Act of 1974 to remedy certain effects of injurious steel imports by protecting benefits of steel industry retirees and encouraging the strengthening of the American steel industry.

S. 2200

At the request of Mr. BAUCUS, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2200, a bill to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2215

At the request of Mrs. BOXER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2225

At the request of Mr. WARNER, his name was added as a cosponsor of S. 2225, a bill to authorize appropriations for fiscal year 2003 for military activities of Department of Defense, to prescribe military personnel strengths for fiscal year 2003, and for other purposes.

S. RES. 247

At the request of Mr. LIEBERMAN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from New York (Mrs. CLINTON), the Senator from Idaho (Mr. CRAPO), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 247, a resolution expressing solidarity with Israel in its fight against terrorism.

S. RES. 249

At the request of Mr. HATCH, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. Res. 249, a resolution designating April 30, 2002, as ''Dia de los Ninos: Celebrating Young Americans,'' and for other purposes.

AMENDMENT NO. 3197

At the request of Mr. CARPER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of amendment No. 3197 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3198

At the request of Mr. CARPER, the names of the Senator from Maine (Ms. COLLINS), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. DURBIN), and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of amendment No. 3198 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3256

At the request of Mr. ALLEN, his name was added as a cosponsor of amendment No. 3256 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3269

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of amendment No. 3269 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3284

At the request of Mrs. LINCOLN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Georgia (Mr. MILLER), and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 3284 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 2236. A bill to amend title III of the Public Health Service Act to provide coverage for domestic violence screening and treatment, to authorize the Secretary of Health and Human Services to make grants to improve the response of health care systems to domestic violence, and train health care providers and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence; to the Committee on Health, Education, Labor, and Pensions.

Mr. WELLSTONE. Madam President, I rise today to introduce the Domestic Violence Screening and Services Act of 2002, an act to improve the response of health care systems to domestic violence, and to train health care providers and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence.

Nearly one third of American women, 31 percent, report being physically or sexually abused by a husband or boyfriend at some point in their lives, and about 1200 women are murdered every year by their intimate partner, nearly 3 each day. 37 percent of all women who sought care in hospital emergency rooms for violence related injuries were injured by a current or former spouse, boyfriend, or girlfriend. In addition to injuries sustained during violent episodes, physical and psychological abuse are linked to numerous adverse health effects including arthritis, chronic neck or back pain, migraine and other frequent headaches, problems with vision, and sexually transmitted infections, including HIV/AIDS.

Each year, at least 6 percent of all pregnant women, about 240,000 pregnant women in this country, are battered by the men in their lives. This battering leads to complications in pregnancy, including low weight gain, anemia, infections, and first and second trimester bleeding. Pregnant women are more likely to die of homicide than to die of any other cause.

Currently, about 10 percent of primary care physicians routinely screen for intimate partner abuse during new patient visits and 9 percent routinely screen during periodic checkups. Recent clinical studies have shown the effectiveness of a 2-minute screening for early detection of abuse of pregnant women. Additional longitudinal studies have tested a 10-minute intervention that was highly effective in increasing the safety of pregnant abused women. 70 to 81 percent of patients studied reported that they would like their health care providers to ask them privately about intimate partner violence.

Medical services for abused women cost an estimated $857,300,000 every year. It is time for us to also authorize resources to promote the effort to make screening for domestic violence routine in health care settings. This bill would establish domestic violence prevention grants in the amount of $5 million dollars per year to improve screening and treatment for domestic violence in federally qualified health centers. Grants could be used for the implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff to respond to domestic violence. Grants could also be used to provide training and follow-up technical assistance to health professionals and staff to screen for domestic violence, and then to appropriately assess, treat, and refer patients who are victims of domestic violence to domestic violence service providers. In addition, grants could be used for the development of onsite access to services to address, the safety, medical, and mental health needs of patients either by increasing the capacity of existing health professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services.

This bill would also authorize the Secretary of Health and Human Services to award grants in the amount of $5 million per year to strengthen the response of State and local health care systems to domestic violence by building the capacity of health personnel to identify, address, and prevent domestic violence. Up to 10 grants would be utilized to design and implement comprehensive statewide strategies in clinical and public healthcare settings and to promote education and awareness about domestic violence at a statewide

level. Up to 10 additional grants would be used to design and implement comprehensive local strategies to improve the response of the health care system in hospitals, clinics, managed care settings, emergency medical services, and other health care settings.

Finally, this bill would also ensure that health care professionals working in the National Health Service Corps receiving training on how to screen, assess, treat and refer patients who are victims of domestic violence. Our health care system represents a potentially life saving point of intervention for those experiencing domestic violence. We need to support these efforts to improve the ability of our health care system to be a safe place for women to turn to when most in need.

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

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

SUMMARY—THE DOMESTIC VIOLENCE SCREENING AND SERVICES ACT OF 2002

OVERVIEW

The Domestic Violence Screening and Services Act of 2002 would create domestic violence prevention grants to improve screening and treatment for patients at Federally Qualified Health Centers. The bill would also provide grants to strengthen the response of State and local health care systems to domestic violence and would ensure that health care professionals working in the National Health Service Corps receive training on how to screen, assess, treat, and render patients who are victims of domestic violence.

FEDERALLY QUALIFIED HEALTH CENTERS

In an effort to increase screening and access to services for these patients who are or may be experiencing domestic violence the bill amends Part P of title III of the Public Health Service Act by adding a new Sec. 3990 creating Domestic Violence Prevention Grants in the amount of 5 million dollars per year for four years.

Funds would be used to design and implement comprehensive local strategies to improve the health care response to domestic violence in federally qualified health centers. These strategies would include: the development, implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff responding to domestic violence; the provision of training and follow-up technical assistance to health care professionals and staff to screen for domestic violence, and then to appropriately assess, record in medical records, treat, and refer patients who are victims of domestic violence to domestic violence services; the development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services.

GRANTS FOR DOMESTIC VIOLENCE SCREENING AND TREATMENT IN STATE AND LOCAL HEALTHCARE SYSTEMS

The Secretary of Health and Human Services acting through the Assistant Secretary for the Administration for Children and Families shall award grants to fund 10 demonstration projects at the state level and 10 demonstration grants on the local level to develop comprehensive strategies to improve the response of the healtcare system to domestic violence. Recommended authorization is $5 million/year for four years.

Eligible entities—would be: A. a State or local health department, nonprofit State domestic violence coalition or local service-based program, State professional medical society, State health professional association, or other nonprofit or State entity with a history of effective work in the field of domestic violence; that can B. demonstrate that it is representing a team of organizations and agencies working collaboratively to strengthen the health care system's response to domestic violence and that such team includes domestic violence and health care organizations.

Use of funds—Funds would be used to design and implement comprehensive statewide and local strategies to improve the health care response to domestic violence in hospitals, clinics, managed care settings, emergency medical services, and other health care settings. These strategies would include: the development, implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff responding to domestic violence; the provision of training and follow-up technical assistance to health care professionals and staff to screen for domestic violence, and then to appropriately assess, record in medical records, treat, and refer patients who are victims of domestic violence the domestic violence services; the implementation of practice guidelines for routine screening and recording mechanisms to identify and document domestic violence; the development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services or other model appropriate to the geographic and cultural needs of a site.

In additional required that health care professionals trained through the National Health Service Corps receiving in domestic violence screening and treatment.

By Mr. ROCKEFELLER:

S. 2237. A bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Madam President, today I introduce legislation on behalf of American veterans whose hearing loss may have resulted from their military service. The Veterans Hearing Loss Compensation Act of 2002 would accomplish two goals: first, it would correct a long-standing inequity in compensating veterans for service-related hearing loss. Second, it would direct VA, with input from outside experts, to determine whether service in certain military occupations can be presumed to be associated with hearing loss.

Currently, section 1160 of title 38, United States Code, directs VA to extend special consideration when evaluating veterans' service-connected disabilities in ''paired organs or extremities,'' such as eyes, kidneys, or hands. If there is damage to both organs, even if only one resulted from military service, the disability of the non-service-connected organ may be considered.

For all listed disabilities except hearing loss, the law requires only ''loss'' or ''loss of use,'' whereas ''total deafness'' is required in rating hearing loss. If hearing loss in either ear is anything less than total, VA cannot even consider the loss in the non-service-connected ear. Section 2 of this bill would remove this requirement for total hearing loss in either ear, allowing VA to consider the effect of any non-service-connected disability when rating hearing loss.

Section 3 of this bill would require VA to contract with an independent scientific organization, such as the National Academy of Sciences, to review scientific evidence on occupational hearing loss, particularly acoustic trauma experienced during military service. This legislation would also require VA to review its own claims and record of medical treatment for hearing loss or tinnitus in veterans. Through these two avenues, VA should be better able to determine objectively whether service in certain military specialties might be associated with an increased risk of hearing loss later in life.

Once the outside scientific authority reports to VA, the Secretary would be required to determine whether the evidence warrants presuming an association between certain military occupations and hearing loss or tinnitus. If VA finds sufficient evidence linking noise exposure in these occupations to veterans' later hearing loss, the Secretary would be required to develop regulations for providing disability benefits to these veterans; if VA determines that no presumptive service-connection is appropriate, the Secretary would be required to publish this determination and report to Congress on the basis of that decision.

With the aging of the veterans population, the number of claims for hearing loss or tinnitus continues to climb. VA faces difficulties in determining whether certain veterans can attribute their hearing loss to damage suffered decades ago during military service, especially as many veterans received no appropriate hearing evaluation at discharge.

I realize that the proposed process is not an immediate fix, but it should provide VA, Congress, and veterans with a solid basis for tackling this difficult problem. I urge my colleagues to join me in supporting this important piece of legislation.

I request 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. 2237

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans Hearing Loss Compensation Act of 2002''.

SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) of title 38, United

States Code, is amended by striking ''total'' both places it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

''(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who while on active military, naval, or air service was assigned to a military occupational specialty or equivalent described in subsection (b) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

''(b) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

''(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 3(c) of the Veterans Hearing Loss Compensation Act of 2002.

''(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

''(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

''(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

''(A) publish the determination in the Federal Register; and

''(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

''(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.''.

(2) The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1118 the following new item:

''1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.''.

(b) PRESUMPTION REBUTTABLE.—Section 1113 of title 38, United States Code, is amended by striking ''or 1118'' each place it appears and inserting ''1118, or 1119''.

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form or acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and accuracy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in individuals who were discharged or released from service in the Armed Forces during the period beginning on December 7, 1941, and ending on the date of the enactment of this Act upon their discharge or release from such service; and

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs.

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

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

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during such years.

(C) The total cost to the Department of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health facilities care in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

By Mr. LEVIN (for himself, Mr. THOMPSON, Mr. LIEBERMAN, and Mr. MCCONNELL):

S. 2238. A bill to permit reviews of criminal records of applicants for private security officer employment; to the Committee on the Judiciary.

Mr. LEVIN. Madam President, I am introducing along with Senators THOMPSON, LIEBERMAN and MCCONNELL the Private Security Officer Employment Standards Act of 2002, a bill that would provide private security firms an opportunity to gain access to national criminal history information to determine whether or not employees or applicants for employment pose a threat to the facilities and persons they are supposed to protect.

Large numbers of critical non-governmental facilities, from power plants to schools to hospitals, are protected by private security firms and their civilian security officers. Keeping these facilities secure from terrorism or other forms of violent attack is critical to our national security. Yet currently most private security employers cannot obtain timely national criminal background check information on the very people they need to hire to protect these key facilities. This legislation seeks to correct that. This bill would authorize private security firms to request Federal background check information on current and prospective employees through the appropriate State agencies, thereby permitting firms to obtain relevant criminal history information they might not otherwise receive.

The Criminal Justice Information Services Division of the FBI maintains complete criminal history records for both Federal crimes and State crimes on individuals with criminal records in the United States. Searches are most efficiently conducted by using fingerprints to ensure efficiency and accuracy. We have already passed legislation specifically permitting other industries, the banking, nursing home, and child care industries, to name a few, to test their prospective employees against the FBI's comprehensive records. Many of the reasons that justified passage of those laws, especially the desire to ensure that those who provide certain important services have a background commensurate with their responsibilities, argues for passage of this bill as well.

This legislation will enhance our Nation's security. As an adjunct to our Nation's law enforcement officers, private security guards are responsible for the protection of numerous critical components of our Nation's infrastructure, including power generation facilities, hazardous materials manufacturing facilities, water supply and delivery facilities, oil and gas refineries, and food processing plants. The approximately 13,000 private security companies in the United States employ about 1.5 million persons nationwide. Given the critical nature of the facilities private security officers are hired to protect, it is imperative that we provide access to information that might disclose who is unsuitable for protecting these resources.

We understand that in about 40 States, private security companies are required to receive a State license in order to conduct business. Relying upon a Federal bill passed in the early 1970's, 37 States and the District of Columbia have passed legislation authorizing State agencies to request both State and Federal record searches. Despite this authorization, security firms report that searches of both State and Federal databases is the exception rather than the rule. That is because only one State, California, makes such reviews mandatory. In the other jurisdictions with authorizing statutes, reviews of the Federal database are conducted at the discretion of the States. I am told that in approximately half of the 36 States with authorizing statutes, typically only State databases are searched. An additional 13 States have not even authorized any form of Federal criminal background check. What that means is that in approximately 31 States, a private security employer typically has no access to any Federal criminal database information. In these 31 States, an employment applicant in 1 State could have a serious criminal conviction in another State and still be permitted to perform sensitive security work. The State conducting the search would have no idea such a conviction in another State existed without access to the Federal database.

Further, even in those few States that actually conduct Federal records searches, I am told that searches of the backgrounds of new employees in the Federal database often take 90 to 120 days. While checks are pending, security guards are often provided a temporary license. This 90 to 120 day period is more than enough time for a guard with a temporary license to perpetrate dangerous acts. In light of our urgent need to strengthen our homeland security, this lack of access to criminal checks and the time it takes to complete such checks is unacceptable. We need to act in order to make it easier for States and employers to gain timely access to this information.

The bill strikes the appropriate balance between the interests of all parties involved.

First, the bill permits private security employers to request that the FBI criminal history database be searched for prospective or existing employees. Requests must be made by the employers through their States' identification bureau or similar State agency designated by the Attorney General. Employers will not be granted direct access to the FBI records. Instead, States will serve as intermediaries between employers and the FBI to: one, ensure that employment suitability determinations are made pursuant to applicable State law; two, prevent disclosure of the raw FBI criminal history information to the employers and the public; and three, minimize the FBI's administrative burden of having to respond to background check requests from countless different sources. The program will not cost the Federal Government anything. The legislation allows the FBI, and States if they so choose, to charge reasonable fees to security firms to recover their costs of carrying out this act.

Second, the bill protects employee and prospective employee's privacy. Before an FBI background check can be conducted, the employee or applicant for employment must grant an employer written consent to request the FBI database search. In addition, the criminal history reports received by the States will not be disseminated to employers. Instead, in States that have laws regulating private security guard employment, designated State agencies will simply be required to use the information provided by the FBI in applying their State standards. For those States that have no standards, the States will be instructed to inform requesting employers whether or not employees or applicants have been convicted of either: one, a felony; two, a violent misdemeanor within the past 10 years; or, three, crime of dishonesty within the past 10 years. Thus, only the fact that a conviction exists or not will be provided by States to employers, and the privacy of the records themselves will be maintained. All information provided to employers pursuant to this act must be provided to the employees or prospective employees. Furthermore, the bill establishes strong criminal penalties for those who might falsely certify they are authorized security firms or otherwise use information obtained pursuant to this act beyond the act's intended purposes.

Third, the bill protects States' rights. The bill does not impose an unfunded mandate on the States. It reserves the right of States to charge reasonable fees to employers for their costs in administering this act. Moreover, if a State wishes to opt out of this statutory regime, it may do so at any time.

I believe that the time is right for us to enact this legislation. It strikes the right balance between the need for employers to gain access to this critical information and the privacy rights of current and prospective security guards. We have worked with the FBI to ease the administrative process, and it will cost the Federal Government nothing. There is no undue burden being placed on our States.

Passage of this act will plug a hole in our homeland security. I urge my colleagues to support the passage of this legislation.

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. 2238

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 ''Private Security Officer Employment Standards Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers;

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained; and

(10) standards are essential for the selection, training, and supervision of qualified security personnel providing security services.

SEC. 3. DEFINITIONS.

In this Act:

(1) EMPLOYEE.—The term ''employee'' includes both a current employee and an applicant for employment.

(2) AUTHORIZED EMPLOYER.—The term ''authorized employer'' means any person that—

(A) provides, as an independent contractor, for consideration, the services of private security officers; and

(B) is authorized by the Attorney General to obtain information provided by the State or other authorized entity pursuant to this section.

(3) PRIVATE SECURITY OFFICER.— The term ''private security officer''—

(A) means an individual who performs security services, full- or part-time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes, whose primary duty is to perform security services; but

(B) does not include—

(i) sworn police officers who have law enforcement powers in the State;

(ii) employees whose duties are primarily internal audit or credit functions;

(iii) an individual on active duty in the military service;

(iv) employees of electronic security system companies acting as technicians or monitors; or

(v) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term ''security services'' means the performance of security services as such services are defined by regulations promulgated by the Attorney General.

SEC. 4. BACKGROUND CHECKS.

(a) IN GENERAL.—

(1) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit fingerprints or other means of positive identification of an employee of such employer for purposes of a background check pursuant to this Act.

(2) EMPLOYEE RIGHTS.—

(A) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit the request for a background check of the employee under this Act.

(B) ACCESS.—An employee shall be provided confidential access to information relating to the employee provided pursuant to this Act to the authorized employer.

(3) PROVIDING RECORDS.—Upon receipt of a background check request from an authorized employer, submitted through the State identification bureau or other entity authorized by the Attorney General, the Attorney General shall—

(A) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(B) promptly provide any identification and criminal history records resulting from the background checks to the submitting State identification bureau or other entity authorized by the Attorney General.

(4) FREQUENCY OF REQUESTS.—An employer may request a background check for an employee only once every 12 months of continuous employment by that employee unless the employer has good cause to submit additional requests.

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including—

(1) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, and destruction of information and audits, and recordkeeping;

(2) standards for qualification as an authorized employer; and

(3) the imposition of reasonable fees necessary for conducting the background checks.

(c) CRIMINAL PENALTY.—Whoever falsely certifies that he meets the applicable standards for an authorized employer or who knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both.

(d) USER FEES.—

(1) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(A) collect fees pursuant to regulations promulgated under subsection (b) to process background checks provided for by this Act;

(B) notwithstanding the provisions of section 3302 of title 31, United States Code, retain and use such fees for salaries and other expenses incurred in providing such processing; and

(C) establish such fees at a level to include an additional amount to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(2) STATE COSTS.—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(e) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act by enacting a law providing that the State is declining to participate pursuant to this subsection.

(f) STATE STANDARDS AND INFORMATION PROVIDED TO EMPLOYER.—

(1) ABSENCE OF STATE STANDARD.—If a State participates in the background check system authorized by this Act and has no State standard for qualification to be a private security officer, the State shall notify an authorized employer whether or not an employee has been convicted of a felony, an offense involving dishonesty or false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years.

(2) STATE STANDARD.—If a State participates in the background check system authorized by this Act and has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standard and shall notify the employer of the results.

By Mr. SARBANES (for himself, Mr. ENSIGN, Mr. SCHUMER, Mr. CORZINE, Mr. ALLARD, Mr. CARPER, Mr. BUNNING, Mrs. CLINTON, Mr. TORRICELLI, and Mr. SANTORUM):

S. 2239. A bill to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SARBANES. Madam President, today I am introducing the ''FHA Downpayment Simplification Act of 2002'' with a number of my colleagues. As the list of original cosponsors indicates, this piece of legislation has broad, bipartisan support. This is because the Federal Housing Administration, FHA, has long been a tool to increase homeownership in America.

Since its inception in 1934, the FHA has helped millions of American families achieve the dream of homeownership. Currently, FHA accounts for about 20 percent of the mortgage market. However, FHA is even more important to first time homebuyers, buyers with lower incomes, and minority homebuyers, many of whom have not been well served by the traditional marketplace. For these borrowers, FHA is the ticket to the American dream.

Indeed, the very strong economy helped raise overall homeownership rates through the 1990s to historically high levels, both for the population as a whole and among underserved buyers. By 1999, homeownership increased to 66.8 percent. But it was the FHA that helped ensure those benefits were widely available.

For example, according to data provided by the Department of Housing and Urban Development, HUD, first time homebuyers accounted for 82 percent of all FHA loans in the year 2000; almost half of FHA-insured loans went to low-income borrowers in metropolitan areas; and over one-third of FHA loans went to African-American and Hispanic borrowers. In each case, FHA played a more significant role than the conventional market.

The role played by FHA in spreading the benefits of homeownership to a broader range of Americans is the central reason my colleagues and I believe it is important to renew and make permanent the law authorizing the streamlined downpayment calculation for all FHA single family insured loans. The streamlined downpayment, which is current law, was initially tried as a pilot in Hawaii and Alaska in 1996 before being extended nationwide in 1998. It was subsequently reauthorized again until the end of this year. Without Congressional action, the law will expire, resulting in higher costs for millions of Americans seeking the benefits of homeownership.

The streamlined downpayment process, as its name implies, is relatively simple and straightforward. The buyer puts down at least 3 percent of the acquisition cost of the home. The acquisition cost includes both the sales price and the closing costs. The old system required different downpayment rates for each portion of a mortgage. This approach is complex, multi-step calculation that often confused consumers, realtors, and lenders alike, and resulted in higher overall closing costs for the consumer.

For example, for a property with a sales price of $150,000 and $3,000 in closing costs, the streamlined approach that would be continued by this legislation would save the borrower almost

$2,200 in closing costs. For a more modest home costing $100,000 with $2,000 in closing costs, the savings would be about $350 over the old system.

The streamlined FHA downpayment process has been working extremely well. That is why both the National Association of Realtors and the Mortgage Bankers Association of America support this legislation. Promoting homeownership is an important value that all of us have supported through the years. Passing this legislation is one way to help more and more Americans achieve this important goal.

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. 2239

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 ''FHA Downpayment Simplification Act of 2002''.

SEC. 2. DOWNPAYMENT SIMPLIFICATION.

Section 203 of the National Housing Act (12 U.S.C. 1709) is amended—

(1) in subsection (b)—

(A) by striking ''shall—'' and inserting ''shall comply with the following:'';

(B) in paragraph (2)—

(i) in subparagraph (A), in the matter that precedes clause (ii), by moving the margin 2 ems to the right;

(ii) in the undesignated matter immediately following subparagraph (B)(iii)—

(I) by striking the second and third sentences of such matter; and

(II) by striking the sixth sentence (relating to the increases for costs of solar energy systems) and all that follows through the end of the last undesignated paragraph (relating to disclosure notice); and

(iii) by striking subparagraph (B) and inserting the following:

''(B) not to exceed an amount equal to the sum of—

''(i) the amount of the mortgage insurance premium paid at the time the mortgage is insured; and

''(ii) in the case of—

''(I) a mortgage for a property with an appraised value equal to or less than $50,000, 98.75 percent of the appraised value of the property;

''(II) a mortgage for a property with an appraised value in excess of $50,000 but not in excess of $125,000, 97.65 percent of the appraised value of the property;

''(III) a mortgage for a property with an appraised value in excess of $125,000, 97.15 percent of the appraised value of the property; or

''(IV) notwithstanding subclauses (II) and (III), a mortgage for a property with an appraised value in excess of $50,000 that is located in an area of the State for which the average closing cost exceeds 2.10 percent of the average, for the State, of the sale price of properties located in the State for which mortgages have been executed, 97.75 percent of the appraised value of the property.'';

(C) by transferring and inserting the text of paragraph (10)(B) after the period at the end of the first sentence of the undesignated paragraph that immediately follows paragraph (2)(B) (relating to the definition of ''area''); and

(D) by striking paragraph (10); and

(2) by inserting after subsection (e), the following:

''(f) DISCLOSURE OF OTHER MORTGAGE PRODUCTS.—

''(1) IN GENERAL.—In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a 1-page analysis of mortgage products offered by that lender and for which the borrower would qualify.

''(2) NOTICE.—The notice required under paragraph (1) shall include—

''(A) a generic analysis comparing the note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under subsection (b) with the note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with a similar loan-to-value ratio in connection with a conventional mortgage (as that term is used in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) or section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)), as applicable), assuming prevailing interest rates; and

''(B) a statement regarding when the requirement of the mortgagor to pay the mortgage insurance premiums for a mortgage insured under this section would terminate, or a statement that the requirement shall terminate only if the mortgage is refinanced, paid off, or otherwise terminated.''.

SEC. 3. CONFORMING AMENDMENTS.

Section 245 of the National Housing Act (12 U.S.C. 1715z–10) is amended—

(1) in subsection (a), by striking '', or if the mortgagor'' and all that follows through ''case of veterans''; and

(2) in subsection (b)(3), by striking '', or, if the'' and all that follows through ''for veterans,''.

Mr. ENSIGN. Madam President, I rise today, along with the senior Senator from Maryland, Mr. SARBANES, to introduce a bill that will help thousands of Americans achieve the dream of homeownership.

Homeownership is the primary source of a household's net worth and the fundamental first step toward accumulating personal wealth. It is also one of the greatest driving forces to a healthy economy for our Nation. Congress must work hard to produce public policies that promote homeownership to further America's growth and prosperity. This legislation does just that.

The legislation we are introducing today will make permanent an existing down payment simplification program that created a simplified formula to determine the proper down payment for FHA loans. This program has become an invaluable tool for helping thousands of families achieve the American dream of buying their first home. This bill will permanently eliminate the burdensome and unnecessary formulas previously used to determine the proper down payment for FHA loans, and will also lower the size of necessary down payments.

The simplified calculation was begun as a pilot program in 1996 in Hawaii and Alaska. It proved so easy and successful that it was temporarily extended nationwide in 1998. In 2000, the calculation was re-extended 27 months, to December 31, 2002. Unless Congress extends the program, home buyers will be required to use the old, complicated and confusing method of calculating the appropriate down payment amounts for all loans after December 31.

To help my colleagues understand the importance of making this program permanent, I should explain the basic difference between the two formulas.

Under the down payment simplification program, FHA borrowers must make cash contributions of at least 3 percent of the acquisition cost, including closing costs of the loan. It is that simple.

Under the old formula, different down payment rates were required for each portion of a mortgage. For example, if the acquisition cost of the home is $150,000, the borrower would have to pay 3 percent on the first $25,000, 5 percent on the next $100,000 and 10 percent on the final $25,000. And that's not all. There is also another set of calculations done based on the appraised value of the home to determine the maximum allowable mortgage in any transaction.

Clearly, the streamlined formula is a far more simple process. In the end, the down payment simplification process results in lowering the amount of the down payment necessary to purchase a FHA single-family home and simplifies the formula for the homebuyer in the process.

It is estimated that one-third of all FHA borrowers will have to make higher down payments if the simplification process is not made permanent. This could mean that without passage of this legislation, thousands of families that otherwise could afford to buy their homes will be denied the chance to do so because an unnecessarily complicated formula will create large, unaffordable down payments.

The effects would be particularly acute in states where over 40 percent of the buyers would be affected, such as California, Colorado, Maryland, New Jersey, New York, Virginia, Washington, Utah, Massachusetts, Minnesota, Nevada, Oregon, Connecticut, Alaska, Hawaii and New Hampshire.

In 2001, in my home State of Nevada alone, over 16,600 families purchased a home with a FHA insured loan. Of those, all benefitted by having a more simple process to follow, while 6,761 homebuyers benefitted from the streamlined formula process with a lower down payment. That is an amazing amount of homes that may not have been purchased had this program not been in place.

I ask my colleagues for their support of this important legislation. If passed, this legislation will help thousands of Americans throughout our country realize their dream of homeownership.

In closing, I would like to thank the Senator from Maryland, Mr. SARBANES, for all his hard work on this very important legislation. I appreciate his determination to make home ownership a reality for so many Americans.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. TORRICELLI, Mr. KENNEDY, Mr. HARKIN, Mr. BINGAMAN, Mr. FEINGOLD, and Mr. JOHNSON):

S. 2240. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Madam President, today I am introducing the Seniors Safety Act of 2002, a bill to protect older Americans from crime. I am pleased to have Senators DASCHLE, KENNEDY, TORRICELLI, HARKIN, BINGAMAN, FEINGOLD, and JOHNSON as cosponsors for this anti-crime bill.

The Seniors Safety Act contains a comprehensive package of proposals to address the most prevalent crimes perpetrated against seniors, including proposals to reduce health care fraud and abuse, combat nursing home fraud and abuse, prevent telemarketing fraud, and safeguard pension and employee benefit plans from fraud, bribery, and graft. In addition, this legislation would help seniors obtain restitution if their pension plans are defrauded.

Older Americans are the most rapidly growing population group in our society, making them an even more attractive target for criminals. The Department of Health and Human Services has predicted that the number of older Americans will grow from 13 percent of the U.S. population in 2000 to 20 percent by 2030. In Vermont, seniors comprise about 12 percent of the population, and it is expected that that number will increase to 20 percent by 2025.

As the Nation's crime rates dropped dramatically during the 1990s, crime against seniors remained stubbornly resistant. This may be because elders are susceptible to more fraud crimes and fewer violent crimes than younger Americans. According to a 2000 Justice Department study, more than 9 out of 10 crimes committed against older Americans were property crimes, most especially theft. As our Nation addressed our violent crime problem, we did not take a comprehensive approach to deterring the crimes that so affect the elderly, like telemarketing fraud, health care fraud, and pension fraud. The Seniors Safety Act provides such a comprehensive approach, and I urge the Senate to do its part to make it law.

The Seniors Safety Act instructs the U.S. Sentencing Commission to review current sentencing guidelines and, if appropriate, amend the guidelines to include the age of a crime victim as a criterion for determining whether a sentencing enhancement is proper. The bill also requires the Commission to review sentencing guidelines for health care benefit fraud, increases statutory penalties both for fraud resulting in serious injury or death and for bribery and graft in connection with employee benefit plans, and increases criminal and civil penalties for defrauding pension plans.

One particular form of criminal activity, telemarketing fraud, disproportionately impacts Americans over the age of 50, who account for over a third of the estimated $40 billion lost to telemarketing fraud each year. The Seniors Safety Act continues the progress we made in the 105th Congress with passage of the Telemarketing Fraud Prevention Act and in the 106th Congress with the Protecting Seniors from Fraud Act, which included provisions from the Seniors Safety Act that I introduced in the last Congress. The legislation I introduce today addresses the problem of telemarketing fraud schemes that too often succeed in swindling seniors of their life savings. Some of these schemes are directed from outside the United States, making criminal prosecution more difficult.

The act would provide the Attorney General with a new, significant crime-fighting tool to prevent telemarketing fraud. Specifically, the act would authorize the Attorney General to block or terminate telephone service to telephone facilities that are being used to conduct such fraudulent activities. The Justice Department could use this authority to disrupt telemarketing fraud schemes directed from foreign sources by cutting off the swindlers' telephone service. Even if the criminals manage to acquire a new telephone number, temporary interruptions will prevent some seniors from being victimized.

The bill also establishes a ''Better Business Bureau''-style clearinghouse at the Federal Trade Commission to provide seniors, their families, and others who may be concerned about a telemarketer with information about prior fraud convictions and/or complaints against the particular company. In addition, the FTC would refer seniors and other consumers who believe they have been swindled to the appropriate law enforcement authorities.

Criminal activity that undermines the safety and integrity of pension plans and health benefit programs threatens all Americans, but most especially those seniors who have relied on promised benefits in planning their retirements. Seniors who have worked faithfully and honestly for years should not reach their retirement years only to find that the funds they relied upon were stolen. This is a significant problem. According to the Attorney General's 1997 Annual Report, an interagency working group on pension abuse brought 70 criminal cases representing more than $90 million in losses to pension plans in 29 districts around the country in 1997 alone.

The Seniors Safety Act would add to the arsenal that Federal prosecutors have to prevent and punish fraud against retirement plans. Specifically, the Act would create new criminal and civil penalties for defrauding pension plans or obtaining money or property from such plans by means of false or fraudulent pretenses. In addition, the act would enhance penalties for bribery and graft in connection with employee benefit plans. The only people enjoying the benefits of pension plans should be the people who have worked hard to fund those plans, not crooks who get the money by fraud.

Health care spending consists of about 15 percent of the gross national product, or more than $1 trillion each year. Estimated losses due to fraud and abuse are astronomical. A December 1998 report by the National Institute of Justice, NIJ, states that these losses ''may exceed 10 percent of annual health care spending, or $100 billion per year.''

As more health care claims are processed electronically, without human involvement, more sophisticated computer-generated fraud schemes are surfacing. Some of these schemes generate thousands of false claims designed to pass through automated claims processing to payment, and result in the theft of millions of dollars from Federal and private health care programs. Defrauding Medicare, Medicaid and private health plans increases the financial burden on taxpayers and beneficiaries alike. In addition, some forms of fraud may result in inadequate medical care, harming patients' health as well. Unfortunately, the NIJ reports that many health care fraud schemes ''deliberately target vulnerable populations, such as the elderly or Alzheimer's patients, who are less willing or able to complain or alert law enforcement.''

We saw a dramatic increase in criminal convictions for health care fraud cases during the 1990s. These cases included convictions for submitting false claims to Medicare, Medicaid, and private insurance plans; fake billings by foreign doctors; and needless prescriptions for durable medical equipment by doctors in exchange for kickbacks from manufacturers. In 1997 alone, $1.2 billion was awarded or negotiated as a result of criminal fines, civil settlements and judgments in health care fraud matters.

We can and must do more. The Seniors Safety Act would allow the Attorney General to bring injunctive actions to stop false claims and illegal kickback schemes involving Federal health care programs. The bill would also provide law enforcement authorities with additional investigatory tools to uncover, investigate, and prosecute health care offenses in both criminal and civil proceedings.

In addition, whistle-blowers who tip off law enforcement about health care fraud would be authorized under the Seniors Safety Act to seek court permission to review information obtained by the Government to enhance their assistance in False Claims Act lawsuits. Such qui tam, or whistle-blower, suits have dramatically enhanced the Government's ability to uncover health

care fraud. The act would allow whistle-blowers and their qui tam suits to become even more effective.

Finally, the act would extend anti-fraud and anti-kickback safeguards to the Federal Employees Health Benefits program. These are all important steps that will help cut down on the enormous health care fraud losses.

As life expectancies continue to increase, long-term care planning specialists estimate that over 40 percent of those turning 65 eventually will need nursing home care, and that 20 percent of those seniors will spend 5 years or more in homes. Indeed, many of us already have experienced having our parents, family members or other loved ones spend time in a nursing home. We owe it to them and to ourselves to give the residents of nursing homes the best care they can get.

The Justice Department has cited egregious examples of nursing homes that pocketed Medicare funds instead of providing residents with adequate care. In one case, five patients died as result of the inadequate provision of nutrition, wound care and diabetes management by three Pennsylvania nursing homes. Yet another death occurred when a patient, who was unable to speak, was placed in a scalding tub of 138-degree water.

This act provides additional peace of mind to residents of nursing homes and those of us who may have loved ones there by giving Federal law enforcement the authority to investigate and prosecute operators of nursing homes for willfully engaging in patterns of health and safety violations in the care of nursing home residents. The act also protects whistle-blowers from retaliation for reporting such violations.

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. 2240

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 ''Seniors Safety Act of 2002''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The number of older Americans is rapidly growing in the United States. According to the 2000 census, 21 percent of the United States population is 55 years of age or older.

(2) In 1997, 7 percent of victims of serious violent crime were 50 years of age or older.

(3) In 1997, 17.7 percent of murder victims were 55 years of age or older.

(4) According to the Department of Justice, persons 65 years of age and older experienced approximately 2,700,000 crimes a year between 1992 and 1997.

(5) Older victims of violent crime are almost twice as likely as younger victims to be raped, robbed, or assaulted at or in their own homes.

(6) Approximately half of all Americans who are 50 years of age or older are afraid to walk alone at night in their own neighborhoods.

(7) Seniors over 50 years of age reportedly account for 37 percent of the estimated $40,000,000,000 in losses each year due to telemarketing fraud.

(8) A 1996 American Association of Retired Persons survey of people 50 years of age and older showed that 57 percent were likely to receive calls from telemarketers at least once a week.

(9) In 1998, Congress enacted legislation to provide for increased penalties for telemarketing fraud that targets seniors.

(10) It has been estimated that—

(A) approximately 43 percent of persons turning 65 years of age can expect to spend some time in a long-term care facility; and

(B) approximately 20 percent can expect to spend 5 years or more in a such a facility.

(11) In 1997, approximately $82,800,000,000 was spent on nursing home care in the United States and over half of this amount was spent by the Medicaid and Medicare programs.

(12) Losses to fraud and abuse in health care reportedly cost the United States an estimated $100,000,000,000 in 1996.

(13) The Inspector General for the Department of Health and Human Services has estimated that about $12,600,000,000 in improper Medicare benefit payments, due to inadvertent mistake, fraud, and abuse were made during fiscal year 1998.

(14) Incidents of health care fraud and abuse remain common despite awareness of the problem.

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

(1) combat nursing home fraud and abuse;

(2) enhance safeguards for pension plans and health care programs;

(3) develop strategies for preventing and punishing crimes that target or otherwise disproportionately affect seniors by collecting appropriate data—

(A) to measure the extent of crimes committed against seniors; and

(B) to determine the extent of domestic and elder abuse of seniors; and

(4) prevent and deter criminal activity, such as telemarketing fraud, that results in economic and physical harm against seniors, and ensure appropriate restitution.

SEC. 3. DEFINITIONS.

In this Act:

(1) CRIME.—The term ''crime'' means any criminal offense under Federal or State law.

(2) NURSING HOME.—The term ''nursing home'' means any institution or residential care facility defined as such for licensing purposes under State law, or if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary of Health and Human Services, pursuant to section 1908(e) of the Social Security Act (42 U.S.C. 1396g(e)).

(3) SENIOR.—The term ''senior'' means an individual who is more than 55 years of age.

TITLE I—COMBATING CRIMES AGAINST SENIORS

SEC. 101. ENHANCED SENTENCING PENALTIES BASED ON AGE OF VICTIM.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the ''Commission'') shall review and, if appropriate, amend section 3A1.1(a) of the Federal sentencing guidelines to include the age of a crime victim as one of the criteria for determining whether the application of a sentencing enhancement is appropriate.

(b) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious economic and physical harms associated with criminal activity targeted at seniors due to their particular vulnerability;

(2) consider providing increased penalties for persons convicted of offenses in which the victim was a senior in appropriate circumstances;

(3) consult with individuals or groups representing seniors, law enforcement agencies, victims organizations, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that may justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2002, the Commission shall submit to Congress a report on issues relating to the age of crime victims, which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for offenses involving seniors.

SEC. 102. STUDY AND REPORT ON HEALTH CARE FRAUD SENTENCES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the ''Commission'') shall review and, if appropriate, amend the Federal sentencing guidelines and the policy statements of the Commission with respect to persons convicted of offenses involving fraud in connection with a health care benefit program (as defined in section 24(b) of title 18, United States Code).

(b) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud;

(2) consider providing increased penalties for persons convicted of health care fraud in appropriate circumstances;

(3) consult with individuals or groups representing victims of health care fraud, law enforcement agencies, the health care industry, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2002, the Commission shall submit to Congress a report on issues relating to offenses described in subsection (a), which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for those offenses.

SEC. 103. INCREASED PENALTIES FOR FRAUD RESULTING IN SERIOUS INJURY OR DEATH.

Sections 1341 and 1343 of title 18, United States Code, are each amended by inserting before the last sentence the following: ''If the violation results in serious bodily injury (as defined in section 1365), such person shall be fined under this title, imprisoned not more than 20 years, or both, and if the violation results in death, such person shall be fined under this title, imprisoned for any term of years or life, or both.''.

SEC. 104. SAFEGUARDING PENSION PLANS FROM FRAUD AND THEFT.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Fraud in relation to retirement arrangements

''(a) DEFINITION.—

''(1) RETIREMENT ARRANGEMENT.—In this section, the term 'retirement arrangement' means—

''(A) any employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

''(B) any qualified retirement plan within the meaning of section 4974(c) of the Internal Revenue Code of 1986;

''(C) any medical savings account described in section 220 of the Internal Revenue Code of 1986; or

''(D) a fund established within the Thrift Savings Fund by the Federal Retirement Thrift Investment Board pursuant to subchapter III of chapter 84 of title 5.

''(2) CERTAIN ARRANGEMENTS INCLUDED.—The term 'retirement arrangement' shall include any arrangement that has been represented to be an arrangement described in any subparagraph of paragraph (1) (whether or not so described).

''(3) EXCEPTION FOR GOVERNMENTAL PLAN.—Except as provided in paragraph (1)(D), the term 'retirement arrangement' shall not include any governmental plan (as defined in section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32))).

''(b) PROHIBITION AND PENALTIES.—Whoever executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement;

shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Attorney General may investigate any violation of, and otherwise enforce, this section.

''(2) EFFECT ON OTHER AUTHORITY.—Nothing in this subsection may be construed to preclude the Secretary of Labor or the head of any other appropriate Federal agency from investigating a violation of this section in relation to a retirement arrangement subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or any other provision of Federal law.''.

(b) TECHNICAL AMENDMENT.—Section 24(a)(1) of title 18, United States Code, is amended by inserting ''1348,'' after ''1347,''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud in relation to retirement arrangements.''.

SEC. 105. ADDITIONAL CIVIL PENALTIES FOR DEFRAUDING PENSION PLANS.

(a) IN GENERAL.—

(1) ACTION BY ATTORNEY GENERAL.—Except as provided in subsection (b)—

(A) the Attorney General may bring a civil action in the appropriate district court of the United States against any person who engages in conduct constituting an offense under section 1348 of title 18, United States Code, or conspiracy to violate such section 1348; and

(B) upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty in an amount equal to the greatest of—

(i) the amount of pecuniary gain to that person;

(ii) the amount of pecuniary loss sustained by the victim; or

(iii) not more than—

(I) $50,000 for each such violation in the case of an individual; or

(II) $100,000 for each such violation in the case of a person other than an individual.

(2) NO EFFECT ON OTHER REMEDIES.—The imposition of a civil penalty under this subsection does not preclude any other statutory, common law, or administrative remedy available by law to the United States or any other person.

(b) EXCEPTION.—No civil penalty may be imposed pursuant to subsection (a) with respect to conduct involving a retirement arrangement that—

(1) is an employee pension benefit plan subject to title I of the Employee Retirement Income Security Act of 1974; and

(2) for which the civil penalties may be imposed under section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132).

(c) DETERMINATION OF PENALTY AMOUNT.—In determining the amount of the penalty under subsection (a), the district court may consider the effect of the penalty on the violator or other person's ability to—

(1) restore all losses to the victims; or

(2) provide other relief ordered in another civil or criminal prosecution related to such conduct, including any penalty or tax imposed on the violator or other person pursuant to the Internal Revenue Code of 1986.

SEC. 106. PUNISHING BRIBERY AND GRAFT IN CONNECTION WITH EMPLOYEE BENEFIT PLANS.

(a) IN GENERAL.—Section 1954 of title 18, United States Code, is amended to read as follows:

''§ 1954. Bribery and graft in connection with employee benefit plans

''(a) DEFINITIONS.—In this section—

''(1) the term 'employee benefit plan' means any employee welfare benefit plan or employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

''(2) the terms 'employee organization', 'administrator', and 'employee benefit plan sponsor' mean any employee organization, administrator, or plan sponsor, as defined in title I of the Employment Retirement Income Security Act of 1974; and

''(3) the term 'applicable person' means—

''(A) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan;

''(B) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan;

''(C) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan;

''(D) a person who, or an officer, counsel, agent, or employee of an organization that, provides benefit plan services to such plan; or

''(E) a person with actual or apparent influence or decisionmaking authority in regard to such plan.

''(b) BRIBERY AND GRAFT.—Whoever—

''(1) being an applicable person, receives or agrees to receive or solicits, any fee, kickback, commission, gift, loan, money, or thing of value, personally or for any other person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan;

''(2) directly or indirectly, gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or

thing of value, to any applicable person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan; or

''(3) attempts to give, accept, or receive any thing of value with the intent to be corruptly influenced in violation of this section;

shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) EXCEPTIONS.—Nothing in this section may be construed to apply to any—

''(1) payment to, or acceptance by, any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as an applicable person; or

''(2) payment to, or acceptance in good faith by, any employee benefit plan sponsor, or person acting on behalf of the sponsor, of anything of value relating to the decision or action of the sponsor to establish, terminate, or modify the governing instruments of an employee benefit plan in a manner that does not violate—

''(A) title I of the Employee Retirement Income Security Act of 1974;

''(B) any regulation or order promulgated under title I of the Employee Retirement Income Security Act of 1974; or

''(C) any other provision of law governing the plan.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 95 of title 18, United States Code, is amended by striking the item relating to section 1954 and inserting the following:

''1954. Bribery and graft in connection with employee benefit plans.''.

TITLE II—PREVENTING TELEMARKETING FRAUD

SEC. 201. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF TELEMARKETING FRAUD.

(a) CENTRALIZED SERVICE.—

(1) REQUIREMENT.—The Federal Trade Commission shall, after consultation with the Attorney General, establish procedures to—

(A) log and acknowledge the receipt of complaints by individuals who certify that they have a reasonable belief that they have been the victim of fraud in connection with the conduct of telemarketing (as that term is defined in section 2325 of title 18, United States Code, as amended by section 202(a) of this Act);

(B) provide to individuals described in subparagraph (A), and to any other persons, information on telemarketing fraud, including—

(i) general information on telemarketing fraud, including descriptions of the most common telemarketing fraud schemes;

(ii) information on means of referring complaints on telemarketing fraud to appropriate law enforcement agencies, including the Director of the Federal Bureau of Investigation, the attorneys general of the States, and the national toll-free telephone number on telemarketing fraud established by the Attorney General; and

(iii) information, if available, on the number of complaints of telemarketing fraud against particular companies and any record of convictions for telemarketing fraud by particular companies for which a specific request has been made; and

(C) refer complaints described in subparagraph (A) to appropriate entities, including State consumer protection agencies or entities and appropriate law enforcement agencies, for potential law enforcement action.

(2) CENTRAL LOCATION.—The service under the procedures under paragraph (1) shall be provided at and through a single site selected by the Commission for that purpose.

(3) COMMENCEMENT.—The Federal Trade Commission shall commence carrying out the service not later than 1 year after the date of enactment of this Act.

(b) CREATION OF FRAUD CONVICTION DATABASE.—

(1) ESTABLISHMENT.—The Attorney General shall establish and maintain a computer database containing information on the corporations and companies convicted of offenses for telemarketing fraud under Federal and State law.

(2) DATABASE.—The database established under paragraph (1) shall include a description of the type and method of the fraud scheme for which each corporation or company covered by the database was convicted.

(3) USE OF DATABASE.—The Attorney General shall make information in the database available to the Federal Trade Commission for purposes of providing information as part of the service under subsection (a).

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

SEC. 202. BLOCKING OF TELEMARKETING SCAMS.

(a) EXPANSION OF SCOPE OF TELEMARKETING FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES.—Section 2325(1) of title 18, United States Code, is amended by striking ''telephone calls'' and inserting ''wire communications utilizing a telephone service''.

(b) BLOCKING OR TERMINATION OF TELEPHONE SERVICE ASSOCIATED WITH TELEMARKETING FRAUD.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

''§ 2328. Blocking or termination of telephone service

''(a) DEFINITIONS.—In this section:

''(1) REASONABLE NOTICE TO THE SUBSCRIBER.—

''(A) IN GENERAL.—The term 'reasonable notice to the subscriber', in the case of a subscriber of a common carrier, means any information necessary to provide notice to the subscriber that—

''(i) the wire communications facilities furnished by the common carrier may not be used for the purpose of transmitting, receiving, forwarding, or delivering a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud in connection with the conduct of telemarketing; and

''(ii) such use constitutes sufficient grounds for the immediate discontinuance or refusal of the leasing, furnishing, or maintaining of the facilities to or for the subscriber.

''(B) INCLUDED MATTER.—The term includes any tariff filed by the common carrier with the Federal Communications Commission that contains the information specified in subparagraph (A).

''(2) WIRE COMMUNICATION.—The term 'wire communication' has the same meaning given that term in section 2510(1).

''(3) WIRE COMMUNICATIONS FACILITY.—The term 'wire communications facility' means any facility (including instrumentalities, personnel, and services) used by a common carrier for purposes of the transmission, receipt, forwarding, or delivery of wire communications.

''(b) BLOCKING OR TERMINATING TELEPHONE SERVICE.—If a common carrier subject to the jurisdiction of the Federal Communications Commission is notified in writing by the Attorney General, acting within the jurisdiction of the Attorney General, that any wire communications facility furnished by that common carrier is being used or will be used by a subscriber for the purpose of transmitting or receiving a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, in connection with the conduct of telemarketing, the common carrier shall discontinue or refuse the leasing, furnishing, or maintaining of the facility to or for the subscriber after reasonable notice to the subscriber.

''(c) PROHIBITION ON DAMAGES.—No damages, penalty, or forfeiture, whether civil or criminal, shall be found or imposed against any common carrier for any act done by the common carrier in compliance with a notice received from the Attorney General under this section.

''(d) RELIEF.—

''(1) IN GENERAL.—Nothing in this section may be construed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court, that—

''(A) the leasing, furnishing, or maintaining of a facility should not be discontinued or refused under this section; or

''(B) the leasing, furnishing, or maintaining of a facility that has been so discontinued or refused should be restored.

''(2) SUPPORTING INFORMATION.—In any action brought under this subsection, the court may direct that the Attorney General present evidence in support of the notice made under subsection (b) to which such action relates.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following:

''2328. Blocking or termination of telephone service.''.

TITLE III—PREVENTING HEALTH CARE FRAUD

SEC. 301. INJUNCTIVE AUTHORITY RELATING TO FALSE CLAIMS AND ILLEGAL KICKBACK SCHEMES INVOLVING FEDERAL HEALTH CARE PROGRAMS.

(a) IN GENERAL.—Section 1345(a) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking '', or'' and inserting a semicolon;

(B) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(D) committing or about to commit an offense under section 1128B of the Social Security Act (42 U.S.C. 1320a–7b),''; and

(2) in paragraph (2), by inserting ''a violation of paragraph (1)(D), or'' before ''a banking''.

(b) CIVIL ACTIONS.—

(1) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by adding at the end the following:

''(g) CIVIL ACTIONS.—

''(1) IN GENERAL.—The Attorney General may bring an action in the appropriate district court of the United States to impose upon any person who carries out any activity in violation of this section with respect to a Federal health care program a civil penalty of not more than $50,000 for each such violation, or damages of 3 times the total remuneration offered, paid, solicited, or received, whichever is greater.

''(2) EXISTENCE OF VIOLATION.—A violation exists under paragraph (1) if 1 or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

''(3) PROCEDURES.—An action under paragraph (1) shall be governed by—

''(A) the procedures with regard to subpoenas, statutes of limitations, standards of proof, and collateral estoppel set forth in section 3731 of title 31, United States Code; and

''(B) the Federal Rules of Civil Procedure.

''(4) NO EFFECT ON OTHER REMEDIES.—Nothing in this section may be construed to affect the availability of any other criminal or civil remedy.

''(h) INJUNCTIVE RELIEF.—The Attorney General may commence a civil action in an appropriate district court of the United States to enjoin a violation of this section, as provided in section 1345 of title 18, United States Code.''.

(2) CONFORMING AMENDMENT.—The heading of section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended by inserting ''AND CIVIL'' after ''CRIMINAL''.

SEC. 302. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

Section 3486 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting '', or any allegation of fraud or false claims (whether criminal or civil) in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f))),'' after ''Federal health care offense'' each place it appears; and

(2) by adding at the end the following:

''(f) PRIVACY PROTECTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any record (including any book, paper, document, electronic medium, or other object or tangible thing) produced pursuant to a subpoena issued under this section that contains personally identifiable health information may not be disclosed to any person, except pursuant to a court order under subsection (e)(1).

''(2) EXCEPTIONS.—A record described in paragraph (1) may be disclosed—

''(A) to an attorney for the Government for use in the performance of the official duty of the attorney (including presentation to a Federal grand jury);

''(B) to government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the Government to assist an attorney for the Government in the performance of the official duty of that attorney to enforce Federal criminal law;

''(C) as directed by a court preliminarily to, or in connection with, a judicial proceeding;

''(D) as permitted by a court at the request of a defendant in an administrative, civil, or criminal action brought by the United States, upon a showing that grounds may exist for a motion to exclude evidence obtained under this section; or

''(E) at the request of an attorney for the Government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law.

''(3) MANNER OF COURT ORDERED DISCLOSURES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if a court orders the disclosure of any record described in paragraph (1), the disclosure—

''(i) shall be made in such manner, at such time, and under such conditions as the court may direct; and

''(ii) shall be undertaken in a manner that preserves the confidentiality and privacy of individuals who are the subject of the record.

''(B) EXCEPTION.—If disclosure is required by the nature of the proceedings, the attorney for the Government shall request that the presiding judicial or administrative officer enter an order limiting the disclosure of the record to the maximum extent practicable, including redacting the personally identifiable health information from publicly disclosed or filed pleadings or records.

''(4) DESTRUCTION OF RECORDS.—Any record described in paragraph (1), and all copies of that record, in whatever form (including electronic), shall be destroyed not later than 90 days after the date on which the record is produced, unless otherwise ordered by a court of competent jurisdiction, upon a showing of good cause.

''(5) EFFECT OF VIOLATION.—Any person who knowingly fails to comply with this subsection may be punished as in contempt of court.

''(g) PERSONALLY IDENTIFIABLE HEALTH INFORMATION DEFINED.—In this section, the term 'personally identifiable health information' means any information, including genetic information, demographic information, and tissue samples collected from an individual, whether oral or recorded in any form or medium, that—

''(1) 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

''(2) either—

''(A) identifies an individual; or

''(B) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.''.

SEC. 303. EXTENDING ANTIFRAUD SAFEGUARDS TO THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.

Section 1128B(f)(1) of the Social Security Act (42 U.S.C. 1320a–7b(f)(1)) is amended by striking ''(other than the health insurance program under chapter 89 of title 5, United States Code)''.

SEC. 304. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

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

''(c) GRAND JURY DISCLOSURE.—Subject to section 3486(f), upon ex parte motion of an attorney for the Government showing that a disclosure in accordance with that subsection would be of assistance to enforce any provision of Federal law, a court may direct the disclosure of any matter occurring before a grand jury during an investigation of a Federal health care offense (as defined in section 24(a) of this title) to an attorney for the Government to use in any investigation or civil proceeding relating to fraud or false claims in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f))).''.

SEC. 305. INCREASING THE EFFECTIVENESS OF CIVIL INVESTIGATIVE DEMANDS IN FALSE CLAIMS INVESTIGATIONS.

Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)(1), in the second sentence, by inserting '', except to the Deputy Attorney General or to an Assistant Attorney General'' before the period at the end; and

(2) in subsection (i)(2)(C), by adding at the end the following: ''Disclosure of information to a person who brings a civil action under section 3730, or the counsel of that person, shall be allowed only upon application to a United States district court showing that such disclosure would assist the Department of Justice in carrying out its statutory responsibilities.''.

TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES

SEC. 401. SHORT TITLE.

This title may be cited as the ''Nursing Home Resident Protection Act of 2002''.

SEC. 402. NURSING HOME RESIDENT PROTECTION.

(a) PROTECTION OF RESIDENTS IN NURSING HOMES AND OTHER RESIDENTIAL HEALTH CARE FACILITIES.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1349. Pattern of violations resulting in harm to residents of nursing homes and related facilities

''(a) DEFINITIONS.—In this section:

''(1) ENTITY.—The term 'entity' means—

''(A) any residential health care facility (including facilities that do not exclusively provide residential health care services);

''(B) any entity that manages a residential health care facility; or

''(C) any entity that owns, directly or indirectly, a controlling interest or a 50 percent or greater interest in 1 or more residential health care facilities including States, localities, and political subdivisions thereof.

''(2) FEDERAL HEALTH CARE PROGRAM.—The term 'Federal health care program' has the same meaning given that term in section 1128B(f) of the Social Security Act.

''(3) PATTERN OF VIOLATIONS.—The term 'pattern of violations' means multiple violations of a single Federal or State law, regulation, or rule or single violations of multiple Federal or State laws, regulations, or rules, that are widespread, systemic, repeated, similar in nature, or result from a policy or practice.

''(4) RESIDENTIAL HEALTH CARE FACILITY.—The term 'residential health care facility' means any facility (including any facility that does not exclusively provide residential health care services), including skilled and unskilled nursing facilities and mental health and mental retardation facilities, that—

''(A) receives Federal funds, directly from the Federal Government or indirectly from a third party on contract with or receiving a grant or other monies from the Federal Government, to provide health care; or

''(B) provides health care services in a residential setting and, in any calendar year in which a violation occurs, is the recipient of benefits or payments in excess of $10,000 from a Federal health care program.

''(5) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(b) PROHIBITION AND PENALTIES.—Whoever knowingly and willfully engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility or facilities, and that results in significant physical or mental harm to 1 or more of such residents, shall be punished as provided in section 1347, except that any organization shall be fined not more than $2,000,000 per residential health care facility.

''(c) CIVIL PROVISIONS.—

''(1) IN GENERAL.—The Attorney General may bring an action in a district court of the United States to impose on any individual or entity that engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility, and that results in physical or mental harm to 1 or more such residents—

''(A) a civil penalty; or

''(B) in the case of—

''(i) an individual (other than an owner, operator, officer, or manager of such a residential health care facility), not more than $10,000;

''(ii) an individual who is an owner, operator, officer, or manager of such a residential health care facility, not more than $100,000 for each separate facility involved in the pattern of violations under this section;

''(iii) a residential health care facility, not more than $1,000,000 for each pattern of violations; or

''(iv) an entity, not more than $1,000,000 for each separate residential health care facility involved in the pattern of violations owned or managed by that entity.

''(2) OTHER APPROPRIATE RELIEF.—If the Attorney General has reason to believe that an individual or entity is engaging in or is about to engage in a pattern of violations that would affect the health, safety, or care of individuals residing in a residential health care facility, and that results in or has the potential to result in physical or mental harm to 1 or more such residents, the Attorney General may petition an appropriate district court of the United States for appropriate equitable and declaratory relief to eliminate the pattern of violations.

''(3) PROCEDURES.—In any action under this subsection—

''(A) a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States;

''(B) the action may not be brought more than 6 years after the date on which the violation occurred;

''(C) the United States shall be required to prove each charge by a preponderance of the evidence;

''(D) the civil investigative demand procedures set forth in the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) and regulations promulgated pursuant to that Act shall apply to any investigation; and

''(E) the filing or resolution of a matter shall not preclude any other remedy that is available to the United States or any other person.

''(d) PROHIBITION AGAINST RETALIATION.—Any person who is the subject of retaliation, either directly or indirectly, for reporting a condition that may constitute grounds for relief under this section may bring an action in an appropriate district court of the United States for damages, attorneys' fees, and other relief.''.

(b) AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.—Section 3486(a)(1) of title 18, United States Code, as amended by section 402 of this Act, is amended by inserting '', act or activity involving section 1349 of this title'' after ''Federal health care offense''.

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1349. Pattern of violations resulting in harm to residents of nursing homes and related facilities.''.

TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS

SEC. 501. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS AND REGULATORY AGENCIES.

Section 981(e) of title 18, United States Code, is amended—

(1) in each of paragraphs (3), (4), and (5), by striking ''in the case of property referred to in subsection (a)(1)(C)'' and inserting ''in the case of property forfeited in connection with an offense resulting in a pecuniary loss to a financial institution or regulatory agency,''; and

(2) in paragraph (7), by striking ''In the case of property referred to in subsection (a)(1)(D)'' and inserting ''in the case of property forfeited in connection with an offense relating to the sale of assets acquired or held by any Federal financial institution or regulatory agency, or person appointed by such agency, as receiver, conservator, or liquidating agent for a financial institution''.

SEC. 502. VICTIM RESTITUTION.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

''(r) VICTIM RESTITUTION.—

''(1) SATISFACTION OF ORDER OF RESTITUTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a defendant may not use property subject to forfeiture under this section to satisfy an order of restitution.

''(B) EXCEPTION.—If there are 1 or more identifiable victims entitled to restitution from a defendant, and the defendant has no assets other than the property subject to forfeiture with which to pay restitution to the victim or victims, the attorney for the Government may move to dismiss a forfeiture allegation against the defendant before entry of a judgment of forfeiture in order to allow the property to be used by the defendant to pay restitution in whatever manner the court determines to be appropriate if the court grants the motion. In granting a motion under this subparagraph, the court shall include a provision ensuring that costs associated with the identification, seizure, management, and disposition of the property are recovered by the United States.

''(2) RESTORATION OF FORFEITED PROPERTY.—

''(A) IN GENERAL.—If an order of forfeiture is entered pursuant to this section and the defendant has no assets other than the forfeited property to pay restitution to 1 or more identifiable victims who are entitled to restitution, the Government shall restore the forfeited property to the victims pursuant to subsection (i)(1) once the ancillary proceeding under subsection (n) has been completed and the costs of the forfeiture action have been deducted.

''(B) DISTRIBUTION OF PROPERTY.—On a motion of the attorney for the Government, the court may enter any order necessary to facilitate the distribution of any property restored under this paragraph.

''(3) VICTIM DEFINED.—In this subsection, the term 'victim'—

''(A) means a person other than a person with a legal right, title, or interest in the forfeited property sufficient to satisfy the standing requirements of subsection (n)(2) who may be entitled to restitution from the forfeited funds pursuant to section 9.8 of part 9 of title 28, Code of Federal Regulations (or any successor to that regulation); and

''(B) includes any person who is the victim of the offense giving rise to the forfeiture, or of any offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.''.

SEC. 503. BANKRUPTCY PROCEEDINGS NOT USED TO SHIELD ILLEGAL GAINS FROM FALSE CLAIMS.

(a) CERTAIN ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the commencement or continuation of an action under section 3729 of title 31, United States Code, does not operate as a stay under section 105(a) or 362(a)(1) of title 11, United States Code.

(2) CONFORMING AMENDMENT.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (17), by striking ''or'' at the end;

(B) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(19) the commencement or continuation of an action under section 3729 of title 31.''.

(b) CERTAIN DEBTS NOT DISCHARGEABLE IN BANKRUPTCY.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) does not discharge a debtor from a debt owed for violating section 3729 of title 31.''.

(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. False claims

''No transfer on account of a debt owed to the United States for violating section 3729 of title 31, or under a compromise order or other agreement resolving such a debt may be avoided under section 544, 545, 547, 548, 549, 553(b), or 742(a).''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. False claims.''.

SEC. 504. FORFEITURE FOR RETIREMENT OFFENSES.

(a) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding at the end the following:

''(9) CRIMINAL FORFEITURE.—

''(A) IN GENERAL.—The court, in imposing a sentence on a person convicted of a retirement offense, shall order the person to forfeit property, real or personal, that constitutes or that is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

''(B) RETIREMENT OFFENSE DEFINED.—In this paragraph, if a violation, conspiracy, or solicitation relates to a retirement arrangement (as defined in section 1348 of title 18, United States Code), the term 'retirement offense' means a violation of—

''(i) section 664, 1001, 1027, 1341, 1343, 1348, 1951, 1952, or 1954 of title 18, United States Code; or

''(ii) section 411, 501, or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111, 1131, 1141).''.

(b) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(H) Any property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of, criminal conspiracy to violate, or solicitation to commit a crime of violence involving, a retirement offense (as defined in section 982(a)(9)(B)).''.

Mr. TORRICELLI. Madam President, I am pleased to join Senators LEAHY and DASCHLE today as an original cosponsor of the Seniors Safety Act, legislation that has been referred to as ''a new safety net for seniors.'' It is that, but it is also much more. Indeed, this bill is a potent weapon designed to track down and punish those criminals who would prey on the trust and good will of America's seniors. This bill puts crooks on notice that crimes against seniors, from violent assaults in the streets, to abuses in nursing homes, to frauds perpetrated over the telephone lines, will not be tolerated.

Seniors represent the most rapidly growing sector of our population. In the next 50 years, the number of Americans over the age of 65 will more than double. Unless we take action now, the frequency and sophistication of crimes against seniors will likewise skyrocket. The Seniors Safety Act was developed to address, head-on, the crimes which most directly affect the senior community, including telemarketing fraud, and abuse and fraud in the health care and nursing home industries. It increases penalties and provides enhancements to the sentencing guidelines for criminals who target seniors. It protects seniors against the

illegal depletion of precious pension and employee benefit plan funds through fraud, graft, and bribery, and helps victimized seniors obtain restitution. And finally, this bill authorizes the Attorney General to study the problem of crime against seniors, and design new techniques to fight it.

Criminal enterprises that engage in telemarketing fraud are some of the most insidious predators out there. Americans are fleeced out of over $40 billion dollars every year, and the effect on seniors is grossly disproportionate. According to the American Association of Retired Persons, ''The repeated victimization of the elderly is the cornerstone of illegal telemarketing.'' A study has found that 56 percent of the names on the target lists of fraudulent telemarketers are those of Americans aged 50 or older. Of added concern is the fact that many of the perpetrators have migrated out of the United States for fear of prosecution, and continue to conduct their illegal activities from abroad.

In one heartbreaking story, a recently-widowed New Jersey woman was bilked out of $200,000 by a deceitful telemarketing firm from Canada, who claimed that the woman had won a $150,000 sweepstakes, the prize could be hers, for a fee. A series of these calls followed, convincing this poor woman, already in a fragile mind-state after her husband's death, to send more and more money for what they claimed was an increasingly large prize, which, of course, never materialized.

Our bill authorizes the Attorney General to effectively put these vultures, even the international criminals, out of business by blocking or terminating their U.S. telephone service. In addition, it authorizes the FTC to create a consumer clearinghouse which would provide seniors, and others who might have questions about the legitimacy of a telephone sales pitch, with information regarding prior complaints about a particular telemarketing company or prior fraud convictions. Furthermore, this clearinghouse would give seniors who may have been cheated an open channel to the appropriate law enforcement authorities.

In 1997, older Americans were victimized by violent crime over 680,000 times. The crimes against them range from simple assault, to armed robbery, to rape. While national crime rates in general are falling, seniors have not shared in the benefits of that drop.

This Act singles out criminals who prey on the senior population and penalizes them for the physical and economic harm they cause. In addition, we intend to place this growing problem in the spotlight, and urge Congress and Federal and State law enforcement agencies to continue to develop solutions. To this end, we have authorized a comprehensive examination of crimes against seniors, and the inclusion of data on seniors in the National Crime Victims Survey.

Seniors across the country have worked their entire lives, secure in the belief that their pensions and health benefits would be there to provide for them in their retirement years. Unfortunately, far too often, seniors wake up one morning to find that their hard-earned benefits have been stolen. In 1997 alone, $90 million in losses to pension funds were uncovered. Older Americans who depend on that money to live are left out in the cold, while criminals enjoy the fruits of a lifetime of our seniors' labor. The Seniors Safety Act gives Federal prosecutors another powerful weapon to punish pension fund thieves. The Act creates new civil and criminal penalties for defrauding pension of benefit plans, or obtaining money from them under false or fraudulent pretenses.

The defrauding of Medicare, Medicaid, and private health insurers has become big business for criminals who prey on the elderly. According to a National Institutes of Health study, losses from fraud and abuse may exceed $100 billion per year. Overbilling and false claims filing have become rampant as automated claims processing is more prevalent. Similarly, the Department of Justice has noted numerous cases where unscrupulous nursing home operators have simply pocketed Medicare funds, rather than providing adequate care for their residents. In one horrendous case, five diabetic patient died from malnutrition and lack of medical care. In another, a patient was burned to death when a mute patient was placed by untrained staff in a tub of scalding water. These terrible abuses would never have occurred had the facilities spent the Federal funds they received to implement proper health and safety procedures. This bill goes after fraud and abuse by providing resources and tools for authorities to investigate and prosecute offenses in civil and criminal courts, and enhances the ability of the Justice Department to use evidence brought in by qui tam, whistleblower, plaintiffs.

Together these provisions bring much-needed protections to our seniors. It sends a message to the cowardly perpetrators of fraud and other crimes against older Americans, that their actions will be fiercely prosecuted, whether they be here or abroad. And it clearly states that we refuse to allow seniors to be victimized by this most heinous form of predation.

By Mr. DORGAN (for himself, Mr. JEFFORDS, Ms. COLLINS, Ms. STABENOW, Ms. SNOWE, Mr. WELLSTONE, Mr. LEVIN, and Mr. DAYTON):

S. 2244. A bill to permit commercial importation of prescription drugs from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DORGAN. Madam President, today I am introducing the Prescription Drug Price Parity for Americans Act, along with my colleagues Senators JEFFORDS, COLLINS, STABENOW, SNOWE, WELLSTONE, LEVIN, and DAYTON. I intend to come to the floor later in the week to speak about this legislation at greater length, but I wanted to go ahead and introduce the bill today.

This bill addresses a growing problem with prescription drug spending in our country. Spending on prescription drugs rose 17 percent in 2001, following on the heels of a nearly 19 percent increase in 2000 and a 16 percent increase in 1999. Unfortunately, many Americans, especially senior citizens and the uninsured, cannot afford the substantially higher prices that they are being charged for their medicines. A prescription drug that costs $1 in the United States costs only 62 cents in Canada, and that is just not fair.

The bill I am introducing today would address this unfair pricing by injecting some price competition into the prescription drug marketplace. This legislation builds on the Medicine Equity and Drug Safety, MEDS, Act, which the Senate passed overwhelmingly in 2000 and was enacted into law. Like the MEDS Act, this bill would allow U.S.-licensed pharmacists and drug wholesalers to import FDA-approved medicines, but unlike the 2000 law, this year's bill will be limited to approved drugs coming only from Canada. Canada has a drug approval and distribution system similarly strong to the U.S. system. I am very confident that this bill can be implemented immediately while ensuring the safety of our Nation's drug supply and significant cost savings for American consumers.

Again, I look forward to coming back to the floor to describe this legislation at length at some later opportunity.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2244

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 ''Prescription Drug Price Parity for Americans Act''.

SEC. 2. IMPORTATION OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

''SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

''(a) DEFINITIONS.—In this section:

''(1) IMPORTER.—The term 'importer' means a pharmacist or wholesaler.

''(2) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

''(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

''(C) an infused drug (including a peritoneal dialysis solution);

''(D) an intravenously injected drug; or

''(E) a drug that is inhaled during surgery.

''(4) QUALIFYING LABORATORY.—The term 'qualifying laboratory' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

''(5) WHOLESALER.—

''(A) IN GENERAL.—The term 'wholesaler' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

''(B) EXCLUSION.—The term 'wholesaler' does not include a person authorized to import drugs under section 801(d)(1).

''(b) REGULATIONS.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

''(c) LIMITATION.—The regulations under subsection (b) shall—

''(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

''(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

''(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

''(d) INFORMATION AND RECORDS.—

''(1) IN GENERAL.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

''(A) The name and quantity of the active ingredient of the prescription drug.

''(B) A description of the dosage form of the prescription drug.

''(C) The date on which the prescription drug is shipped.

''(D) The quantity of the prescription drug that is shipped.

''(E) The point of origin and destination of the prescription drug.

''(F) The price paid by the importer for the prescription drug.

''(G) Documentation from the foreign seller specifying—

''(i) the original source of the prescription drug; and

''(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

''(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

''(I) The name, address, telephone number, and professional license number (if any) of the importer.

''(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

''(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

''(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

''(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

''(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

''(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

''(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

''(i) is approved for marketing in the United States; and

''(ii) meets all labeling requirements under this Act.

''(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

''(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

''(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

''(2) MAINTENANCE BY THE SECRETARY.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

''(e) TESTING.—The regulations under subsection (b) shall require—

''(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

''(2) if the tests are conducted by the importer—

''(A) that information needed to—

''(i) authenticate the prescription drug being tested; and

''(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

''(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

''(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

''(f) REGISTRATION OF FOREIGN SELLERS.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

''(g) SUSPENSION OF IMPORTATION.—The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

''(h) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

''(i) PROHIBITION OF DISCRIMINATION.—

''(1) IN GENERAL.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

''(2) DISCRIMINATION.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

''(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

''(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

''(j) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

''(k) WAIVER AUTHORITY FOR IMPORTATION BY INDIVIDUALS.—

''(1) DECLARATIONS.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

''(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

''(B) exercise discretion to permit individuals to make such importations in circumstances in which—

''(i) the importation is clearly for personal use; and

''(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

''(2) WAIVER AUTHORITY.—

''(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

''(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

''(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

''(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

''(B) is accompanied by a copy of a valid prescription;

''(C) is imported from Canada, from a seller registered with the Secretary;

''(D) is a prescription drug approved by the Secretary under chapter V;

''(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

''(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

''(l) STUDIES; REPORTS.—

''(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

''(A) STUDY.—

''(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

''(I) importations of prescription drugs made under the regulations under subsection (b); and

''(II) information and documentation submitted under subsection (d).

''(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

''(I) evaluate the compliance of importers with the regulations under subsection (b);

''(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

''(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

''(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(2) BY THE COMPTROLLER GENERAL.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

''(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

''(m) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

''(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''.

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking ''covered product in violation of section 804'' and inserting ''prescription drug in violation of section 804'';

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6), by striking ''covered product pursuant to section 804(a)'' and inserting ''prescription drug under section 804(b)''.

Mr. WELLSTONE. Madam President, I am glad we have the opportunity today to introduce legislation that corrects a sad injustice. This injustice makes American consumers the least likely of any in the industrialized world to be able to afford drugs manufactured by the American pharmaceutical industry. That's because of the unconscionable prices the industry charges only here in the United States.

When I return to Minnesota which I do frequently, I meet with many constituents, but none with more compelling stories than senior citizens struggling to make ends meet because of the high cost of prescription drugs, lifesaving drugs that are not covered under the Medicare program. Ten or twenty years ago these same senior citizens were going to work everyday, in the stores, and factories, and mines in Minnesota, earning an honest paycheck, and paying their taxes without protest. Now they wonder, how can this government, their government, stand by, when the medicines they need are out of reach.

And it is not just that Medicare won't pay for these drugs. The unfairness which Minnesotans feel is exacerbated of course by the high cost of prescription drugs here in the United States, the same drugs that can be purchased for frequently half the price in Canada. These are the exact same drugs, manufactured in the exact same facilities with the exact same safety precautions.

All the legislators speaking today have heard the first-hand stores from our constituents back home. Our constituents are justifiably frustrated and discouraged when they can't afford to buy prescription drugs that are made in the United States, unless they go across the border to Canada where those same drugs, manufactured in the same facilities are available for about half the price.

Senior citizens have lost their patience in waiting for answers, and so have I. Driving to Canada every few months to buy prescription drugs at affordable prices isn't the solution; it's a symptom of how broken parts of our health care system are. Americans regardless of political party have a fundamental belief in fairness, and we know a rip-off when we see one. It is time to end that rip-off.

While we can be proud of both American scientific research that produces new miracle cures and the high standards of safety and efficacy that we expect to be followed at the FDA, it is shameful that America's most vulnerable citizens, the chronically ill and the elderly, are being asked to pay the highest prices in the world here in the U.S. for the exact same medicines that are manufactured here but sold more cheaply in other countries.

That is why I am introducing with my colleagues today the Medicine Equity and Drug Safety Act of 2002. This bill will amend the Food, Drug, and Cosmetic Act to allow American pharmacists and wholesalers to import prescription drugs from Canada into the United States, as long as the drugs meet FDA's strict safety standards. Pharmacists and wholesalers will be able to purchase these drugs, often manufactured right here in the U.S., at much lower prices and then pass those savings on to consumers. In addition, the bill would give individuals a waiver to import prescription drugs from Canada as long as the medicine is for their own personal use and the amount of medicine imported is a 90-day supply or less. This provision will give consumers confidence that, if they follow the rules for personal importation, they won't have to worry about their medicines being stopped at the border.

Our bill addresses the absurd situation by which American consumers are paying substantially higher prices for their prescription drugs than are the citizens of Canada. The bill does not create any new Federal programs. Instead, it uses principles frequently cited in both houses of the Congress, principles of free trade and competition, the help make it possible for American consumers to purchase the prescription drugs they need.

And the need is clear. A recent informal survey by the Minnesota Senior Federation on the price of six commonly used prescription medications showed that Minnesota consumers pay, on average, nearly double, 196 percent, what their Canadian counterparts pay. These excessive prices apply to drugs manufactured by U.S. pharmaceutical firms, the same drugs that are sold in Canada for a fraction of the U.S. price.

Pharmacists could sell prescription drugs for less here in the United States, if they could buy and import these same drugs from Canada at lower prices than the pharmaceutical companies charge here.

Now, however, Federal law allows only the manufacturer of a drug to import it into the U.S. Thus American pharmacists and wholesalers must pay the exorbitant prices charged by the pharmaceutical industry in the U.S. market and pass along those high prices to consumers. It is time to stop protecting the pharmaceutical industry's outrageous profits, and they are outrageous.

Let's take a look at the numbers, so there can be no mistake:

Where the average Fortune 500 industry in the United States returned 2.2 percent profits as a percentage of revenue, the pharmaceutical industry returned 18.5 percent.

Where the average Fortune 500 industry returned 2.5 percent profits as a percentage of their assets, the pharmaceutical industry returned 16.5 percent.

Where the average Fortune 500 industry returned less than 10 percent profits as a percentage of shareholders equity, the pharmaceutical industry returned 33.2 percent.

Those huge profits are no surprise to America's senior citizens because they know where those profits come from, they come from their own pocketbooks. It is time to end the price gouging.

We need legislation that can assure our senior citizens and all Americans

that safe and affordable prescription medications at last will be as available in the United States of America as they are in Canada. The bill we are introducing today accomplishes that end.

I also want to point out that our bill includes important safety precautions to make sure we are not sacrificing safety for price. The safety measures provide strong protection for the American public. These protections include: Strict FDA oversight; importation from Canada only; strict handling requirements for importers, like those already in place for manufacturers; registration of Canadian pharmacists and wholesalers with the HHS Secretary; lab testing to screen out counterfeits; lab testing to ensure purity, potency, and safety of medications and; authority for the HHS Secretary to immediately suspend importation of prescription drugs that appear counterfeit or otherwise violate the law.

The only thing that is not protected in this bill is the excessive profits of the pharmaceutical industry. My job as a United States Senator is not to protect profits but to protect the people. Colleagues, please join us and support this thoughtful and important bill that will help make prescription drugs affordable to the American people.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3332. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3333. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3334. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3335. Mr. SESSIONS (for himself, Mr. SHELBY, Mr. SPECTER, and Mr. SANTORUM) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3336. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3337. Mr. WELLSTONE submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3338. Mr. REID submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3339. Mr. DURBIN (for himself and Mr. HARKIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3340. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3341. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3342. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3343. Mrs. LINCOLN (for herself, Mr. HAGEL, Mr. BOND, Mr. KERRY, Mrs. CARNAHAN, Mr. NELSON of Nebraska, and Mr. MILLER) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3344. Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3345. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3346. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3347. Mr. INOUYE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3348. Mr. INOUYE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3349. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3350. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3351. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3352. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3353. Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. BINGAMAN, and Mr. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3354. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3355. Mr. CONRAD (for himself, Mr. SMITH of New Hampshire, and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3356. Mr. HOLLINGS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3357. Mr. ROCKEFELLER (for himself, Mrs. CARNAHAN, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3358. Mr. ROCKEFELLER (for himself, Mr. ALLEN, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3359. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3360. Mr. TORRICELLI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3361. Mr. KERRY (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3362. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3363. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3364. Mr. THOMAS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3365. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3366. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3367. Mr. HAGEL submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3368. Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3369. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3370. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3371. Mr. GRAHAM submitted an amendment intended to be proposed to