate safeguards to prevent the misappropriation of social security numbers by the general public, while permitting internal business uses of such numbers.

(D) The implementation of procedures to prevent identity thieves, stalkers, and others with ill intent from posing as legitimate businesses to obtain social security numbers.

**SEC. 205. TREATMENT OF SOCIAL SECURITY NUMBERS ON GOVERNMENT DOCUMENTS.**

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following new clause:

“(x) No Federal, State, or local agency may display the social security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to violations of section 205(c)(2)(C)(x) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(x)), as added by paragraph (1), occurring after the date that is 3 years after the date of enactment of this Act.

(b) PROHIBITION OF APPEARANCE OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATION.—

(1) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(A) by inserting “(I)” after “(vi)”; and

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

“(II)(aa) An agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not disclose the social security account numbers issued by the Commissioner of Social Security, or any derivative of such numbers, on any driver's license or motor vehicle registration or any other document issued by such State (or political subdivision thereof) to an individual for purposes of identification of such individual.

“(bb) Nothing in this subclause shall be construed as precluding an agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, from using a social security account number for an internal use or to link with the database of an agency of another State that is responsible for the administration of

any driver's license or motor vehicle registration law.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to licenses, registrations, and other documents issued or reissued after the date that is 1 year after the date of enactment of this Act.

(c) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (b)) is amended by adding at the end the following new clause:

“(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of other individuals. For purposes of this clause, the term ‘prisoner’ means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of a criminal offense.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

**SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

**“SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.**

“(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual's social security number when purchasing a commercial good or service or deny an individual the good or service for refusing to provide that number except—

“(1) for any purpose relating to—

“(A) obtaining a consumer report for any purpose permitted under the Fair Credit Reporting Act;

“(B) a background check of the individual conducted by a landlord, lessor, employer, voluntary service agency, or other entity as determined by the Attorney General;

“(C) law enforcement; or

“(D) a Federal or State law requirement; or

“(2) if the social security number is necessary to verify identity and to prevent fraud with respect to the specific transaction requested by the consumer and no other form of identification can produce comparable information.

“(b) OTHER FORMS OF IDENTIFICATION.—Nothing in this section shall be construed to prohibit a commercial entity from—

“(1) requiring an individual to provide 2 forms of identification that do not contain the social security number of the individual; or

“(2) denying an individual a good or service for refusing to provide 2 forms of identification that do not contain such number.

“(c) APPLICATION OF CIVIL MONEY PENALTIES.—A violation of this section shall be deemed to be a violation of section 1129(a)(3)(F).

“(d) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 208(a)(8).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a social security number made on or after the date of enactment of this Act.

**SEC. 207. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.**

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended—

(A) by striking “who” and inserting “who—”;

(B) by striking “makes” and all that follows through “shall be subject to” and inserting the following:

“(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

“(B) makes such a statement or representation for such use with knowing disregard for the truth; or

“(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to”;

(C) by inserting “or each receipt of such benefits while withholding disclosure of such fact” after “each such statement or representation”;

(D) by inserting “or because of such withholding of disclosure of a material fact” after “because of such statement or representation”; and

(E) by inserting “or such a withholding of disclosure” after “such a statement or representation”.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a-8a(a)) is amended—

(A) by striking “who” and inserting “who—”;

(B) by striking “makes” and all that follows through “shall be subject to” and inserting the following new paragraphs:

“(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

“(2) makes such a statement or representation for such use with knowing disregard for the truth; or

“(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to”.

(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a-8(a)), as amended by subsection (a)(1), is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesignating the last sentence of paragraph (1) as paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following new paragraph:

“(3) Any person (including an organization, agency, or other entity) who—

“(A) uses a social security account number that such person knows or should know has been assigned by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

“(B) falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the social security account number assigned by the Commissioner to such individual;

“(C) knowingly alters a social security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

“(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

“(E) counterfeits a social security card, or possesses a counterfeit social security card with intent to display, sell, or purchase it;

“(F) discloses, uses, compels the disclosure of, or knowingly displays, sells, or purchases the social security account number of any person in violation of the laws of the United States;

“(G) with intent to deceive the Commissioner of Social Security as to such person's true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

“(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional social security account number or a number which purports to be a social security account number; or

“(I) being an officer or employee of a Federal, State, or local agency in possession of any individual's social security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (vi)(II) or (x) of section 205(c)(2)(C)

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each violation. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.”

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a-8(e)(2)(B)) is amended by striking “In the case of amounts recovered arising out of a determination relating to title VIII or XVI,” and inserting “In the case of any other amounts recovered under this section.”

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a-8(b)(3)(A)) is amended by striking “charging fraud or false statements”.

(2) Section 1129(c)(1) of the Social Security Act (42 U.S.C. 1320a-8(c)(1)) is amended by striking “and representations” and inserting “, representations, or actions”.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a-8(e)(1)(A)) is amended by striking “statement or representation

referred to in subsection (a) was made” and inserting “violation occurred”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320-8 and 1320a-8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(a)(3)(I) of the Social Security Act (42 U.S.C. 1320a-8(a)(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date under section 202(c).

**TITLE III—LIMITATIONS ON SALE AND SHARING OF NONPUBLIC PERSONAL FINANCIAL INFORMATION**

**SEC. 301. DEFINITION OF SALE.**

Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) is amended by adding at the end the following:

“(12) SALE.—The terms ‘sale’, ‘sell’, and ‘sold’, with respect to nonpublic personal information, mean the exchange of such information for any thing of value, directly or indirectly, including the licensing, bartering, or renting of such information.”

**SEC. 302. RULES APPLICABLE TO SALE OF NON-PUBLIC PERSONAL INFORMATION.**

Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802) is amended—

(1) in the section heading, by inserting “and sales” after “disclosures”;

(2) in subsection (a), by inserting “or sell” after “disclose”;

(3) in subsection (b)—

(A) in the heading, by inserting “FOR CERTAIN DISCLOSURES” before the period; and

(B) by adding at the end the following:

“(3) LIMITATION.—Paragraphs (1) and (2) do not apply to the sale of nonpublic personal information.”;

(4) by striking subsection (e);

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

(6) by inserting after subsection (b) the following:

“(c) OPT-IN FOR SALE OF INFORMATION.—

“(1) AFFIRMATIVE CONSENT REQUIRED.—Each agency or authority described in section 504(a) shall, by rule prescribed under that section, prohibit a financial institution that is subject to its jurisdiction from selling any nonpublic personal information to any nonaffiliated third party, unless the consumer to whom the information pertains—

“(A) has affirmatively consented in accordance with such rule to the sale of such information; and

“(B) has not withdrawn the consent.

“(2) DENIAL OF SERVICE PROHIBITED.—The rule prescribed pursuant to paragraph (1) shall prohibit a financial institution from denying any consumer a financial product or a financial service for the refusal by the consumer to grant the consent required by such rule.”

**SEC. 303. EXCEPTIONS TO SALE PROHIBITION.**

Section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802), as amended by this title, is amended by adding at the end the following:

“(f) GENERAL EXCEPTIONS.—This section does not prohibit—

“(1) the sale or other disclosure of nonpublic personal information to a non-affiliated third party—

“(A) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer to whom the information pertains, or in connection with—

“(i) servicing or processing a financial product or service requested or authorized by the consumer;

“(ii) maintaining or servicing the account of the consumer with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

“(iii) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

“(B) with the consent or at the direction of the consumer, in accordance with applicable rules prescribed under this subtitle;

“(C) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978; or

“(D) to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury, with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety; or

“(2) the disclosure, other than the sale, of nonpublic personal information—

“(A) to protect the confidentiality or security of the records of the financial institution pertaining to the consumer, the service or product, or the transaction therein;

“(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

“(C) for required institutional risk control, or for resolving customer disputes or inquiries;

“(D) to persons holding a legal or beneficial interest relating to the consumer;

“(E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

“(F) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the compliance of the institution with industry standards, or the attorneys, accountants, or auditors of the institution;

“(G) to a consumer reporting agency, in accordance with the Fair Credit Reporting Act or from a consumer report reported by a consumer reporting agency, as those terms are defined in that Act;

“(H) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit;

“(I) to comply with Federal, State, or local laws, rules, or other applicable legal requirements, or with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or

“(J) to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes, as authorized by law.”.

#### SEC. 304. EFFECTIVE DATE.

This title shall take effect 6 months after the date on which the rules are required to be prescribed under section 504(a)(3).

#### TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

##### SEC. 401. DEFINITIONS.

In this title:

(1) BUSINESS ASSOCIATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “business associate” means, with respect to a covered entity, a person who—

(i) on behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of—

(I) a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

(II) any other function or activity regulated under parts 160 through 164 of title 45, Code of Federal Regulations; or

(ii) provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(B) LIMITATIONS.—

(i) IN GENERAL.—A covered entity participating in an organized health care arrangement that performs a function or activity as described by subparagraph (A)(i) for or on behalf of such organized health care arrangement, or that provides a service as described in subparagraph (A)(ii) to or for such organized health care arrangement, does not, simply through the performance of such function or activity or the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.

(ii) LIMITATION.—A covered entity may be a business associate of another covered entity.

(2) COVERED ENTITY.—The term “covered entity” means—

(A) a health plan;

(B) a health care clearinghouse; and

(C) a health care provider who transmits any health information in electronic form in connection with a transaction covered by parts 160 through 164 of title 45, Code of Federal Regulations.

(3) DISCLOSURE.—The term “disclosure” means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

(4) EMPLOYER.—The term “employer” means a person or organization for whom an individual performs or has performed any service, of whatever nature, as the employee of that person or organization, except that—

(A) if the person for whom the individual performs or has performed the service does not have control of the payment of wages for such service, the term “employer” means the person having control of the payment of those wages; and

(B) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” means that person.

(5) GROUP HEALTH PLAN.—The term “group health plan” means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act, 42 U.S.C. 300gg-91(a)(2)),

including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that—

(A) has 50 or more participants (as defined in section 3(7) of Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(7)); or

(B) is administered by an entity other than the employer that established and maintains the plan.

(6) HEALTH CARE.—The term “health care” means care, services, or supplies related to the health of an individual, including—

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(B) a sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(7) HEALTH CARE CLEARINGHOUSE.—The term “health care clearinghouse” means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and value-added networks and switches, that—

(A) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or

(B) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

(8) HEALTH CARE PROVIDER.—The term “health care provider” has the same meaning given the terms “provider of services” and “provider of medical or health services” in subsections (u) and (s) of section 1861 of the Social Security Act (42 U.S.C. 1395x), and includes any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(9) HEALTH INFORMATION.—The term “health information” means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

(10) HEALTH INSURANCE ISSUER.—The term “health insurance issuer” means a health insurance issuer (as defined in section 2791(b)(2) of the Public Health Service Act, 42 U.S.C. 300gg-91(b)(2)) and used in the definition of health plan in this section and includes an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance. Such term does not include a group health plan.

(11) HEALTH MAINTENANCE ORGANIZATION.—The term “health maintenance organization” (HMO) (as defined in section 2791(b)(3) of the Public Health Service Act, 42 U.S.C. 300gg-91 (b)(3)) and used in the definition of health plan in this section, means a federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such an HMO.



(12) **HEALTH OVERSIGHT AGENCY.**—The term “health oversight agency” means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

(13) **HEALTH PLAN.**—The term “health plan” means an individual or group plan that provides, or pays the cost of, medical care, as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-91(a)(2))—

- (A) including, singly or in combination—
  - (i) a group health plan;
  - (ii) a health insurance issuer;
  - (iii) an HMO;
  - (iv) part A or B of the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);
  - (v) the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);
  - (vi) an issuer of a medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss(g)(1));
  - (vii) an issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy;
  - (viii) an employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers;
  - (ix) the health care program for active military personnel under title 10, United States Code;
  - (x) the veterans health care program under chapter 17 of title 38, United States Code;
  - (xi) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in section 1072(4) of title 10, United States Code);
  - (xii) the Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);
  - (xiii) the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code;
  - (xiv) an approved State child health plan under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.), providing benefits for child health assistance that meet the requirements of section 2103 of such Act (42 U.S.C. 1397cc);
  - (xv) the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w-21 et seq.);
  - (xvi) a high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals; and
  - (xvii) any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-91(a)(2))); and

(B) excluding—

- (i) any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the Public Health Service Act (42 U.S.C. 300gg-91(c)(1)); and
- (ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of paragraph (1)), whose principal purpose is other than providing, or paying the cost of,

health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

(14) **INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.**—The term “individually identifiable health information” means information that is a subset of health information, including demographic information collected from an individual, that—

(A) is created or received by a covered entity or employer; and

(B)(i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

(ii)(I) identifies an individual; or

(II) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

(15) **LAW ENFORCEMENT OFFICIAL.**—The term “law enforcement official” means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to—

(A) investigate or conduct an official inquiry into a potential violation of law; or

(B) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(16) **LIFE INSURER.**—The term “life insurer” means a life insurance company (as defined in section 816 of the Internal Revenue Code of 1986), including the employees and agents of such company.

(17) **MARKETING.**—

(A) **IN GENERAL.**—The term “marketing” means to make a communication about a product or service a purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(B) **LIMITATION.**—Such term does not include communications that meet the requirements of subparagraph (C) and that are made by a covered entity—

(i) for the purpose of describing the entities participating in a health care provider network or health plan network, or for the purpose of describing if and the extent to which a product or service (or payment for such product or service) is provided by a covered entity or included in a plan of benefits; or

(ii) that are tailored to the circumstances of a particular individual and the communications are—

(I) made by a health care provider to an individual as part of the treatment of the individual, and for the purpose of furthering the treatment of that individual; or

(II) made by a health care provider to an individual in the course of managing the treatment of that individual, or for the purpose of directing or recommending to that individual alternative treatments, therapies, health care providers, or settings of care.

(C) **NOT INCLUDED.**—A communication described in subparagraph (B) is not included in marketing if—

(i) the communication is made orally; or

(ii) the communication is in writing and the covered entity does not receive direct or indirect remuneration from a third party for making the communication.

(18) **NONCOVERED ENTITY.**—

(A) **IN GENERAL.**—The term “noncovered entity” means any person or public or private entity, including but not limited to a health researcher, school or university, life insurer, employer, public health authority, health oversight agency, or law enforcement official, or any person acting as an agent of such entities or persons, that is not a covered entity.

(B) **LIMITATION.**—The term “noncovered entity” includes a covered entity if such covered entity is acting as a business associate.

(19) **ORGANIZED HEALTH CARE ARRANGEMENT.**—The term “organized health care arrangement” means—

(A) a clinically integrated care setting in which individuals typically receive health care from more than 1 health care provider;

(B) an organized system of health care in which more than 1 covered entity participates, and in which the participating covered entities—

(i) hold themselves out to the public as participating in a joint arrangement; and

(ii) participate in joint activities including at least—

(I) utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;

(II) quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or

(III) payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk;

(C) a group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;

(D) a group health plan and 1 or more other group health plans each of which are maintained by the same plan sponsor; or

(E) the group health plans described in subparagraph (D) and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

(20) **PROTECTED HEALTH INFORMATION.**—The term “protected health information” means individually identifiable health information that is in any form or medium. The term does not include individually identifiable health information in education records covered by section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(21) **PUBLIC HEALTH AUTHORITY.**—The term “public health authority” means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(22) **SCHOOL OR UNIVERSITY.**—The term “school or university” means an institution or place for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under 1 corporate organization or government.

(23) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(24) **SALE; SELL; SOLD.**—The terms “sale”, “sell”, and “sold”, with respect to protected health information, mean the exchange of

such information for anything of value, directly or indirectly, including the licensing, bartering, or renting of such information.

(25) **USE.**—The term “use” means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

(26) **WRITING.**—The term “writing” means writing in either a paper-based or computer-based form, including electronic and digital signatures.

#### **SEC. 402. PROHIBITION AGAINST SELLING PROTECTED HEALTH INFORMATION.**

(a) **IN GENERAL.**—A noncovered entity shall not sell the protected health information of an individual without an authorization that is valid under section 403. When a noncovered entity obtains or receives authorization to sell such information, such sale must be consistent with such authorization.

(b) **SCOPE.**—A sale of protected health information as described under subsection (a) shall be limited to the minimum amount of information necessary to accomplish the purpose for which the sale is made.

(c) **PURPOSE.**—A recipient of information sold pursuant to this title may use or disclose such information solely to carry out the purpose for which the information was sold.

(d) **NOT REQUIRED.**—Nothing in this title permitting the sale of protected health information shall be construed to require such sale.

(e) **IDENTIFICATION OF INFORMATION AS PROTECTED HEALTH INFORMATION.**—Information sold pursuant to this title shall be clearly identified as protected health information.

(f) **NO WAIVER.**—Except as provided in this title, an individual's authorization to sell protected health information shall not be construed as a waiver of any rights that the individual has under other Federal or State laws, the rules of evidence, or common law.

#### **SEC. 403. AUTHORIZATION FOR SALE OF PROTECTED HEALTH INFORMATION.**

(a) **VALID AUTHORIZATION.**—A valid authorization is a document that complies with all requirements of this section. Such authorization may include additional information not required under this section, provided that such information is not inconsistent with the requirements of this section.

(b) **DEFECTIVE AUTHORIZATION.**—An authorization is not valid, if the document submitted has any of the following defects:

(1) The expiration date has passed or the expiration event is known by the noncovered entity to have occurred.

(2) The authorization has not been filled out completely, with respect to an element described in subsections (e) and (f).

(3) The authorization is known by the noncovered entity to have been revoked.

(4) The authorization lacks an element required by subsections (e) and (f).

(5) Any material information in the authorization is known by the noncovered entity to be false.

(c) **REVOCATION OF AUTHORIZATION.**—An individual may revoke an authorization provided under this section at any time provided that the revocation is in writing, except to the extent that the noncovered entity has taken action in reliance thereon.

(d) **DOCUMENTATION.**—

(1) **IN GENERAL.**—A noncovered entity must document and retain any signed authorization under this section as required under paragraph (2).

(2) **STANDARD.**—A noncovered entity shall, if a communication is required by this title to be in writing, maintain such writing, or an electronic copy, as documentation.

(3) **RETENTION PERIOD.**—A noncovered entity shall retain the documentation required

by this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

(e) **CONTENT OF AUTHORIZATION.**—

(1) **CONTENT.**—An authorization described in subsection (a) shall—

(A) contain a description of the information to be sold that identifies such information in a specific and meaningful manner;

(B) contain the name or other specific identification of the person, or class of persons, authorized to sell the information;

(C) contain the name or other specific identification of the person, or class of persons, to whom the information is to be sold;

(D) include an expiration date or an expiration event relating to the selling of such information that signifies that the authorization is valid until such date or event;

(E) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(F) be in writing and include the signature of the individual and the date, or if the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual; and

(G) include a statement explaining the purpose for which such information is sold.

(2) **PLAIN LANGUAGE.**—The authorization shall be written in plain language.

(f) **NOTICE.**—

(1) **IN GENERAL.**—The authorization shall include a statement that the individual may—

(A) inspect or copy the protected health information to be sold; and

(B) refuse to sign the authorization.

(2) **COPY TO THE INDIVIDUAL.**—A noncovered entity shall provide the individual with a copy of the signed authorization.

(g) **MODEL AUTHORIZATIONS.**—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model written authorizations of the type described in this section and model statements of the limitations on such authorizations. Any authorization obtained on a model authorization form developed by the Secretary pursuant to the preceding sentence shall be deemed to satisfy the requirements of this section.

(h) **NONCOERCION.**—A covered entity or noncovered entity shall not condition the purchase of a product or the provision of a service to an individual based on whether such individual provides an authorization to such entity as described in this section.

#### **SEC. 404. PROHIBITION AGAINST RETALIATION.**

A noncovered entity that collects protected health information, may not adversely affect another person, directly or indirectly, because such person has exercised a right under this title, disclosed information relating to a possible violation of this title, or associated with, or assisted, a person in the exercise of a right under this title.

#### **SEC. 405. PROHIBITION AGAINST MARKETING PROTECTED HEALTH INFORMATION.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, a covered entity or noncovered entity shall not use, disclose, or sell protected health information for marketing without an authorization that is valid under subsection (c), except as provided in subsection (b).

(b) **EXCEPTION.**—A health care provider may use or disclose protected health information for marketing without an authorization when it uses or discloses such information to make a marketing communication to an individual if the communication occurs in a face-to-face encounter between the health care provider and the individual.

(c) **AUTHORIZATION.**—

(1) **IN GENERAL.**—An authorization under subsection (a) shall—

(A) contain a description of the information to be used, disclosed, or sold that identifies such information in a specific and meaningful manner;

(B) contain the name or other specific identification of the person, or class of persons, authorized to use, disclose, or sell the information;

(C) identify persons to whom the information is to be provided or sold;

(D) include an expiration date or an expiration event relating to the use, disclosure, or sale of such information that signifies that the authorization is valid until such date or event;

(E) include a statement that the individual has a right to revoke the authorization in writing and that there are exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(F) be in writing and include the signature of the individual and the date, or if the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual; and

(G) include a statement explaining the purpose for which such information is used, disclosed, or sold.

(2) **PLAIN LANGUAGE.**—The authorization must be written in plain language.

(d) **NOTICE.**—The authorization shall include a statement that the individual may—

(1) inspect or copy the protected health information to be marketed as provided under section 164.524 of title 45, Code of Federal Regulations (or a successor regulation); and

(2) refuse to sign the authorization.

(e) **DOCUMENTATION.**—A covered entity shall retain such documentation as required for any use, disclosure, or sale, as described under section 403(d).

(f) **RESCISSION OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION REGULATION.**—Effective as of December 28, 2000—

(1) section 164.514(e) of title 45, Code of Federal Regulations (relating to standards for uses and disclosures of protected health information for marketing), promulgated by the Secretary of Health and Human Services in the final rule entitled “Standards for Privacy of Individually Identifiable Health Information” (65 Fed. Reg. 82462 (December 28, 2000)) is void; and

(2) section 164.514 shall take effect as if subsection (e) of such section had not been included in the promulgation of the final regulation.

(g) **NONCOERCION.**—A covered entity or noncovered entity shall not condition the purchase of a product or the provision of a service to an individual based on whether such individual provides an authorization to such entity as described in this section.

#### **SEC. 406. RULE OF CONSTRUCTION.**

Except for the provisions of section 405, all requirements of this title shall not be construed to impose any additional requirements or in any way alter the requirements imposed upon covered entities under parts 160 through 164 of title 45, Code of Federal Regulations.

#### **SEC. 407. REGULATIONS.**

(a) **IN GENERAL.**—The Secretary shall promulgate regulations implementing the provisions of this title.

(b) **TIMEFRAME.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish proposed regulations in the Federal Register. With regard to such proposed regulations, the Secretary shall provide an opportunity for submission of comments by interested persons during a period of not less than 90 days. Not later than

2 years after the date of enactment of this Act, the Secretary shall publish final regulations in the Federal Register.

#### SEC. 408. ENFORCEMENT.

(a) IN GENERAL.—A covered entity or non-covered entity that knowingly violates section 402 or 405 shall be subject to a civil money penalty under this section.

(b) AMOUNT.—The civil money penalty described in subsection (a) shall not exceed \$100,000. In determining the amount of any penalty to be assessed, the Secretary shall take into account the previous record of compliance of the entity being assessed with the applicable provisions of this title and the gravity of the violation.

#### (c) ADMINISTRATIVE REVIEW.—

(1) OPPORTUNITY FOR HEARING.—The entity assessed shall be afforded an opportunity for a hearing by the Secretary upon request made within 30 days after the date of the issuance of a notice of assessment. In such hearing the decision shall be made on the record pursuant to section 554 of title 5, United States Code. If no hearing is requested, the assessment shall constitute a final and unappealable order.

(2) HEARING PROCEDURE.—If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within 30 days after the date of the decision of the judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (d).

#### (d) JUDICIAL REVIEW.—

(1) FILING OF ACTION FOR REVIEW.—Any entity against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which such entity is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary.

(2) CERTIFICATION OF ADMINISTRATIVE RECORD.—The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed.

(3) STANDARD FOR REVIEW.—The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(4) APPEAL.—Any final decision, order, or judgment of the district court concerning such review shall be subject to appeal as provided in chapter 83 of title 28 of such Code.

#### (e) FAILURE TO PAY ASSESSMENT; MAINTENANCE OF ACTION.—

(1) FAILURE TO PAY ASSESSMENT.—If any entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed by action in the appropriate United States district court.

(2) NONREVIEWABILITY.—In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) PAYMENT OF PENALTIES.—Except as otherwise provided, penalties collected under this section shall be paid to the Secretary (or other officer) imposing the penalty and shall be available without appropriation and until expended for the purpose of enforcing the provisions with respect to which the penalty was imposed.

### TITLE V—DRIVER'S LICENSE PRIVACY

#### SEC. 501. DRIVER'S LICENSE PRIVACY.

Section 2725 of title 18, United States Code, is amended by striking paragraphs (2) and (3) and adding the following:

“(2) ‘person’ means an individual, organization, or entity, but does not include a State or agency thereof;

“(3) ‘personal information’ means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, medical or disability information, any physical copy of a driver's license, birth date, information on physical characteristics, including height, weight, sex or eye color, or any biometric identifiers on a license, including a finger print, but not information on vehicular accidents, driving violations, and driver's status; and

“(4) ‘highly restricted personal information’ means an individual's photograph or image, social security number, medical or disability information, any physical copy of a driver's license, driver identification number, birth date, information on physical characteristics, including height, weight, sex, or eye color, or any biometric identifiers on a license, including a finger print.”

### TITLE VI—MISCELLANEOUS

#### SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

##### (a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under title I, II, or IV of this Act or under any amendment made by such a title, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with such titles or such amendments;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

##### (2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General—

(i) written notice of the action; and

(ii) a copy of the complaint for the action.

##### (B) EXEMPTION.—

(1) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

##### (b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Attorney General shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Attorney General intervenes in an action under subsection (a), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a),

nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under title I, II, IV, or V of this Act or under any amendment made by such a title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

##### (e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

#### SEC. 602. FEDERAL INJUNCTIVE AUTHORITY.

In addition to any other enforcement authority conferred under this Act or under an amendment made by this Act, the Federal Government shall have injunctive authority with respect to any violation of any provision of title I, II, or IV of this Act or of any amendment made by such a title, without regard to whether a public or private entity violates such provision.

By Mrs. MURRAY (for herself,  
Mrs. BOXER, Ms. CANTWELL, Mr.  
KENNEDY, Ms. LANDRIEU, Mr.  
SCHUMER):

S. 1056. A bill to authorize grants for community telecommunications infrastructure planning, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. MURRAY. Mr. President, I rise today to introduce legislation to help rural and underserved communities across the country get connected to the information economy.

Today I am introducing the Community Telecommunication Planning Act of 2001. I am proud to have Senators BOXER, LANDRIEU, KENNEDY, CANTWELL, and SCHUMER as original cosponsors. This bill will give small and rural communities a new tool to attract high speed services and economic development.

I am especially proud at how this legislation came about. Since last year, I've been working with a group of community leaders in Washington State to find ways to help communities get connected to advanced telecommunications services.

I want to take a moment to thank the members of my Rural Telecommunication Working Group for their hard work on this bill. The members include: Brent Bahrenburg, Gregg Caudell, Dee Christensen, Dave Danner, Louis Fox, Tami Garrow, Larry Hall, Rod Fleck, Ray King, Dale King, Terry Lawhead, Dick Llarman, Jim Miller, Joe Poire, Skye Richendrfer, Jim

Schmit, Fred Sexton, Ted Sprague, Barbara Tilly, Terry Vann, Ron Yenney.

We met as a working group, and we held forums around the State that attracted hundreds of people. We've tapped the ideas of experts, service providers and people from across the State who are working to get their communities connected. The result in this legislation, which I am proud to say is part of Washington State's contribution to our national effort to wire all parts of our country.

This bill addresses a real need in many communities. While urban and suburban areas have strong competition between telecommunications providers, many small and rural communities are far removed from the services they need. We must ensure that all communities have access to advanced telecommunications like high speed internet access. Just as yesterday's infrastructure was built of roads and bridges, today our infrastructure includes advanced telecom services. Advanced telecommunications can enrich our lives through activities like distance-learning, and they can even save lives through efforts like telemedicine. The key is access. Access to these services is already turning some small companies in rural communities into international marketers of goods and services.

Unfortunately, many small and rural communities are having trouble getting the access they need. Before areas can take advantage of some of the help and incentives that are out there, they need to work together and go through a community planning process. Community plans identify the needs and level of demand, create a vision for the future, and show what all the players must do to meet the telecom needs of their community for today and tomorrow. These plans take resources to develop. This bill would provide those funds.

Providers say they're more likely to invest in an area if it has a plan that makes a business case for the costly infrastructure investment. Communities want to provide them with that plan, but they need help developing it. Unfortunately, many communities get stuck on that first step. They don't have the resources to do the studies and planning required to attract service. So the members of my Working Group came up with a solution: have the federal government provide competitive grants that local communities can use to develop their plans. I took that idea and put it into this bill.

When you think about it, it just makes sense. Right now the federal government already provides money to help communities plan other infrastructure improvements—everything from roads and bridges to wastewater facilities. The bill would provide rural and underserved communities with grant money for creating community plans, technical assessments and other analytical work that needs to be done.

With these grants, communities will be able to turn their desire for access into real access that can improve their communities and strengthen their economies. This bill can open the door for thousands of small and rural areas across our state to tap the potential of the information economy. I urge the Senate to support this bill and I look forward to working with my colleagues to see it passed.

By Mr. AKAKA (for himself and Mr. INOUE):

S. 1067. A bill to authorize the addition of lands to Pu'u'honua o Honaunau National Historical Park in the State of Hawaii, and for other purposes; to the committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I rise today along with my colleague Senator INOUE to introduce legislation that is important for the people of Hawaii, for the National Park Service, and for the nation as a whole. I am offering legislation that would allow expansion of the boundaries of Pu'u'honua o Honaunau National Historical Park on the island of Hawaii by 238 acres. These lands are adjacent to and contiguous with the park's current boundaries.

Pu'u'honua o Honaunau National Historical Park preserves a site with great significance for Native Hawaiians, students of history, archaeologists, and the people of Hawaii in general. It is nestled along the coast of the island of Hawaii where, up until the early 19th century, Hawaiians who broke kapu or one of the ancient laws against the gods could avoid certain death by fleeing to this place of refuge or "pu'u'honua." The offender would be absolved by a priest and freed to leave. Defeated warriors and non-combatants could also find refuge here during times of battle. The grounds just outside the wall that encloses the pu'u'honua were home to several generations of powerful chiefs. The 182-acre park was established in 1961 and includes the pu'u'honua and a complex of archeological areas including temple platforms, royal fishponds, holua (sledding tracks), and coastal village sites. The Haloe o Keawe temple and several other structures have been reconstructed to provide visitors an understanding of life during the early days of the royal families.

The park, on the famed Kona coast of the Big Island of Hawaii, is appreciated by Native Hawaiians and the general public as a place where the story and history of native culture are interpreted for all Americans. It is worth mentioning that the National Park Service oversees 384 units across the nation, including national parks, battlefields, military parks, memorials, monuments and historic trails. Of these nearly 400 sites, there are only a handful of national historic parks that celebrate interpretations of contemporary native cultures. I am pleased that two of these parks, Pu'u'honua o Honaunau and Kaloko-Honokohau, are

in Hawaii on the Big Island. I invite you all to visit us for a truly remarkable immersion in Hawaiian cultural history, something very close to my heart.

The proposed expansion has national significance from an archaeological and historical perspective. The archeological resources are very important. They illustrate that the Ki'ilae village complex, with its numerous sites and features, represents one of the most complete assemblages of the coastal component of the ancient Kona field system. This system was not just an agricultural system utilized by the early Kona chiefs, it was a complex economic system that supported a dense population. Archaeological records have shown that this system allowed the Kona chiefs to become very powerful for a period of at least 200 years and most likely supported the growth and development of Kamehameha the Great's army and thereby contributed to his rise to power in the Hawaiian Islands. The cultural landscape here includes not only residential features, but also religious, agricultural and ceremonial sites. The unusually high number of heiau is believed to be an indication of the importance of this area to the Hawaiian ruling class.

Mr. President, the expansion of the park has widespread support from local communities and county officials. There is a long history of study and analysis of expansion possibilities for the park. The 1977 Master Plan for the Pu'u'honua o Honaunau National Historical Park originally proposed boundary expansions in four contiguous areas. Following the original master plan, in 1992 the National Park Service conducted a feasibility study for protecting adjacent lands through boundary expansions. Then in August of last year, given the notification of the recent land transaction between the McCandless Ranch and a private development corporation, the NPS prepared a special report on the proposed park expansion to include the Ki'ilae village parcel. The Service held three well-attended community meetings on the Big Island, with enthusiastic support for the expansion.

The 238-acre expansion authorized by this bill is the preferred option of the NPS, although additional acres could potentially be acquired. The Ki'ilae village property meets the criterion of national significance for historical and archaeological areas. The Trust for Public Land (TPL) is providing funds for the appraisal of the property, and has indicated an interest in helping facilitate the expansion of the park. The TPL financial assistance is a departure from their normal business practice, and they made the decision to commit the funds in recognition of the unique conservation values that this property presents for the National Park Service.

I submit for the RECORD a letter from Mayor Harry Kim of the County of Hawaii which shows the depth of public support and appreciation for the expansion, particularly from the Hawaiian

community. I ask unanimous consent that the letter and the text of the bill be printed in the RECORD.

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

S. 1057

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Pu'uhoanau o Hōnaunau National Historical Park Addition Act of 2001".

#### SEC. 2. ADDITIONS TO PU'UONAU O HŌNAUNAU NATIONAL HISTORICAL PARK.

The first section of the Act of July 26, 1955 (69 Stat. 376, ch. 385; 16 U.S.C. 397) is amended—

(1) by striking "That when" and inserting "SECTION 1. (s) When"; and

(2) by adding at the end thereof the following new subsections:

"(b) The boundaries of Pu'uhoanau o Hōnaunau National Historical Park are hereby modified to include approximately 238 acres of lands and interests therein within the area identified as "Parcel A" on the map entitled "Pu'uhoanau o Hōnaunau National Historical Park Proposed Boundary Additions, Ki'īlae Village", numbered PUHO-P 415/82,013 and dated May, 2001.

"(c) The Secretary of the Interior is authorized to acquire approximately 159 acres of lands and interests therein within the area identified as "Parcel B" on the map referenced in subsection (b). Upon the acquisition of such lands or interests therein, the Secretary shall modify the boundaries of Pu'uhoanau o Hōnaunau National Historical Park to include such lands or interests therein."

#### SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

COUNTY OF HAWAII,  
Hilo, HI, May 16, 2001.

Hon. DANIEL AKAKA,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR AKAKA: The purpose of this letter is to request that you seek Congressional authorization to expand the boundaries of Pu'u Honua O Hōnaunau National Park.

As I am sure you know, our local media have given a good deal of attention to a development proposed on 800 acres adjacent to Pu'u Honua O Hōnaunau. The community, particularly the Hawaiian community, has been outspoken in its desire to see this acreage preserved and the park enhanced. Numerous historic sites have been identified on this acreage, some or all related to the ancient Hawaiian village of Ki'īlae.

My staff has spoken with Ms. Geri Bell, Park Superintendent, and she has said that at least 238 acres (out of the 800) are closely linked to the park and associated with the village of Ki'īlae. Moreover, she has indicated that the owner of the land would willingly sell the 238 acres to the National Park. The next step is Congressional authorization.

The acquisition could be 238 acres, 800 acres, or something in between, and I would leave that determination to the experts to decide. However, your support for acquisition of at least the smaller portion would allow for a valuable addition to the park and assure preservation of an important part of our ancient Hawaiian heritage.

I fully support the expansion of the park by acquisition of this acreage, and hope you

will let me know if there is any way in which I can be of assistance.

A similar letter has been sent to the other members of our Congressional delegation.

Aloha,

HARRY KIM,  
Mayor.

#### STATEMENTS ON SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 110—RELATING TO THE RETIREMENT OF SHARON ZELASKA, ASSISTANT SECRETARY OF THE SENATE

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 110

Whereas, on June 15, 2001, Sharon Zelaska will retire from service to the United States Senate as the Assistant Secretary of the Senate after 4½ years;

Whereas, previously Sharon rendered exemplary service to the federal government as a staff member in the House of Representatives for 11½ years and in the Executive Branch for 4 years;

Whereas, throughout these years, she has at all times discharged the difficult duties and responsibilities of her office with extraordinary grace, efficiency and devotion; and

Whereas, Sharon Zelaska's service to the Senate has been marked by her personal commitment to the highest standards of excellence to enable the Senate to function effectively: Now, therefore, be it

*Resolved*, That Sharon Zelaska be and hereby is commended for her outstanding service to her country and to the United States Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Sharon A. Zelaska.

#### SENATE RESOLUTION 111—COMMENDING ROBERT "BOB" DOVE ON HIS SERVICE TO THE SENATE

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 111

Whereas Robert Britton Dove began his service to the United States Senate in 1966 as Second Assistant Parliamentarian;

Whereas "Bob Dove" continued his service to the United States Senate for 35 years culminating in his appointment as the Parliamentarian of the United States Senate;

Whereas throughout his tenure in the Senate Bob Dove faithfully discharged the difficult duties and responsibilities of Parliamentarian of the United States Senate with great dedication, integrity and professionalism;

Whereas Bob Dove always performed his duties with unfailing good humor;

Whereas throughout his service as Parliamentarian Bob Dove advised the President of the Senate, as well as all Senators and staff on all questions of procedure in the Senate;

Whereas Senators and staff on both sides of the aisle have been appreciative of the Institutional and Historical knowledge that Bob brought to the office of the Parliamentarian;

Whereas Bob has published a number of documents regarding Senate process that

have been used as educational resources by many Senators and staff;

Whereas Bob has given parliamentary advice and guidance to numerous countries around the globe on behalf of the Senate including but not limited to the newly formed Russian Federation;

Whereas Bob Dove has been honored by the United States Senate with the title of Parliamentarian Emeritus;

Whereas Robert Britton Dove retired on May 18, 2001, after 35 years of service to the United States Senate: Now, therefore, be it

*Resolved*, That the United States Senate commends Robert B. Dove for his exemplary service to the United States Senate and the Nation, and wishes to express its deep appreciation and gratitude for his long, faithful, and outstanding service.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Robert Britton Dove.

#### SENATE RESOLUTION 112—HONORING THE UNITED STATES ARMY ON ITS 226TH BIRTHDAY

Mr. ALLARD (for himself, Mrs. HUTCHISON, Mr. HAGEL, Mr. CLELAND, Mr. BOND, Mr. INHOFE, Mr. HUTCHINSON, Mr. JEFFORDS, Mr. ROBERTS, Mr. REED, Mr. SMITH of New Hampshire, Mr. WARNER, Mr. LEVIN, Ms. COLLINS, Mr. BUNNING, Mr. DAYTON, Mr. KENNEDY, Mr. MCCAIN, Mr. ALLEN, Mr. THURMOND, Mr. SANTORUM, Mr. SESSIONS, Ms. LANDRIEU, and Mr. DURBIN) submitted the following resolution; which was considered and agreed to:

S. RES. 112

Whereas 226 years ago, the Continental Army was formed with the goals of ending tyranny and winning freedom for the colonists in what has become the United States of America;

Whereas since the end of the American Revolution, our Nation's soldiers, imbued with the spirit of the original patriots, have pledged their allegiance to our Nation through their sacrifices in uniform;

Whereas all of the United States Army units, Active, Guard, and Reserve, share the heritage of the Continental Army, and our Nation's soldiers represent the finest men and women our Nation has to offer;

Whereas thousands of our Nation's soldiers stand guard around the globe ensuring our freedom and doing the tough jobs that maintain our way of life;

Whereas the United States Army is steeped in a proud tradition that dates back to June 14, 1775, but is ever flexible and capable of responding to a dynamic world;

Whereas the United States Army is transforming to meet the new demands of the 21st century;

Whereas the United States Army will ensure that the President, as Commander in Chief of the Armed Forces, continues to have capable land forces to quickly and efficiently deploy throughout the world to meet the national security interests of the United States;

Whereas both in times of peace and war, throughout more than 2 centuries, our Nation's soldiers have been poised and ready to answer the call of duty to defend our great Nation; and

Whereas the United States Army remains the best fighting force in the world: unchallenged, unparalleled, respected by their allies, feared by their opponents, and esteemed by the people of the United States: Now, therefore, be it

*Resolved*, That the Senate—