



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, FRIDAY, MAY 5, 2006

No. 53

## House of Representatives

The House was not in session today. Its next meeting will be held on Monday, May 8, 2006, at 2 p.m.

## Senate

FRIDAY, MAY 5, 2006

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, source of knowledge and wisdom, give us Your truth.

Open our eyes to see Your truth. Strengthen our hearts to face Your truth. Illuminate our spirits to understand Your truth. Fortify our minds to remember Your truth. Give Your Senators today the determination to obey Your truth. Show them what to believe and what to do.

Help us all to listen carefully to Your wise counsel and store up knowledge that transforms lives.

We pray in Your holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 5, 2006.

### To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

Mr. ISAKSON thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, in a few minutes I will set up votes for next week on several measures that we began to discuss yesterday. Once we set the schedule for next week, we have

some Senators who would like to make statements on those bills and other matters. Therefore, we provided this period today for that purpose.

### MEDICAL MALPRACTICE LIABILITY

Mr. FRIST. Mr. President, I will set up those votes in a bit, but I want to speak to one of the issues that we will be voting on Monday night, and that is the medical malpractice liability issue which, in many ways, is destroying the practice of medicine today. As one who has spent longer in the profession of a physician/doctor than I have in politics, this is something that hurts me as I look to what it is doing to patients, to consumers, to all Americans as it drives up their health care costs unnecessarily, wastefully, but then, even more importantly than that, it affects access to health care. Literally, we have expectant moms today who are having to worry whether there will be an obstetrician there to deliver their baby.

We have right now people who should be worrying, if they are in an accident today driving to work or driving home from work, about whether there will be a trauma surgeon once they arrive at a hospital. That is the threshold we have reached, affecting access, affecting cost, and affecting availability of health care.

A couple years ago, I took my son Harrison, who is in college, to Ohio, Pennsylvania, and Florida. Those were the hot States during the last Presidential campaign. I took him to be

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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with him, and he observed a lot as we went to those three States.

It is interesting, those three States also happen to be three States that have been most dramatically impacted by the skyrocketing health care medical liability premiums. Because I am a physician, when I went to these town meetings or we would go to cafes, physicians would come up, their spouses would come up, their family members would come up and talk with me and pull me aside—Harrison would be at my side—and say: Dr. FRIST, something has to change. My dad was a physician. I am in practice with my dad. Right now we are going to have to dissolve our practice because our health care liability malpractice premiums have gotten so high we simply cannot afford to stay in business.

Then the discussion would continue a little bit and someone else would come up, and Harrison would be listening—at the time studying pre-med as well as history—and they would say: Dr. FRIST, right now I am going to get sued. I just got out of my residency, and I am going to get sued on average three times in the next 10 or 15 years, sued not just for \$1,000 or \$5,000 but for \$1 million or \$4 million or \$5 million, even if I have done nothing wrong.

What hurt me about this is when we got back home after traveling around, Harrison took me aside and said: Dad, I know your dad—his grandfather, my dad—was a physician who practiced 55 years in family practice in cardiology in Middleton, TN. Harrison said: Dad, you love that noble profession of medicine, surgery, heart and lung transplants and healing, but why in the world would you encourage me, your son, to go into a profession that right now, based on what I have heard as we have gone around the country, is being destroyed by predatory personal injury trial lawyers and frivolous lawsuits?

It is a hard question to answer. I probably told him it's a noble profession and there's nothing greater than the healing process. But he looked at me and said: Dad, why would I subject my future wife and my family to lawsuit after lawsuit if I have done nothing wrong? Why would I jeopardize my own family no matter how noble that profession is?

I tell that story because it is personal in many ways, but I think it signifies why it is important for us to be allowed to proceed to debate how we can solve—probably not totally solve but help solve what has gotten out of control in our medical liability system today.

Across the country, rising medical malpractice premiums are driving doctors from the practice of medicine, limiting access to care. What that means is that your health care costs, my colleagues' health care costs, the American people, everybody's health care costs are driven up unnecessarily and access is diminished. Doctors leave the practice of medicine or they move to States where this may not be quite as

big a problem, and when you need a doctor, they are not there.

Across the country, one out of two counties do not have an obstetrician/gynecologist to deliver a baby or to manage that complication from an expectant mom. Seventy-five percent of neurosurgeons today no longer operate on children, and an even higher number have made a decision not to take a trauma call at a hospital. These are highly trained neurosurgeons, surgeons who focus on the brain and the back, on the neurological system, which is usually damaged if you are in a motor vehicle accident or any kind of blunt trauma accident. They basically said: We are not going to take the call; why subject ourselves to these exorbitant, frivolous lawsuits that affect our access, access for our children, for our families.

My own State of Tennessee the other day was put on the crisis list, one of 20 States now in crisis; 81 out of 95 counties in Tennessee don't have a neurosurgeon; half don't have an orthopedic surgeon, an emergency physician or an OB/GYN.

So we see these unnecessarily high malpractice premiums driving doctors out of the State, out of the profession. The average malpractice premiums in my State of Tennessee have increased a whopping 89 percent in the past 6 years. Again, these premium increases drive up the cost of your health care.

Doctors pass on the premiums they have to pay to the insurance company and the insurance company passes it on to you, so it affects everybody's health care unnecessarily.

Without reforms, over two-thirds of Tennessee physicians report they are contemplating early retirement or just totally changing careers. Dr. Steven Stack, a 34-year-old emergency doctor from Memphis is moving to Lexington, KY, to escape the litigation lottery. He told me the following:

The high risk nature of my chosen specialty, the associated predator tactics of the trial bar, and very unreasonable and unfunded regulatory burdens imposed by governmental agencies have robbed me of much of the professional satisfaction I otherwise receive in caring for the health of my patients. . . . A fair number of my friends share my disillusionment and hope to leave the practice of medicine as expeditiously as possible.

Dr. Stack and his friends he referred to are far from alone. We all hear it. We get the letters. We get the e-mails. We have the conversations.

Dr. Justin Hensley of Johnson City, TN, says:

As a Tennessee resident and having grown up in Knoxville, it pains me that I will choose to do my residency and practice in another State simply because the climate in my State is unbearable. My fiancée, who is also a resident and medical student, feels the same way.

The issue is even affecting the futures of medical students, the future of medicine, the people who will be delivering care to our children, to the next generation.

Patrick Emerson, writing from Memphis, reports:

As a medical student here in Tennessee, the issue of medical liability is definitely a concern both to me and many of my classmates. The issue is going to shape our decisions in medicine drastically in the coming years, from what speciality we pick to what tests we order for our patients. Without reform, we are doing a grave injustice to our fellow citizens of Tennessee by depriving them of cost-effective and efficient care.

Patrick's story is one of the many stories that are pouring in. The bottom line: The system is broken and it needs to be fixed. The good news, on the optimistic side, is if we are allowed to, we can fix it. We can make this problem go away.

It is not just the bad doctors who are getting sued. People will say we have to have a strong medical liability system, strong medical malpractice system. I agree, I have been right in the middle of it. I have been right in the middle of where medicine is practiced, and with the complexity, the technology, the great miracles that can be done, is still subject to malpractice, still subject to medical errors—and I know that—and we need to have a fair, commonsense, balanced compensation system that punishes malpractice. But good doctors are getting dragged into this as well.

Consider this one statistic: Of those who have practiced in Tennessee for the past 10 years, in my profession, heart surgery, 100 percent of cardiac surgeons have been sued. Of those who have been in practice 10 years, 92 percent of orthopedic surgeons, bone doctors, have been sued; 70 percent of all doctors have faced legal action.

That is common sense, and the American people get it. But I am not sure all of our colleagues get it. Does it make sense or does anybody believe that all heart surgeons in Tennessee are bad or that all are committing malpractice, bad practice or that 7 of 10 doctors across the State deserve to be sued? Of course not. The system is out of control. The problem affects not just my State but patients and doctors from across the country. Rising medical liability premiums are increasing because of health care for every American. Again, it is common sense. The statistic is that 8 out of 10 doctors practice defensive medicine—defensive medicine—to fend off these frivolous lawsuits, and it makes sense. Right now, if you know with almost 100 percent certainty or 70 percent certainty that you are going to be sued no matter what you do—no matter what you do—what you are going to do is put a paper trail out there that will protect you in the courtroom. It makes sense. You want to protect yourself, and that is what you will do. You prescribe a few extra tests that are not necessary—something you wouldn't do otherwise. You prescribe an extra blood test, maybe an extra CAT scan, maybe an extra positron emission tomography, an extra fluorodeoxy with glucose, a

PET scan—unnecessary, totally unnecessary, but you do it because the likelihood is you are going to be sued. You do it to have that whole paper record there showing that you did the right thing. That is a cost. It is a huge cost, and it is a waste of money. It doesn't result in better patient care. It is a total waste.

Again, it gives me a sense of optimism because if you omit this waste—I would call it fraud—this abuse out of the system, everybody's cost of health care goes down.

It is estimated that the defensive medicine costs in this country are over \$100 billion. Wasted money. It is not Government money, it is your money. It is the American people's money. It is not even your tax dollars, it is how much you have to pay for that health care premium. That is why, if you are uninsured, you can't afford an insurance policy, because the cost of your insurance policy is too high.

Last month, I was in Texas, and again it is remarkable because medical liability reform is alive and well there, and it is working. I talked to patients, I talked to doctors, and I talked to nurses, and it is working. Since 2003, medical malpractice claims, following their reform, have dropped by at least 80 percent in most Texas counties. I talked just moments ago about physicians fleeing States because of medical liability, and since their reform was put in place, 3,000 doctors haven't fled that State but are coming back into that State today. We need to get on board with that reform movement.

When children who are dying of cancer can't get the lifesaving surgery they need, when a mother is forced to drive hundreds of miles to a doctor just to have her baby delivered, when doctors who have spent years training, years training and sacrificing to give people hope are having to leave the practice of medicine, it is time for us to act.

In a few moments, I will be filing cloture on the medical liability bill, and on Monday we will have those votes. I know a number of my colleagues will come by today and on Monday to explain the legislation as well as make the case of the importance of that legislation. I urge my colleagues, for the sake of all Americans and every citizen who is either walking into a doctor's office now or who will walk into a doctor's office in the future, that we vote to move forward on this bill.

I have seen firsthand that we have the best medicine in the world. The fact that I was able to do heart transplants with the technology on a routine basis, the fact that I was able to do lung transplants on a routine basis or to use that positron emission tomography to make a diagnosis on the metabolic processes of the heart or the brain today is truly astounding because it translates into better health care for all. We have the best doctors, we have the best medical schools, and we have the best hospitals in the world.

We have the best laboratories. We have the best universities and schools. I have been a beneficiary of that, and I have witnessed it. But we have a broken medical liability system, and it is bringing down that greatness. By pulling together, we are going to be able to deliver to the American people a system that works, and this will be a major step forward.

#### MEDICAL CARE ACCESS PROTECTION ACT OF 2006—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. FRIST. Mr. President, we have been in discussions with the Democratic leader, and we have agreed to a plan for the next several days that I will outline now and I will place in order now with the next series of requests.

We have set aside next week to address several important bills relating to health care issues, but as I understand it, there will be objections to proceeding on these bills. Because there is objection to proceeding on the bills or bringing them forth and debating them and amending them, we have to go through a process to overcome that obstruction.

I now move to proceed to Calendar No. 422, S. 22, the Medical Care Access Protection Act of 2006, and I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

##### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 22: A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Pat Roberts, Larry Craig, Ted Stevens, David Vitter, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, John Sununu, Craig Thomas.

Mr. FRIST. Mr. President, I now withdraw the motion to proceed.

#### HEALTHY MOTHERS AND HEALTHY BABIES ACCESS TO CARE ACT—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. FRIST. Mr. President, I move to proceed to Calendar No. 423, S. 23, the Healthy Mothers and Healthy Babies Access to Care Act, and I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

##### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the

standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 23: A bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Pat Roberts, Larry Craig, Ted Stevens, David Vitter, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, John Sununu, Craig Thomas.

Mr. FRIST. Mr. President, I now withdraw the motion to proceed.

I ask unanimous consent that notwithstanding rule XXII, the vote on the first motion to invoke cloture occur at 5:15 p.m. on Monday, May 8; provided further that if cloture is not invoked on that motion, then the Senate proceed immediately to a vote on the second cloture motion.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### HEALTH INSURANCE MARKETPLACE MODERNIZATION AND AFFORDABILITY ACT OF 2006—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. FRIST. Mr. President, I move to proceed to Calendar No. 417, S. 1955, the Small Business Health Plan bill, and I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

##### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 417, S. 1955, Health Insurance Marketplace Modernization and Affordability Act of 2005.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Richard Shelby, Larry Craig, Ted Stevens, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, Pat Roberts, Craig Thomas, Richard Burr.

Mr. FRIST. Mr. President, I withdraw the motion to proceed.

Mr. President, I ask unanimous consent that on Monday, May 8, the time for debate be divided as follows: 1:30 p.m. to 2 p.m., minority control; and 2 p.m. to 2:30 p.m., majority control. Further, that the time rotate under this format, with the final time from 5 p.m. to 5:15 p.m. under majority control. Finally, I ask unanimous consent that the three live quorums related to the cloture motions be waived.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, to summarize what we just went through and where we are, we have scheduled for next week the consideration of several important bills related to health care.