

maybe not even fair. The fact is this has been a good process.

I conclude by saying in fact the process that led to this bill was comprehensive, it was fair, it was bipartisan. I do not think we should use complaints about process as an excuse to vote against proceeding to debate on this bill. We should bring this bill to the floor. We have been through a long, laborious, and a good process. It has gotten us this far.

If anyone would have said to me 2 years ago, 3 years ago, 18 months ago we would have been this far on this bill, I would have said, I do not think so; I do not think we can craft a bill that would be even this close. We have come a long way.

First of all, we owe it to the victims who are still not being compensated, either at all or adequately, to craft this bill and to report a bill. We owe it to the victims to debate this and give it our best efforts on the Senate floor. Too much work has gone into this. We have come too far. We owe it to the workers who will lose their jobs if more companies have to declare bankruptcy or if more companies go out of business. We owe it to those companies, but most of all we owe it to the victims.

So let's bring this bill to the floor. Let's give it the chance it deserves. We have put a great deal of effort in it. Let's do the right thing, bring this bill to the Senate floor.

I thank my colleague from Tennessee for his indulgence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I commend the Senator from Ohio for his comments on the asbestos legislation. This is a time when Americans are concerned about jobs, especially about manufacturing jobs. In the State of Tennessee, as in the State of Ohio, a large number of those jobs are in the automotive industry. About one-third of the manufacturing jobs in Tennessee is in the automotive industry. Making automobiles is a very competitive business. There are companies all over the world making cars. They are putting their assembly plants and their parts suppliers in Ohio and in Tennessee, but they can put them in Germany, South Korea, Mexico, and other places. If costs in manufacturing cars and trucks in America go a little bit higher, then we hear a lot about jobs going overseas.

All Senators who are worried about good manufacturing jobs going overseas, jobs in the automotive industry in Ohio and in Tennessee, should be wanting to come to the Senate floor and raise their hand and say, let's get on with this asbestos legislation because it is slowing down our economy, it is going to hurt the companies that produce the jobs and it is keeping the victims from getting a fair recovery. So I congratulate the Senator from Ohio. This helps Americans, and it is a piece of jobs legislation. I hear about it

from auto parts suppliers. I hear about it, as I am sure the Senator does, from many manufacturers. I thank him for his leadership. I ask unanimous consent to be recognized as in morning business for the purpose of introducing legislation.

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

Mr. ALEXANDER. I thank the Chair.

(The remarks of Mr. ALEXANDER and Mr. CHAMBLISS pertaining to the introduction of S. 2319 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ALEXANDER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE FAIR ACT

Mr. CHAMBLISS. Madam President, I rise today to speak on the need to resolve the crisis in the asbestos litigation.

S. 2290, the Hatch-Frist-Miller FAIR Act of 2004—FAIR, of course, stands for Fairness in Asbestos Injury Resolution Act—is a bill that would solve many of these problems in an expedited fashion.

S. 2290 will secure fair and equitable compensation for asbestos victims who, right now, face uncertainty, delay, and risk in the court system. As things stand today, compensation for asbestos-related injuries is more likely to be determined by where and when your claim is filed and who your lawyer or judge is than by how sick you are.

Under the current system where companies can declare bankruptcy and substantially avoid paying damages, a truly injured victim might recover absolutely nothing for their actual harm, while a claimant with no physical impairment can recover his or her whole claim. That is simply not right.

The FAIR Act would cut down on delays in compensation to asbestos victims. Today, courts are being overwhelmed by a flood of asbestos cases, with some truly ill victims actually dying before they see their day in court. An estimated 300,000 claims are pending; 730,000 individuals have already brought claims; and 60,000 to 100,000 new claims are filed each and every year. However, at least three-quarters or more of current claims are from the unimpaired. Bankruptcies which often result from massive court filings by unimpaired claimants further delay and diminish compensation to truly injured victims.

S. 2290 would save American jobs and preserve pensions. American jobs are being lost because of this broken system. Asbestos-related bankruptcies have led to the direct loss of as many as 60,000 jobs, with each displaced

worker losing up to \$50,000 in average wages and an average of 25 percent of the value of their 401(k) accounts. Moreover, an estimated 423,000 new jobs will not be created because asbestos defendants will have to reduce capital investments by as much as \$33 billion.

The FAIR Act would revive the economy, as asbestos litigation costs are currently wreaking havoc on American business. As approximately 8,400 companies in all industries have been targeted, the cost of capital for American businesses has increased by as much as 14 percent, annual capital investment has gone down \$1.6 billion, and annual economic growth has been slowed by \$2.4 billion. More than 70 American businesses have filed for asbestos-related bankruptcies, 35 of these just since the year 2000.

In sum, S. 2290 will provide fair and timely compensation to asbestos victims and certainly to American workers, retirees, shareholders, and the U.S. economy. Congress has never been more close to resolving the asbestos litigation crisis than it now is with S. 2290.

This bill provides for a privately funded, no-fault national asbestos victims' compensation fund that will step into the shoes of the Federal court system and ensure that individuals who are truly sick receive compensation quickly, fairly, and efficiently. The FAIR Act retains the bipartisan agreement on medical criteria that the Judiciary Committee approved last year. These criteria form the basis of a no-fault victims' compensation fund that will stop the flow of resources to the unimpaired and ensure that the truly ill will be paid quickly and fairly.

S. 2290 contains many improvements made to its predecessor, S. 1125. The new bill reflects several months of intensive negotiations by the stakeholders in this important debate and affirmatively addresses the major issues of concern identified by the stakeholders following the Judiciary Committee approval of the original bill S. 1125.

Let me take a minute to say that as a member of the Judiciary Committee, I have been a party to a lot of the negotiations—certainly not all of them. Chairman HATCH has done a great job of steering the negotiations, but this has been a bipartisan effort.

I take a minute to commend Senators on the other side of the aisle, some who are on the Judiciary Committee and some who are not, including Senator FEINSTEIN, Senator BIDEN, Senator DODD, Senator KOHL, and others, who have been strong proponents of trying to reach a conclusion of this asbestos litigation issue. I don't know how they will vote on the final bill. That is not important to me right now. But it is important they have negotiated in good faith and been a party to the negotiations in a fair and reasonable manner. I commend them for taking part and for their cooperative spirit

as we have gone through these negotiations.

S. 2290 includes revised funding provisions. The new bill establishes a fund that can pay \$114 billion in claims, with an additional \$10 billion in contingent funding available from defendant companies. Money required to go to the fund from defendants and insurers is assured over a period of 27 years. Defendant participants, for example, guarantee their funding obligations through a grant of authority to the administrator of the fund to impose a surcharge in any year where monies received fall short of the annual requirements. S. 2290 also provides up to \$300 million annually in hardship and inequity adjustments that may be granted by the administrator among defendant participants. Money from insurers is front loaded for the early years of the fund where the most stress on the system is expected. Enforcement provisions have been strengthened to help the administrator go after recalcitrant participants.

The new FAIR Act increases compensation going to claimants. Based on the funding now available under S. 2290, claims values have been increased in several disease categories. S. 2290 also now provides for reimbursement for out-of-pocket costs of physical examinations by claimants' physicians as well as costs for x-rays and pulmonary function testing at the lowest level of disease-inflicted claimants or Level I claimants.

S. 2290 establishes a new streamlined administrative structure. Rather than administering claims in the U.S. Court of Federal Claims, as was the case when S. 1125 came out of the Judiciary Committee, the new bill creates a new executive Office of Asbestos Disease Compensation within the Department of Labor, which has 90 years of experience in administering similar compensation programs, to process claims as well as manage the fund. The new administrative structure will be more streamlined, more efficient, less adversarial, and less burdensome on claimants. The program can be effectively run at a fraction of the cost. The application process is faster, is more user friendly, and is fairer to claimants. To further ease the burden on claimants, S. 2290 also establishes a claimant-assistance program. The administrator of the new office will be appointed by the President with the advice and consent of the Senate.

S. 2290 ensures a quick start to processing and paying claims. S. 2290 includes a number of new provisions that ensure the fund will be set up and that processing and payment of claims occurs as quickly as possible. Placement of the claims-handling office within the Department of Labor will utilize DOL's existing infrastructure and experienced personnel to facilitate startup. S. 2290 requires implementation of interim regulations and procedures within 90 days after the bill is enacted to allow the office to begin accepting and

processing claims in short order. Our new bill grants interim authority to an existing Assistant Secretary of the Department of Labor until the new administrator is appointed to avoid potential delays associated with the appointment process.

Lastly, S. 2290 provides for upfront funding, as early as 90 days after date of enactment, from fund participants, as well as increased borrowing authority, to ensure adequate initial funding will be available to fully meet demand. These new provisions are meant to insure that claimants will have speedy access to the fund while stopping any court actions in their tracks; this is to prevent any further, scarce resources from being siphoned away from the truly sick to the unimpaired claimants.

The new FAIR Act ensures that any risk of insufficient funds does not fall on claimants. S. 2290 establishes a fund that can pay \$114 billion in claims, with an additional \$10 billion in contingent funding available from defendant participants. It also provides the administrator with more management flexibility and increased borrowing authority to be able to address any short-term funding issues.

Under the terms of the new bill, if after 7 years it is determined that the fund will have insufficient resources to pay off 100 percent of all claims, the administrator is empowered to take actions to sunset the fund. In this event, S. 2290 fully protects the rights of claimants by creating a federal cause of action, so claimants will be able to pursue their claims in the U.S. District Court where they live or where they were exposed to asbestos.

In closing, it is important to note that asbestos victims, American businesses, workers, retirees, shareholders, and the U.S. economy cannot afford to wait any longer for asbestos litigation reform. Consideration of the FAIR Act on the floor will allow what I'm sure will be a spirited debate and consideration of any reasonable amendments to our new proposal. That being said, we need move forward with the debate on the FAIR Act and enact S. 2290 now. I ask that my colleagues join me in voting to move forward on this important bill.

NOW CAN WE TALK ABOUT HEALTH CARE

Mr. DASCHLE. Madam President, yesterday's New York Times Magazine contained a very insightful article written by our colleague from New York, Senator CLINTON. This article, entitled "Now Can We Talk About Health Care?," is truly a call to action.

Senator CLINTON could not be more right when she points out that if we were starting from scratch in designing a health care system, "none of us, from dyed-in-the-wool liberals to rock-solid conservatives, would fashion the kind of health care system America has inherited." She pointedly asks why we

should carry this flawed system and its problems into the future. It is a rhetorical question, of course, but the answer, unfortunately, is that we are doing just that.

Last year, 43.6 million Americans were without health coverage—an increase of over 2 million from the year before. About 74,800 people in my State of South Dakota—12 percent of the population—are without health insurance. But statistics alone do not communicate the anguish felt by so many people in our country regarding an issue as personal as their health care.

Senator CLINTON correctly notes that things will only get worse. Her article explains that the very manner in which we finance care is "so seriously flawed that if we fail to fix it, we face a fiscal disaster that will not only deny quality care to the uninsured and underinsured but also undermine the capacity of the system to care for even the well insured." This a sobering warning.

It does not have to be this way. The United States is the only major industrialized nation that fails to provide guaranteed health care to all its citizens. And, in many countries—Canada, the United Kingdom, Japan, France, and Sweden to name a few—they do it while spending less per capita than we do in the United States. Yet in each of those countries, citizens have greater life expectancies and lower rates of child mortality than we have in the United States.

We must act. The nonpartisan Institute of Medicine recently recommended that by 2010, everyone in the United States should be insured. That is no small task, and it won't come free. But, as Senator CLINTON points out, it will save us money in other ways. People will get the preventive care they need and deserve, and this will save us the cost of treating conditions and diseases that have progressed. And, certainly, it is a moral imperative when we are talking about people's health.

We must invest in our public health infrastructure, in preventive care, and in covering the care people need. We can save money by increasing our reliance on information technology with appropriate privacy protections. And we can use every tool we have—including genetic testing—to prevent and contain disease. We can encourage these tests by enacting the Genetic Information Nondiscrimination Act, a bipartisan bill that has already passed the Senate but awaits action in the House. We can reduce health disparities by passing the Healthcare Equality and Accountability Act, a bill I introduced with each of the House minority caucuses last year. And we can address the problem of the uninsured in a serious manner rather than proposing tax credits that will do little to help those most in need or pushing consumer-driven plans that shift cost and risk onto the individual.

I commend Senator CLINTON on her thoughtful article. It is something we