

our seniors. I suggest that is not the best priority for our country.

I am very concerned that this is a complicated system they are setting up. There are gaps between \$2,000 of out-of-pocket expenses a year and \$4,500 or \$5,000—we are not sure which number they will end up with—but that gap leaves no help for a senior with a bill from \$2,500 to \$5,000. That gap between \$2,000 and \$5,000 is a gap leaving seniors to pay the premium while receiving no assistance.

There are serious problems. I am told half of Medicare beneficiaries will receive no drug coverage for at least part of the year. Half of the Medicare beneficiaries will receive no help for at least part of the year under the proposal now being considered in the House of Representatives.

I am also concerned that rather than relying on the Part B premium as we have provided health care to this point to a private sector/private sector-public sector working together on Medicare, they are discussing having private insurance companies create prescription drug-only policies and relying on private insurance companies to provide this coverage.

We hear the insurance companies do not want to write those policies. If those were profitable policies, they would already be writing the policies. It is not profitable to write prescription-only policies for people who need prescriptions. The idea is to spread the risk between those who are healthy and those who need care. Those who are likely to want an insurance policy for prescription drugs probably are using prescription drugs. Insurance industry folks say they are not interested.

What do our Republican colleagues do? They give dollars to the insurance companies to provide this coverage rather than providing it under Medicare. The Republican bill allows Medicare to pay insurance companies more in order to write these policies rather than just using the Medicare process that has worked so well.

There are a lot of flaws. They are using a structure that does not work with private insurance companies rather than having the clout of 40 million seniors under Medicare, enabling a lowering of the prices, using a system that is tried and true; they want to bring in a new system. The reality is there is no interest in the private sector to provide this type of insurance.

We see on the other side of the aisle, and the other side of the building, two committees working on legislation that, in fact, will do little to help our seniors, those with disabilities who need help with prescription drugs. We can do better. We have the opportunity to do better.

I share from this morning's New York Times a portion of a column by Paul Krugman, outlining what is happening. I encourage Members to read this. He says:

... the Senate Democrats have a plan that can be criticized but is definitely work-

able. The House Republicans, by contrast, have a plan that would quickly turn into a fiasco—but not, of course, until after the next election.

He then goes on to say:

... Senate Democrats have a plan that is sensible and workable, but House Republicans surely won't agree to anything resembling that plan. Senate Democrats might be bullied into something resembling the House Republican plan, but since that plan is completely unworkable, that's the same as getting no drug plan at all—which, I suspect, is what the Republican leaders really want in any case.

We are not going to be bullied into a plan that does not do the job. There is no doubt in my mind. We have a commitment. Our seniors have heard for too long, too many election cycles, that Medicare will cover prescription drugs. I know a lot of seniors are saying nothing will ever change. Yet the prices keep going up, the need for care keeps going up, and the choices the seniors have to make keep getting bigger and bigger and bigger.

We can do better than that. We in the Senate are committed to doing better than that. I urge everyone listening today to engage in this fight with us. There are six drug company lobbyists for every one Member of the Senate. We need the people's voice. We are willing and able and determined to bring a comprehensive Medicare prescription drug bill to the floor of the Senate in July. We urge everyone to get involved in this debate.

There are substantive differences in plans and how they will affect seniors and families. We need to get through the smoke and mirrors and down to the facts, look at comparisons, have honest critiques, and pass a bill that works and makes sense. It is time to completely fulfill the promise of 1965 with the passage of Medicare, and 2002 is a great time to do it. It is long overdue.

I invite people to engage in this debate and make sure the best proposal passes and passes quickly. I suggest reviewing [www.fairdrugprices.org](http://www.fairdrugprices.org) and get involved.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. REED). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TERRORISM RISK INSURANCE ACT OF 2002—Continued

The PRESIDING OFFICER. The Chair notes that the time between the two Senators is equally divided.

Mr. GRAMM. Mr. President, we are coming down to a vote at 4:45. I intend to vote no. I don't expect many other Members to vote no, nor am I encouraging people to vote no. But I want to try to explain the problem I have and explain a little bit of the history of this bill so people know where we are coming from.

I think we have about 14 minutes each. Is that right?

The PRESIDING OFFICER. The Senator from Texas has approximately 10 minutes 30 seconds.

Mr. GRAMM. Mr. President, when terrorism insurance was first proposed, the whole logic was that we were going to have the Federal Government step in to help provide insurance coverage and pay claims when there was a cataclysmic event.

When we first started debating this issue in the House of Representatives, insurance companies had to pay back money that was paid by the Federal Government over \$1 billion. When we debated it in the Senate, we concluded that if it had to be paid back, you were not providing the assistance we sought, but we were sure when we initially debated this subject we had a very substantial amount of money that the companies had to pay before the Federal Government got in the business of having to pay. The amount the companies have to pay before the Federal Government starts paying is called "retention."

When we first started to debate this issue, and when we reached an initial bipartisan agreement in October, I believe it was that companies were required to pay \$10 billion before the Federal Government came in to pay claims. Above that \$10 billion, the Federal Government was to pay 90 percent of the next \$90 billion. The logic of the retention—the amount that the insurance companies had to pay—was basically, No. 1, that the insurance companies are selling this insurance and collecting premiums. The fact that they would cover the initial cost was immidentally logical.

No. 2, we wanted to protect the taxpayer unless there was a cataclysmic event.

Thirdly, the whole objective of our bill was to try to encourage the development of reinsurance and to encourage syndication so that no one insurance company would write an insurance policy on the Empire State Building. There might be a lead insurance company that would write the policy. But then they would syndicate and sell off part of the insurance to other companies, or they would simply go into a reinsurance market and sell all or part of the policy—the idea being to distribute the risk not just throughout the United States but throughout the world.

When we reached an agreement in October, the companies had to pay \$10 billion before the taxpayer got involved. Many Members of the Senate thought that was too low. We reached an agreement. We announced it, and the White House signed off on it.

We also protected victims of terrorism from punitive damages and predatory losses.

In December, we still had not passed a bill. We were 3 weeks away from 80 percent of the insurance policies in America expiring. There was a belief

that if we did pass a bill right at the end of the session there would not be enough time for syndication and reinsurance to develop. So the bill that was written at that time had an individual company retention but not a \$10 billion retention.

This is still very much confused by the media in writing on this subject.

The net result is that the biggest insurance company in America—AIG—has a retention of about \$1.6 billion. The smallest insurance companies in the country might have a retention that would be in the tens of millions. That means that is what they have to pay before the taxpayer pays.

That has several problems.

No. 1, companies have already collected premiums. Premiums have gone up. They had to go up because risks have gone up. But premiums have gone up, and insurance companies have collected these premiums. When they wrote the insurance policy, they had no taxpayer backup whatsoever. Now we are coming along, and instead of having \$10 billion that the industry has to pay before the taxpayer pays, in some cases some insurance companies will have to pay only millions of dollars before the taxpayer steps in and pays.

It doesn't take a great knowledge of economics or arithmetic to figure out that when people wrote policies and collected premiums based on having to pay the full cost if a claim was made and the Government is going to come in and pay 90 percent of the claim above only a few million dollars in the case of some insurance companies, that you are going to create a very substantial shifting of wealth from the taxpayers to the people who have written the policies, if there is a major claim. And, at a minimum, you are shifting a substantial amount of risk from the insurance company to the Federal Government.

I am one of a handful of Members of the Senate who thought we ought to do a bill. In fact, at one point, I was one of the few people willing to stand up and say so.

I have always believed if we were going to do a bill we had to have a substantial industry retention so the people collecting the premiums paid first, and also so that we had an incentive for industry to syndicate to spread the risk, and an incentive to develop reinsurance.

I am very concerned that the bill, as it is now written, represents an unwarranted shift of risk from the insurance companies to the taxpayer. If there is, God forbid, another attack, it will mean the shifting of billions of dollars from the taxpayer to the insurance companies.

But the biggest concern I have is not about taxpayer risk or about the unintended shift of billions of dollars to private interests from the taxpayer. The biggest concern I have is that by reducing the amount that the companies have to pay before the Government

pays, that we are going to reduce the incentive that companies will have to spread the risk to syndicate, to develop reinsurance, and that 2 years from now, when the bill expires, none of these secondary markets will have developed, the Government will have become the primary risk taker, and we will end up extending this indefinitely.

In World War II we had a Government program, but we knew World War II was going to end with the signing of a peace treaty. This war is going to end with the death of some terrorist, and we are not going to know he was the last terrorist in the world.

So I am very concerned that unless we raise this retention level, unless we make companies that have collected the premiums pay a substantial amount of money before the taxpayer pays, that we are never going to get the Government out of this area of insurance.

Our whole focus from the beginning—in fact, I have never heard a Democrat or Republican suggest otherwise—has been that this was a bridge to help us get through this period of great uncertainty so that ultimately these risks could be built into insurance rates.

That is where we are. I think we are making a mistake by not requiring the people who collected these premiums to pay a substantial amount of money first. I think we are planting the seeds to get Government permanently in the insurance business.

Something happened, and it is perfectly reasonable that it would happen. When we were talking about the industry having to pay \$10 billion before the taxpayer paid, the industry was delighted that they were going to have the backup of the taxpayer. But in December it was suggested that the industry could pay tens of millions of dollars before the taxpayer paid. And even though all those insurance policies expired on January 1, many of them were rewritten at substantially higher premiums. I am not complaining. Premiums have to go up because risks have gone up. But now to suggest that we should not make the industry pay up to \$10 billion before the taxpayer pays, I think, is basically going back on the deal in which we engaged.

I do not doubt that if I were in the insurance business I would probably want the Government to pay the whole claim, and I would want to collect the policy, I would want to collect the premiums. But I think we have a gross overreach here that puts the taxpayer at risk at an unjustifiable level.

Finally, and most importantly, I am concerned that the incentives we are creating here will induce companies not to syndicate, not to spread risk as much as they would; and, as a result, the Government will pay sooner. I am worried that secondary markets will not develop and the Government will not be able to get out of the insurance business. And I am very much concerned that 2 years from now we will be

right back here, and the argument will be made that there is no syndication, that there is no secondary market, and, therefore, the Government has to stay in the terrorism insurance business.

We can fix that by changing this bill. We have not done that. That is why I am opposed to it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, if I may, I want to engage, before some final comments, in a couple of housekeeping matters.

#### AMENDMENT NO. 3862

First, Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is amendment No. 3862.

Mr. DODD. Mr. President, I make a point of order that the Specter amendment is not germane post cloture.

The PRESIDING OFFICER. The point of order is well taken and the amendment falls.

#### AMENDMENTS NOS. 3872, 3874 THROUGH 3879, 3881, 3883, 3884, 3885 THROUGH 3887, 3889, AND 3890

Mr. DODD. Mr. President, I ask unanimous consent it be in order for the Senate to consider en bloc the following amendments; that the amendments be considered and agreed to en bloc, and the motion to reconsider be laid upon the table en bloc, without further intervening action or debate: amendments Nos. 3872, 3874 through 3879, 3881, 3883, 3884, 3885 through 3887, 3889, and 3890.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Will the Senator yield?

Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Did the Senator include 3884?

Mr. DODD. I did.

Mr. GRAMM. I would just like to say that we do not have any objection. These are amendments that were agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 3872, 3874 through 3879, 3881, 3883, 3884, 3885 through 3887, 3889, and 3890) were agreed to, as follows:

#### AMENDMENT NO. 3872

On page 5, line 3, insert "or vessel" after "air carrier".

#### AMENDMENT NO. 3874

On page 9, line 19, strike "the period" and all that follows through line 22 and insert the following: "the 1-year period beginning on the date of enactment of this Act; and".

#### AMENDMENT NO. 3875

On page 10, beginning on line 2, strike "the period" and all that follows through "2003" on line 3, and insert "the 1-year period beginning on the day after the date of expiration of the period described in subparagraph (A)".

#### AMENDMENT NO. 3876

On page 10, line 17, insert before the semicolon "including workers' compensation insurance".

## AMENDMENT NO. 3877

On page 11, line 4, strike the period and insert the following: “; or  
“(iii) financial guaranty insurance.”.

## AMENDMENT NO. 3878

On page 11, line 14, strike “all States” and insert “the several States, and includes the territorial sea”.

## AMENDMENT NO. 3879

On page 11, between lines 14 and 15, insert the following:

- (14) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date on this Act, such day shall be construed—  
(A) to begin at 12:01 a.m. on that date; and  
(B) to end at midnight on that date.

## AMENDMENT NO. 3881

On page 24, line 7, strike “2003” and insert “the second year of the Program, if the Program is extended in accordance with this section”.

## AMENDMENT NO. 3883

On page 21, strike lines 1 through page 22, line 14 and insert the following:

(1) IN GENERAL.—The Program shall terminate 1 year after the date of enactment of this Act, unless the Secretary—

(A) determines, after considering the report and finding required by this section, that the Program should be extended for one additional year, beginning on the day after the date of expiration of the initial 1-year period of the Program; and

(B) promptly notifies the Congress of such determination and the reasons therefor.

(2) DETERMINATION FINAL.—The determination of the Secretary under paragraph (1) shall be final, and shall not be subject to judicial review.

(3) TERMINATION AFTER EXTENSION.—If the Program is extended under paragraph (1), the Program shall terminate 1 year after the date of commencement of such extension period.

(b) REPORT TO CONGRESS.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the Program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates 1 year after the date of enactment of this Act.

## AMENDMENT NO. 3884

On page 12, strike lines 15 through 19 and insert the following: “of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy; and

“(B) in the case of any policy that is issued before the date of enactment of this Act, as a line item described in subparagraph (A), not”.

## AMENDMENT NO. 3885

On page 15, line 3, strike “the period” and all that follows through line 6, and insert “the 1-year period beginning on the date of enactment of this Act—”.

## AMENDMENT NO. 3886

On page 16, beginning on line 4, strike “the period” and all that follows through “2003” on line 6, and insert the following: “the 1-year period beginning on the day after the date of expiration of the period described in subparagraph (A)”.

## AMENDMENT NO. 3887

On page 16, between lines 19 and 20, insert the following:

(D) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government for those insured losses under any other Federal insurance or reinsurance program.

## AMENDMENT NO. 3889

On page 23, line 19, insert “5(d),” before “and”.

## AMENDMENT NO. 3890

On page 23, line 25, strike “10(b)” and insert “9(b)”.

Mr. DODD. I thank my colleague from Texas.

Mr. President, let me point out, one of these amendments is an amendment that was raised by our colleague from Florida, Senator BILL NELSON. I thank him for his work on that amendment. I appreciate the willingness of the Senator from Texas to agree to that change we made in the legislation.

Mr. President, if I may, I would like to speak on this bill in the few remaining minutes we have before the vote. This bill has been 9 months in the process.

I would like to begin by thanking my good friend from Texas. We began together on this legislation a long time ago, a few weeks after the tragic events of September 11. In fact, I recall, very vividly, my friend from Texas leaning over to me and saying we ought to do something in the area of terrorism insurance, not that we called it that at that particular time, but it was the same idea that is contained in the legislation before the Senate today.

So despite whatever differences we may have at this particular moment, I would like to acknowledge his active involvement with this issue. He is one of the few people who was consistently interested in trying to get something done here over these many months.

It has taken us a long time. This is an arcane subject matter. We are literally doing something we have never done before, at least that I know of.

Back in World War II, for acts of war, the Federal Government acted as an insurance company. But, obviously, we are not duplicating that here. We are trying to provide a temporary backstop, if you will, to allow this market to redevelop over the coming months.

So I thank my colleague from Texas for his involvement, despite the fact he may disagree with the product we are going to be voting on in a few short moments.

I would like to thank the leadership. I thank Senator DASCHLE and Senator REID who have been tremendously helpful in putting this bill together. I

thank Senator LOTT and others who understood the importance of raising this issue. I thank Senator SARBANES, the Chairman of the committee, and Senator CORZINE, who has been tremendously helpful on this. Senator SCHUMER has also been tremendously helpful.

I would also like to thank the 17 members of the minority this morning who voted to invoke cloture. Without their support, we would not be voting on this measure today and moving this process along.

Additionally I would like to express my gratitude to President Bush and Treasury Secretary Paul O'Neill. They were very involved in the last few days in getting support for this particular effort. So I thank all of them.

This is an important moment. This particular proposal or ideas like it have been sought by a very diverse group of people in the country. Organized labor to real estate, insurance groups—small businesses and large—the list is very long of those insurance consumers who have demanded that we act in this area.

And why? Very simply, there is a major problem continuing to grow out there. We have seen it growing every day. There was a headline even today in the local newspaper here in Washington talking about a major problem with the number of mortgage holders, the GMAC Corporation.

We heard the other day from the commercial mortgage-backed security industry, and the some \$7 billion in decline they have experienced in the first quarter. We have a real bottleneck occurring in major construction projects, real estate, and development projects across the country in cities large and small.

Yesterday, in my home State of Connecticut, Simon Konover, a wonderful developer in my State, has a small hotel, not a large one, at Bradley International Airport. And he can get no terrorism insurance. That is not a major development project—it is a small hotel at a regional airport—and he cannot get terrorism insurance at any cost. So this isn't just major development; it is also small projects where, at any cost, you cannot get this product. And if you can get it, it is very costly, as my colleague from Texas has already stated. And I agree with him.

This bill is designed to, one, free up that bottleneck, to get the process moving again.

We will know shortly whether or not what we have done is going to provoke that response. We believe it will. This is a 12-month bill with a possible 12-month extension. It is going to take a Herculean effort to get more than that. Our colleagues believe that 2 years is about what they are willing to try at this particular program. So remember, we are talking about 12 months with a possible extension of 12 more in order to get this moving.

This legislation is critically important for American workers. We hope it

will dampen the tremendous increase that could occur, in the absence of this bill being done, in premium costs. And it is going to make available a product that we think is going to be critically important so that people such as Simon Konover in my State will be able to obtain insurance against terrorist acts. It is going to mean that smaller insurance companies can be involved in this, not just large insurers.

One of the reasons we put retention caps on individual companies is because without doing that you force insolvency upon smaller insurance companies. Consumers would have very limited choices where that product was unavailable, God forbid we do have an event. The idea that insurers are going to go out and gouge their customer base for 1 year with the hopes then of retaining that customer base after this bill expires is unrealistic, in my view.

I have told my colleague from Texas that, as we go into conference, if we can get to conference, I am willing to try to work out something that will at least deal with some of the issues he has raised with the potential problems he sees in the retention area.

On tort reform, the House has significant tort reform. We have some tort reform in this bill. All of us understand we are going to probably come back with some additional limited tort reform. That is the way things work out when you have a conference between the House and the Senate. I am confident that will be the case as well. I hope our colleagues will support this effort.

As I say, it has been 7 months. We are hearing from various groups all across the country that believe this is an important issue to address. We know we are trying to deal with homeland security to protect our personal security from terrorist attack. We also need to be talking about economic security and restoring confidence into this marketplace. This is a product that consumers need and must be made available by the private sector. If we perform our duties today and provide this critical backstop, I believe that it will result in the industry then stepping up to the plate and freeing up this bottleneck I have described in the terrorism insurance area.

There is no guarantee it is going to happen. I can't promise absolutely. But I know this much: If we do nothing, I guarantee you will get skyrocketing premium costs. You may not get this product available to those who need it, and those that are able to obtain the product will pay exorbitantly high premiums for minimal coverage.

We have to conference with the House to work out the differences. I hope at this hour, at this day, we will not walk away from this problem. There are 100 of us here trying to craft legislation. We all bring different ideas to the table. It is not easy to come to a compromise on this kind of an effort, but we have. My hope is that my colleagues will support us, that we will

get the bill done. We can send it to the President, and we will try to resolve the issue this problem has posed for all of us.

#### STATE PREEMPTION

Mrs. BOXER. Mr. President, I recognize the need to move forward on this terrorism insurance bill. I had filed an amendment regarding the state preemption language in this bill. I will not offer that amendment, but I wonder if the Senator from Connecticut will engage in a colloquy with me about that provision.

Mr. DODD. I would be happy to.

Mrs. BOXER. I thank the Senator.

This bill would preempt state law with regard to the prior approval or a waiting period of terrorism risk insurance. Specifically, section 7 states, "rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable."

This language would preempt the law of the State of California and 21 other States where prior approval mechanisms for increases in insurance rates have been put into place to keep insurance companies from gouging consumers.

The bill before us does allow States to invalidate excessive rates after the fact. But it will do nothing for consumers who have already paid too much. Prior approval mechanisms are the only way to protect consumers before sky-high rates go into effect.

I understand that my colleagues who support this legislation want terrorism insurance made available as quickly as possible. And that is the reason for his preemption—to speed up the process. I agree.

So to meet both the need for quick insurance availability and the desire to allow states to review rates for at least some period before they go into effect, I had proposed an amendment to replace the blanket State preemption language in the bill with more narrow language. My amendment would have said that terrorism risk insurance would not be subject to a waiting period greater than 60 days under any State law.

This would allow California and other States to retain oversight for prior approval over egregious increases in terrorism insurance rates while also making sure that the insurance is made available quickly.

Given the number of Americans involved, the taxpayer exposure to risk, and the leverage that insurers will have over consumers, I believe we must allow States to protect consumers. I hope my colleague from Connecticut will be willing to work with me on this.

Mr. DODD. One of the guiding principles of this bill is that, to the extent possible, State insurance law should not be overridden. To that end, the bill respects the role of the State insurance commissioners as the appropriate regulators of policy terms and rates.

Due to the urgency of the problems that currently exist in the marketplace for terrorism coverage, however, the bill requires that once the Federal program is in place, the States must allow rates for terrorism coverage to take effect immediately, without being subject to a preapproval requirement or a waiting period. The States would, of course, retain full authority to disapprove any rates that violate State laws, which are inadequate, unfairly discriminatory, or excessive.

I understand that my colleague from California, Senator BOXER, has some concerns about this provision and its effects. I appreciate her interest in this issue, and I want to assure my colleague that I will work with her as this bill moves to conference to try to address her concerns, and to ensure that this provision is as narrowly crafted as possible.

#### CLARIFICATION OF LEGISLATIVE LANGUAGE

Mr. BROWNBACK. Mr. President, I would like to correct the RECORD on a point that I made during a brief floor discussion between myself and Senator SPECTER.

At the time, I was under the impression, given a previous understanding with the leadership, that my legislative language on the issue of human cloning had been provided to the majority leader. Included in my legislative language is a section that pertains to the patenting of human embryos.

I am now informed that apparently that legislative language was never exchanged.

I apologize for any confusion that this misunderstanding may have caused.

Mrs. FEINSTEIN. Mr. President, I would like to take this time to express my support for the Terrorism Risk Insurance Act.

Exposure to terrorism is not only a threat to our national security, but is also a threat to the United States and global economies. The full extent of insured losses from September 11 has been estimated at \$70 billion.

There is no doubt that these terrorist attacks have resulted in the most catastrophic loss in the history of property and casualty insurance.

Even though the insurance industry committed to pay losses resulting from the attacks, they have indicated a reluctance to continue offering terrorism insurance because the risk of future losses is unknown.

I and my staff have heard from my constituents in California, who have already suffered from this constriction of the terrorism insurance industry.

Some are insurance providers, who have written to say that they are afraid that their companies will not survive if they are forced to endure another terrorist event without a Federal backstop for terrorism reinsurance.

Some are businesses whose premiums have risen so drastically in the past nine months that they too, risk insolvency.

San Francisco's own Golden Gate Bridge, Highway, and Transportation

District, which manages the Golden Gate Bridge, recently had to renew its insurance policy. The new policy costs \$1.1 million per year for \$50 million in coverage which does not include terrorism coverage, despite assertions by Governor Davis last year that the bridge was a target for the terrorist attacks.

Last year's policy cost \$125,000 for \$125 million in coverage, including coverage for damage due to a terrorist act.

This legislation will provide desperately needed stability to the terrorism insurance market.

It provides a Federal backstop so that the industry can have the confidence to issue new policies, and it enables financial services providers to again finance new commercial property acquisitions and construction projects.

This bill also has some important limits on Federal exposure to losses.

First, it is designed to be temporary. The length of the program will be one year, with the option for the Secretary of the Treasury to extend it an additional year.

Second, the bill clarifies that the Federal Government does not bear any responsibility for insurance losses due to punitive damage awards.

Punitive damages awards are issued when a defendant has acted in a willful and malicious manner. I don't believe the American taxpayer should be left holding the bag if such judgments are awarded.

It is my hope that the passage of this legislation will enable the Golden Gate Bridge, Highway, and Transportation District, as well as other, similarly affected, companies and organizations, in California and across the Nation, to obtain the terrorism insurance coverage they need to adequately protect their patrons during these uncertain times.

Mr. DODD. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Connecticut has 2 minutes 10 seconds.

Mr. REID. If the Senator will yield for a unanimous consent request, I ask unanimous consent that the time for the vote be extended for 3 minutes on this side and 3 minutes on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I yield the Senator from Pennsylvania 3 minutes.

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the point of order which was sustained as to Amendment No. 3862, which was my amendment. I had been on the floor awaiting the making of such a point of order on germaneness. I wanted to make a very brief comment; that is, that the amendment which I have provided was germane when it was filed, which was pre-cloture. I understand that post-cloture it is not. I voted for cloture notwithstanding the fact that I knew it would render my amendment non-germane because of my view of the importance of passing this bill.

I wanted to comment briefly on the amendment because it may yet surface in the conference. Senator MCCONNELL had offered an amendment which would have eliminated punitive damages unless there was a criminal conviction. I supplemented that amendment by putting in a provision that it would be a Federal crime for someone to be malicious and disregard the safety of others, contributing to damages or death in the event of a terrorist attack, and also an additional provision for a private right of action so that in the event the prosecuting attorney did not act, that a private citizen could petition the court on the failure or refusal of the Attorney General to act so that would activate a criminal prosecution and provide a basis for punitive damages but, more importantly, to move to an area where there is real responsibility for somebody who acts maliciously, resulting in the death of another person.

Punitive damages doesn't reach real responsibility. Punitive damages, as I amplified earlier today, are seldom granted but, where they are, come out of the pockets of the shareholders. To hold someone liable to go to jail where they are malicious, resulting in someone's death, that is a sanction which means something. That would provide the basis then for a later punitive damage claim.

This may be the basis for action in conference. I wanted to take a brief period of time to explain that provision. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, before I yield to my colleague from New York, I wish to thank several staff people as well—we don't do that enough here—Alex Sternhell and Jessica Byrnes from my own staff. Sarah Kline, Aaron Klein, Steve Kroll, Wayne Abernathy, Stacie Thomas, Ed Pagano, Jim Ryan, Jonathan Aldelstein, Jim Williams, Kate Scheeler, Roger Hollingsworth. I would also like to thank Laura Ayoud with Senate Legislative Counsel for her contribution to this process. We thank all of them for their efforts, the leadership staff as well for their support.

Is Senator CORZINE going to seek any time at all? We have 4 minutes remaining on this side; is that correct?

The PRESIDING OFFICER. Four minutes twenty seconds.

Mr. DODD. I yield 3 minutes to my colleague from New York and then 1 minute to my colleague from New Jersey.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Let me, once again, thank the Senator from Connecticut for his leadership and steadfastness, his sensibleness. I also thank my colleague from Texas who has been, even though he didn't get his way on everything, a very constructive force in moving this bill forward. I appreciate that.

I approach this in a few ways. I am delighted that the single company cap,

so vital to making this legislation work, which I spent a lot of time working on in the early days, has stayed in the bill. I am particularly grateful that the city I represent, New York, and its metropolitan area, will have this bill because terrorism has put a crimp in our economy the way it has in no other city in terms of higher costs, lost new projects, and delays in existing projects.

This legislation is probably as vital to New York as just about anything we will do with the exception maybe of the generosity that this body and the other have shown to New York in terms of the funding we have received.

Most importantly, this has been a test, a test of whether we can meet the post 9-11 challenge. It will be like many tests in the future. First, government is going to have to play a larger role. The ideology that anything the government does is bad and we must shrink it at all cost is over in many areas. The private sector could not solve this problem alone, plain and simple. That is why we came to bipartisan agreement that the Federal Government's role should be increased. We can quibble about how much and where, but it was definitely needed. That will be repeated in years to come.

Second, this is a problem where the legislature stepped to the plate. The bottom line is this: There was not clamoring from the average citizen for this proposal. Yes, some real estate developers, some bankers, some insurance companies, but not much else. Given the division we had here, it would have been easy to forget it.

But we did step to the plate. We are passing what I consider to be not the ideal bill—my ideal bill would have had the Federal Government write all terrorist insurance, something I worked on with Treasury Secretary O'Neill should, God forbid, the next attack occur—but it is a good product, it is a reasonable product, and it does the job in the short term.

Over and over, we are going to be asked as a government to step forward and solve a problem before it gets out of control without the public impugning us to do it. That will occur on an issue such as nuclear security. That will occur on an issue such as making our health supply system better. It is the kind of challenge we face in the post 9-11 world: Real, but anticipatory, dealing with a problem that could get worse and spiral out of control if we do not act, and we have to show the leadership because it will not be our constituents pushing us.

I salute the Senator from Connecticut, the Senator from Texas, the Senator from New Jersey, and all my colleagues who worked so hard on this bill.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I second the salute of the Senator from Connecticut. This is a tremendous step

forward in protecting our economy, not protecting insurance companies. This is about jobs. It is about making sure we have economic growth going forward. It is a bridge. It is not a long-term creation of an insurance function by the Government, but it is a response that the Government needs to build a bridge to a better marketplace and a more secure economy. This will make a difference to all of America's economic growth, not just regionally.

I am really quite pleased we are going to have a chance to vote in a minute to do something that will move our economy forward in the post-September 11 period.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, the majority leader will be here shortly. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 252, H.R. 3210, the House-passed terrorism insurance bill; that all after the enacting clause be stricken; that the text of S. 2600, as amended, if amended, be inserted in lieu thereof; that the bill be read a third time and the Senate vote on passage of the bill; that upon passage, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate, without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. We might come to a point where we are ready to do this. We are not ready to do it now, and I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announced that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. NICKLES. I announced that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mr. MILLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 84, nays 14, as follows:

[Rollcall Vote No. 157 Leg.]

#### YEAS—84

Akaka	Dodd	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCaïn
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Reed
Breaux	Graham	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Byrd	Harkin	Sarbanes
Cantwell	Hatch	Schumer
Carnahan	Hollings	Shelby
Carper	Hutchinson	Smith (OR)
Chafee	Inhofe	Snowe
Cleland	Inouye	Specter
Clinton	Jeffords	Stabenow
Cochran	Johnson	Stevens
Collins	Kennedy	Thompson
Conrad	Kohl	Thurmond
Corzine	Landrieu	Torricelli
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wellstone
DeWine	Lincoln	Wyden

#### NAYS—14

Burns	Grassley	Santorum
Campbell	Hutchison	Sessions
Craig	Kyl	Smith (NH)
Enzi	McConnell	Thomas
Gramm	Nickles	

#### NOT VOTING—2

Helms Kerry

The bill (S. 2600), as amended, was passed as follows:

#### S. 2600

*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 "Terrorism Risk Insurance Act of 2002".

#### SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(2) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this Act is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

#### SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term "act of terrorism" means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be a violent act or an act that is dangerous to—

- (I) human life;
- (II) property; or
- (III) infrastructure;

(ii) to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel described in paragraph (3)(A)(ii); and

(iii) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION.—No act or event shall be certified by the Secretary as an act of terrorism if—

(i) the act or event is committed in the course of a war declared by the Congress; or

(ii) losses resulting from the act or event, in the aggregate, do not exceed \$5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act or event as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(2) BUSINESS INTERRUPTION COVERAGE.—The term "business interruption coverage"—

(A) means coverage of losses for temporary relocation expenses and ongoing expenses, including ordinary wages, where—



(i) there is physical damage to the business premises of such magnitude that the business cannot open for business;

(ii) there is physical damage to other property that totally prevents customers or employees from gaining access to the business premises; or

(iii) the Federal, State, or local government shuts down an area due to physical or environmental damage, thereby preventing customers or employees from gaining access to the business premises; and

(B) does not include lost profits, other than in the case of a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632) and applicable regulations thereunder) in any case described in clause (i), (ii), or (iii) of subparagraph (A).

(3) **INSURED LOSS.**—The term “insured loss”—

(A) means any loss resulting from an act of terrorism that is covered by primary property and casualty insurance, including business interruption coverage, issued by a participating insurance company, if such loss—

(i) occurs within the United States; or  
(ii) occurs to an air carrier (as defined in section 40102 of title 49, United States Code) or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; and

(B) excludes coverage under any life or health insurance.

(4) **MARKET SHARE.**—

(A) **IN GENERAL.**—The “market share” of a participating insurance company shall be calculated using the total amount of direct written property and casualty insurance premiums for the participating insurance company during the 2-year period preceding the year in which the subject act of terrorism occurred (or during such other period for which adequate data are available, as determined by the Secretary), as a percentage of the aggregate of all such property and casualty insurance premiums industry-wide during that period.

(B) **ADJUSTMENTS.**—The Secretary may adjust the market share of a participating insurance company under subparagraph (A), as necessary to reflect current market participation of that participating insurance company.

(5) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners.

(6) **PARTICIPATING INSURANCE COMPANY.**—The term “participating insurance company” means any insurance company, including any subsidiary or affiliate thereof—

(A) that—  
(i) is licensed or admitted to engage in the business of providing primary insurance in any State, and was so licensed or admitted on September 11, 2001; or

(ii) is not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(B) that receives direct premiums for any type of commercial property and casualty insurance coverage or that, not later than 21 days after the date of enactment of this Act, submits written notification to the Secretary of its intent to participate in the Program with regard to personal lines of property and casualty insurance; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) **PARTICIPATING INSURANCE COMPANY DEDUCTIBLE.**—The term “participating insurance company deductible” means—

(A) a participating insurance company’s market share, multiplied by \$10,000,000,000,

with respect to insured losses resulting from an act of terrorism occurring during the 1-year period beginning on the date of enactment of this Act; and

(B) a participating insurance company’s market share, multiplied by \$15,000,000,000, with respect to insured losses resulting from an act of terrorism occurring during the 1-year period beginning on the day after the date of expiration of the period described in subparagraph (A), if the Program is extended in accordance with section 6.

(8) **PERSON.**—The term “person” means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(9) **PROGRAM.**—The term “Program” means the Terrorism Insured Loss Shared Compensation Program established by this Act.

(10) **PROPERTY AND CASUALTY INSURANCE.**—The term “property and casualty insurance”—

(A) means commercial lines of property and casualty insurance, including workers’ compensation insurance;

(B) includes personal lines of property and casualty insurance, if a notification is made in accordance with paragraph (6)(B); and

(C) does not include—

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(ii) private mortgage insurance, as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901); or

(iii) financial guaranty insurance.

(11) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(12) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and each of the United States Virgin Islands.

(13) **UNITED STATES.**—The term “United States” means the several States, and includes the territorial sea of the United States.

(14) **RULE OF CONSTRUCTION FOR DATES.**—With respect to any reference to a date in this Act, such day shall be construed—

(A) to begin at 12:01 a.m. on that date; and

(B) to end at midnight on that date.

#### **SEC. 4. TERRORISM INSURED LOSS SHARED COMPENSATION PROGRAM.**

(a) **ESTABLISHMENT OF PROGRAM.**—

(1) **IN GENERAL.**—There is established in the Department of the Treasury the Terrorism Insured Loss Shared Compensation Program.

(2) **AUTHORITY OF THE SECRETARY.**—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(b) **CONDITIONS FOR FEDERAL PAYMENTS.**—No payment may be made by the Secretary under subsection (e), unless—

(1) a person that suffers an insured loss, or a person acting on behalf of that person, files a claim with a participating insurance company;

(2) the participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

(A) in the case of any policy covering an insured loss that is issued on or after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy; and

(B) in the case of any policy that is issued before the date of enactment of this Act, as a line item described in subparagraph (A), not later than 90 days after that date of enactment;

(3) the participating insurance company processes the claim for the insured loss in accordance with its standard business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the participating insurance company submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written verification and certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) **MANDATORY PARTICIPATION; MANDATORY AVAILABILITY.**—Each insurance company that meets the definition of a participating insurance company under section 3—

(1) shall participate in the Program;

(2) shall make available in all of its property and casualty insurance policies (in all of its participating lines), coverage for insured losses; and

(3) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(d) **PARTICIPATION BY SELF INSURED ENTITIES.**—

(1) **DETERMINATION BY THE SECRETARY.**—The Secretary may, in consultation with the NAIC, establish procedures to allow participation in the Program by municipalities and other governmental or quasi-governmental entities (and by any other entity, as the Secretary deems appropriate) operating through self insurance arrangements that were in existence on September 11, 2001, but only if the Secretary makes a determination with regard to participation by any such entity before the occurrence of an act of terrorism in which the entity incurs an insured loss.

(2) **PARTICIPATION.**—If the Secretary makes a determination to allow an entity described in paragraph (1) to participate in the Program, all reports, conditions, requirements, and standards established by this Act for participating insurance companies shall apply to any such entity, as determined to be appropriate by the Secretary.

(e) **SHARED INSURANCE LOSS COVERAGE.**—

(1) **FEDERAL SHARE.**—

(A) **IN GENERAL.**—Subject to the cap on liability under paragraph (2) and the limitation under paragraph (6), the Federal share of compensation under the Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the 1-year period beginning on the date of enactment of this Act—

(i) shall be equal to 80 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required to be paid for those insured losses; and

(II) does not exceed \$10,000,000,000; and

(ii) shall be equal to 90 percent of that portion of the amount of aggregate insured losses that—

(I) exceeds the participating insurance company deductibles required to be paid for those insured losses; and

(II) exceeds \$10,000,000,000.

(B) **EXTENSION PERIOD.**—If the Program is extended in accordance with section 6, the Federal share of compensation under the

Program to be paid by the Secretary for insured losses resulting from an act of terrorism occurring during the 1-year period beginning on the day after the date of expiration of the period described in subparagraph (A), shall be calculated in accordance with clauses (i) and (ii) of subparagraph (A), subject to the cap on liability in paragraph (2) and the limitation under paragraph (6).

(C) **PRO RATA SHARE.**—If, during the period described in subparagraph (A) (or during the period described in subparagraph (B), if the Program is extended in accordance with section 6), the aggregate insured losses for that period exceed \$10,000,000,000, the Secretary shall determine the pro rata share for each participating insurance company of the Federal share of compensation for insured losses calculated under subparagraph (A).

(D) **PROHIBITION ON DUPLICATIVE COMPENSATION.**—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government for those insured losses under any other Federal insurance or reinsurance program.

(2) **CAP ON ANNUAL LIABILITY.**—Notwithstanding paragraph (1), or any other provision of Federal or State law, if the aggregate insured losses exceed \$100,000,000,000 during any period referred to in subparagraph (A) or (B) of paragraph (1)—

(A) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds \$100,000,000,000; and

(B) participating insurance companies shall not be liable for the payment of any portion of the amount that exceeds \$100,000,000,000.

(3) **NOTICE TO CONGRESS.**—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 in any period described in paragraph (1), and the Congress shall determine the procedures for and the source of any such excess payments.

(4) **FINAL NETTING.**—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) **DETERMINATIONS FINAL.**—Any determination of the Secretary under this subsection shall be final, and shall not be subject to judicial review.

(6) **IN-FORCE REINSURANCE AGREEMENTS.**—For policies covered by reinsurance contracts in force on the date of enactment of this Act, until the in-force reinsurance contract is renewed, amended, or has reached its 1-year anniversary date, any Federal share of compensation due to a participating insurance company for insured losses during the effective period of the Program shall be shared—

(A) with all reinsurance companies to which the participating insurance company has ceded some share of the insured loss pursuant to an in-force reinsurance contract; and

(B) in a manner that distributes the Federal share of compensation for insured losses between the participating insurance company and the reinsurance company or companies in the same proportion as the insured losses would have been distributed if the Program did not exist.

#### SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) **GENERAL AUTHORITY.**—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to implement the Program.

(b) **INTERIM RULES AND PROCEDURES.**—The Secretary shall issue interim final rules or procedures specifying the manner in which—

(1) participating insurance companies may file, verify, and certify claims under the Program;

(2) the Secretary shall publish or otherwise publicly announce the applicable percentage of insured losses that is the responsibility of participating insurance companies and the percentage that is the responsibility of the Federal Government under the Program;

(3) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual aggregate insured losses;

(4) the Secretary may, at any time, seek repayment from or reimburse any participating insurance company, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions contained in section 4;

(5) each participating insurance company that incurs insured losses shall pay its pro rata share of insured losses, in accordance with section 4; and

(6) the Secretary will determine any final netting of payments for actual insured losses under the Program, including payments owed to the Federal Government from any participating insurance company and any Federal share of compensation for insured losses owed to any participating insurance company, to effectuate the insured loss sharing provisions contained in section 4.

(c) **SUBROGATION RIGHTS.**—The United States shall have the right of subrogation with respect to any payment made by the United States under the Program.

(d) **CONTRACTS FOR SERVICES.**—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) **CIVIL PENALTIES.**—The Secretary may assess civil money penalties for violations of this Act or any rule, regulation, or order issued by the Secretary under this Act relating to the submission of false or misleading information for purposes of the Program, or any failure to repay any amount required to be reimbursed under regulations or procedures described in section 5(b). The authority granted under this subsection shall continue during any period in which the Secretary's authority under section 6(d) is in effect.

#### SEC. 6. TERMINATION OF PROGRAM; DISCRETIONARY EXTENSION.

(a) **TERMINATION OF PROGRAM.**—

(1) **IN GENERAL.**—The Program shall terminate 1 year after the date of enactment of this Act, unless the Secretary—

(A) determines, after considering the report and finding required by this section, that the Program should be extended for one additional year, beginning on the day after the date of expiration of the initial 1-year period of the Program; and

(B) promptly notifies the Congress of such determination and the reasons therefor.

(2) **DETERMINATION FINAL.**—The determination of the Secretary under paragraph (1) shall be final, and shall not be subject to judicial review.

(3) **TERMINATION AFTER EXTENSION.**—If the Program is extended under paragraph (1), the Program shall terminate 1 year after the date of commencement of such extension period.

(b) **REPORT TO CONGRESS.**—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to Congress—

(1) regarding—

(A) the availability of insurance coverage for acts of terrorism;

(B) the affordability of such coverage, including the effect of such coverage on premiums; and

(C) the capacity of the insurance industry to absorb future losses resulting from acts of terrorism, taking into account the profitability of the insurance industry; and

(2) that considers—

(A) the impact of the Program on each of the factors described in paragraph (1); and

(B) the probable impact on such factors and on the United States economy if the Program terminates 1 year after the date of enactment of this Act.

(c) **FINDING REQUIRED.**—A determination under subsection (a) to extend the Program shall be based on a finding by the Secretary that—

(1) widespread market uncertainties continue to disrupt the ability of insurance companies to price insurance coverage for losses resulting from acts of terrorism, thereby resulting in the continuing unavailability of affordable insurance for consumers; and

(2) extending the Program for an additional year would likely encourage economic stabilization and facilitate a transition to a viable market for private terrorism risk insurance.

(d) **CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.**—Following the termination of the Program under subsection (a), the Secretary may take such actions as may be necessary to ensure payment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this Act, in accordance with the provisions of section 4 and regulations promulgated thereunder.

(e) **REPEAL; SAVINGS CLAUSE.**—This Act is repealed at midnight on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (d) of this section and sections 4(e)(4), 4(e)(5), 5(a)(1), 5(c), 5(d), and 5(e) (as in effect on the day before the date of such repeal), and applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (d) of this section is in effect; or

(2) to prevent the availability of funding under section 9(b) during any period in which the authority of the Secretary under subsection (d) of this section is in effect.

(f) **SENSE OF THE CONGRESS.**—It is the sense of the Congress that the Secretary should make any determination under subsection (a) in sufficient time to enable participating insurance companies to include coverage for acts of terrorism in their policies for the second year of the Program, if the Program is extended in accordance with this section.

(g) **STUDY AND REPORT ON SCOPE OF THE PROGRAM.**—

(1) **STUDY.**—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage.

(2) **REPORT.**—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

(h) **REPORTS REGARDING TERRORISM RISK INSURANCE PREMIUMS.**—

(1) **REPORT TO THE NAIC.**—Beginning 6 months after the date of enactment of this Act, and every 6 months thereafter, each participating insurance company shall submit a report to the NAIC that states the premium rates charged by that participating insurance company during the preceding 6-month period for insured losses covered by



the Program, and includes an explanation of and justification for those rates.

(2) **REPORTS FORWARDED.**—The NAIC shall promptly forward copies of each report submitted under paragraph (1) to the Secretary, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the Comptroller General of the United States.

(3) **AGENCY REPORTS TO CONGRESS.**—

(A) **IN GENERAL.**—The Secretary, the Secretary of Commerce, and the Chairman of the Federal Trade Commission shall submit joint reports to Congress and the Comptroller General of the United States summarizing and evaluating the reports forwarded under paragraph (2).

(B) **TIMING.**—The reports required under subparagraph (A) shall be submitted—

(i) 9 months after the date of enactment of this Act; and

(ii) 12 months after the date of submission of the first report under clause (i).

(4) **GAO EVALUATION AND REPORT.**—

(A) **EVALUATION.**—The Comptroller General of the United States shall evaluate each report submitted under paragraph (3), and upon request, the Secretary, the Secretary of Commerce, the Chairman of the Federal Trade Commission, and the NAIC shall provide to the Comptroller all documents, records, and any other information that the Comptroller deems necessary to carry out such evaluation.

(B) **REPORT TO CONGRESS.**—Not later than 90 days after receipt of each report submitted under paragraph (3), the Comptroller General of the United States shall submit to Congress a report of the evaluation required by subparagraph (A).

#### **SEC. 7. PRESERVATION OF STATE LAW.**

Nothing in this Act shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any participating insurance company or other person—

(1) except as specifically provided in this Act; and

(2) except that—

(A) the definition of the term “act of terrorism” in section 3 shall be the exclusive definition of that term for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this Act;

(B) during the period beginning on the date of enactment of this Act and ending at midnight on December 31, 2002, rates for terrorism risk insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period, under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 6 (including any period during which the authority of the Secretary under section 6(d) is in effect), books and records of any participating insurance company that are relevant to the Program shall be provided, or caused to be provided, to the Secretary or the designee of the Secretary, upon request by the Secretary or such designee, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

#### **SEC. 8. SENSE OF THE CONGRESS REGARDING CAPACITY BUILDING.**

It is the sense of the Congress that the insurance industry should build capacity and aggregate risk to provide affordable property

and casualty insurance coverage for terrorism risk.

#### **SEC. 9. AUTHORIZATION OF APPROPRIATIONS; PAYMENT AUTHORITY.**

(a) **ADMINISTRATIVE EXPENSES.**—There are authorized to be appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary for administrative expenses of the Program, to remain available until expended.

(b) **PAYMENT AUTHORITY.**—This Act constitutes payment authority in advance of appropriation Acts, and represents the obligation of the Federal Government to provide for the Federal share of compensation for insured losses under the Program.

#### **SEC. 10. PROCEDURES FOR CIVIL ACTIONS.**

(a) **FEDERAL CAUSE OF ACTION.**—

(1) **IN GENERAL.**—There shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for claims for such property damage, personal injury, or death, except as provided in subsection (d).

(2) **PREEMPTION OF STATE ACTIONS.**—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (d).

(b) **GOVERNING LAW.**—The substantive law for decision in an action described in subsection (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined pursuant to paragraph (1), is inconsistent with or otherwise preempted by Federal law.

(c) **PUNITIVE DAMAGES.**—Any amounts awarded in a civil action described in subsection (a)(1) that are attributable to punitive damages shall not count as insured losses for purposes of this Act.

(d) **CLAIMS AGAINST TERRORISTS.**—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(e) **EFFECTIVE PERIOD.**—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including, if applicable, any extension period provided for under section 6.

#### **SEC. 11. SATISFACTION OF JUDGMENTS FROM FROZEN ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(b) **PRESIDENTIAL WAIVER.**—

(1) **IN GENERAL.**—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) **EXCEPTION.**—A waiver under this subsection shall not apply to—

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any non-diplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(c) **SPECIAL RULE FOR CASES AGAINST IRAN.**—Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386; 114 Stat. 1542) is amended—

(1) in subsection (a)(2)(A)(ii), by inserting after “July 27, 2000” the following: “or before October 28, 2000.”;

(2) in subsection (b)(2)(B), by inserting after “the date of enactment of this Act” the following: “(less amounts therein as to which the United States has an interest in subrogation pursuant to subsection (c) arising prior to the date of entry of the judgment or judgments to be satisfied in whole or in part hereunder).”;

(3) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(4) by inserting after subsection (c) the following new subsection (d):

“(d) **DISTRIBUTION OF FOREIGN MILITARY SALES FUNDS INADEQUATE TO SATISFY FULL AMOUNT OF COMPENSATORY AWARDS AGAINST IRAN.**—

“(1)(A) In the event that the Secretary determines that the amounts available to be paid under subsection (b)(2) are inadequate to pay the entire amount of compensatory damages awarded in judgments issued as of the date of the enactment of this subsection in cases identified in subsection (a)(2)(A), the Secretary shall, not later than 60 days after such date, make payment from the account specified in subsection (b)(2) to each party to which such judgment has been issued a share of the amounts in that account which are not subject to subrogation to the United States under this Act.

“(B) The amount so paid to each such person shall be calculated by the proportion that the amount of compensatory damages awarded in a judgment issued to that particular person bears to the total amount of all compensatory damages awarded to all persons to whom judgments have been issued in cases identified in subsection (a)(2)(A) as of the date referred to in subparagraph (A).

“(2) Nothing herein shall bar, or require delay in, enforcement of any judgment to which this subsection applies under any procedure or against assets otherwise available under this section or under any other provision of law.

“(3) Any person receiving less than the full amount of compensatory damages awarded to that party in judgments to which this subsection applies shall not be required to make the election set forth in subsection (a)(2)(C) in order to qualify for payment hereunder.”.

(d) **DEFINITIONS.**—In this section:

(1) The term “terrorist party” means a terrorist, a terrorist organization, or a foreign

state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(2) The term "blocked asset" means any asset seized or frozen by the United States in accordance with law, or otherwise held by the United States without claim of ownership by the United States.

(3) The term "property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" and the term "asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

**THE PRESIDING OFFICER.** The majority leader.

**Mr. DASCHLE.** Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

**Mr. NELSON** of Florida. Mr. President, I voted today for passage of the Dodd-Schumer terrorism insurance bill. While it is not perfect, it provides temporary backstop to allow the private insurance marketplace to adjust to the new threat of terrorist attacks. Because I had serious concerns about a lack of consumer protection in the original bill, I offered two amendments, one to guard against price gouging, the other requiring the industry to separately disclose to policyholders the amount of premium due to terrorism risk. The first amendment was rejected by the Senate June 13. But the disclosure provision was added to the bill today. This provision gives regulators an essential tool to safeguard against excessive price hikes, and consumers more information upon which to base purchasing decisions.

**Mr. SARBANES.** Mr. President, I want to take this opportunity to express my appreciation to my colleague, Senator DODD for his efforts to move this bill along. We have just completed the Banking Committee's markup of the Public Company Accounting Reform and Investor Protection Act of 2002, which the committee reported favorably by a vote of 17-4. Returning to the matter pending before us, I simply want to acknowledge that the Senate has taken a considerable step forward in addressing the important issue of terrorism insurance.

The discussion over the last several days has clearly illustrated the dimensions of the problem. Many insurers are excluding coverage of terrorism from the policies they write. In those cases where terrorism insurance is available, it is often unaffordable, and very limited in the scope and amount of coverage.

The fact that so many properties are uninsured or underinsured against the risk of terrorism could have a negative effect on our economy and our recovery

if there were to be another terrorist attack. Insurance plays a vital role in our economy, by allowing businesses and property owners to spread their risks. As the U.S. General Accounting Office noted in a recent report, property owners on their own "lack the ability to spread such risks among themselves the way insurers do." In the event of another attack, many properties would have to absorb any losses themselves, without the support of insurance. As a result, the GAO concluded, "another terrorist attack similar to that experienced on September 11 could have significant economic effects on the marketplace and the public at large." The GAO noted that "These effects could include bankruptcies, layoffs, and loan defaults."

But even in the absence of another attack, the lack of insurance can hinder economic activity. In preparing its recent report, the GAO found that there are examples of "large projects canceling or experiencing delays . . . with a lack of terrorism coverage being cited as a principal contributing factor." This is a drag of economic activity that we can ill afford.

Most industry observers are of the opinion that, given time, the insurance industry will develop the capacity and the experience that will allow them to underwrite the terrorist risk. However, those conditions do not exist today. In the interim, a Federal reinsurance backstop of limited duration would give the insurance markets the necessary time to stabilize.

I know that there are still many steps between now and final enactment of the legislation. We look forward to continuing to work with the administration on this issue, as we have done since shortly after the attacks. Again, I want to underscore the importance of this legislation and of the actions that the Senate has taken today to move it forward.

#### VOTE EXPLANATION

• **Mr. KERRY.** Mr. President, due to a longstanding commitment I was necessarily absent for the vote on cloture on the Terrorism Reinsurance bill, S. 2600, and on final passage of the terrorism reinsurance bill. Although my votes would not have affected the outcome, had I been present, I would have voted for cloture on the bill and for final passage.●

#### MARITIME TRANSPORTATION ANTITERRORISM ACT OF 2002

**Mr. DASCHLE.** Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives with respect to S. 1214, the port security bill.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House insist upon its amendment to the bill (S. 1214) entitled "An Act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater se-

curity for United States seaports, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered*, That the following Members be the managers of the conference on the part of the House:

From the Committee on Transportation and Infrastructure, for consideration of the Senate bill and the House amendment, and modifications committed to conference: Mr. Young of Alaska, Mr. Coble, Mr. LoBiondo, Mr. Oberstar, and Ms. Brown of Florida.

From the Committee on Ways and Means, for consideration of sections 112 and 115 of the Senate bill, and section 108 of the House amendment, and modifications committed to conference: Mr. Thomas, Mr. Crane, and Mr. Rangel.

**Mr. DASCHLE.** Mr. President, I ask unanimous consent that the Senate disagree to the House amendment, agree to the request for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

There being no objection, the Presiding Officer appointed Mr. HOLLINGS, Mr. INOUE, Mr. KERRY, Mr. BREAUX, Mr. WYDEN, Mr. CLELAND, Mrs. BOXER, Mr. MCCAIN, Mr. STEVENS, Mr. LOTT, Mrs. HUTCHISON, Ms. SNOWE, and Mr. SMITH of Oregon conferees on the part of the Senate; for matters in section 108 of the House amendment and sections 112 and 115 of the Senate bill, Mr. GRAHAM and Mr. GRASSLEY conferees on the part of the Senate.

#### AUCTION REFORM ACT OF 2002

**Mr. DASCHLE.** Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar No. 380, H.R. 4560.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (H.R. 4560) to eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting.

The Senate proceeded to consider the bill.

#### AMENDMENT NO. 3893

**Mr. DASCHLE.** I understand Senators ENSIGN, KERRY, and STEVENS have a substitute amendment at the desk. I ask unanimous consent that the Senate consider and agree to the amendment, the motion to reconsider be laid upon the table, the bill as amended be read three times, passed, the motion to reconsider be laid on the table, and any statements relating thereto be printed in the RECORD without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3893) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Auction Reform Act of 2002".

#### SEC. 2. FINDINGS.

Congress finds the following: