United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *106th* CONGRESS, FIRST SESSION

Vol. 145 WASHINGTON, FRIDAY, NOVEMBER 19, 1999 *No. 165*

Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

REVISED NOTICE—NOVEMBER 17, 1999

If the 106th Congress, 1st Session, adjourns sine die on or before November 18, 1999, a final issue of the Congressional Record for the 106th Congress, 1st Session, will be published on December 3, 1999, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through December 1. The final issue will be dated December 3, 1999, and will be delivered on Monday, December 6, 1999.

If the 106th Congress does not adjourn until a later date in 1999, the final issue will be printed at a date to be announced.

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By order of the Joint Committee on Printing.

WILLIAM M. THOMAS, *Chairman.*

NOTICE

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MICHAEL F. DiMARIO, *Public Printer.*

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

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, it is with reverence and commitment that we address You as Sovereign of our lives and of our Nation. You are absolute Lord of all, the one to whom we are accountable and the only one we must please. Our forefathers and foremothers called You Sovereign, with awe and wonder as they established this land and trusted You for guidance and courage. Our founders really believed that they derived their power through You and governed with divinely delegated authority.

In our secularized society, Lord, recall the Senators to their commitment to Your sovereignty over all that is said and done. May this day be a reaffirmation that You are in control and that their central task is to seek and to do Your will. Thank You that this is the desire of the Senators. So speak, Lord; they are listening. Guide, strengthen, and encourage faithfulness to You. In Your holy, all-powerful name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CHUCK HAGEL, a Senator from the State of Nebraska, 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.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. HAGEL. I thank the Chair.

SCHEDULE

Mr. HAGEL. Mr. President, on behalf of the leader, this morning the Senate will consider numerous legislative items that have been cleared for action. Following consideration of those bills, the Senate will resume debate on the final appropriations conference report. Cloture was filed on the conference report yesterday, and it is still hoped that those Senators objecting to an agreement to change the time of the cloture vote to occur at a reasonable hour during today's session will reconsider. However, if no agreement is made, the cloture vote will occur at 1:01 a.m., Saturday morning. Senators may also expect a vote on final passage to occur a few hours after the cloture vote. In addition, the Senate could consider the work incentives conference report prior to adjournment.

Mr. President, I thank you.

I suggest the absence of a quorum.

Mr. REID addressed the Chair.

Mr. HAGEL. Mr. President, I would ask the acting minority leader be recognized.

The PRESIDENT pro tempore. The Senator from Nevada.

BANKRUPTCY REFORM

Mr. REID. Mr. President, I hope in the final hours of the session in the final day we will not forget the progress that has been made on the bankruptcy bill. I spoke to the manager of the bill, the subcommittee chair, late yesterday evening, and he indicated that there was some thought by the Republican majority leadership they would accept the unanimous-consent agreement that I suggested yesterday morning. As I indicated at that time, we have gone from some 320 amendments down to 14, 7 of which have either been accepted or they will be resolved in some manner. We only have seven contested amendments.

I hope we do not lose the initiative that has taken place to this point in the next few hours, or the next few minutes, really, that we could enter into that unanimous-consent agreement so that at such time as we return to the bankruptcy bill, we have a finite number of amendments and can proceed to wrapping that up. I repeat that it is not the minority but, rather, the majority that is holding up this most important bill.

Mr. HAGEL. Mr. President, I note the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. HAGEL assumed the chair.)

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

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business.

The Senator from Illinois.

A CHALLENGING SESSION OF THE SENATE

Mr. DURBIN. Mr. President, the Senate, we hope today or perhaps tomorrow, will be bringing this session to a close. It has been a session which has involved some historic decisions by the Senate. Of course, it began with an impeachment trial of the President of the United States, which ended in a bipartisan decision of the Senate not to convict the President. Then, shortly thereafter, we faced a rather historic challenge in terms of our role in Kosovo. So we went from one extreme in the Constitution, involving an impeachment against the President, to the other extreme, where this Senate had to contemplate the possibility, the very real possibility, of war. That is how our session began, at such a high level with such great challenges.

There were so many other challenges that were presented to the Senate during the course of the year. I am sad to report that we addressed very few of them. Things that American families really care about we did not spend enough time on, we did not bring to a conclusion. So, as we return to our homes, States, and communities after this session is completed and we are confronted by those who are concerned about their daily lives and they ask us, What did you achieve during the course of this session? I am afraid there is very little to which to point.

This morning, I received some letters from my home State of Illinois from senior citizens concerned about the cost of prescription drugs, as well they should be, because not only are these costs skyrocketing, but we find gross disparities between the charges for prescription drugs in the United States and the cost of the very same drugs made by the same companies if they are sold in Canada or in Europe.

In fact, in the northern part of the United States, it is not uncommon for many senior citizens to get on a bus and go over the border to Canada to buy their prescription drugs at a deep discount from what they would pay in the United States. That is difficult for seniors to understand; it is difficult for Senators to understand as to why that same prescription drug should be so cheap if purchased overseas and so expensive for American citizens in a country where those pharmaceutical companies reside and do business.

The senior citizens have asked us, as well as their families who are concerned about the costs they bear, to do something. Yet this session comes to an end and nothing has been done—nothing has been done—either to address the spiraling cost of prescription drugs or to amend the Medicare program and to make prescription drugs part of the benefits.

Think about it: In the 1960s, under President Lyndon Johnson when Medicare was created, we did not include any provision for paying for prescription drugs. We considered it from a Federal point of view as if prescription drugs were something similar to cosmetic surgery, just an option that one might need or might not need, but certainly something that was not life-threatening.

Today, we know we were wrong. In many instances, because of the wide array of prescription drugs and the valuable things they can do for seniors, we find a lot of our senior citizens dependent on them to avoid hospitalizations and surgeries and to keep their lives at the highest possible quality level.

Last week, I went to East St. Louis, IL, the town where I was born, and St. Mary's Hospital and visited a clinic. I walked around and met groups of senior citizens and asked them how much they were paying for prescription drugs. The first couple took the prize: $1,000 a month came in from their Social Security; $750 a month went out for prescription drugs. Three-fourths of all the money they were bringing in from Social Security went right out the window to the pharmacy.

There was another lady with about $900 a month in Social Security; $400 a month paid in prescription drugs.

Another one, about $900 a month in Social Security; $300 a month in prescription drugs.

The last person we met, though, told another story. He was retired from a union job he worked at for many years, a tough job, a manual labor job, and he, too, had expensive prescription drugs, but he was fortunate. The union plan helped him to pay for them. Out of pocket, he puts down $5 to $15 a month and is happy to do it.

Think of the contrast between $750 a month and $15 a month. One can understand why people across America, seniors who want to continue to lead active and healthy lives, have turned to Congress and said: Please, learn from the President's lead in the State of the Union Address that we should have a prescription drug benefit.

This Senate—this Congress—will go home without even addressing that issue. That is sad. It is a reality facing American families. You will recall, as well as I, a few months ago we were all in shock over what happened at Columbine High School with the killing of those innocent students. This Senate made an effort to keep guns out of the hands of children and criminals with a very modest bill that said if you were going to buy a gun at a gun show, we want to know your background.

The bill passed. It was sent over to the House of Representatives. The gun lobby got its hands on it, and that was the end of it. End of discussion.

As we return home to face parents who say, what have you done to make America safer, to make communities, neighborhoods, and schools safer, the honest answer is nothing, nothing.

Take a look at campaign finance reform. Senator FEINGOLD of Wisconsin is on the floor. He has been a leader on this issue with Senator MCCAIN of Arizona. They had a bipartisan effort to clean up this mess of campaign funding in America. Yet when it came to a vote, we could muster 55 votes out of 100 favoring reform, which most people would say: You have a majority; why didn't you win?

Under Senate rules, it takes more than a majority. It takes 60 votes. We were five votes short. All of the Democratic Senators supported campaign finance reform, and 10 stalwarts on the Republican side came forward. Yet when it was all said and done, nothing was done. We will end this session never having addressed campaign finance reform, something so basic to the future of our democracy.

On a Patients' Bill of Rights, there is a term which a few years ago American families might not have been able to define. I think they understand it now. It was an effort on the floor of the Senate to say that families across America and individuals and businesses would get a fair shake from their health insurance companies; that life-and-death decisions would be made by doctors and nurses and medical professionals, not by clerks at insurance companies. It is that basic. Mr. President, you know as well as I, time and again, a good doctor making a diagnosis, who wants to go forward with a procedure, first has to get on the phone and ask for permission.

I can recall a time several years ago in a hospital in downstate Illinois where I accompanied a doctor on rounds for a day. I invite my colleagues to do that. It is an eye-opener to see what the life of a doctor is like, but also to understand how it has been changed because health insurance companies now rule the roost when it comes to making decisions about health care.

This poor doctor was trying to take care of his patients and do the right thing from a medical point of view, and he spent most of his time while I was with him on the phone with insurance companies. He would be at the nurses' station on a floor of St. John's Hospital in Springfield, IL, begging these insurance companies to allow him to keep a patient in the hospital over a weekend, a patient he was afraid might have some dangerous consequences if she went home before her surgery—her brain surgery—on Monday. Finally, the insurance company just flat out said: No, send her home.

He said: I cannot do that. In good conscience, she has to stay in the hospital, and I will accept the consequences.

That is what doctors face. Patients who go to these doctors expecting to get the straight answers about their medical condition and medical care find they are involved in a game involving health insurance companies and clerks with manuals and computers who decide their fate.

When we tried to debate that issue on the floor of the Senate, we lost. American families lost. The winners were the insurance companies. They came here, a powerful special interest, and they won the day. They had a majority of 100 Members of the Senate on their side, and American families lost.

Thank goodness that bill went to the other side of the Rotunda. The House of Representatives was a different story. Sixty-eight Republicans broke from the insurance lobby and voted with the Democrats for the Patients' Bill of Rights so that families across America would have a chance. But nothing came of it. That was the end of it. The debate in the House was the last thing said; no conference committee, no bill, no relief, no protection for families across America.

I will return to Illinois, and my colleagues to their States, unable to point to anything specific we have done to help families deal with this vexing problem.

The minimum wage debate is another one. Senator KENNEDY, who sits to my right, has been a leader in trying to raise the minimum wage 50 cents a year for the next 2 years to a level of $6.15. He has been trying to do this for years. He has been stopped for years. We are literally talking about millions of Americans, primarily women, who go to work in minimum-wage jobs and try to survive. Many of them are the sole bread winners of their families. We will leave this session of the Congress—the Senate and the House will go home—and those men and women will get up and go to work on Monday morning still facing $5.15 an hour.

In a Congress which could come up with $792 billion for tax breaks for the wealthiest people in America, we cannot find 50 cents for the hardest working men and women, who get up every single day and go to work, as people who watch our children in day-care centers, as those who care for our parents and grandparents in nursing homes, as those people who make our beds when we stay in hotels, service our tables when we go to restaurants. They get up and go to work every single day. This Senate did not go to work to help those people. We could find tax breaks for wealthy people, but when it came to helping those who are largely voiceless in this political process, we did nothing. We will return home and face the reality of that decision.

If there is any positive thing that came of this session, it emerged in the last few days. Finally, after an impasse over the budget that went on for month after weary month, the Republican leadership sat down at the table with the President. The President insisted on priorities, and you have to say, by any measure, he prevailed. And thank goodness he did.

Let me tell you some of the things that are achieved in the budget we will vote for. It has its shortcomings—and I will point out a few of them—but it has several highlights.

The President's 100,000 COPS Program across America has had a dramatic impact in reducing violent crime and making America a safer place to live. There was opposition from Republican leadership to continue this program. But, finally, the President prevailed, and we will move forward to send more police and community policemen into our neighborhoods and schools across America to make them safer. That is something achieved by the President, in negotiation with congressional leaders at the 11th hour and the 59th minute.

In the area of education, the President has an initiative at the Federal level which makes sense from a parent's point of view. If we can keep the

class sizes in the first and second grade smaller—rather than larger—teachers have a better chance to connect with a child, to find out if this is a gifted child who has a bright future, or a child who needs some special help with a learning disability, or perhaps a slow learner who needs a little more tutorial assistance to get through the first and second grade.

You know what happens when those kids do not get that attention? They start feeling frustrated and falling behind, and the next thing you know, it is even a struggle to stay in school, let alone enjoy the experience and learn from it. The President has said: Let's take our Federal funds, limited as they are, and focus on an American initiative to make class sizes smaller in the first and second grade.

I went to Wheaton, IL, and I saw a class like this. Believe me, it works. Don't take my word for it. Ask the administrators at the school, who applied for it, and the teachers who benefit from it. And the parents are happy that it is there.

The Republican side of the aisle resisted the President's initiative. But thank goodness, in the closing minutes of the negotiations, the President prevailed. Common sense prevailed. And we will continue this initiative to reduce class size.

The way we are paying for some of these things is very suspect; I will be honest with you. We had this long debate during the course of the year about the future of the Social Security trust fund. Some on the Republican side said: We will never touch it. Well, historically we have touched it many times. The money, the excess and surplus in that fund that is not needed to pay Social Security recipients has been borrowed by President Reagan, President Bush, and President Clinton, with the understanding it would be paid back with interest.

Now that we have gotten beyond the deficit era in America, when we talk about surplus, we hope we do not have to borrow from it in the future. So this year, to avoid directly borrowing from the fund, Republicans argued that they have done some things that are fiscally responsible.

Let me give one illustration. This budget agreement contains $38 billion for education programs. That is 7 percent, $2.4 billion, more than last year. However, this increase is due to the fact that the agreement includes $6.2 billion more in advance appropriations than last year's bill.

What is an advance appropriation? You borrow from next year. You do not take your current revenue; you borrow from next year. So in order to provide more for education, we borrow from next year.

You might assume, then, we are going to have this huge surplus of money from which we continue to borrow. It is anybody's guess. We pass a bill, we appropriate the money, but we cannot account for its sources.

Let me tell you about Head Start.

This is a good story. Head Start is a program created by President Lyndon Johnson in the Great Society. There were people who were critics of the President's initiatives, but Head Start has survived because it is a great idea. We take kids from lower income and disadvantaged families, and bring them into a learning environment at a very early age, put them in something similar to a classroom, and give them a chance to start learning. And we involve their parents. That is the critical element in Head Start.

This budget is going to provide $5.3 billion—the amount requested by the President—to serve an additional 44,000 kids across America, and to stay on track to serve 1 million children by the year 2002.

Class size reduction, which I have mentioned to you, is one that is very important to all of us. Disadvantaged students—there is $8.7 billion for title I compensatory education programs. That is an increase of $274 million, but it is still short of what the President requested.

In special education there is good news. This budget will provide $6 billion, $912 million—or 18 percent—more than the fiscal year 1999 appropriations for special ed. In my home State of Illinois, school districts will receive $227 million, a 62-percent increase since 1997.

Keep in mind these school districts, because of a court decision and Federal legislation, now bring disabled children and kids with real problems into a learning atmosphere to give them a chance. But it is very labor intensive and very expensive. I am glad to see that this budget will provide more money to those school districts to help pay for those costs.

Afterschool programs: We provide $453 million, an increase of $253 million, to serve an additional 375,000 students in afterschool programs. How important are afterschool programs? Ask your local police department. Ask the families who leave their kids at the school door early in the morning, and perhaps do not return home from work until 6 or 7 o'clock at night. They have to be concerned about those kids, as anyone would be. And the people in the local police department will tell you, after school lets out, we often run into problems. So afterschool programs give kids something constructive to do after school. I am glad the Federal Government is taking some leadership in providing this.

In student aid, the agreement increases maximum Pell grant awards to college students by $175, from $3,125 to $3,300. Since President Clinton has taken office, we have seen the Pell grants increase by 43 percent.

This is an illustration of things that can be done when Congress works together. But we literally waited until the last minute to consider the education bill in the Senate. What is the highest priority for American families was the lowest priority of the Appropriations Committee. When we wait that long, we invite controversy and delay. Fortunately, it ended well. The President prevailed. These educational programs will be well funded.

Let me tell you of a bipartisan success story: The National Institutes of Health. That is one of the best parts of the bill that we are going to vote on. It receives a 15-percent increase over last year's funding level. The National Institutes of Health conducts medical research. Those of us who are in the Senate, those serving in the House, are visited every single year by parents with children who suffer from autism, juvenile diabetes, by people representing those who have Alzheimer's disease, cancer, heart disease, AIDS. And all of them come with a single, unified message: Please, focus more resources, more money on research, more money on the National Institutes of Health. We increase it this year some 15 percent.

Fortunately, one of the budget gimmicks which would have delayed giving the money to the National Institutes of Health until the last 48 hours of the fiscal year was changed dramatically. Because of that change, we do not believe there will be any disadvantage to this important agency.

I will give you an example of the life of a Senator and how this agency affects it. A few weeks ago, a family in Peoria, IL, who had a little boy named Eric with a life-threatening genetic disease called Pompe's disease, called my office. Their son's only chance to live was through a clinical trial; in other words, an experimental project at Duke University, which was being sponsored by a private company.

Unfortunately, there were not any additional slots available for Eric in this clinical trial. The company could only manufacture enough of the drug for three patients. Eric would have been the fourth. Eric was denied admission to the trial for this rare disease. Sadly, Eric passed away. Pompe's disease is rare. Children like Eric frequently rely on the Government and its sponsored research for cures because a cure for a rare disease is unlikely to be very profitable for a lot of the pharmaceutical companies. I am glad to salute Senator SPECTER, Republican of Pennsylvania; Senator HARKIN, my Democratic colleague from Iowa; and my colleague from Illinois, Congressman JOHN PORTER, a Republican. They have made outstanding progress in increasing the money available for the National Institutes of Health in this bill.

There is money also available for community health centers. We have talked about a lot of things in this Congress, but we don't talk about the 42 million Americans—and that number is growing—who have no health insurance. Many of these Americans who are not poor enough to qualify for Medicaid and not fortunate enough to have a job with health insurance go to community health centers, trying to get

the basic health care which all of us expect for our families in this great Nation. These community health centers serve so many of these people, and they deserve our support. With a 30-year track record of providing quality service to America's most vulnerable, these community health centers need to have our support.

According to congressional testimony by the Health Resources Service Administration, which overseas health center programs, 45 percent of these health centers are at risk financially, 5 to 7 percent close to bankruptcy, and 5 to 10 percent in severe financial trouble. Between 60 and 70 health center delivery sites already have been forced to close their doors. Changes in the Medicaid program have cut the compensation for these centers. The Balanced Budget Act, which was good overall, made some cuts that really have resulted in deprivation of funds. An additional $100 million to community health centers would provide health care to another 350,000 Americans. It can open up 259 new clinics. This is something we should do.

Let me point to one thing I am particularly proud of in this bill. It is an initiative on asthma. I was shocked to learn of the prevalence of asthma in America today. I was stunned when I learned it is the No. 1 diagnosis of children who were admitted to emergency rooms across America. Asthma is the No. 1 reason for school absenteeism in America. When I asked my staff to research what we are doing to deal with asthma, I found that we did precious little. I started asking my colleagues in the Senate about their concerns over asthma and was surprised to find so many of them who either had asthma themselves or had a member of their family with asthma.

They joined in trying to find a new approach, a new initiative that would deal with this problem. Leading that effort was my colleague from the State of Ohio, Senator MIKE DEWINE. He and I put in an amendment, which was funded in this bill, to provide $10 million in funding to the Centers for Disease Control for childhood asthma programs.

What is asthma like? I have never suffered from it, thank God. But imagine this illustration: For the next 15 minutes, imagine breathing through a tiny straw the size of a coffee stir, never getting enough air. Now imagine suffering this three to six times a day. That is asthma.

There have been some innovative things that have been done. In Southern California, Dr. Jones, with the University of Southern California, has started a ''breathmobile'' moving around the areas and neighborhoods of highest incidence of asthma, identifying kids with the problem, making sure they receive the right treatment and that their parents and teachers know what to do. That is what we have to encourage. The $10 million Senator DEWINE and I have put in this bill for this type of outreach program for asthma can have dramatic positive results.

There is one other thing I will mention. That is a program in which I became interested in 1992. I went to Detroit, MI, and saw an effort that was underway to provide residential treatment to addicted pregnant women. I thought it was such a good program, I asked the directors: Where do you get your Federal funds? They said: We don't qualify for Federal funds. I went back to Washington and put a demonstration project in place so that we could take addicted mothers across America out of their drug-infested neighborhoods, put them in a safe environment, and try to make certain that the babies they would bear would be free from drug addiction.

It was a demonstration project, and it worked—1,500 children in 1994 in America were born drug free because of this program which we started in 1992. We were about to lose it this year. Imagine, we know a drug-addicted baby is extremely expensive, let alone, perhaps, a waste of great potential in human life. I was able to work with Senators SPECTER and HARKIN to put $5 million in the bill to expand our current efforts.

I say, in closing, there is one area of this bill I find particularly troubling. In a world which now has 6 billion people, in a world where we see the need for family planning and population control to avoid serious poverty, to avoid environmental disaster, and to avoid wars, the leadership in the House of Representatives and the Senate has turned a blind eye to international family planning. I cannot understand how this Republican Party—not all of them but many of them—can be so insensitive to the need for international family planning. Every year it is a battle. We have to understand that when population growth is out of control in underdeveloped countries, it is a threat to the stability not only of that country, of that region, but of the world and the United States.

We have to follow the lead of President Clinton and many in Congress who have said U.S. involvement in international family planning is absolutely essential. We hear arguments and see amendments offered because there are some who want to make this an abortion issue. The sad reality is that if a woman in a faraway land does not have the wherewithal to plan the size of her family and has an unintended pregnancy, it increases the likelihood of abortion. So family planning, when properly used, will reduce the likelihood of these unintended pregnancies. That is as night follows day, for those who care to even take a look at this policy issue.

I am sorry to report that although we are going to finally pay a major part of our U.N. dues, which has been an embarrassment to many of us for so many years while the Republican Congresses have refused to pay those dues, it was at the price of threatening international family planning programs. The Republican leadership in the House of Representatives insisted, if we are going to pay our U.N. dues, it has to be at the expense of international family planning programs. I think that is extremely shortsighted. I hope the next Congress will have a little more vision when it comes to family planning, when it comes to enacting a treaty, for example, a nuclear test ban treaty. The Senator from Nebraska, who is now presiding over the Senate, is working with Senator LIEBERMAN from Connecticut in an effort to revive that effort as well.

I hope the next session of Congress will be more productive in that area and many others.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. WELLSTONE. Mr. President, will the Senator from Nevada yield?

Mr. REID. Of course.

Mr. WELLSTONE. I ask unanimous consent I be allowed to follow the Senator from Nevada.

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

Mr. REID. Mr. President, before my friend from Illinois leaves the floor, I want to direct a few questions to him. I appreciate very much the outline of this congressional session made by my friend from Illinois. The Senator from Illinois and I came to the Senate from the House of Representatives. I feel a great affinity for my friend, not only for the great work he does but because we came as part of the same class. I made a number of notations as he gave his speech.

Isn't it about time we updated, revised, modernized Medicare? I say that because it was almost 40 years ago, certainly 35, 36 years ago, that Medicare passed. Almost 40 years ago, 4 decades ago, we didn't have prescription drugs; we didn't have drug therapies that extended lives or made life more comfortable for most people.

I say to my friend from Illinois, isn't it about time Medicare became modern? Isn't it about time senior citizens have a program where they can get an affordable prescription drug program to keep them alive, to keep them healthy?

Mr. DURBIN. I agree with the Senator from Nevada. Isn't it ironic that if you bought a hospitalization policy now, as an employee of a company, you would expect some sort of prescription drug benefit as part of it, that goes along with most policies?

Medicare does not include that. Seniors find themselves at a distinct disadvantage. Many of the seniors I talked to the other day in East St. Louis, IL, had heart problems. Back 35 years ago, we didn't have the wide array of potential prescription drugs to deal with blood pressure problems, for example. Now we do. The fact that these prescription drugs are available means longer and better lives for seniors.

Mr. REID. Also, while we are talking about prescription drugs, I offered an amendment in the Senate, which passed, that said for Federal employees—I tried to broaden it to cover all insurance policies but was unable to do that—health insurance programs, the people who are allowed to get prescription drugs should be allowed to get prescriptions for contraceptives. The reason is that there are 3.6 million unintended pregnancies in the United States and almost 50 percent of those wind up in abortion.

So if people really care about cutting back the number of abortions, we should have prescription drugs available in the form of contraceptives for people. But what the Senator didn't mention is hidden in this huge bill is language to lessen the effectiveness of this program. For reasons unknown to anyone, other than a way to attempt to help the insurance companies, they have said there is going to be a conscience clause for pharmacists. I say to my friend, I understand there should be a conscience clause for physicians who might prescribe these drugs, but does the Senator see any reason why you should weaken this most important piece of legislation in law and have a so-called conscience clause for pharmacists?

Mr. DURBIN. I do not. I agree with the Senator from Nevada that it is extremely shortsighted. Perhaps we are striking a moralistic pose when we say we are not going to allow prescriptions for contraception. In other words, we will acknowledge all of the other needs a woman may have, but not provide for birth control pills. That seems to me to be out of step with what American families expect us to do. Let them make the decision with their doctor. Instead, we are imposing on them what may be viewed by many as a moralistic point of view that should not be in our province. This is the first I have heard of this conscience clause, where a pharmacist, for example, might refuse to fill a prescription for birth control pills. Under this amendment that is being put in the bill, he or she is not required to do so.

Mr. REID. It is in this bill on which we are going to vote.

Mr. DURBIN. I think it really stretches credibility to think that a pharmacist, in this situation, would be allowed to make that decision and perhaps disadvantage a woman who may not have easy access to another pharmacy.

Mr. REID. The Senator has said it all there. Not everybody lives in metropolitan Chicago, where they can go to two or three different pharmacies within a matter of a few blocks. In some places, there is only one pharmacy.

I also say to my friend it seems unusual—while we are talking about health care—and the Senator did an excellent job in talking about the Patients' Bill of Rights. We passed a patients' non-bill of rights. We passed a bill here that is a bill in name only. If you read the Patients' Bill of Rights, the Senator knows it is not a Patients' Bill of Rights.

It is unusual in this country—and the Senator and I are both lawyers, and I know sometimes the legal profession doesn't have the greatest name, unless you need a lawyer. But in our great society, this country that we admire—and we salute the flag every day—it is interesting that the only two groups of people you can't sue in America are foreign diplomats and HMOs.

Doesn't the Senator think that should be changed?

Mr. DURBIN. I agree completely with the Senator from Nevada. If we did nothing else but change that to say these health insurance companies could be held liable in a court of law before a jury of Americans for their decisions on health care, it would have a dramatic overnight impact on their decisions also. They would think twice about denying a doctor's recommendation for a surgical procedure or a hospitalization. They would think twice about delaying these decisions.

I have noticed, and I am sure the Senator from Nevada has noticed as well, many times, poor families I represent in Illinois will get into a struggle with an insurance company to try to get help, for example, for a child with a serious illness or disease, and the struggle goes on for months; ultimately, the family prevails; but during that period of time, the poor child is suffering and the family is suffering. I think that giving those families across America the right to sue health insurance companies and saying to the health insurance companies that, like every other business in America, you will be held accountable for any wrongdoing, is just simple justice. To do otherwise is to suggest that we are going to create some special, privileged class of companies and that, literally, the health insurance companies are above the law. That is not America.

Mr. REID. My friend also knows that with part of the public relations mechanisms these giant HMOs have, they are going around saying, well, what these people in Washington want to do—the Congressmen—is allow suits against your employer. Now, the Senator knows that is fallacious. Any litigation that would be directed against the wrongful acts of the entity that disallows the treatment has nothing to do with the employer. Does the Senator understand that?

Mr. DURBIN. That is right. The Senator probably saw the survey that there are people against giving families the right to hold health insurance companies accountable in court, and they say, well, if you work for an employer who provides health insurance, those families may turn around and sue the employer, as opposed to the health insurance company. So we looked at that and did a survey; we investigated. We found out that only in a very rare situation has that occurred. Here is an example.

In one circumstance, the employer collected the health insurance premiums from the employee and then didn't pay the health insurance company. So when the family tried to get coverage for medical care, the next thing that occurred was they found out the premiums had not been paid by the employer. That was the only example we could find. But if the employer picks a health insurance company and they make a decision, we could not find a single case where the employer was held liable because of the health insurance company's bad medical decision.

So that, I think, is a red herring, one that really does a disservice to American families who deserve this right.

Mr. REID. The Senator also gave an example of one of his constituents in Illinois whose child has Pompe's disease, who, as we speak, is not receiving treatment for that.

Mr. DURBIN. The child has passed away.

Mr. REID. He wanted to participate in what is called a clinical trial. Is the Senator aware that HMOs almost universally deny the ability of their enrollees to participate in clinical trials?

Mr. DURBIN. Yes. Frankly, during the course of the debate here, the Senator can remember that when they referred to reputable medical leaders in the United States, such as Sloan Kettering—which is a great institution when it comes to cancer treatment and research and is respected around the world—they said, after their survey, that clinical trials really open the door for new treatments and therapies that, frankly, save us money. They found better and more efficient ways to keep people healthy. Meanwhile, the health insurance companies won't pay for them, and we are literally stopped in our tracks from moving forward with this kind of medical research and clinical trials.

In this case, with this little boy, Eric, who passed away from this disease, he was closed out of a clinical trial. Would he have survived with it? I am not sure, but because of the health insurance company, he never got a chance.

Mr. REID. On the floor today, right next to the Senator, is the Senator from Minnesota, who has been a leader in Congress fighting for the rights of those people who are disadvantaged because of mental disease. Well, there was a big fanfare a week or two ago about some big health entity in the Midwest that had decided they were going to let doctors make the decision, rather than checking them out. They looked on their accounting and found they could spend a lot of money trying to direct care. They said what they are going to do now is let doctors make the decision. What they didn't tell us is that this would not apply to people who had mental disease, who had emotional problems. Is the Senator aware of that?

Mr. DURBIN. I am aware of it. I salute the Senator from Minnesota, my

friend, Senator PAUL WELLSTONE, and our colleague, Senator DOMENICI from New Mexico, for their leadership on this issue. It is a classic illustration of another problem facing American families which this Congress has refused to address. The problem is very straightforward.

An internist from Springfield, IL, came to see me and said, ''Senator, I am literally afraid to put in a patient's record that I am giving them medication for depression because the insurance company will then label them as 'victims of chronic depression,' a mental illness, and discriminate against them when it comes to future health insurance coverage.''

That is outrageous. Mental illness is an illness, it is not a moral shortcoming. These people can and deserve to receive the very best care. Unless and until the Senator from Minnesota and others of like mind prevail in the Senate and in the House of Representatives, we will continue to discriminate against the victims of mental illness. That is something this Congress can do something about. We will leave here today or tomorrow, again, with that unfinished item on the agenda.

Mr. REID. I also say to my friend that we were here last year wrapping up the congressional session. Is the Senator aware that since that time we have had 1½ million new people in America added to the uninsured rolls?

Mr. DURBIN. The list grows. The Senator from Nevada knows as well as I do that unless and until we face the reality that every American citizen and every American family deserves the peace of mind of health insurance coverage, you will continue to see employers deciding not to offer health insurance protection, and working, lower income people in America will be without the protection of either Medicaid or health insurance at work. These people get sick as other people do. When they present themselves to hospitals, they receive charity treatment which is paid for by everyone, instead of receiving quality health care from the start. Preventive care can avoid serious illness.

Again, it is an issue that this Congress has refused to address.

Mr. REID. I wanted to say this—the Senator has said it, but I want to underline it and make it more graphic. The Senator who is on the floor is the leader for the Democrats. I am the whip for the Democrats. We spend a lot of time here on the floor. Have we missed something? Has the Senator heard any debate dealing with the uninsured in this country?

Mr. DURBIN. No. We haven't missed it, as the Senator from Nevada knows very well. This is the third rail for a lot of politicians around here because you have to start to talk about things that cost a lot of money. Doing nothing costs a lot more money. People get ill, they have to go to the doctor, and to the hospital. When they need to have serious treatment, or hospitalization, that is very expensive, too.

It strikes me that those of us who sought this office to serve in the Senate or the House of Representatives did not do it just to collect a paycheck and accumulate years toward a pension but to do something to help families across this country. This is the No. 1 concern of families across the country.

If you have a child reaching the age of 23, and all of a sudden it dawns on you: Where is my daughter going to get her health insurance? I can't bring her under my policy. You start thinking. I am sure the Senator from Nevada has. I have. As a parent, every day I call my daughter in Chicago, who is an art student, and an artist, and say, ''Jennifer, are you insured this month?'' ''Yes, dad.'' But I have to ask the question because health insurance is not automatic.

This Congress has done little, if anything, to help families across America who struggle with this every single day—not to mention those with preexisting conditions. If you have a preexisting condition and it is a serious one, and you have to change insurers, good luck. Most people find themselves being discriminated against.

I agree with the Senator from Nevada. We have been here day in and day out, and I have heard literally nothing suggested by the Republican leadership to deal with this.

Mr. REID. At the beginning of our August break, I traveled back to Nevada with my wife. As we flew home, my wife became very sick. We got off the airplane and went immediately to the Sunrise Hospital emergency room. As we walked in that room—she was wheeled into the room—there were lots of people. It was very crowded. We were probably among the 10 percent of the fortunate ones in that room; we had insurance to cover my wife's illness. She was there for 18 days. Ninety percent of the people there had no health insurance of any kind. They were there because they had no place else to go.

Those uninsured people get care. The most expensive kind of care you can get anyplace is in an emergency room. Who pays for that? You and I pay for it. Everybody in America pays for it in the form of higher taxes for indigent care—higher insurance premiums, higher insurance policies, and higher hospital and doctor bills. We all pay for it anyway.

But we don't have the direction from the majority here to have a debate on what we are going to do with the rapidly rising number of people with no health insurance.

Next year, we are going to probably have 2 million more. It is going up every year. We have 45 million people—actually 44 million people now—who have no health insurance. Next year, it will be close to 46 million people. Will the Senator agree with me that it is somewhat embarrassing for this great, rich country, the only superpower in the world, that 44 million people will have no health insurance?

Mr. DURBIN. It is an embarrassment, and it is sad. We have spent more time this morning on the floor of the Senate talking about providing health insurance to the uninsured than we have spent in the entire session this year debating any proposals to deal with the problem.

I would say to my friends on the Republican side of the aisle that if you have an idea, or a concept, or a piece of legislation, come forward with it. Let us put our best proposal on the table. That is what the Senate is supposed to be about. It is supposed to be a contest of ideas, and the hope that when it is all said and done, the American people will prosper because we will come out with something that improves the quality of their lives. This year we have not.

Mr. REID. I want the Senator, also, to react to this. If we passed all of the programs the Republicans have talked about, the majority has talked about, on rare occasions—medical savings accounts, tax breaks for employers, and insurance—does the Senator realize that would cover less than 5 million of the 45 million people?

Mr. DURBIN. The Senator from Nevada is right. We overlook the numbers. The numbers are important. It is good to do something symbolic, but it doesn't solve the problem. We know the problem grows, as the Senator from Nevada has indicated, by 1 or 2 million a year—more people without health insurance coverage, more people who are vulnerable, and a Congress which has a tin ear when it comes to this issue.

We look at the Time magazine polls where it talks about the concern of the American people about health care. It doesn't get through to the leadership in Congress, and we will leave this year having done nothing to make it better.

Mr. REID. The Senator made an outstanding statement relating to guns, juvenile justice, kids getting killed, and people getting killed. So that those people within the sound of our voice understand what we are talking about, we are talking about people who purchase a gun shouldn't be crazies or a criminal. Isn't that what we are saying?

Mr. DURBIN. It is very basic. That is it.

Mr. REID. We are saying that we believe the legislation we passed, with the Democrats voting for it and a few Republicans, basically said that under this law if you are mentally deranged, a criminal, or a felon, you shouldn't be able to buy a gun. It should apply to pawnshops, and it should apply to gun shows. Is that what the legislation we passed said, and we can't even get to conference on it?

Mr. DURBIN. That is what it came down to. Those who would argue that gun control legislation and Capitol Hill want to take your gun away, that is not the case at all. What it is all about here is to say if you want to purchase a gun in America, whether it is from a licensed dealer, a pawnshop, or a gun show, we want to know a little about you. Are you a stable person? Do you

have a criminal record? If the answer is yes to either of those, if you are unstable, or you have a criminal record, then we will deny you the right to own a gun. Who can argue with that? A person who may in a weak moment do something to hurt an innocent person shouldn't be given advantage or given an opportunity by the purchase of a firearm.

We passed that when Vice President Gore came to the floor and cast a deciding vote just a few weeks after Columbine. And that issue died over in the U.S. House of Representatives when the gun lobby came through and said that is an outrageous suggestion—that you would keep guns out of the hands of kids and criminals.

I think American families see this a lot differently. I am hoping that when Members of the Senate who voted with the gun lobby go home, they will hear the other side of the story.

Mr. REID. The Senator also mentioned something we have not done—campaign finance reform. I would like the Senator to reflect a minute on how many people live in the State of Illinois, approximately.

Mr. DURBIN. About 12 million.

Mr. REID. In the State of Nevada, we have at least 2 million. But yet in a Senate race a little over a year ago in the State of Nevada, Harry REID and his opponent spent $20 million; that is, between the State party moneys, our own money, $20 million. That doesn't count independent expenditures by people who come from someplace and are spending money. You don't know who they are, and where they are from—another probably $3 million. So in a small State of Nevada, about $23 million.

Does that sound a little excessive to the Senator from Illinois?

Mr. DURBIN. It is more than a little excessive. It is outrageous. In Illinois, of course, we are faced with similar demands. If you want to buy television time, you have to raise money. If you can't write a personal check for it, you have to go out and beg for it.

Members of the Senate and House of Representatives who spend their time on the telephone begging for money from individuals and special interest groups are not using their time to represent people in Congress. They are, frankly, unfortunately bringing an element into this political process that is not positive. And the voters know this.

Interestingly enough, since 1960, we have seen a dramatic increase in spending on Presidential election campaigns, for example. And we have seen a dramatic decline in voter turnout and the number of people who participate. Voters have decided to vote with their feet and stay home. They are sick of the negative advertising. They are sick of the special interest groups. They are sick of the fundraising involved in this. And they are sick of the process. In a democracy, you can't stand that very long because if democracy is going to work, people have to be involved in it. And that means cleaning up our acts. When Senators FEINGOLD and MCCAIN came forward with campaign finance reform, 55 Senators—45 Democrats, 10 Republicans—said we agree, at least with respect to eliminating soft money. We should go forward with reform.

The Senator from Nevada, though, points to another problem: Even eliminating soft money will not eliminate the expense of campaigns, until we find a way to put legitimate candidates on the television without the extreme costs they run into now.

(Mr. BROWNBACK assumed the chair.)

Mr. REID. Let me say to my friend from Illinois to show how the system has frayed, I was interviewed in Washington by a Reno TV station for a half hour interview. During the interview, they said: How do you feel about the present Senate race? The person I had the good fortune of being able to beat is running again for the Senate; Senator BRYAN is not running for reelection. I said nice things about my opponent. I said I have known him; he is a nice man; I have known his family, and they always supported me. I said nice things about my opponent and I said nice things about the person who is going to be the Democratic nominee.

The Republican Senatorial Campaign Committee issues a press release they poured out to Nevada saying, ''Reid endorses Ensign,'' because I said something nice about my former opponent. They stooped to the level of saying, Reid endorses John Ensign.

I like John Ensign; he is a nice man.

The system has gotten so callous. After this came out, a radio talk show host called me and said, I am a Republican but I want you to know I think what the Republican Senatorial Campaign Committee did is despicable. I think it is, too. We now are suspect because we say something nice about somebody who is running for office. Shouldn't it all be nice? We should be in a contest where we can determine who will be the best for the State of Nevada, the State of Illinois, the State of Minnesota—not the worst.

Mr. DURBIN. I agree with the Senator from Nevada. He came to Congress, as I did, in 1983. There has been a dramatic and palpable change in the atmosphere on Capitol Hill in that period of time. I know he can remember in the early days when there was real civility between the political parties and real dialogue and parties at night. We went to dinner together even if we fought like cats and dogs on an issue on the floor.

That has changed. The well has been poisoned by the obsession with negative politics. I think that is one of the reasons the American people are checking out. They said if that is the best that can be done, you professionals in the business, we would just as soon stay home and watch professional wrestling. Occasionally professional wrestlers are involved in politics. The point they make is they don't approve of what is happening as we sink to lower and lower depths in the Democratic or Republican campaigns.

I agree with the Senator from Nevada. If one can't say something honest and complimentary about someone across the aisle without another person looking for a political advantage, that is a sorry commentary on the state of political affairs in America.

Mr. REID. I very much appreciate the Senator's statement on education. The Senator talked about how important it is to have additional teachers in America to reduce class sizes.

My daughter is a second grade teacher. She said she can tell within the first few days with these little kids who the smart ones are and those who are not so smart. The problem is classes are so big, what can be done about those in between, the average kid? Most people are average. What happens to the average kids? Many times they are lost in our present system.

No matter how teachers struggle, work long hours, and prepare their lessons, they don't have time to do it all because the classes are too big. What we have been able to do as a result of the President hanging in there is get more teachers to reduce class size. That is a positive step.

One thing the Senator didn't mention, and I know we have spoken about it, is the problem we are having in America with high school dropouts. Every day we have about 3,000 children drop out of high school, half a million a year. We have no specific programs to address that. The Senator from New Mexico and I have introduced legislation two successive years. Last year, it passed; it was killed in the House when the Gingrich Congress killed it. It would have set up within the Department of Education a dropout czar who would have been able to work on programs that have been successful in other parts of the country and, in effect, give challenge grants to local school districts—they would still control the programs, of course—giving them guidance and direction in keeping kids in school.

This year on a strictly partisan vote the majority killed the Bingaman-Reid amendment.

Would the Senator acknowledge the fact we have to do something about high school dropouts, we need to do something to keep kids in school?

Mr. DURBIN. The Senator from Nevada knows that is the source of many problems. At juvenile justice facilities across America, whether in the courts or in the correctional system, we will generally find the kids who are there dropped out of high school. Having dropped out, with time on their hands and no skills to get a job, many of them veered toward drugs and crime and a life that is not productive.

We end up paying for that over and over and over and over again. The old saying about an ounce of prevention is true. The Senator from Nevada has been a leader on this, telling the Nation we have to look at high school

dropouts not just as a sad reality but as a challenge to all to do better.

I look at some of the things I have learned recently about the American workforce. When I visited Dell Computer in Austin, TX, last week and talked to their officers and leaders in their company, they said they hired some 6,000 people in the previous 3 months to work for Dell Computer in Austin and Nashville, TN. I find their complaint or request similar to those I have heard in Illinois. We can't find enough skilled workers. That says to me that our educational system has to be better, it can't let any child fall behind and be forgotten. We have to address dropouts. We have to address skilled training. We have to address the kind of educational reform that goes way beyond the question about who wears a uniform to school and who doesn't. But we haven't done it in this Congress.

I am glad the Senator from Nevada has been a leader on this issue of dropout.

Mr. REID. If for no other statistics, we should look at the penitentiaries and jails in America. Eighty-three percent of the people sentenced for crimes in America today are high school dropouts, 83 percent. That says it all as far as I am concerned as to why we need to do something about dropouts.

Mr. WELLSTONE. Will the Senator yield?

Mr. REID. I am happy to yield to the Senator.

Mr. WELLSTONE. Mr. President, Judge Rick Solum from Minnesota told me—and I have to have this confirmed; it is dramatically jarring—there is actually a higher correlation between high school dropout and incarceration than between cigarette smoking and lung cancer. It is quite predictable.

The Senator from Nevada was talking about his daughter's experience as a second grade teacher. In many ways we harp on the complexity of it all to the point it becomes the ultimate copout, but a lot of these kids by kindergarten are way behind. There is a learning gap and they fall further behind and then they drop out of school and wind up all too often in prison.

It does seem to me this is a full agenda that we barely touched.

Sorry to interrupt. I am enjoying listening to the discussion.

Mr. REID. I appreciate hearing from the professor.

I want to talk with my friend from Illinois about Social Security. The Senator mentioned Social Security. One of the things that puts a smile on my face is when I hear the majority talking about having saved Social Security. If that doesn't put a smile on your face, nothing would because the Senator will recall a few years ago here in the Congress we were debating something called the constitutional amendment to balance the budget. As the Senator will recall, I offered the first amendment to say, fine, we want a constitutional amendment to balance the budget; let's exclude the Social Security trust fund from the balancing.

The Senator is aware they defeated that because they wanted to have their calculations applying the vast surplus that we have had the last several years with our Social Security fund, they wanted to apply that to balance the budget.

Is the Senator aware of that?

Mr. DURBIN. I remember that debate. Frankly, I think that was really the critical debate, when it came to the future of that amendment and when the Republican majority rejected our attempts to protect the Social Security trust fund in the balanced budget amendment debate. That was the end of the debate. As I recall, that amendment lost by one or two votes at the most. I voted against it. I think the Senator from Nevada did as well. If it was not going to protect Social Security, then we should not go forward with it.

As I reflect on it, it is a little over 2½ years ago that the battle cry on Capitol Hill was: The deficits, the balanced budget amendment, let the courts step in and have Congress stop spending; that was our only hope. Now we are in the era of surpluses. We have changed so dramatically without that constitutional amendment.

The Senator from Nevada recalls accurately the Social Security trust fund was a viable issue at that point.

Mr. REID. The Senator was also part of this Congress when, in 1993, without a single Republican vote, we passed the budget to address the deficit. It passed. We had to have the Vice President come down and break the tie. The Senator recalls at that time clearly, we had deficits of about $300 billion a year. Since then, we now have surpluses. We have done very well with low inflation, low unemployment—40-year employment highs in that regard. We have created about 20 million new jobs. We have about 350,000 fewer Federal employees than we had then. We have a Federal Government about the same size as when President Kennedy was President.

We could go on with other things that happened as a result of the hard vote we cast, without a single vote from the Republicans. Does the Senator remember that?

Mr. DURBIN. I was in the House of Representatives and cast a vote in favor of the President's program. I can tell you, literally, there were Democratic Members of the House of Representatives who lost in the next election, in 1994, because of that vote they cast. It was a really courageous effort on their part. It was exploited by those who said they were going to somehow destroy the economy and raise taxes across America. Yet look at what has happened. From 1993 to the current day, we have seen the Dow Jones index go from 3,500 to over 11,000, and all the things the Senator from Nevada has alluded to.

So that decision by President Clinton, supported exclusively by Democrats on Capitol Hill, had a very positive impact on America and its future. We have gone through one of the longest and strongest economic growth periods in our history. I think it relates back directly to that 1993 vote.

I can recall a number of my colleagues—Congresswoman Mezvinsky, a new Congresswoman from Pennsylvania who only served one term because she had the courage to cast that vote. If she had not, America might have gone on a different course than we have seen recently.

Mr. REID. I apologize to my friend from Minnesota. I want to end by asking one final group of questions to the Senator from Illinois.

We are here in kind of a celebratory fashion. We are going to complete this bill tonight, unless certain Members of the Senate keep our staff in all night long. Otherwise, we will finish it very quickly.

Does the Senator understand getting to this point has been really difficult and we, the minority, have had to hang very tough?

Remember, in an effort to get where we are, there have been a number of ways the majority has attempted to get to this point. You remember the Wall Street Journal article where they talked about the two sets of books the Republicans were keeping? They would, for certain things, go with the Office of Management and Budget and for certain things go with the Congressional Budget Office. Does the Senator remember that?

Mr. DURBIN. Yes.

Mr. REID. You can't keep two sets of books. The Senator recalls that didn't work. Does the Senator remember that?

Mr. DURBIN. Yes, I do.

Mr. REID. Does the Senator also remember they came up with this ingenious idea that they would add a month to the calendar? Does the Senator remember that?

Mr. DURBIN. That is right, 13 months.

Mr. REID. I remember the Senator from Illinois saying that is a great idea because we can just keep adding months to the year and we will never have a Y2K problem.

Mr. DURBIN. That is right.

Mr. REID. That was something also where we said: That is not fair, we are not going to do it. That didn't work.

Does the Senator also recall when they decided, with the earned-income tax credit, the program that President Reagan said was the best welfare program in the history of the country, where you would give the working poor tax incentives to keep working—does the Senator recall they wanted to withhold parts of those moneys to the poor in an effort to balance the budget?

Mr. DURBIN. I remember there was a certain Governor from Texas who admonished the Republican Members in the House and Senate, the House in particular, for their insensitivity. He said you should not balance the budget

on the backs of working people, and that was about the time they abandoned that particular gimmick.

Mr. REID. Then there was the across-the-board cut. Does the Senator understand when they were doing that, and it was decided to do all these things, they did it without the offsets that would take an across-the-board cut of 7 or 8 percent, but now they are declaring a victory because they got an across-the-board cut—except the President can decide what is going to be cut—of .37 percent? Does the Senator from Illinois understand that crying victory over having a .3-percent across-the-board cut where the President can decide what would be cut is not something they should be crowing about victoriously?

Mr. DURBIN. It is a face-saving gesture on their part. Once we got into the budget negotiations and the Republican leadership was faced with actually saying, no, we won't add additional teachers, we will not have additional cops on the beat to address the crime problem across America, they could not do it. They ended up saying we actually won because we got this so-called across-the-board cut of .37 percent.

I might say to the Senator from Nevada, as he well knows, this is entirely within the discretion of the President, so it is not across the board. He can decide which areas of Federal spending to reduce to reach this target.

Mr. REID. I have enjoyed very much visiting with my friend from Illinois. As the session is drawing to a close, I want to express appreciation, on behalf of all the Democratic Senators, for the Senator being our floor leader. He has done an outstanding job. He has been here. He has been able to express himself very well, as we all know he can. I want to personally tell him how much I appreciate it. And on behalf of the Democratic Senators, for all of them, I tell the Senator how much we appreciate every word he has spoken, everything he has done, and I will make sure the majority keeps their ear to what the Senator from Illinois is saying. He has done extremely well in expressing what I believe are the views of the majority of the American people.

Mr. DURBIN. I thank the Senator. It could not have been done without Senator DASCHLE and Senator REID and the leadership of my colleagues who have joined me. I also say it could not have been done without having such good, strong issues the American people support, that we can come talk about on the floor each day, pointing out that in this session of Congress they have not been addressed.

I thank the Senator for his kind words.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota is recognized.

THE LACK OF SENATE ACCOMPLISHMENTS

Mr. WELLSTONE. Mr. President, I say to my colleagues, there are other colleagues on the floor. I have waited for some time. I think it has been an important discussion, but I am going to try, since there are other Senators on the floor, to abbreviate my remarks. I actually could speak for 3 or 4 or 5 hours right now. I will not. We will see when we are going to finish up today.

I would like to build on a little bit of the discussion I just heard, and then I would like to go to the issue at hand, which is the extension of the Northeast Dairy Compact, the way this was done, the impact on my State of Minnesota, and why we have been fighting this out.

First of all, I also thank Senator DURBIN for his very strong voice on the floor of the Senate. I say to Senator REID from Nevada, sometimes we come out here and compliment each other to the point it becomes so flowery, people are not sure whether it is sincere or not. I believe it is sincere. Senator REID is a good example of somebody in politics who, if he suffers from anything, it is modesty. He rarely takes credit. He really has done some tremendous work in the mental health field. He has probably done more than anybody in the Senate to get us to focus on the problem of depression. He never takes the credit. He should have included himself in this discussion.

I am talking about Senator REID.

Mr. President, I am not sure how exactly to view this overall omnibus conference report we now have before us. I am a little worried about sounding so negative that it will seem I only come to the floor to be negative. I do not. I think some of what my colleagues have talked about—given the framework we were working within and given where we started, I think there are some things people can feel good about.

I am pleased to give the administration and Democrats some credit for at least being able to get some resources for some areas of priorities, such as more teachers and schools and moving toward smaller class size. It was a fix. I know for the State of Minnesota, and I am sure for many States, the Balanced Budget Act of 1997 and the cuts in Medicare reimbursement had, no pun intended, catastrophic consequences, especially for our rural hospitals, some of the nursing homes, home-based health care, and teaching hospitals. At least we were able to make a difference for a couple of years, though, again, it is temporary.

I feel pretty good about some investment of resources that are going to be helpful to people in Minnesota. If I had to pick out one priority, it would be $14 million for the Fon du Lac School, a pretty important commitment of resources. I count as one of the best days as a Senator the day I visited Fon du Lac School. It is a pretty horrendous facility, and for years I have been trying to get some money to build a new school for kids in the Indian community.

It is interesting, just this past week I was there, and at the end of the discussion I said to the students: I have to leave in 30 seconds, and I am sorry we are finishing. Can any of you talk about one thing you care more about than anything else?

This one student who is age 15 said: The thing I think the most about is I would like for the children—I viewed him as a child at age 15—I would like the children to live a better life than we have been able to live, and I would like to live a life that will help kids do better.

I said to this student: That was the most beautiful, powerful thing I heard said in any school I have visited, and I have been in a school every 2 weeks for the last 9, 9½ years I have been in the Senate.

I tend to come down more on the side of the editorial debate of the Washington Post. I do not think this Congress has much to be proud of at all. Part of what has happened is we have been engaged in a lot of mutual self-deception. I came out to the floor quite a while ago on an amendment dealing with veterans' health care. I said it was a deliberate effort to bust the budget caps.

The ways in which we have been talking about ''not raiding the Social Security surplus'' has been ridiculous. President Clinton started to do it. Tom DeLay has done it. We have put ourselves in a straitjacket. We know that is not what it is about, but it is great political sloganeering.

For Republicans who do not believe, when it comes to the most critical issues of people's lives, there is nothing the Government can or should do, then I think you are consistent and I respect your point of view, for those Republicans who take that position, and this is not a problem. But for Democrats and other Republicans who believe there are certain decisive areas of life in America, such as investment in children and education and opportunities for children, decent health care coverage, environmental protection, making sure we have some support for the most vulnerable citizens in the Congress, whether it be congregate dining or Meals on Wheels or affordable child care or, for God's sake, making sure children are not hungry in America, I do not think we have much to be proud of because we have done precious little.

As a matter of fact, I say to my colleagues on our side of the aisle, if you were to take the ''non-Social Security surplus,'' 75 percent of it because of cuts in the budget caps of 2 years ago in a lot of these areas we say we care the most about, in real dollar terms we are still not spending as much as we spent several years ago.

I do not think we have all that much to be proud of and we have to do a lot better. I said at the beginning I would talk about some positive things. I do not want to come out here appearing to

be shrill. I do think, unfortunately, this is a pretty rigorous analysis.

We did not pass campaign finance reform. That is the core issue. That is the core issue, the core problem. We did not pass patient protection legislation. We have done precious little to deal with the reality of 44 million people without any health insurance coverage and many other people having health insurance coverage but being underinsured.

Under title I—I saw this listed as one of our victories—we are funding about one-third of the kids who are eligible to be helped. These are some of our most vulnerable children in America, to the point where in Minnesota, in St. Paul, after you reach the threshold of a school that has 65 percent low-income population, there is no money for any other schools. It is about a $16 billion shortfall, and we have increased spending by $75 million.

We have done hardly anything for affordable child care. We did not include prescription drug coverage as a part of Medicare. On a whole host of amendments I have worked on as a Senator, almost all of them were eliminated in conference committee; whether it be at least some support for kids who witness violence in their homes or trying to deal with the problem of exploitation of women in international sex trafficking or juvenile justice mental health services or having an honest policy evaluation of what the welfare ''reform'' is doing around the country or increasing some funding—I mean real funding, a real increase of funding—for Meals on Wheels or congregate dining or social services support.

If you look at it from the point of view of how at least I think we can make life better for others—I am not going to speak for others—I think this has been a do-nothing Congress, I really do.

I will make one other point before I talk about this dairy compact, and it is this: I am hearing so much discussion about testing. George W. is talking about testing third graders, and if they do not pass those tests, they do not go on to fourth grade. It is high-stakes testing, and by the way, I will have an amendment next year to the Elementary and Secondary Education Act which makes sure we do not start testing at that young of an age.

Here is the point. Jonathan Kozol wrote a book ''Savage Inequalities,'' in which he points out—and all of us know this about our States—some school districts have the best technology, a beautiful building, recruit the best teachers, have the best lab facilities, the best textbooks, and other schools have none of that. We do not do anything to change that.

I cite a second bit of evidence. We have all these reports and studies, irrefutable evidence that if you do not get it right for children by kindergarten, many of them come to school way behind and they fall further behind and then they drop out. This is critically important, and we invest hardly anything in affordable child care.

Third, we do not do anything about the concerns and circumstances of children's lives in New York City or Minneapolis-St. Paul or rural Aitkin County or rural anywhere or inner-suburban anywhere in the country before they go to school and when they go home, whether it be the violence in the homes, or the children who see the violence or the violence in the communities or children who come to school hungry or children who come to school with an abscess because they do not have dental care. It is not very easy for children to do well in school under these conditions. We do not do hardly anything to change any of those conditions for children's lives in America so that we can truly live up to the idea of equal opportunity for every child.

But we are going to flunk them. We are going to fail them. We are going to give them standardized tests and fail them. We already know which kids are going to do well and which kids are not. I would argue it is cowardly. I would argue it is a great political slogan, but it is cowardly. There is a difference between testing and standardized—we should have accountability, but there are different ways of testing.

If you cannot prove you are giving every child the same opportunity to achieve and do well in the test, what are you doing giving these kids these standardized tests and flunking them and not letting them go on to the next grade?

We have done so little when it comes to good health care for every citizen, equal opportunity for every child, jobs at decent wages, and getting money out of politics and bringing people back into politics and speaking to the economic pain that exists among citizens in our country.

I start with agriculture. I am from an agricultural State. We have a failed farm policy that is driving family farmers off the land. We have not done a thing about the price crisis. We have had another bailout. We have some money for people so they can live to farm another day, but we have not changed a thing when it comes to farmers being able to get a decent price. We have not changed a thing when it comes to all the concentration of power in agriculture and in the media and in banking and in energy and in health insurance companies. We do not want to take on these big conglomerates. We do not want to talk about antitrust action.

So I argue that at the macrolevel this has been a do-nothing Congress. I think people in the country should hold us accountable. I say to the majority party, I think they should especially hold the majority party accountable because I think many of us have wanted to do much more. I think that is what the next election probably will be all about.

If people believe education and health care and opportunities for their children and jobs at decent wages are important issues to them—that is their center; that is the center of their lives—and they believe the Republican majority has not been willing to move on this agenda, and they feel as if there is a big disconnect between what is done here and the lives of people who we are suppose to represent, then I say, let the next election be a referendum. But I certainly wish we had done more.

A FAIR DEAL FOR MINNESOTA DAIRY FARMERS

Mr. WELLSTONE. Mr. President, final point. Some of us have been fighting for several days. We are out of leverage now. It is toward the end. But to be real clear about it, there was a time, when the Northeast Dairy Compact was brought to the floor, it was going to be part of the 1996 ''Freedom to Farm.'' I think it is the ''Freedom to Fail'' bill. It was defeated.

But this compact, which was not in the farm bill that passed in either House, was then put into the conference committee. There is a reform issue on which we ought to work. There is one in which I am really interested. I do not think the conference committee, which has become the ''third House'' of the Congress, should be able to put an amendment, a provision, into conference that was not passed in either House; or, for that matter, take out a provision that was passed in both Houses.

So this got snuck in. It was part of a deal. It is how we got the ''Freedom to Fail'' bill, which has visited unbelievable economic pain and misery.

The argument that was made for the Freedom to Farm bill was it should all be in the market; there ought not be any safety net; so a family farmer should not have any real leverage for bargaining for a decent price. You name it. It was a great bill for grain companies, a great bill for the packers, but not a very good bill for family farmers. On the other hand, when it came to dairy, it was a different set of rules. And we were going to have these dairy compacts with administered prices.

Our dairy producers were just asking for a fair shot—dairy producers in States such as Wisconsin and Minnesota.

Let me explain. In my State, we have 8,700 dairy farms. We rank fifth in the Nation in milk production. These farms generate about $1.2 billion for our farmers each year. The average size of the Minnesota dairy farm is about 60 cows—60 cows per farm. We are talking about family-size farm operations. We are going to lose many more because this compact, for all sorts of reasons so negative, impacts on our dairy farmers.

Mr. President, I am disgraced by the recent action by the majority party to include such harmful dairy provisions to the State of Minnesota as part of the final spending bill this year. The tactics used to include dairy as part of

this bill is yet another illustration of the flagrant abuse of power. I and my fellow colleagues have fought hard and have been successful in defeating previous attempts to extend the Northeast Dairy Compact. We fought openly and fairly on the Senate floor, and now our successful efforts may be unjustly curtailed by clandestine negotiations by those who overtly misuse their power. This type of backroom negotiating style is clearly not the first time that harmful dairy provisions have been attached to the bill. We have been fighting such tactics since the authorization of the compact. In fact, the authorization of the Northeast Dairy Compact was inserted into the 1996 farm bill as part of a backroom deal. In 1996, I offered an amendment which successfully struck the compact out of the Senate bill and the compact was not in the farm bill initially passed by either House of Congress. Instead, it was later inserted during the bill's conference in the passage of the 1996 Freedom to Farm bill. Yet ironically, the 1996 Freedom to Farm bill was passed with the intent to remove government from the marketplace. Although, I adamantly opposed the bill, many viewed the 1996 farm bill as a way to decouple payments to family farmers. The thought at that time was that farmers should produce for the market and that Congress should eliminate a safety net for our farmers.

For some reason, we seemed to play by a different set of rules when it comes to dairy. We told our corn and soybean farmers that to succeed in the 21st century they should pay close attention to market signals, but at the same time we considered implementing compacts that drown out those signals for dairy farmers. And yet even among dairy producers, we scrutinized and only allowed one region of the country to provide a safety net for their farmers, while hurting farmers in other parts of the country.

Minnesota is not asking for special favors. All Minnesota dairy producers are asking for is a fair shot. I have spoken here before about the importance of family dairy farming to my State's economy. Minnesota's dairy industry is one of the cornerstones of the State's economy. We have 8,700 dairy farms in Minnesota, ranking fifth in the Nation's milk production. The milk production from Minnesota farms generates more than $1.2 billion for our farmers each year. Yet, the average herd size of a Minnesota dairy farm is about 60 cows. Sixty cows per farm. So we are really talking about family operations in my State. Family businesses with a total of $1.2 billion in sales a year, contributing to their small-town economies, trying to live a productive life on the land.

Let me read from a few farmers in my State of Minnesota who are hurting:

Eunice Biel, a Harmony, MN dairy farmer:

We currently milk 100 cows and just built a new milking parlor. We will be milking 120 cows next year. Our 22-year-old son would like to farm with us. But for us to do so he must buy out my husband's mother (his grandmother) because my husband and I who are 47-years-old, still are unable to take over the family farm. Our son must acquire a beginning farmer loan. But should he shoulder that debt if there is no stable milk price? We continuously are told by bankers, veterinarians and ag suppliers that we need to get bigger or we will not survive. At 120 cows, we can manage our herd and farm effectively and efficiently. We should not be forced to expand in order to survive.

Lynn Jostock, a Waseca, MN dairy farmer:

I have four children. My 11-year-old son Al helps my husband and I by doing chores. But it often is too much to expect of someone so young. For instance, one day our son came home from school. His father asked Al for some help driving the tractor to another farm about 3 miles away. Al was going to come home right afterward. But he wound up helping his father cut hay. Then he helped rake hay. Then he helped bale hay. My son did not return home until 9:30 p.m. He had not yet eaten supper. He had not yet done his schoolwork. We don't have other help. The price we get at the farm gate isn't enough to allow us to hire any farmhands or to help our community by providing more jobs. And it isn't fair to ask your 11-year-old son to work so hard to keep the family going. When will he burn out? How will he ever want to farm?

Les Kyllo, a Goodhue dairy farmer:

My grandfather milked 15 cows. My dad milked 26. I have milked as many as 100 cows, and I'm going broke. They made a living out here and I didn't. Since my son went away to college, my farmhands are my 73-year-old father and my 77-year-old father-in-law who has an artificial hip.

I have a barn that needs repairs and updates that I can't afford. I have two children that don't want to farm. At one point, in a 30-mile radius, there were 15 Kyllos farming. Now there are three. And now I'm selling my cows. My family has farmed since my ancestors emigrated to the United States.

When I leave farming, my community will lose the $15,000 I spend locally each year for cattle feed; the $3,000 I spend at the veterinarian; the $3,600 I spend for electricity; or the money I spend for fuel, cattle insemination and other farm needs.

The testimony I just read were from MN farmers who felt comfortable to share their names. I have additional testimony, but the farmers who shared their stories, had requested that I not use their name. This is testimony from a farmer in East Ottertail, MN:

Despite the ongoing difficulties, it is amazing the steadfast willingness of this family to try and hold things together. The farm is farmed by two families, a father and his son.

Since dairy prices fell in the second quarter of 1999, there was not enough income for this family to make the loan payments and to provide for family living and cover farm operating expenses. The Farm Credit Services would not release a loan for farm operating assistance, and so the family had to borrow money from the lender from which they are already leasing their cows. They have not been able to feed the cows properly because of the lack of funds. Because they cannot adequately feed their dairy herd, their milk production has fallen and is considerably lower than the herd's average production. In addition, because there was no money for family living, the parents had to cash out what little retirement savings they had so that the two families had something to live on day to day.

The son and wife had to let their trailerhouse go since they could not make the payments and moved into a home owned by a relative for the winter. Most of their machinery is being liquidated. However, there are a few pieces of machinery that go toward paying off their existing debt. The family will be selling off 120 acres of land in their struggle to reduce the debt. Recently, the father has been having serious back troubles and has been unable to help his son with the work. This is tremendous stress both physically and mentally on the son. The son has decided he is going to have to sell part of the herd in order to reduce the herd to a number that is more manageable for one person. In addition, the money acquired from selling off part of the herd will be applied toward their debt. The son hopes that these three items combined: selling machinery, land and part of the herd can pay off enough of their debt that he might be able to do some restructuring on the remainder of the farm and to reduce loan payments to a manageable amount where there is something left to live on after payments are made.

These are just a few of the stories. I read these stories, because it is important that when we consider national dairy policy here in the Senate, we need to keep in mind that we are determining the future of an industry and a way of life that are basic not only to the agricultural economy, but to the very soul of America's rural heartland. I am concerned that the dairy provisions attached to this omnibus bill will hurt Minnesota dairy farmers and frankly dairy farmers throughout the country. I have been on the floor before discussing how the dairy compacts and any reversal to the implementation of an equitable milk marketing system will harm Minnesota dairy farmers. However, the dairy language included in this bill goes even further and could potentially threaten all family dairy farmers throughout the nation.

What I am talking about and concerned about as are many Americans is the trend towards factory-farm and concentration in dairy. It is unnecessary and unwise. There is no reason we cannot have a family-farm based dairy system. A dairy system which promotes economic vitality in rural communities and one which is more environmentally sustainable than a factory-farm system. Family dairy farms are efficient and innovative. Family dairy farms can provide a plentiful supply of wholesome milk at a fair price. However, there is a provision stuck in this bill which no one has really discussed, and would harm family dairy farmers everywhere. The provision would establish a pilot program allowing for the expansion of forward contracting of milk.

Forward contracting reduces competition in the marketplace and results in lower prices to dairy producers. Forward contracting is not specific to the dairy industry. In fact, one can note the effect of forward contracting by the recent events occurring in the hog industry. Recently, the hog industry has witnessed a significant increase in the number of producers who decided to forward contract. Hog producers will contract with packers to guarantee

them a minimum price for their pigs. Contracting is not inherently bad and there are some good contracts. However, what is occurring is that these deals are made often in private and do not reflect the spot market. There is a strong argument that contracting is partly responsible for the depressed hog prices and the rapid increase in the consolidation of the hog industry. What is happening in the hog industry is also happening in dairy.

This provision would expand forward contracting of milk by allowing processors to pay producers less than the federal milk price for milk. Under current law, forward contracting is allowed, however, only if the buyer is willing to offer at least as much as the federal minimum price. In other words, this provision will remove an important safety net for our dairy producers. Expanded forward contracting can also reduce the price for producers who do not forward contract by reducing the competition for milk, thereby damaging the entire dairy market structure. This provision could also discriminate against our family farmers because the most likely scenario is that processors would offer forward contracts to the largest producers. Again, we would see the domino effect of losing family farmers. By giving a better deal to larger producers, our family farmers cannot compete and we would see more losses of family farmers.

Those who support forward contracting contend that forward contracting is a risk management tool; however, this argument doesn't hold water. In fact, National Farmers' Union and other groups contend that the proposal for forward contracting will actually make it more difficult to manage risk by forcing producers to guess whether the volatile dairy market will go up or down. It is logically deduced that in the absence of an adequate support price, the market will continue to be highly volatile. What can happen is that anytime producers price guess wrong, they lose money under this proposal. The truth is that our family dairy farmers cannot compete in such a volatile market place. We must set policy that keeps family dairy farms in business while ensuring that consumer and taxpayer costs are kept at a reasonable level. What we need to achieve here is a fair, sustainable and stable price system for all dairy farmers.

That has clearly not happened, and that's partly why Minnesota continues to lose dairy farmers at an appalling rate. Minnesota is losing dairy farms at the rate of three per day due to base price that are already low and unstable. Let me read to you the past couple of BFP prices for family dairy farmers. The BFP is the basic formula price. It is the monthly base price per hundredweight paid to dairy farmers for their milk.

In August the BFP was $15.79 per hundredweight. That was quite high and it is a good price. Farmers could be pleased with that price. In September the BFP rose a little higher to $16.26 per hundredweight. I haven't seen the analysis of why the BFP price rose so high. Back in May of 1999, the BFP was only $11.26. Some would argue that it was due to the drought in the East that prices rose so high for August and September. The milk price was high because cows in the eastern region were strained and produces less milk. Therefore, milk was in demand and thus the price rose. If this is the case, our farmers are getting a decent price for their milk only at the expense of farmers in other parts of the country who are suffering.

In October, the BFP took a stumbling tumble from the $16.26-September price to $11.49 per hundredweight. This is a dramatic drop price. The BFP for this month will not be released until December 3rd, but it is predicted to be even lower. Again, as I have stated before with such volatility in the market, it is no question why our farmers are having a difficult time to survive. And if dairy farmers are not struggling enough with the volatility of the market, Congress is now assisting and in some cases is making the price of my dairy farmers worse—and that is what has happened with the Northeast Dairy Compact. The Northeast Dairy Compact gives six states the right to join together to raise prices to help producers in the region. While it may help the Northeast, it is cutting into our markets. It is true that the compact provided a safety net this spring to certain farmers when dairy prices plunged. When the price of raw milk dropped by 37 percent, one Massachusetts farmer got a $2,100 check from the compact. Overall, that farmer said, aid from the compact totaled seven percent of his gross income during the first 12 months of its operation. Conversely, Midwest dairy farmers—who also confronted the sharp price decline—got no such price.

The Northeast Dairy Compact fixes fluid milk prices at artificially high prices for the benefit of dairy producers in just that region. This artificial price boost of a compact may benefit the producers covered by the compact, but it hurts all other dairy farmers. It is also no secret that the extension of the Northeast Compact encourages other regions such as the Southeast to form their own compact. This would be detrimental to the Upper Midwest. A recent report by University of Missouri dairy economist Ken Baily found that Minnesota's farm-level milk price would drop at least 21 cents per hundredweight if a Southeast dairy compact were allowed to be implemented alongside expanded Northeast dairy compact. This would translate into a $27.2 million annual reduction of Minnesota farm milk sales. The compacts in Baily's study would cover only 27 percent of U.S. milk production, yet would have a sizable negative impact. If more regions adopted compacts Minnesota prices would drop even further.

Many, such as I heard Senator LEAHY inquire, why doesn't the Upper Midwest form their own compact. Minnesota and Wisconsin farmers would not benefit from organizing their own compact. A compact's price boost applies for only fluid milk. The percentage of Upper Midwest milk going into fluid products is so low that any compact would do little for Minnesota's farmers' income. The negative impact of compacts would far outweigh any minimal boost to fluid prices here in Minnesota. Congress should not accept a policy that so clearly provides benefits to the producers of one region at the expense of consumers and producers elsewhere. Instead, there should be an effort to create a more uniform and rational national dairy policy—a policy without the regional fragmentation caused by compacts.

To put it simply, compacts erect trade barriers in our country. By fixing milk prices at artificially high levels, Compact proponents understand that their markets become vulnerable to market forces at work elsewhere in the nation. So in order to prevent milk from other regions entering those Compact markets at lower prices, a tariff-like mechanism is established to ensure that all milk entering the Compact area is priced at the level fixed by the price-fixing commission in the region. It is bad enough that the extension of the Northeast Dairy Compact is attached to this bill, but it is unacceptable for Congress to attempt to meddle with USDA's final plan by resurrecting an alternative similar to Option 1–A.

As you know, the referendum voted on by producers nationwide overwhelming passed this past summer. Given the prominence of Minnesota's dairy industry, it should be no surprise that I have pushed for reform of the existing milk pricing system. The Secretary's reforms are a step forward in a long overhaul of dairy policy toward a more unified and simplified pricing system that benefits all producers. We need to reduce and eliminate the regional inequities that exist within the federal order system. The current pricing system regulates the price of fluid milk based on the distance from Eau Claire, Wisconsin. This policy causes market distortions that disadvantage producers in the Upper Midwest. These reforms must move forward quickly, and be implemented as soon as possible by the Secretary.

These dairy provisions are putting at great risk dairy farmers not just in my State, but across the country. It is imperative that we establish a national and equitable dairy system for all. For this reason, and among numerous other inequities included as part of this mammoth omnibus package, I cannot vote for the bill.

Mr. President, milk prices per 100 weight were about $16. Now they are down to $11. They are going down further. We do not have any kind of national dairy policy that makes any sense.

What has happened, which affects Eunice Biel and Lynn Jostock, and Les Kyllo, and all sorts of other farmers who will remain anonymous but whose statements are included in the RECORD—they do not want their names used—it is hard when you are going through pain, and you are working 19 hours a day, and you are going to lose your farm.

What has happened, to add salt to the wound, insult to injury, is that in the dark of night in a conference committee a few people—it did not pass the Senate; they did not get it through—they put through a provision that extended this Northeast Dairy Compact, which would have run out, and they blocked the Secretary of Agriculture from being able to move forward with milk marketing order reform.

They have another provision which would allow for a pilot project for the expansion of the forward contracting of milk. That is what we have had in the hog industry. Contracting is not inherently bad, but what happens is these arrangements are made in private; they do not reflect the spot market. Basically, what happens is, you are going to have this consolidated industry, as in the hog industry. And what will happen is that the processors will be able to pay the producers less than the Federal milk price for milk. In other words, under current law, forward contracting is allowed; however, only if the buyer is willing to offer at least as much as the Federal minimum price. But this little-known provision—never debated on the floor of the Senate—would now remove that important safety net for our dairy producers. Processors are going to offer better forward contracts to the larger producers, to the largest producers, and our dairy farms are going to go under.

In Minnesota, we continue to lose dairy farms at an appalling rate. Minnesota is losing dairy farms at the rate of three per day due to a base price that is already so low and so unstable.

I say to each and every one of my colleagues that it is a triple blow to agriculture, to dairy farmers, in Minnesota. First of all, again, this horrendous piece of legislation, which was passed in 1996, that I think the Senate should be ashamed of, took the bargaining power away from farmers. They cannot even get a price to survive.

We have a depression in agriculture. We are going to lose a whole generation of producers. The way this happened, with the Northeast Dairy Compact, was to put that into the conference report. It never passed on the floor. It was part of the whole deal that made this bill possible.

Then this dairy compact was going to expire in 2 years. We had a vote on it. It did not get through the Senate. It came back into the conference committee, in this horrendous process—which will be my last point about this process—no vote, no public discussion, all sorts of provisions, one of which I just mentioned, put into this amendment, and now this omnibus conference report is brought to us, and we cannot amend it. We can't amend it. I can't come to the floor of the Senate and deal with this forward contracting of milk without the safety net. I can't come to the floor of the Senate with an amendment to knock out this amendment. You get a few people who decide in a closed room, outside of any scrutiny, and they put this back in.

I am outraged. But we fought this every way we know how. Today is the last day. There will be a vote, and we can't stop that vote—whether it be at 1 a.m. or in midafternoon. To me, that is no longer an issue. We have done everything we can.

But I say to my colleagues that I think what has been done to the dairy farmers in the Midwest is an injustice. I think it is an injustice in a piece of legislation that, in and of itself, doesn't represent all that much for America, even though I know everybody will be talking about how great this is. I am certainly going to vote against it.

I also say to my colleagues that I hope we will, next year, think about how we can reform the way we operate. On this, I hold the majority leader accountable—to the extent that I can hold him accountable. And I will figure out every way I can next year, when we come back, to keep raising this issue.

We didn't get a lot of these appropriations bills done. We had a lot of legislation that came to the floor. We weren't allowed to do amendments. Frankly, I don't know how anybody in here thinks we can be good legislators when we don't have the bills coming to the floor. We need to get them out here in the open and have debates that are introduced, have up-or-down votes, and then we move forward. And if we have to work from 9 in the morning until 9 at night, so be it. But instead, we don't do our work.

Those of us who believe the Senate floor is the place to fight for what we believe in and have the debates are not able to do so. Instead, we have this process where six, seven, eight people decide what is in and what is out, and we have this huge monstrosity called the ''omnibus'' bill that is presented to us, which none of us has read—or maybe two people have. But none of us has read this from cover to cover. I doubt whether there are more than two Senators who know everything that is in here.

I would like to raise the question, How can we be good legislators with this kind of process? We are not being good legislators. I am speaking for myself. I am not able to be an effective legislator representing Minnesota if we are going to continue making decisions in conference committees and rolling in six, seven, eight major pieces of legislation with no opportunity for me as a Senator from Minnesota to bring amendments to the floor. That was done on the dairy compact, and that is what has been done on a whole lot of other decisions. It is no way to legislate.

I contend that that is no way to legislate. I contend that this omnibus bill makes a mockery of the legislative process. I contend on the floor of the Senate today, not only because of what happened to dairy farmers in Minnesota but because of the whole way in which this decisionmaking process has worked, that this is unconscionable. I contend that this kind of decisionmaking process is going to lead to more and more disillusionment on the part of people in the country.

People hate the mix of money and politics. They don't like poison politics. They don't like all the hack-attack politics my colleagues, Senator REID and Senator DURBIN, were talking about earlier because they believe that is what is wrong. They don't like what, apparently, some of us relish. They don't like backroom deals, decisionmaking that is not open, accountable, and that people can understand and comprehend.

Now, my final point. I am not so sure that some of the major decisionmakers, given the sort of deck of cards they had to work with—I don't know that I want to point the finger at any one person. I don't think that is probably fair. I am making an argument about process, not about a particular Senator. Some of them who were involved in this probably did everything they could do from their point of view. They are very skillful. But I will tell you one thing. Minnesota dairy farmers came out on the short end of the stick.

I regret the fact that this has been done and stuck into a conference report and was not done in an honest way, with open debate on the floor of the Senate, where we could have amendments. I also regret a legislative process where we didn't get to the bills on time, didn't have the debate on the floor, didn't have amendments we could introduce, didn't have the up-or-down votes, and it all got done by a few people, really, basically, with very little opportunity for public scrutiny, for democratic accountability.

I am going to vote ''no'' on this bill. I think I would vote ''no'' just on the issue of the way in which these decisions have been made because, again, I think we have made a mockery of what should be the legislative process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

UNANIMOUS CONSENT AGREEMENT

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senator from Iowa, Mr. GRASSLEY, be recognized for approximately 10 minutes, if that is sufficient for the Senator.

Mr. GRASSLEY. I think it is.

Ms. COLLINS. I also ask unanimous consent that he be followed by the Senator from New York, Mr. SCHUMER, for

not to exceed 5 minutes, and that I be recognized to transact legislative business.

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

The Senator from Iowa is recognized.

CHINA'S ACCESSION TO THE WORLD TRADE ORGANIZATION

Mr. GRASSLEY. Mr. President, in my capacity as chairman of the International Trade Subcommittee and getting ready for the Seattle Round, as well as considering China's accession to the World Trade Organization, I want to speak on Congress' power and our responsibility on the whole issue of international trade.

It is very clear in the Constitution that the Congress of the United States has the power, as one of the specifically delineated powers of Congress in the first article, to regulate interstate and foreign commerce. So the United States has just concluded a bilateral market access agreement with China. It should pave the way for China's accession to the World Trade Organization.

From what I have heard about this agreement—and, of course, we only have summaries at this point—it is an exceptionally good one for the United States and especially for American agriculture. I said, when the agreement fell through on April 8, I was fearful that a lot of ground would be lost. I don't think, from what I know, there has been any ground lost with the renegotiation. Charlene Barshefsky, our U.S. Trade Representative, conducted herself in a highly professional way and negotiated what appears to be an excellent agreement, and she did it under very difficult circumstances.

Now that the negotiations are finished, the job of the Senate and the House of Representatives becomes even more important. Our constitutional responsibility requires that the Senate and the House carefully review the agreement in its entirety, and the extent to which there are changes in law, they obviously have to pass the Congress, as any law would, and be signed by the President.

It is a responsibility every Senator takes very seriously because it is assigned to us by the Constitution. And because the Congress has a unique and close relationship with the American people, we must also keep faith with the people who sent us here to fulfill our constitutional responsibilities.

That is why it is critical we know everything that was negotiated.

I want to put emphasis upon that statement.

That is why it is important that the Congress of the United States know everything that was negotiated—everything, every issue, every detail, and every interpretation—so there can be no surprises, no private exchanges of letters, no private understandings about the key meanings of key phrases in the agreement, and no reservations whatsoever that are kept just between negotiators.

In other words, if Congress is going to legislate these agreements and secure these agreements, Congress has a responsibility not only to make sure everything is on the table but to make sure the administration puts everything on the table.

Let me be clear about this. There is an absolute requirement of disclosure. Congress must see everything that is negotiated. And it has not always been this way, or I wouldn't be to the floor asking my colleagues to consider this, and with an admonition to the administration to make sure everything is given to Congress. When congressional approval is required, only what we see and vote on should become the law. Nothing should become the law of the land that is secretly negotiated and that isn't submitted to Congress for our approval.

Because there have been problems in this area in the past, Senator CONRAD of North Dakota and I have introduced legislation. This legislation is contained in the African trade bill. That trade bill was recently approved by the Senate. I will work very hard to see that this provision is part of the final bill approved by conference committee before the African trade bill is sent to the President.

Why are we where we are today with what Senator CONRAD and I have tried to accomplish, and did accomplish, as far as the Senate is concerned? Unfortunately, past administrations have not complied with their basic principles of complete disclosure and complete openness in their submittal of agreements to the Congress. A prior administration—it happened to be a Republican administration—violated the spirit, if not the letter, of this absolute good faith requirement of complete disclosure. This incident occurred in 1988. I want to give background on it because it was in regard to the Canadian Free Trade Agreement which became part of the North American Free Trade Agreement.

At that time, there was disagreement about the meaning of a term relating to Canada's price support system for wheat.

If anybody has heard the articulate speaking of the Senator from North Dakota on this issue—Senator CONRAD has talked about this many times, about wheat unfairly coming into the northern United States in violation of the free trade agreement but somehow being legal because of these side agreements that Congress didn't know about in the past.

There was a disagreement about the meaning of a term relating to Canada's price support system for wheat. The issue dealt with whether the Canadians were manipulating their price support system by unfairly defining a very key term in their favor, thus allowing them to sell wheat below cost in the United States market in violation of the clear meaning of a provision of the Canadian-United States free trade agreement.

The United States insisted that Canada was, indeed, selling wheat below cost in violation of the agreement. Canada denied the violation. The dispute was even taken to a binational panel for resolution.

In the argument before the binational panel for dispute resolution, the Canadian side at that time produced a letter from a few years back from the United States Trade Representative to the Canadians supporting the Canadian interpretation of the provision and very devastating to the case brought by the United States.

The question now is whether the U.S. Trade Representative's letter, or his interpretation of this controversial and important provision, was properly reported to the Congress before we considered that agreement, voted on it, and it became the law of the land. Some might argue that it was disclosed. Others say it was not.

In my view, because the issue of Canada's price support system for wheat was such a politically sensitive issue in the context of the NAFTA agreement, there should not have been any room for doubt what the administration's interpretation was. The disclosure of the administration's interpretation of this key language should have been fully and completely disclosed—not just in the fine print or in response to questions raised by a Senator at a hearing.

When important issues of foreign commerce are at stake and Congress is exercising its constitutional power of regulating foreign commerce, we in the Congress should not have to guess what the answer is or even have to figure out how to ask the right questions in the hearing at the right time and in the right way to get an honest answer, to have open disclosure of what our agreements are and what the results of the negotiation are.

This incident on the wheat and the Canadian Free Trade Agreement had unfortunate and profound consequences. It led some in Congress to believe they could not trust our negotiators. Some of us believed we weren't dealt with fairly. The American wheat farmer has been harmed as a result of it.

Now, I want to say I have the highest regard for our negotiators, especially for Ambassador Barshefsky. She has done a remarkable job. She has my complete trust. So this is not about Ambassador Barshefsky. It is not about any one of our negotiators. Nor is this a partisan concern. The incident that sparked my concern occurred during a Republican administration. I am concerned about one simple thing. The principle of openness and full disclosure to Congress.

This simple, basic principle applies not just to the agreement with China. In about ten days, the United States will help launch a new round of global trade negotiations in Seattle. This new round of trade liberalization talks will

cover agriculture, services, and other key trade issues. Many of these issues are sensitive, and even controversial.

We must be confident that we will see everything that is negotiated in the new round before it can become law. The legislation Senator CONRAD and I wrote that is part of the Africa trade bill requires full disclosure to Congress of all agreements or understandings with a foreign government relating to agricultural trade negotiations—what we refer to here as agricultural trade negotiations, objectives, and consultation.

Anyway, our provision says that any such agreement or understanding that is not disclosed to Congress before legislation implementing a trade agreement is introduced in the Congress shall not become law. In other words, if Congress doesn't know about the agreement, it should not become law. That is very simple. It is very clear. It is a restatement of the principle of full disclosure. It is consistent with Congress' constitutional responsibility for foreign commerce, but I understand the administration opposes this commonsense provision. They want it removed from the bill.

Mr. President, it says in the Conrad-Grassley bill, no secret side deals. The Congress agreed that there should be fully submitted to Congress all of the provisions of any negotiations that must be approved by Congress. I don't know why the administration wants this language removed from the trade bill, but this is what they have sent to the conferees in the Congress of the United States. They list this section that says no secret side deals. They are suggesting we strike this subsection.

We cannot let this happen. I will do everything I can to make sure this physical disclosure provision becomes the law of the land when the House and Senate conferees finally consider the African trade bill. I believe our Government should live by the same standards we expect from farmers in my hometown of New Hartford, IA, or any businessman in Des Moines, IA. Tell us exactly what you mean. Show us everything in the agreement. Act in good faith.

I ask my colleagues to support this provision and vote for it when it comes back from the conference committee so we have physical disclosure of everything so Congress isn't asked to vote on something that is secret, that we don't know anything about. If we do that, we are violating our constitutional responsibility to the people of this country.

The PRESIDING OFFICER. Under the previous agreement the Senator from New York is recognized for 5 minutes.

GOOD NEWS FOR RURAL NEW YORK

Mr. SCHUMER. Mr. President, today I am happy to say there is good news in the omnibus budget bill for rural New Yorkers in two ways. The Satellite Home Viewer Act will finally allow rural residents in rural areas to receive local television programming, and the dairy language in the omnibus final package allows both option 1–A and the New England Dairy Compact to continue. Let me touch on both of these. It is clearly two dollops of good news for rural New Yorkers.

On the satellite bill, I have had constituent after constituent in areas such as Allegany County and Chenango County and Steuben County and Ulster County, throughout New York State in rural areas, tell me all of a sudden they were unable to receive over the air signals to receive local satellite programming. Imagine being cut off. Imagine for years depending on the weather reports before you took your kids to school or because you are a farmer and then not being able to get them. Imagine having your local news shows cut off. Imagine not being able to see things your family was accustomed to seeing, all because of a court action.

Today, that bill, that court action, is being overruled in the omnibus act. I am delighted to say half a million New York residents will now be able to get their local signal from their satellite which they were not able to do before—half a million people, all back the way they should be.

I hope we will continue the progress of the Satellite Home Viewer Act. The Federal provision was taken out. I understand the Senate Banking Committee plans to hold hearings next year to ensure that multiservice providers are encouraged to extend competition. I want to work with my colleagues to make sure my constituents in upstate rural New York, central New York, the west and southern tier, and in the north country have the same viewing options as those in downstate.

The other bit of good news, of course, is the dairy language in the final bill. First, I know some of my colleagues from Wisconsin and Minnesota have labored long and hard on behalf of their constituents in this regard. I salute their hard work, their tenacity, and their diligence. I heard the Senator from Minnesota say the average dairy farm in his State has 60 cows. It is no different in New York. We don't have large farms, by and large. We shouldn't be pitting one against the other. Without 1–A and without the dairy compact we would have had desperate times in rural New York for our dairy farmers. We are the third largest dairy State. Dairy is a vital industry in much of New York.

If option 1–B were allowed to be implemented, New York would experience the single largest loss of any State, $30.5 million a year. Compacts, of course, are necessary. The 1–A option passed both Houses. This is not something being done in the dark of night and not being debated. Both Houses, after full debate, passed both compacts.

I say with all due respect to my colleagues from Minnesota and Wisconsin, it is they who seek to thwart the will of the majority of the House and the Senate when they try at the last minute to stop an omnibus bill from going through. We need this compact.

In New York and New England, the price of milk has not risen by more than 4 cents over the national average in every given year. I say to my downstate constituents, to keep an industry vital to all New Yorkers going, is it worth it to pay that 4 cents? Almost everyone says yes. With senior citizen centers, WIC, and other types of good programs being exempt, this is a worthy piece of legislation. I think it is a good day for the dairy farmers of New York.

It is not all we wanted; I admit that. We want New York to be added to the Northeast Dairy Compact, and we will fight like the devil to make that happen in future years. Without 1–A and the existing dairy compact, which still benefits New York dairy farms in the north country and places such as Washington and Warren Counties and in central New York, those areas without the New England Dairy Compact, we would have suffered dramatically. Adding insult to injury, not having option 1–A would have been devastating.

In the last decade, New York State has lost one-third of its dairy farms, 13,000 to 8,600. The dairy compact and option 1–A will help my State and region retain this vital and cherished industry. I believe that can be done not at the expense of our counterparts in the Midwest.

In conclusion, it is a good day for rural New Yorkers in this omnibus bill. No. 1, the Satellite Home Viewer Act will allow half a million New York families to receive local signal once again; and, an extension of the dairy compact, as well as extension of option 1–A, will allow our dairy farmers who have been struggling over the last decade to have a better chance to survive, to grow, and to prosper in one of the industries most vital to all of New York State.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Maine is recognized.

SENATE ACCOMPLISHMENTS

Ms. COLLINS. For the information of all of our colleagues, I inform Senators that we are still working out some last-minute issues that will then allow the Senate to move a number of important bills that have been cleared on both sides. While we are waiting for these last-minute glitches to be resolved, I want to take this opportunity to respond to some of the comments made by my colleagues on the other side of the aisle this morning.

I am disappointed in some of the process, and I do not support all of the provisions of the omnibus appropriations bill which we will consider later this day, but I very much disagree with the assertions made by some of my colleagues on the other side of the aisle

that we have not accomplished anything during this Congress. We have, in fact, accomplished a great deal of which we can be proud. Rather than engaging in harsh partisan rhetoric, we should be coming together in these final hours of this session to celebrate what we have done for the American people.

First of all, I think we can take great pride in the accomplishment that we will be producing a balanced budget for the first time in decades, one which does not raid the Social Security trust fund. This is a tremendous accomplishment and it establishes a new milestone in fiscal responsibility. It has been the Republican caucus that has held firm in their determination to prevent one penny of the Social Security trust fund from being diverted to support expensive new unrelated Government programs. We have succeeded. We have kept that commitment. We have fulfilled our obligation to the senior citizens of this country. For the first time in 30 years, the Congress has produced a balanced budget which will result in a surplus that does not rely on funds from the Social Security trust fund. The raid on the Social Security trust fund has been stopped cold.

I give a great deal of credit to Senator DOMENICI, to Senator STEVENS, to Senator ABRAHAM, and to all colleagues in the Republican caucus who have united in their determination to secure the Social Security trust fund for our seniors and for future generations. That is an accomplishment of which we can be proud.

Second, I am delighted the omnibus appropriations bill includes what has been my highest priority in the last few months and that is to restore some of the unintended cuts made by the Balanced Budget Act of 1997 as well as by onerous regulations imposed by the Clinton administration that have impaired the ability of our rural hospitals, our home health care agencies, and our nursing homes to provide much needed quality health care to our Nation's senior citizens.

The Presiding Officer has been an early supporter of legislation that I have introduced to provide financial relief to our distressed home health care agencies. America's home health care agencies allow our senior citizens and our disabled citizens to receive the health care where they want it, in the security and the privacy of their own homes. Unfortunately, under the Balanced Budget Act of 1997, and exacerbated by misguided policies of the Clinton administration, America's home health agencies have found their ability to provide this care has been jeopardized. This care is so important to our Nation's senior citizens, particularly those who are living in rural areas of our country where access to home health care may spell the difference between staying in their own homes and having to travel many miles to receive health care.

Unfortunately, since cutbacks in home health care have gone into effect, there has been a devastating impact on the senior citizens of our country. Let me use the example of the State of Maine. As you can see, in just a year's time, more than 6,000 Maine senior citizens have lost their access to home care. In fact, it is 6,600 Maine seniors who have lost their access to home health care. The number of home health care visits in Maine has declined by more than 420,000. Reimbursements to Maine's home health agencies have declined in a year's time by more than $20 million.

Maine's home health agencies have had a long tradition of providing low-cost compassionate care. We are not talking about home health agencies that were in any way abusing the system, making too many visits, or overbilling Medicare. We are talking about home health agencies that were cost effective and efficient, providing quality low-cost care throughout the State of Maine.

I have visited with many of these seniors who have lost access to home health care. One was a retired priest in my hometown of Caribou, ME. He relied on his home health services and has now had to dig deeply into his savings to provide for the care out of his own pocket because Medicare is no longer providing the services he needs.

In another case, I visited an elderly couple in rural Maine who were able to stay together in their own home rather than go into a nursing home because of the valuable services provided by home health care nurses. The woman in this case was severely diabetic. She was confined to a wheelchair and had a wound that was not healing. It was home health care nurses who came three times a week to clean the wound, to change the dressing, to take care of her other health care needs. Home health care allowed her and her elderly husband to stay together in their golden years.

It is that kind of service which has made such a difference to the quality of life of our senior citizens, and it was that kind of service which has been so jeopardized by the ill-advised Clinton administration regulations and the unintended consequences of the Balanced Budget Act of 1997.

The legislation I introduced was a bipartisan bill. It was cosponsored by more than 30 of my colleagues, to reverse these unintended consequences. The Balanced Budget Remedies Act that is included in the omnibus appropriations bill does not go as far as I would like, frankly, but it is a good and necessary first step. I commend the chairman of the Finance Committee, Senator ROTH, as well as Senator MOYNIHAN, for working with us to come up with legislation that we can enact to ensure our senior citizens do not lose access to much needed health care.

That is also a very important bill to our rural hospitals. In our hospitals, in States such as Maine, we have been suffering from the cutbacks that jeopardize their ability to provide care. These hospitals, in most cases, are the only hospital in the community. If they are forced to close because of unfair and inadequate reimbursements from Medicare, it will devastate the communities. It will leave many of our senior citizens and others in the community without access to health care at all when they become ill and need hospitalization.

One of the features of the cutbacks in home health care troubles me. I wonder what has become of these nearly 7,000 Maine citizens. In some cases they have been forced to pay for the care themselves. Many of the seniors in Maine simply cannot afford that kind of out-of-pocket expense. They are living on Social Security, on limited incomes. They already have a very difficult time affording their prescription drugs. Some of them have become sicker because they have lost their access to home health care and have prematurely been forced into nursing homes or have been subject to repeated hospitalization which would have been avoided had the home health care services been provided. The irony and the wrongheaded effect of this policy is we are probably going to end up paying more for the care for these senior citizens who have lost access to their home health care because hospitalization and nursing home care is so much more expensive than home health care. Surely this has been a shortsighted policy.

I am pleased this legislation is going to take the first steps we need to provide much needed financial relief to our Nation's home health care agencies, our rural hospitals, and our nursing homes. It is going to make a real difference. There is much else that is very valuable in this legislation for our Nation's families. Not only our senior citizens but our children are going to benefit from this legislation.

When you hear the rhetoric in this Chamber about education, you would think that somehow there has been an attempt to slash education funding. Nothing could be further from the truth. In fact, the Republican Senate increased—increased, Mr. President—education spending by $500 million beyond what was requested by President Clinton in his budget.

The increase also represents a substantial hike in spending for education programs over last year's spending levels. In fact, the legislation we are about to consider increases education spending by $2 billion over the last fiscal year, and, again, the increase is $500 million over what the President proposed.

Clearly, there is a deep and heartfelt commitment in the Senate to increase education spending and to recognize its importance to the future of this country and to ensuring a bright future for our Nation's children. The issue has not been about money. The issue has been who is best able to make education decisions. That is the debate we will continue next year.

To me, the answer is obvious. We do need to increase the Federal investment in education, but at the same time we need to empower our local school boards, our parents, our teachers, and our principals to make the decisions and set the priorities. We need to hold them accountable for improved education achievement, but we do not need a Washington-knows-best, a one-size-fits-all approach to education policy.

There is other good news in the omnibus appropriations bill, and that is good news for students and their families who are pursuing higher education. Since I have come to the Senate, one of my highest priorities has been to increase Pell grants and student loans so that no qualified student faces a financial barrier that makes it impossible for him or her to attend college.

Prior to coming to the Senate, I worked at a small business and health college in Bangor, ME, known as Husson College. It was there that I first became aware of how critically important Federal financial assistance was for students who are attending college.

Eighty-five percent of the students at Husson College could not afford to attend college but for the assistance they were provided from student loans and from Pell grants. This assistance was absolutely essential in allowing them to attend college. Many of them were first-generation college students. They were the first people in their families to have the opportunity to attend college. They were taking a big step they knew would ensure a brighter future for them and more opportunities.

We know the vast majority of new jobs that are being created into the next century will require some kind of postsecondary education, either attendance at a technical college, a private college, or a university. We are going to need more and more skills, more and more education, if we are to compete for the jobs of the future. That is why I am so delighted the legislation provides a significant increase for Pell grants.

As you can see, the maximum Pell grant will be increased in the appropriations bill. Currently, it is $3,125. The President proposed $3,250. The appropriations bill passed by the Senate proposed $3,325. Those are good steps. They will help make college a little bit more affordable for our Nation's young people; indeed, also for older adults who are returning to college because they realize they need additional skills.

Once again, it is important we emphasize, the Senate increased spending for these essential Pell grants beyond what the President recommended. This is a budget of which we can be proud. It does not include every provision each of us would like. It reflects hours, weeks, and months of work. It reflects compromise. That is what the system is all about.

Each of us would write this bill differently. Each of us wishes the process could be cleaner, that we could work to get our legislation accomplished earlier, that we had more cooperation with the White House in achieving this goal. But the fact is, this legislation will ensure brighter futures for the families of America.

I appreciate the opportunity to set the record straight on these important issues. The bill, which will be before us later today, is not perfect but it is good legislation that deserves the support of all our colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

DECEPTIVE MAIL PREVENTION AND ENFORCEMENT ACT

Ms. COLLINS. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 335) to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.

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

Resolved, That the bill from the Senate (S. 335) entitled ''An Act to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—DECEPTIVE MAIL PREVENTION AND ENFORCEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Deceptive Mail Prevention and Enforcement Act''.

SEC. 102. RESTRICTIONS ON MAILINGS USING MISLEADING REFERENCES TO THE UNITED STATES GOVERNMENT.

Section 3001 of title 39, United States Code, is amended—

(1) in subsection (h)—

(A) in the first sentence by striking ''contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement'' and inserting the following: ''which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government''; and

(B) in paragraph (2)—

(i) in subparagraph (A) by striking ''and'' at the end;

(ii) in subparagraph (B) by striking ''or'' at the end and inserting ''and''; and

(iii) by inserting after subparagraph (B) the following:

''(C) such matter does not contain a false representation stating or implying that Federal Government benefits or services will be affected by any purchase or nonpurchase; or'';

(2) in subsection (i) in the first sentence—

(A) in the first sentence by striking ''contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement'' and inserting the following: ''which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government''; and

(B) in paragraph (2)—

(i) in subparagraph (A) by striking ''and'' at the end;

(ii) in subparagraph (B) by striking ''or'' at the end and inserting ''and''; and

(iii) by inserting after subparagraph (B) the following:

''(C) such matter does not contain a false representation stating or implying that Federal Government benefits or services will be affected by any contribution or noncontribution; or'';

(3) by redesignating subsections (j) and (k) as subsections (m) and (n), respectively; and

(4) by inserting after subsection (i) the following:

''(j)(1) Any matter otherwise legally acceptable in the mails which is described in paragraph (2) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

''(2) Matter described in this paragraph is any matter that—

''(A) constitutes a solicitation for the purchase of or payment for any product or service that—

''(i) is provided by the Federal Government; and

''(ii) may be obtained without cost from the Federal Government; and

''(B) does not contain a clear and conspicuous statement giving notice of the information set forth in clauses (i) and (ii) of subparagraph (A).''.

SEC. 103. RESTRICTIONS ON SWEEPSTAKES AND DECEPTIVE MAILINGS.

Section 3001 of title 39, United States Code, is amended by inserting after subsection (j) (as added by section 102(4)) the following:

''(k)(1) In this subsection—

''(A) the term 'clearly and conspicuously displayed' means presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated;

''(B) the term 'facsimile check' means any matter that—

''(i) is designed to resemble a check or other negotiable instrument; but

''(ii) is not negotiable;

''(C) the term 'skill contest' means a puzzle, game, competition, or other contest in which—

''(i) a prize is awarded or offered;

''(ii) the outcome depends predominately on the skill of the contestant; and

''(iii) a purchase, payment, or donation is required or implied to be required to enter the contest; and

''(D) the term 'sweepstakes' means a game of chance for which no consideration is required to enter.

''(2) Except as provided in paragraph (4), any matter otherwise legally acceptable in the mails which is described in paragraph (3) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

''(3) Matter described in this paragraph is any matter that—

''(A)(i) includes entry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and

''(ii)(I) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes;

''(II) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that a purchase will not improve an individual's chances of winning with such entry;

''(III) does not state all terms and conditions of the sweepstakes promotion, including the rules and entry procedures for the sweepstakes;

''(IV) does not disclose the sponsor or mailer of such matter and the principal place of business or an address at which the sponsor or mailer may be contacted;

''(V) does not contain sweepstakes rules that state—

''(aa) the estimated odds of winning each prize;

''(bb) the quantity, estimated retail value, and nature of each prize; and

''(cc) the schedule of any payments made over time;

''(VI) represents that individuals not purchasing products or services may be disqualified from receiving future sweepstakes mailings;

''(VII) requires that a sweepstakes entry be accompanied by an order or payment for a product or service previously ordered;

''(VIII) represents that an individual is a winner of a prize unless that individual has won such prize; or

''(IX) contains a representation that contradicts, or is inconsistent with sweepstakes rules or any other disclosure required to be made under this subsection, including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with such rules or disclosures;

''(B)(i) includes entry materials for a skill contest or a promotion that purports to be a skill contest; and

''(ii)(I) does not state all terms and conditions of the skill contest, including the rules and entry procedures for the skill contest;

''(II) does not disclose the sponsor or mailer of the skill contest and the principal place of business or an address at which the sponsor or mailer may be contacted; or

''(III) does not contain skill contest rules that state, as applicable—

''(aa) the number of rounds or levels of the contest and the cost to enter each round or level;

''(bb) that subsequent rounds or levels will be more difficult to solve;

''(cc) the maximum cost to enter all rounds or levels;

''(dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past 3 skill contests conducted by the sponsor;

''(ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor;

''(ff) the method used in judging;

''(gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded;

''(hh) the quantity, estimated retail value, and nature of each prize; and

''(ii) the schedule of any payments made over time; or

''(C) includes any facsimile check that does not contain a statement on the check itself that such check is not a negotiable instrument and has no cash value.

''(4) Matter that appears in a magazine, newspaper, or other periodical shall be exempt from paragraph (2) if such matter—

''(A) is not directed to a named individual; or

''(B) does not include an opportunity to make a payment or order a product or service.

''(5) Any statement, notice, or disclaimer required under paragraph (3) shall be clearly and conspicuously displayed. Any statement, notice, or disclaimer required under subclause (I) or (II) of paragraph (3)(A)(ii) shall be displayed more conspicuously than would otherwise be required under the preceding sentence.

''(6) In the enforcement of paragraph (3), the Postal Service shall consider all of the materials included in the mailing and the material and language on and visible through the envelope or outside cover or wrapper in which those materials are mailed.

''(l)(1) Any person who uses the mails for any matter to which subsection (h), (i), (j), or (k) applies shall adopt reasonable practices and procedures to prevent the mailing of such matter to any person who, personally or through a conservator, guardian, or individual with power of attorney—

''(A) submits to the mailer of such matter a written request that such matter should not be mailed to such person; or

''(B)(i) submits such a written request to the attorney general of the appropriate State (or any State government officer who transmits the request to that attorney general); and

''(ii) that attorney general transmits such request to the mailer.

''(2) Any person who mails matter to which subsection (h), (i), (j), or (k) applies shall maintain or cause to be maintained a record of all requests made under paragraph (1). The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for a 5-year period beginning on the date the written request under paragraph (1) is submitted to the mailer.''.

SEC. 104. POSTAL SERVICE ORDERS TO PROHIBIT DECEPTIVE MAILINGS.

Section 3005(a) of title 39, United States Code, is amended—

(1) by striking ''or'' after ''(h),'' each place it appears; and

(2) by inserting '', (j), or (k)'' after ''(i)'' each place it appears.

SEC. 105. TEMPORARY RESTRAINING ORDER FOR DECEPTIVE MAILINGS.

(a) IN GENERAL.—Section 3007 of title 39, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by striking subsection (a) and inserting the following:

''(a)(1) In preparation for or during the pendency of proceedings under section 3005, the Postal Service may, under the provisions of section 409(d), apply to the district court in any district in which mail is sent or received as part of the alleged scheme, device, lottery, gift enterprise, sweepstakes, skill contest, or facsimile check or in any district in which the defendant is found, for a temporary restraining order and preliminary injunction under the procedural requirements of rule 65 of the Federal Rules of Civil Procedure.

''(2)(A) Upon a proper showing, the court shall enter an order which shall—

''(i) remain in effect during the pendency of the statutory proceedings, any judicial review of such proceedings, or any action to enforce orders issued under the proceedings; and

''(ii) direct the detention by the postmaster, in any and all districts, of the defendant's incoming mail and outgoing mail, which is the subject of the proceedings under section 3005.

''(B) A proper showing under this paragraph shall require proof of a likelihood of success on the merits of the proceedings under section 3005.

''(3) Mail detained under paragraph (2) shall—

''(A) be made available at the post office of mailing or delivery for examination by the defendant in the presence of a postal employee; and

''(B) be delivered as addressed if such mail is not clearly shown to be the subject of proceedings under section 3005.

''(4) No finding of the defendant's intent to make a false representation or to conduct a lottery is required to support the issuance of an order under this section.

''(b) If any order is issued under subsection (a) and the proceedings under section 3005 are concluded with the issuance of an order under that section, any judicial review of the matter shall be in the district in which the order under subsection (a) was issued.''.

(b) REPEAL.—

(1) IN GENERAL.—Section 3006 of title 39, United States Code, and the item relating to such section in the table of sections for chapter 30 of such title are repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 3005(c) of title 39, United States Code, is amended by striking ''section and section 3006 of this title,'' and inserting ''section,''.

(B) Section 3011(e) of title 39, United States Code, is amended by striking ''3006, 3007,'' and inserting ''3007''.

SEC. 106. CIVIL PENALTIES AND COSTS.

Section 3012 of title 39, United States Code, is amended—

(1) in subsection (a) by striking ''$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection.'' and inserting ''$50,000 for each mailing of less than 50,000 pieces; $100,000 for each mailing of 50,000 to 100,000 pieces; with an additional $10,000 for each additional 10,000 pieces above 100,000, not to exceed $2,000,000.'';

(2) in paragraphs (1) and (2) of subsection (b) by inserting after ''of subsection (a)'' the following: '', (c), or (d)'';

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

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

''(c)(1) In any proceeding in which the Postal Service may issue an order under section

3005(a), the Postal Service may in lieu of that order or as part of that order assess civil penalties in an amount not to exceed $25,000 for each mailing of less than 50,000 pieces; $50,000 for each mailing of 50,000 to 100,000 pieces; with an additional $5,000 for each additional 10,000 pieces above 100,000, not to exceed $1,000,000.

''(2) In any proceeding in which the Postal Service assesses penalties under this subsection the Postal Service shall determine the civil penalty taking into account the nature, circumstances, extent, and gravity of the violation or violations of section 3005(a), and with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability and other such matters as justice may require.

''(d) Any person who violates section 3001(l) shall be liable to the United States for a civil penalty not to exceed $10,000 for each mailing to an individual.''.

SEC. 107. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 30 of title 39, United States Code, is amended by adding at the end the following:

''§3016. Administrative subpoenas

''(a) SUBPOENA AUTHORITY.—

''(1) INVESTIGATIONS.—

''(A) IN GENERAL.—In any investigation conducted under section 3005(a), the Postmaster General may require by subpoena the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General considers relevant or material to such investigation.

''(B) CONDITION.—No subpoena shall be issued under this paragraph except in accordance with procedures, established by the Postal Service, requiring that—

''(i) a specific case, with an individual or entity identified as the subject, be opened before a subpoena is requested;

''(ii) appropriate supervisory and legal review of a subpoena request be performed; and

''(iii) delegation of subpoena approval authority be limited to the Postal Service's General Counsel or a Deputy General Counsel.

''(2) STATUTORY PROCEEDINGS.—In any statutory proceeding conducted under section 3005(a), the Judicial Officer may require by subpoena the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material to such proceeding.

''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (2) shall be considered to apply in any circumstance to which paragraph (1) applies.

''(b) SERVICE.—

''(1) SERVICE WITHIN THE UNITED STATES.—A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

''(2) FOREIGN SERVICE.—Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

''(3) SERVICE ON BUSINESS PERSONS.—Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

''(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

''(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

''(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

''(4) SERVICE ON NATURAL PERSONS.—Service of any subpoena may be made upon any natural person by—

''(A) delivering a duly executed copy to the person to be served; or

''(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

''(5) VERIFIED RETURN.—A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

''(2) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court may be punished as contempt.

''(d) DISCLOSURE.—Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5, United States Code.''.

(b) REGULATIONS.—Not later than 120 days after the date of the enactment of this section, the Postal Service shall promulgate regulations setting out the procedures the Postal Service will use to implement the amendment made by subsection (a).

(c) SEMIANNUAL REPORTS.—Section 3013 of title 39, United States Code, is amended by striking ''and'' at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following:

''(5) the number of cases in which the authority described in section 3016 was used, and a comprehensive statement describing how that authority was used in each of those cases; and''.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

''3016. Administrative subpoenas.''.

SEC. 108. REQUIREMENTS OF PROMOTERS OF SKILL CONTESTS OR SWEEPSTAKES MAILINGS.

(a) IN GENERAL.—Chapter 30 of title 39, United States Code (as amended by section 107) is amended by adding after section 3016 the following:

''§3017. Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings

''(a) DEFINITIONS.—In this section—

''(1) the term 'promoter' means any person who—

''(A) originates and mails any skill contest or sweepstakes, except for any matter described in section 3001(k)(4); or

''(B) originates and causes to be mailed any skill contest or sweepstakes, except for any matter described in section 3001(k)(4);

''(2) the term 'removal request' means a request stating that an individual elects to have the name and address of such individual excluded from any list used by a promoter for mailing skill contests or sweepstakes;

''(3) the terms 'skill contest', 'sweepstakes', and 'clearly and conspicuously displayed' have the same meanings as given them in section 3001(k); and

''(4) the term 'duly authorized person', as used in connection with an individual, means a conservator or guardian of, or person granted power of attorney by, such individual.

''(b) NONMAILABLE MATTER.—

''(1) IN GENERAL.—Matter otherwise legally acceptable in the mails described in paragraph (2)—

''(A) is nonmailable matter;

''(B) shall not be carried or delivered by mail; and

''(C) shall be disposed of as the Postal Service directs.

''(2) NONMAILABLE MATTER DESCRIBED.—Matter described in this paragraph is any matter that—

''(A) is a skill contest or sweepstakes, except for any matter described in section 3001(k)(4); and

''(B)(i) is addressed to an individual who made an election to be excluded from lists under subsection (d); or

''(ii) does not comply with subsection (c)(1).

''(c) REQUIREMENTS OF PROMOTERS.—

''(1) NOTICE TO INDIVIDUALS.—Any promoter who mails a skill contest or sweepstakes shall provide with each mailing a statement that—

''(A) is clearly and conspicuously displayed;

''(B) includes the address or toll-free telephone number of the notification system established under paragraph (2); and

''(C) states that the notification system may be used to prohibit the mailing of all skill contests or sweepstakes by that promoter to such individual.

''(2) NOTIFICATION SYSTEM.—Any promoter that mails or causes to be mailed a skill contest or sweepstakes shall establish and maintain a notification system that provides for any individual (or other duly authorized person) to notify the system of the individual's election to have the name and address of the individual excluded from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes.

''(d) ELECTION TO BE EXCLUDED FROM LISTS.—

''(1) IN GENERAL.—An individual (or other duly authorized person) may elect to exclude the name and address of that individual from all lists of names and addresses used by a promoter of skill contests or sweepstakes by submitting a removal request to the notification system established under subsection (c).

''(2) RESPONSE AFTER SUBMITTING REMOVAL REQUEST TO THE NOTIFICATION SYSTEM.—Not later than 60 calendar days after a promoter receives a removal request pursuant to an election under paragraph (1), the promoter shall exclude the individual's name and address from all lists of names and addresses used by that promoter to select recipients for any skill contest or sweepstakes.

''(3) EFFECTIVENESS OF ELECTION.—An election under paragraph (1) shall remain in effect, unless an individual (or other duly authorized

person) notifies the promoter in writing that such individual—

''(A) has changed the election; and

''(B) elects to receive skill contest or sweepstakes mailings from that promoter.

''(e) PRIVATE RIGHT OF ACTION.—

''(1) IN GENERAL.—An individual who receives one or more mailings in violation of subsection (d) may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

''(A) an action to enjoin such violation;

''(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater; or

''(C) both such actions.

It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of subsection (d). If the court finds that the defendant willfully or knowingly violated subsection (d), the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

''(2) ACTION ALLOWABLE BASED ON OTHER SUFFICIENT NOTICE.—A mailing sent in violation of section 3001(l) shall be actionable under this subsection, but only if such an action would not also be available under paragraph (1) (as a violation of subsection (d)) based on the same mailing.

''(f) PROMOTER NONLIABILITY.—A promoter shall not be subject to civil liability for the exclusion of an individual's name or address from any list maintained by that promoter for mailing skill contests or sweepstakes, if—

''(1) a removal request is received by the promoter's notification system; and

''(2) the promoter has a good faith belief that the request is from—

''(A) the individual whose name and address is to be excluded; or

''(B) another duly authorized person.

''(g) PROHIBITION ON COMMERCIAL USE OF LISTS.—

''(1) IN GENERAL.—

''(A) PROHIBITION.—No person may provide any information (including the sale or rental of any name or address) derived from a list described in subparagraph (B) to another person for commercial use.

''(B) LISTS.—A list referred to under subparagraph (A) is any list of names and addresses (or other related information) compiled from individuals who exercise an election under subsection (d).

''(2) CIVIL PENALTY.—Any person who violates paragraph (1) shall be assessed a civil penalty by the Postal Service not to exceed $2,000,000 per violation.

''(h) CIVIL PENALTIES.—

''(1) IN GENERAL.—Any promoter—

''(A) who recklessly mails nonmailable matter in violation of subsection (b) shall be liable to the United States in an amount of $10,000 per violation for each mailing to an individual of nonmailable matter; or

''(B) who fails to comply with the requirements of subsection (c)(2) shall be liable to the United States.

''(2) ENFORCEMENT.—The Postal Service shall, in accordance with the same procedures as set forth in section 3012(b), provide for the assessment of civil penalties under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 30 of title 39, United States Code, is amended by adding after the item relating to section 3016 the following:

''3017. Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings.''.

(c) EFFECTIVE DATE.—This section shall take effect 1 year after the date of the enactment of this Act.

SEC. 109. STATE LAW NOT PREEMPTED.

(a) IN GENERAL.—Nothing in the provisions of this title (including the amendments made by this title) or in the regulations promulgated under such provisions shall be construed to preempt any provision of State or local law that imposes more restrictive requirements, regulations, damages, costs, or penalties. No determination by the Postal Service that any particular piece of mail or class of mail is in compliance with such provisions of this title shall be construed to preempt any provision of State or local law.

(b) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REFERENCES TO REPEALED PROVISIONS.—Section 3001(a) of title 39, United States Code, is amended by striking ''1714,'' and ''1718,''.

(b) CONFORMANCE WITH INSPECTOR GENERAL ACT OF 1978.—

(1) IN GENERAL.—Section 3013 of title 39, United States Code, is amended—

(A) by striking ''Board'' each place it appears and inserting ''Inspector General'';

(B) in the third sentence by striking ''Each such report shall be submitted within sixty days after the close of the reporting period involved'' and inserting ''Each such report shall be submitted within 1 month (or such shorter length of time as the Inspector General may specify) after the close of the reporting period involved''; and

(C) by striking the last sentence and inserting the following:

''The information in a report submitted under this section to the Inspector General with respect to a reporting period shall be included as part of the semiannual report prepared by the Inspector General under section 5 of the Inspector General Act of 1978 for the same reporting period. Nothing in this section shall be considered to permit or require that any report by the Postmaster General under this section include any information relating to activities of the Inspector General.''.

(2) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act, and the amendments made by this subsection shall apply with respect to semiannual reporting periods beginning on or after such date of enactment.

(3) SAVINGS PROVISION.—For purposes of any semiannual reporting period preceding the first semiannual reporting period referred to in paragraph (2), the provisions of title 39, United States Code, shall continue to apply as if the amendments made by this subsection had not been enacted.

SEC. 111. EFFECTIVE DATE.

Except as provided in section 108 or 110(b), this title shall take effect 120 days after the date of the enactment of this Act.

TITLE II—FEDERAL RESERVE BOARD RETIREMENT PORTABILITY

SEC. 201. SHORT TITLE.

This title may be cited as the ''Federal Reserve Board Retirement Portability Act''.

SEC. 202. PORTABILITY OF SERVICE CREDIT.

(a) CREDITABLE SERVICE.—

(1) IN GENERAL.—Section 8411(b) of title 5, United States Code, is amended—

(A) by striking ''and'' at the end of paragraph (3);

(B) in paragraph (4)—

(i) by striking ''of the preceding provisions'' and inserting ''other paragraph''; and

(ii) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.''.

(2) BANK PLAN DEFINED.—Section 8411 of title 5, United States Code, is amended by adding at the end the following:

''(i) For purposes of subsection (b)(5), the term 'Bank Plan' means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).''.

(b) EXCLUSION FROM CHAPTER 84.—

(1) IN GENERAL.—Paragraph (2) of section 8402(b) of title 5, United States Code, is amended by striking the matter before subparagraph (B) and inserting the following:

''(2)(A) any employee or Member who has separated from the service after—

''(i) having been subject to—

''(I) subchapter III of chapter 83 of this title;

''(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

''(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

''(ii) having completed—

''(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

''(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

''(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or''.

(2) EXCEPTION.—Subsection (d) of section 8402 of title 5, United States Code, is amended to read as follows:

''(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

''(1) becomes subject to—

''(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or

''(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established

under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

''(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.''.

(c) PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES.—A former employee of the Board of Governors of the Federal Reserve System who—

(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act;

(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code); and

(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code,

shall, for purposes of section 302 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) and the provisions of subsection (c) shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act.

(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of the enactment of this Act, became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual's appointment.

SEC. 203. CERTAIN TRANSFERS TO BE TREATED AS A SEPARATION FROM SERVICE FOR PURPOSES OF THE THRIFT SAVINGS PLAN.

(a) AMENDMENTS TO CHAPTER 84 OF TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting before section 8432 the following:

''§ 8431. Certain transfers to be treated as a separation

''(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

''(b) The retirement systems described in this subsection are—

''(1) the retirement system under this chapter;

''(2) the retirement system under subchapter III of chapter 83; and

''(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting before the item relating to section 8432 the following:

''8431. Certain transfers to be treated as a separation.''.

(b) CONFORMING AMENDMENTS.—Subsection (b) of section 8351 of title 5, United States Code, is amended by redesignating paragraph (11) as paragraph (8), and by adding at the end the following:

''(9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transfers occurring before, on, or after the date of the enactment of this Act, except that, for purposes of applying such amendments with respect to any transfer occurring before such date of enactment, the date of such transfer shall be considered to be the date of the enactment of this Act. The Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may prescribe any regulations necessary to carry out this subsection.

SEC. 204. CLARIFYING AMENDMENTS.

(a) IN GENERAL.—Subsection (f) of section 3304 of title 5, United States Code, as added by section 2 of Public Law 105–339, is amended—

(1) by striking paragraph (4);

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(3) by inserting after paragraph (1) the following:

''(2) If selected, a preference eligible or veteran described in paragraph (1) shall acquire competitive status and shall receive a career or career-conditional appointment, as appropriate.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on October 31, 1998.

TITLE III—AMENDMENT TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

SEC. 301. TRANSFER OF CERTAIN PROPERTY TO STATE AND LOCAL GOVERNMENTS.

Section 203(p)(1)(B)(ii) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(p)(1)(B)(ii)) is amended by striking ''December 31, 1999.'' and inserting ''July 31, 2000. During the period beginning January 1, 2000, and ending July 31, 2000, the Administrator may not convey any property under subparagraph (A), but may accept, consider, and approve applications for transfer of property under that subparagraph.''.

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate agree to the amendment of the House.

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

Ms. COLLINS. Mr. President, I am delighted the Senate has now sent S. 335, the Deceptive Mail Prevention and Enforcement Act that I introduced to curb deceptive mailings, to the President for his signature.

The Senate originally passed this legislation by a vote of 93–0 on August 2. It will impose new disclosure requirements on sweepstakes mailings to protect consumers. It will also provide new authority to the Postal Service to take enforcement action against those companies sending deceptive mailings.

I want to thank several people whose hard work has made passage today possible. I particularly want to acknowledge the contributions of Senator LEVIN of Michigan, the ranking minority member of the permanent Subcommittee on Investigations, and the chief cosponsor of this important legislation. In addition, Senator COCHRAN and Senator EDWARDS were real leaders in this effort and contributed greatly to the legislation.

There were many other Senators, as well, who cosponsored this measure. In particular, I want to recognize the contributions of several members of the Committee on Governmental Affairs, including Chairman THOMPSON, Senators LIEBERMAN, STEVENS, DURBIN, DOMENICI, AKAKA, and SPECTER. They were early cosponsors of this legislation.

Senator CAMPBELL has also played an important role. He first introduced legislation to curb some of the deceptive practices of sweepstakes companies.

In addition, there are several Members of the House of Representatives who have also worked very hard to bring to about passage today. They include Congressman JOHN MCHUGH, who is chairman of the Subcommittee on the Postal Service; Congressman FATTAH, who is the ranking minority member of the subcommittee; Congressman LOBIONDO, Congressman ROGAN, Congressman MCCOLLUM, Congressman and Chairman DAN BURTON, and Congressman HENRY WAXMAN. All of them worked very hard to forge workable legislation that is going to make a real difference.

I also want to express my thanks to the members of my staff who worked very hard on this. On the subcommittee staff, Lee Blalack and Kirk Walder were instrumental, and on my personal staff, Michael Bopp, my legislative director—all of them worked very hard.

The requirements in this legislation will reduce the deceptive techniques that have caused countless Americans, hundreds of thousands of Americans, many of them elderly, to purchase products they do not need nor do they want. Once this legislation takes effect, mailings will be required to make crystal clear to consumers that no purchase is necessary to enter a sweepstakes and that making a purchase will not improve your chances of winning.

That is the primary misconception our investigation identified. Too many consumers believe if they make a purchase, somehow they will improve their chances of winning, but nothing could be further from the truth. It is easy to see why they have that misconception because that is exactly the impression these deceptive mailings are intended to leave.

In addition, the legislation will prohibit sweepstakes companies from telling people they are a winner unless they really have won a prize.

Enactment of this legislation concludes a year-long investigation by the Permanent Subcommittee on Investigations, which I chair. Prompted by

complaints from my constituents in Maine, I began an investigation to examine deceptive mailings. Hearings before the subcommittee demonstrated that the deceptive techniques of major sweepstakes companies were misleading thousands of Americans into making purchases of products. Further investigation into the activities of the smaller sweepstakes companies, the ones that I call the ''stealth companies,'' showed that their practices were even more deceptive. In some cases, they bordered on outright fraud.

The subcommittee heard heartbreaking testimony that deceptive sweepstakes can induce trusting consumers to buy thousands of dollars of unnecessary and unwanted merchandise. One example was a magazine subscription extending to the year 2018 that one witness testified that her 82-year-old father-in-law purchased because of sweepstakes promotions.

We found that our senior citizens are particularly vulnerable to these kinds of deceptive mailings. They are a trusting generation. Many seniors tend to believe what they read, particularly if it is endorsed by a trusted spokesman, comes from a well-known company, or involves a mailing that has been designed to appear as if it is from the Federal Government.

Family members told us of loved ones who were so convinced that they had won a sweepstakes that they refused to leave their home for fear they would miss the Prize Patrol. One constituent of mine actually canceled needed surgery because she did not want to miss Ed McMahon's visit. Sadly, of course, Ed McMahon never showed up.

We found cases of seniors enticed by the bold promises of sweepstakes who spent their Social Security checks, squandered their life's savings, and even borrowed money to buy unwanted magazines and other merchandise.

I will never forget the testimony of one man who broke down in tears as he recounted how the sweepstakes companies had deceived him into purchasing $15,000 worth of products in an effort to win the big prize.

The loss suffered by consumers cannot be measured in dollars alone. As one elderly gentleman put it:

> My wife has finally come to realize that she has been duped by the sweepstakes solicitations for all these years. Although the financial train is now halted, the loss of her dignity is incalculable.

Unfortunately, these are not isolated examples. According to a survey commissioned by the AARP, 40 percent of seniors surveyed believe there is a connection between purchasing and winning. It is easy to see why consumers believe they have already won or that they will win if they just purchase something as a result of these mailings.

I would like to show you, Mr. President, and read from a sweepstakes mailing that I received last week at my home in Bangor, ME. As you can see, in bold print, it proclaims: ''Our sweepstakes results are now final.'' ''Ms. Susan M. Collins has won a cash prize of $833,337.'' ''A bank check for $833,337 is on its way to''—my address—''in Bangor.'' It further warns that I will forfeit the entire amount if I refuse to respond to this notice. On the back it says, again, ''A bank check for $833,337 in cash will be sent to you by certified mail if you respond now.''

I have a feeling you will not be surprised to learn that I am not the big winner. But if I relied on the information in this mailing, it would be easy to see why many people would be deceived into thinking they have, indeed, won the grand prize.

Now, in the small print—not in the bold type—but in the small print it explains that I have to have the winning number to really win the prize.

That message is overwhelmed by the bold proclamations telling me I am a winner. Of course, in case I am tempted not to enter, there is what appears to be a personal note that says, ''Please don't say no now,'' and implores me to enter and to buy the product offered. This is not unusual. This is typical of the kinds of deceptive mailings that are all too common and that flood the mailboxes of American consumers with more than a billion pieces of mail a year.

You shouldn't have to be a lawyer, you shouldn't have to have a magnifying glass, to figure out the rules of the game and the odds of winning. Our legislation will make a real difference by requiring honest disclosures, by preventing sweepstakes companies from telling people they have won when they have not, and, most importantly, by making crystal clear to consumers that you don't have to make a purchase to win and that making a purchase will not increase your chances of winning.

Mr. President, as I said, I am pleased that the Senate is now poised to send my legislation to curb deceptive mailings to the President for his signature.

As I have described to my colleagues previously, you only have to look at some of these sweepstakes mailings to understand why. For example, one mailing by Publisher's Clearing House, which is famous for its Prize Patrol, tells the consumer to ''Open Your Door To $31 Million on January 31.'' This mailing suggests to the reader that his or her past purchases are paying off. Specifically, the mailing states: ''You see, your recent order and entry has proven to us that you're indeed one of our loyal friends and a savvy sweepstakes player. And now I'm pleased to tell you that you've passed our selection criteria to receive this special invitation.''

Another mailing from American Family Publishers stated, ''It's Down to a 2 person race for $11,000,000—You And One Other Person In Georgia Were Issued the Winning Number . . . Whoever Returns It First Wins It All!'' Most people probably didn't see the fine print that declared, ''If you have the winning number.'' Unless the contestant reads and understands this fine print, the mailing leaves the unmistakable impression that the recipient and one other person have the winning number for the $11 million prize.

Mr. President, the bill adopted by the Senate would curb these problems by, for the first time, establishing federal standards for a variety of promotional mailings, including sweepstakes mailings. Such mailings must clearly and conspicuously display several important disclosures, including statements that no purchase is necessary to enter the contest and that a purchase will not improve your chances of winning; the odds of winning; the value and nature of each prize; and the name and address of the sponsor. Sweepstakes mailings would also be required to include all the rules and entry procedures for the sweepstakes.

This legislation also addresses another problem consumers experience in dealing with sweepstakes companies. The Subcommittee heard from many individuals who found it difficult to have their name or a parent's name removed from the mailing lists of sweepstakes companies, or who were told that the name removal process might take as long as six months. To address this problem, this legislation includes a section developed by Senator EDWARDS that would require companies sending sweepstakes or skill contests to establish a system allowing consumers to call or write to have their names removed from the companies' mailing lists.

The House made several modifications to this section of the bill, including extending the time from 35 days to 60 days by which companies must remove names of consumers who do not wish to receive future sweepstakes or skill contest mailings. Non-profit mailers who use sweepstakes contests requested a time limit of longer than 35 days, arguing that their limited resources might not allow the establishment of a system to quickly remove names. The 60-day limit in the bill, however, should not be used by any company to continue to inundate with more mailings those consumers who have asked to be removed from sweepstakes mailing lists. Accordingly, companies should make every effort to remove names as quickly as possible.

The House also added provisions to allow consumers to bring a private right of action in state court if they receive a mailing after previously requesting to be removed from the mailing list of a skill contest or sweepstakes promoter. Sweepstakes promoters will have an affirmative defense if they have established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings that would violate the section on name removal.

The notification system in the bill passed by the Senate, and modified by the House, requires companies to include in every mailing the address or a

toll-free telephone number of the notification system, but does not require that consumers submit their name in writing to comply with the removal system. Companies are encouraged to adopt a consumer friendly system for the removal of names from their mailing lists, which may include the ability to have names removed by calling a toll-free number. Under this legislation, companies using a toll-free number to permit the removal of names would not need to require a consumer to also provide their name in writing. Any appropriate method of establishing a record of removal requests by consumers would comply with the requirements of Section 8(d) of the legislation. For example, companies may wish to electronically verify the consumer's election to be removed from their mailing list.

The legislation would strengthen the ability of the Postal Service to investigate, penalize, and stop deceptive mailings. It grants the Postal Inspection Service subpoena authority, nationwide stop mail authority, and the ability to impose tougher civil penalties. The House made several changes in the subpoena authority, including requiring the Postal Service to develop procedures for the issuance of subpoenas and their approval by the General Counsel or a Deputy General Counsel of the Postal Service. The new subpoena authority will give the Postal Inspection Service better ability to investigate and stop deceptive mailings, and I encourage the General Counsel of the Postal Service to recognize that effective enforcement of this legislation requires the timely issuance of subpoenas.

Mr. President, S. 335 will provide important new consumer protections against the many deceptive techniques currently used in promotional mailings. I thank my colleagues for their support of this measure.

I yield to the subcommittee's ranking minority member, Senator LEVIN. As I explained earlier in my remarks, he has been the chief cosponsor of this legislation and a true leader in the effort to crack down on deceptive mailings.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the good Senator from Maine for her leadership in this and so many other consumer issues. This bill would not be here on the floor of the Senate without her leadership on the Permanent Subcommittee on Investigations, which has taken responsibility for getting this bill passed.

S. 335, the bill we have just passed and sent to the President is going to crack down on deceptive sweepstakes practices that have affected people in all of our States. Most of us have personal knowledge of the kind of egregious deceptive practices which have been perpetrated by too many companies, including some otherwise reputable companies that are using deceptive practices to suck into their net people who will be lured into believing that if they buy something or subscribe to something, somehow or other that will increase their chances of winning a prize.

The bill we are passing today is similar to one I had introduced in the 105th Congress to curb abuse of sweepstakes solicitations and provide for additional enforcement tools against deceptive mailings by the Postal Service. There were hearings held in September of 1998 in the Governmental Affairs Committee Federal Services Subcommittee that was then chaired by Senator COCHRAN.

We learned from witnesses at that hearing, including the Florida attorney general, the Michigan assistant attorney general, and the Postal Inspection Service, that senior citizens in particular are vulnerable to these deceptive solicitations and that the financial cost to seniors for deceptive and fraudulent sweepstakes is a serious problem. Deceptive sweepstakes solicitations not only cause significant financial losses but frequently carry heavy emotional losses as well.

We have constituents in Michigan, seniors, who have lost tens of thousands of dollars to deceptive sweepstakes. Their houses are frequently filled with hundreds of items they don't need that they bought because they thought somehow or other it might help them win the promised prize.

The Postal Service has inadequate tools to effectively shut down these deceptive marketing people, so we have added some tough enforcement tools in this bill.

Until this bill becomes law, the Postal Service, for instance, cannot impose a fine against a promoter who uses deceptive practices until the Postal Service first issues a stop order. Now, if you wait for a stop order to be violated before you can impose an administrative fine, what the deceptive sweepstakes promoter does is slightly modify in some way the deceptive mailing that is the subject of the stop order so they can avoid being caught by a violation of the Postal Service stop order. The Postal Service currently is too often powerless to stop these kinds of deceptive practices and the slight changes which are made in them which allow the companies that are using these practices to continue and ignore what appears to be a stop order.

In March and July of this year, Senator COLLINS chaired hearings in the Permanent Subcommittee on Investigations, where I serve as ranking member. The bill we are taking up today, S. 335, reflects what we learned at those hearings as well. Senator COLLINS has set forth for us some of the egregious examples. I will not take the time of this body to go through some of these additional examples we have. We have seen them all. We have seen the big print that says, ''you have just won a big prize;'' we have seen the fine, unreadable print that says but only ''if you have the winning number;'' the headline which says ''a million dollars is yours'' or ''just submit this number'' and you will have this big prize. The fine print says ''no,'' you haven't. We have all seen those kinds of examples and the way people are taken in.

Fortunately, most people aren't taken in, but enough people are, so that a billion pieces of this kind of mail, sweepstakes mail, is sent out each year, including by some companies that are otherwise companies that have good reputations. We have had these kinds of deceptive mailings sent out by Time Warner, by Reader's Digest, by other companies whose names have generally prompted positive responses in people because their products have been good products. Yet they have stooped, in the case of sweepstakes, to deceptive practices in order to lull the people who receive these sweepstakes mailings into believing that if they will just buy that magazine or just buy that product, they will really seal the deal and the truck will really show up with the check. We have seen these ads on television, the comeons. Thank God, 90 or 95 percent of the people look at them and can see them for what they are. It is that 5 or 10 percent, frequently seniors, who are taken in. We are trying to stop these practices. This bill, hopefully, will do exactly that.

We are going to require that the statement that a purchase will not increase an individual's chances of winning and that no purchase is necessary to win be clearly and conspicuously displayed in the mailing—in fact more conspicuously displayed than the other information in the mailing.

The House changed the term ''prominently'' in our Senate bill, which was used to describe how these two key required statements must be displayed and substituted ''more conspicuously'' for ''prominently'' to better match previous uses of the term. The intent of both houses on this subject is the same, however, and we have emphasized that point in the committee report. There should be no misunderstanding by the Postal Service and by the direct mail industry on what we intend by this.

S. 335 is also going to provide the Postal Service with authority to issue a civil penalty for the first-time violation of the statute, and we are going to give the Postal Service subpoena authority. Those are some of the things we have done.

Again, I thank the good Senator from Maine, Ms. COLLINS, her staff, my staff, Linda Gustitus and her good crew, who have made it possible for this bill to happen. Senator EDWARDS has been extremely helpful with his provision requiring a delisting of persons not wanting to receive sweepstakes mailings. Senator COCHRAN has been very much in the forefront of this effort. Again, the majority and minority staffs of the

Permanent Subcommittee on Investigations have done an absolutely superb job of putting together these hearings and developing this legislation.

I am confident that with the Senate's passage today, the President will sign the bill into law. It is a bill that will help end the abuses which too often occur in this area and which take advantage of people who are too often vulnerable to the power of suggestion.

PRIVILEGE OF THE FLOOR

Ms. COLLINS. Mr. President, I ask unanimous consent that Benjamin Brown, a legislative assistant in Senator TED STEVENS' office, be granted floor privileges for the 19th and 20th of November.

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

INTERNET GAMBLING PROHIBITION ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 158, S. 692.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 692) to prohibit Internet gambling, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 692

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 ''Internet Gambling Prohibition Act of 1999''.

SEC. 2. PROHIBITION ON INTERNET GAMBLING.

(a) IN GENERAL.—Chapter 50 of title 18, United States Code, is amended by adding at the end the following:

''§ 1085. Internet gambling

''(a) DEFINITIONS.—In this section:

''(1) BETS OR WAGERS.—The term 'bets or wagers'—

''(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game of chance, upon an agreement or understanding that the person or another person will receive something of value based on that outcome;

''(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

''(C) includes any scheme of a type described in section 3702 of title 28; and

''(D) does not include—

''(i) a bona fide business transaction governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) for the purchase or sale at a future date of securities (as that term is defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)));

''(ii) a transaction on or subject to the rules of a contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7);

''(iii) a contract of indemnity or guarantee; or

''(iv) a contract for life, health, or accident insurance.

''(2) CLOSED-LOOP SUBSCRIBER-BASED SERVICE.—The term 'closed-loop subscriber-based service' means any information service or system that uses—

''(A) a device or combination of devices—

''(i) expressly authorized and operated in accordance with the laws of a State, exclusively for placing, receiving, or otherwise making a bet or wager described in subsection (f)(1)(B); and

''(ii) by which a person located within any State must subscribe and be registered with the provider of the wagering service by name, address, and appropriate billing information to be authorized to place, receive, or otherwise make a bet or wager, and must be physically located within that State in order to be authorized to do so;

''(B) an effective customer verification and age verification system, expressly authorized and operated in accordance with the laws of the State in which it is located, to ensure that all applicable Federal and State legal and regulatory requirements for lawful gambling are met; and

''(C) appropriate data security standards to prevent unauthorized access by any person who has not subscribed or who is a minor.

''(3) FOREIGN JURISDICTION.—The term 'foreign jurisdiction' means a jurisdiction of a foreign country or political subdivision thereof.

''(4) GAMBLING BUSINESS.—The term 'gambling business' means—

''(A) a business that is conducted at a gambling establishment, or that—

''(i) involves—

''(I) the placing, receiving, or otherwise making of bets or wagers; or

''(II) the offering to engage in the placing, receiving, or otherwise making of bets or wagers;

''(ii) involves 1 or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

''(iii) has been or remains in substantially continuous operation for a period in excess of 10 days or has a gross revenue of $2,000 or more from such business during any 24-hour period; and

''(B) any soliciting agent of a business described in subparagraph (A).

''(5) INFORMATION ASSISTING IN THE PLACING OF A BET OR WAGER.—The term 'information assisting in the placing of a bet or wager'—

''(A) means information that is intended by the sender or recipient to be used by a person engaged in the business of betting or wagering to place, receive, or otherwise make a bet or wager; and

''(B) does not include—

''(i) information concerning parimutuel pools that is exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and 1 or more parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, if that information is used only to conduct common pool parimutuel pooling under applicable law;

''(ii) information exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and a support service located in another State or foreign jurisdiction, if the information is used only for processing bets or wagers made with that facility under applicable law;

''(iii) information exchanged exclusively between or among 1 or more wagering facilities that are located within a single State and are licensed and regulated by that State, and any support service, wherever located, if the information is used only for the pooling or processing of bets or wagers made by or with the facility or facilities under applicable State law;

''(iv) any news reporting or analysis of wagering activity, including odds, racing or event results, race and event schedules, or categories of wagering; or

''(v) any posting or reporting of any educational information on how to make a bet or wager or the nature of betting or wagering.

''(6) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' means any information service, system, or access software provider that operates in, or uses a channel or instrumentality of, interstate or foreign commerce to provide or enable access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

''(7) INTERACTIVE COMPUTER SERVICE PROVIDER.—The term 'interactive computer service provider' means any person that provides an interactive computer service, to the extent that such person offers or provides such service.

''(8) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

''(9) PERSON.—The term 'person' means any individual, association, partnership, joint venture, corporation (or any affiliate of a corporation), State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other government, organization, or entity (including any governmental entity (as defined in section 3701(2) of title 28)).

''(10) PRIVATE NETWORK.—The term 'private network' means a communications channel or channels, including voice or computer data transmission facilities, that use either—

''(A) private dedicated lines; or

''(B) the public communications infrastructure, if the infrastructure is secured by means of the appropriate private communications technology to prevent unauthorized access.

''(11) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory, or possession of the United States.

''(12) SUBSCRIBER.—The term 'subscriber'—

''(A) means any person with a business relationship with the interactive computer service provider through which such person receives access to the system, service, or network of that provider, even if no formal subscription agreement exists; and

''(B) includes registrants, students who are granted access to a university system or network, and employees or contractors who are granted access to the system or network of their employer.

''(b) INTERNET GAMBLING.—

''(1) PROHIBITION.—Subject to subsection (f), it shall be unlawful for a person engaged in a gambling business knowingly to use the Internet or any other interactive computer service—

''(A) to place, receive, or otherwise make a bet or wager; or

''(B) to send, receive, or invite information assisting in the placing of a bet or wager.

''(2) PENALTIES.—A person engaged in a gambling business who violates this section shall be—

''(A) fined in an amount equal to not more than the greater of—

''(i) the total amount that such person bet or wagered, or placed, received, or accepted in bets or wagers, as a result of engaging in that business in violation of this section; or

''(ii) $20,000;

''(B) imprisoned not more than 4 years; or

''(C) both.

''(3) PERMANENT INJUNCTIONS.—Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

''(c) CIVIL REMEDIES.—

''(1) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

''(2) PROCEEDINGS.—

''(A) INSTITUTION BY FEDERAL GOVERNMENT.—

''(i) IN GENERAL.—The United States may institute proceedings under this subsection to prevent or restrain a violation of this section.

''(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section if the court determines, after notice and an opportunity for a hearing, that there is a substantial probability that such violation has occurred or will occur.

''(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

''(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur, after providing written notice to the United States, may institute proceedings under this subsection to prevent or restrain the violation.

''(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section if the court determines, after notice and an opportunity for a hearing, that there is a substantial probability that such violation has occurred or will occur.

''(C) INDIAN LANDS.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703))—

''(i) the United States shall have the enforcement authority provided under subparagraph (A); and

''(ii) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact.

''(D) EXPIRATION.—Any temporary restraining order or preliminary injunction entered pursuant to subparagraph (A) or (B) shall expire if, and as soon as, the United States, or the attorney general (or other appropriate State official) of the State, as applicable, notifies the court that issued the order or injunction that the United States or the State, as applicable, will not seek a permanent injunction.

''(3) EXPEDITED PROCEEDINGS.—

''(A) IN GENERAL.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), without notice and the opportunity for a hearing as provided in rule 65(b) of the Federal Rules of Civil Procedure (except as provided in subsection (d)(3)), if the United States or the State, as applicable, demonstrates that there is probable cause to believe that the use of the Internet or other interactive computer service at issue violates this section.

''(B) HEARINGS.—A hearing requested concerning an order entered under this paragraph shall be held at the earliest practicable time.

''(d) INTERACTIVE COMPUTER SERVICE PROVIDERS.—

''(1) IMMUNITY FROM LIABILITY FOR USE BY ANOTHER.—

''(A) IN GENERAL.—An interactive computer service provider described in subparagraph (B) shall not be liable, under this section or any other provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, for the use of its facilities or services by another person to engage in Internet gambling activity that violates such law—

''(i) arising out of any transmitting, routing, or providing of connections for gambling-related material or activity (including intermediate and temporary storage in the course of such transmitting, routing, or providing connections) by the provider, if—

''(I) the material or activity was initiated by or at the direction of a person other than the provider;

''(II) the transmitting, routing, or providing of connections is carried out through an automatic process without selection of the material or activity by the provider;

''(III) the provider does not select the recipients of the material or activity, except as an automatic response to the request of another person; and

''(IV) the material or activity is transmitted through the system or network of the provider without modification of its content; or

''(ii) arising out of any gambling-related material or activity at an online site residing on a computer server owned, controlled, or operated by or for the provider, or arising out of referring or linking users to an online location containing such material or activity, if the material or activity was initiated by or at the direction of a person other than the provider, unless the provider fails to take expeditiously, with respect to the particular material or activity at issue, the actions described in paragraph (2)(A) following the receipt by the provider of a notice described in paragraph (2)(B).

''(B) ELIGIBILITY.—An interactive computer service provider is described in this subparagraph only if the provider—

''(i) maintains and implements a written or electronic policy that requires the provider to terminate the account of a subscriber of its system or network expeditiously following the receipt by the provider of a notice described in paragraph (2)(B) alleging that such subscriber has violated or is violating this section; and

''(ii) with respect to the particular material or activity at issue, has not knowingly permitted its computer server to be used to engage in activity that the provider knows is prohibited by this section, with the specific intent that such server be used for such purpose.

''(2) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS.—

''(A) IN GENERAL.—If an interactive computer service provider receives from a Federal or State law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in subparagraph (B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to violate this section, the provider shall expeditiously—

''(i) remove or disable access to the material or activity residing at that online site that allegedly violates this section; or

''(ii) in any case in which the provider does not control the site at which the subject material or activity resides, the provider, through any agent of the provider designated in accordance with section 512(c)(2) of title 17, or other responsible identified employee or contractor—

''(I) notify the Federal or State law enforcement agency that the provider is not the proper recipient of such notice; and

''(II) upon receipt of a subpoena, cooperate with the Federal or State law enforcement agency in identifying the person or persons who control the site.

''(B) NOTICE.—A notice is described in this subparagraph only if it—

''(i) identifies the material or activity that allegedly violates this section, and alleges that such material or activity violates this section;

''(ii) provides information reasonably sufficient to permit the provider to locate (and, as appropriate, in a notice issued pursuant to paragraph (3)(A) to block access to) the material or activity;

''(iii) is supplied to any agent of a provider designated in accordance with section 512(c)(2) of title 17, if information regarding such designation is readily available to the public;

''(iv) provides information that is reasonably sufficient to permit the provider to contact the law enforcement agency that issued the notice, including the name of the law enforcement agency, and the name and telephone number of an individual to contact at the law enforcement agency (and, if available, the electronic mail address of that individual); and

''(v) declares under penalties of perjury that the person submitting the notice is an official of the law enforcement agency described in clause (iv).

''(3) INJUNCTIVE RELIEF.—

''(A) IN GENERAL.—The United States, or a State law enforcement agency acting within its authority and jurisdiction, may, not less than 24 hours following the issuance to an interactive computer service provider of a notice described in paragraph (2)(B), in a civil action, obtain a temporary restraining order, or an injunction to prevent the use of the interactive computer service by another person in violation of this section.

''(B) LIMITATIONS.—Notwithstanding any other provision of this section, in the case of any application for a temporary restraining order or an injunction against an interactive computer service provider described in paragraph (1)(B) to prevent a violation of this section—

''(i) arising out of activity described in paragraph (1)(A)(i), the injunctive relief is limited to—

''(I) an order restraining the provider from providing access to an identified subscriber of the system or network of the interactive computer service provider, if the court determines that there is probable cause to believe that such subscriber is using that access to violate this section (or to engage with another person in a communication that violates this section), by terminating the specified account of that subscriber; and

''(II) an order restraining the provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, foreign online location;

''(ii) arising out of activity described in paragraph (1)(A)(ii), the injunctive relief is limited to—

''(I) the orders described in clause (i)(I);

''(II) an order restraining the provider from providing access to the material or activity that violates this section at a particular online site residing on a computer server operated or controlled by the provider; and

''(III) such other injunctive remedies as the court considers necessary to prevent or restrain access to specified material or activity that is prohibited by this section at a particular online location residing on a computer server operated or controlled by the provider, that are the least burdensome to the provider among the forms of relief that are comparably effective for that purpose.

''(C) CONSIDERATIONS.—The court, in determining appropriate injunctive relief under this paragraph, shall consider—

''(i) whether such an injunction, either alone or in combination with other such injunctions issued, and currently operative, against the same provider would significantly (and, in the case of relief under subparagraph (B)(ii), taking into account, among other factors, the conduct of the provider, unreasonably) burden either the provider or the operation of the system or network of the provider;

''(ii) whether implementation of such an injunction would be technically feasible and effective, and would not materially interfere with access to lawful material at other online locations;

''(iii) whether other less burdensome and comparably effective means of preventing or restraining access to the illegal material or activity are available; and

''(iv) the magnitude of the harm likely to be suffered by the community if the injunction is not granted.

''(D) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this paragraph shall not be available without notice to the service provider and an opportunity for such provider to appear before the court, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the communications network of the service provider.

''(4) EFFECT ON OTHER LAW.—

''(A) IMMUNITY FROM LIABILITY FOR COMPLIANCE.—An interactive computer service provider shall not be liable for any damages, penalty, or forfeiture, civil or criminal, under Federal or State law for taking in good faith any action described in paragraph (2)(A) to comply with a notice described in paragraph (2)(B), or complying with any court order issued under paragraph (3).

''(B) DISCLAIMER OF OBLIGATIONS.—Nothing in this section may be construed to impose or authorize an obligation on an interactive computer service provider described in paragraph (1)(B)—

''(i) to monitor material or use of its service; or

''(ii) except as required by a notice or an order of a court under this subsection, to gain access to, to remove, or to disable access to material.

''(C) RIGHTS OF SUBSCRIBERS.—Nothing in this section may be construed to prejudice the right of a subscriber to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that the account of such subscriber should not be terminated pursuant to this subsection, or should be restored.

''(e) AVAILABILITY OF RELIEF.—The availability of relief under subsections (c) and (d) shall not depend on, or be affected by, the initiation or resolution of any action under subsection (b), or under any other provision of Federal or State law.

''(f) APPLICABILITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the prohibition in this section does not apply to—

''(A) any otherwise lawful bet or wager that is placed, received, or otherwise made wholly intrastate for a State lottery, or for a multi-State lottery operated jointly between 2 or more States in conjunction with State lotteries if—

''(i) each such lottery is expressly authorized, and licensed or regulated, under applicable State law;

''(ii) the bet or wager is placed on an interactive computer service that uses a private network;

''(iii) each person placing or otherwise making that bet or wager is physically located when such bet or wager is placed at a facility that is open to the general public; and

''(iv) each such lottery complies with sections 1301 through 1304, and other applicable provisions of Federal law;

''(B) any otherwise lawful bet or wager that is placed, received, or otherwise made on an interstate or intrastate basis on a live horse or a live dog race, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, if such bet or wager, or the transmission of such information, as applicable, is—

''(i) expressly authorized, and licensed or regulated by the State in which such bet or wager is received, under applicable Federal and such State's laws;

''(ii) placed on a closed-loop subscriber-based service;

''(iii) initiated from a State in which betting or wagering on that same type of live horse or live dog racing is lawful and received in a State in which such betting or wagering is lawful;

''(iv) subject to the regulatory oversight of the State in which the bet or wager is received and subject by such State to minimum control standards for the accounting, regulatory inspection, and auditing of all such bets or wagers transmitted from 1 State to another; and

''(v) in the case of—

''(I) live horse racing, made in accordance with the Interstate Horse Racing Act of 1978 (15 U.S.C. 3001 et seq.); or

''(II) live dog racing, subject to consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, approved by the appropriate State regulatory agencies, in the State receiving the signal, and in the State in which the bet or wager originates; or

''(C) any otherwise lawful bet or wager that is placed, received, or otherwise made for a fantasy sports league game or contest.

''(2) BETS OR WAGERS MADE BY AGENTS OR PROXIES.—

''(A) IN GENERAL.—Paragraph (1) does not apply in any case in which a bet or wager is placed, received, or otherwise made by the use of an agent or proxy using the Internet or an interactive computer service.

''(B) QUALIFICATION.—Nothing in this paragraph may be construed to prohibit the owner operator of a parimutuel wagering facility that is licensed by a State from employing an agent in the operation of the account wagering system owned or operated by the parimutuel facility.

''(3) ADVERTISING AND PROMOTION.—The prohibition of subsection (b)(1)(B) does not apply to advertising or promotion of any activity that is not prohibited by subsection (b)(1)(A).

''(g) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect any prohibition or remedy applicable to a person engaged in a gambling business under any other provision of Federal or State law.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 50 of title 18, United States Code, is amended by adding at the end the following:

''1085. Internet gambling.''.

SEC. 3. REPORT ON ENFORCEMENT.

Not later than 3 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report, which shall include—

(1) an analysis of the problems, if any, associated with enforcing section 1085 of title 18, United States Code, as added by section 2 of this Act;

(2) recommendations for the best use of the resources of the Department of Justice to enforce that section; and

(3) an estimate of the amount of activity and money being used to gamble on the Internet.

SEC. 4. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of this Act and the provisions of such amendments to any other person or circumstance shall not be affected thereby.

AMENDMENT NO. 2782

(Purpose: To provide a complete substitute)

Ms. COLLINS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. KYL, for himself and Mr. BRYAN, proposes an amendment numbered 2782.

Ms. COLLINS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

AMENDMENT NO. 2783 TO AMENDMENT NO. 2782

Ms. COLLINS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. CAMPBELL, proposes an amendment numbered 2783 to amendment No. 2782.

Ms. COLLINS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 35 of the Kyl-Bryan substitute, after line 18, insert the following:

(4) INDIAN GAMING.—

(A) IN GENERAL.—Subject to paragraph (2), the prohibition in this section does not apply to any otherwise lawful bet or wager that is placed, received, or otherwise made on any game that constitutes class II gaming or class III gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act, 25 U.S.C. 2703), or the sending, receiving, or inviting of information assisting in the placing of any such bet or wager, as applicable, if—

(i) the game is permitted under and conducted in accordance with the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.);

(ii) each person placing, receiving, or otherwise making such bet or wager, or transmitting such information, is physically located on Indian lands (as that term is defined in section 4 of Indian Gaming Regulatory Act, 25 U.S.C. 2703) when such person places, receives, or otherwise makes the bet or wager, or transmits such information;

(iii) the game is conducted on a closed-loop subscriber-based system or a private network; and

(iv) in the case of a game that constitutes class III gaming—

(I) the game is authorized under, and is conducted in accordance with, the respective Tribal-State compacts (entered into and approved pursuant to section 11(d) of the Indian Gaming Regulatory Act, 25 U.S.C. 2710) governing gaming activity on the Indian lands, in each respective State, on which each person placing, receiving, or otherwise making such bet or wager, or transmitting such information, is physically located when such person places, receives, or otherwise makes the bet or wager, or transmits such information; and

(II) each such Tribal-State compact expressly provides that the game may be conducted using the Internet or other interactive computer service only on a closed-loop subscriber-based system or a private network.

(B) ACTIVITIES UNDER EXISTING COMPACTS.—The requirement of subparagraph (A)(iv)(II) shall not apply in the case of gaming activity, otherwise subject to this section, that was being conducted on Indian lands on September 1, 1999, with the approval of the state gaming commission or like regulatory authority of the State in which such Indian lands are located, but without such required compact approval, until the date on which the compact governing gaming activity on

such Indian lands expires (exclusive of any automatic or discretionary renewal or extension of such compact), so long as such gaming activity is conducted using the Internet or other interactive computer service only on a closed-loop subscriber-based system or a private network. For purposes of this subparagraph, the phrase ''conducted on Indian lands'' shall refer to all Indian lands on which any person placing, receiving, or otherwise making a bet or wager, or sending, receiving, or inviting information assisting in the placing of a bet or wager, is physically located when such person places, receives, or otherwise makes the bet or wager, or sends, receives, or invites such information.

Mr. KYL. Mr. President, I rise in strong support of S. 692, the Internet Gambling Prohibition Act of 1999. As we move toward passage of this landmark legislation, I want to thank especially Senator BRYAN, the original cosponsor of S. 692, Senator FEINSTEIN, the ranking member of the Subcommittee on Technology, Terrorism, and Government Information, and Senator HATCH, the Chairman of the Judiciary Committee. I also want to acknowledge the role of Senator CAMPBELL in helping ensure that the legislation addressed issues of concern to Indian tribes, and Senator LEAHY, the ranking member of the Judiciary Committee, who helped advance S. 692 notwithstanding his differences with some of its features. Finally, I want to thank all of my colleagues who joined the legislation as cosponsors following its introduction.

S. 692 enjoys extraordinarily broad public support. Those supporting it—ranging from Federal and State law-enforcement authorities to religious, consumer, and family groups, from the professional and amateur sports leagues to the thoroughbred racing industry—are fully identified in the Judiciary Committee report accompanying the bill. I want to acknowledge, in particular, the support of the National Association of Attorneys General, the National Football League, and the National Collegiate Athletic Association, and the constructive role played by the American Horse Council, the Major League Baseball Players Association, and America Online, which spearheaded a coalition of Internet service providers and others interested in this legislation. I would particularly like to thank David Remes, Gerry Waldron, Marty Gold, Daniel Nestel, and Stephen Higgins, whose hard work and diplomatic skills played an important role in securing the passage of the bill by unanimous consent.

The bill we are voting on today, which the Judiciary Committee approved in June by a recorded vote of 16–1, is the culmination of efforts begun in the last Congress, when Senator BRYAN and I first introduced legislation to prohibit Internet gambling. That legislation, S. 474, was approved by the Judiciary Committee in August 1997 and passed by a 90–10 vote as an amendment to the Commerce-Justice-State appropriations bill in July 1998. The Subcommittee on Crime of the House Judiciary Committee held hearings on an Internet gambling bill in that the last Congress (H.R. 2380) and approved a revised version of the bill (H.R. 4427), but the House did not complete action on the legislation due to the lateness of the session, and the Senate language was not included in the final version of the appropriations measure. New legislation, similar to S. 692, has been introduced in the House in this Congress, and I am quite hopeful that Internet gambling legislation will be enacted into law early next year.

Mr. President, as documented in the Judiciary Committee's report, both the number of Internet gambling sites, and Internet gambling revenues, have grown rapidly since Internet gambling first appeared in the summer of 1995. Two studies cited by the National Gambling Impact Study Commission in its ''Final Report'' to Congress this summer indicate that Internet gambling revenues have doubled every year for the past three years. One study reported growth from $300 million in 1998 to $651 million in 1999, and projected revenues of $2.3 billion by 2001. Another study reported growth from $445.4 million in 1997 to $919.1 million in 1998. The Commission noted estimates by the Financial Times and Smith Barney that Internet gambling will reach annual revenues of $10 billion early in the new millennium. A third study cited by the Commission found that the number of online gamblers had increased from 6.9 million to 14.5 million between 1997 and 1998. According to the Commission, ''virtually all observers assume the rapid growth of Internet gambling will continue.''

It is no exaggeration to say that the Internet has brought gambling into every home that has purchased a computer and chosen to go online. According to the Department of Commerce, 26.2 percent of U.S. households had Internet access at the end of 1998, representing 27 million households. That percentage will undoubtedly continue to grow (millions of other U.S. households have computers but simply have not yet chosen to go online) until, not long from now, online home computers will be as commonplace as the humble telephone—which, like the telegraph before it, seemed as revolutionary and wondrous, in its day, as the Internet seems today.

As a new technology, the Internet presents new problems that current law must be updated to address. These problems, which S. 692 is designed to remedy, are extensively documented in the Judiciary Committee's report. They include, among others, serious harms to our young people, who are the most adept users of Internet; harms from gambling on professional and amateur sports events and athletic performances; and harms relating to pathological gambling and criminal activity. It is vital that we legislate to prevent the Internet from being used as an instrument of gambling and establish an effective mechanism—specifically tailored to this new medium—for enforcing that prohibition. In establishing such a mechanism, however, it is also important to avoid impeding or disrupting the use of the Internet as an instrument of lawful activity. I am confident that S. 602 meets these objectives. Moreover, the fact that the legislation is strongly supported by the chief law enforcement officers of the States is compelling evidence that it strikes the right balance between Federal and State authority in this area.

S. 692 creates a new section 1085 of title 18. It prohibits any person engaged in a gambling business from using the Internet to place, receive, or otherwise make a bet or wager, or to send, receive, or invite information assisting in the placing of a bet or wager, and it establishes mechanisms tailored to the Internet to enforce this prohibition. The new section provides criminal penalties for violations, authorizes civil enforcement proceedings by Federal and State authorities, and establishes mechanisms for requiring Internet service providers to terminate or block access to material or activity that violates the prohibition.

Because section 1085, as reported by the Judiciary Committee, is comprehensively analyzed in the Judiciary Committee's report, I will only describe its structure here. Section 1085(a) contains definitions. Section 1085(b) contains the prohibitions and criminal penalties. Section 1085(c) provides for civil actions by the United States and the States to prevent and restrain violations, applicable to persons other than Internet service providers. Section 1085(d) establishes responsibilities for Internet service providers, enforceable through civil injunction actions by Federal and State authorities, and grants providers specified immunities from liability. Section 1085(e) specifies that the availability of relief under subsections (c) and (d), which is civil in nature, is independent of any criminal action under subsection (b) or any other Federal or State law. Section 1085(f) specifies categories of activities that, if otherwise lawful, are not subject to the prohibition of subsection (b). This subsection addresses State lotteries, pari-mutuel animal wagering, Indian gaming, and fantasy sports league games and contests. Section 1085(f) specifically preserves the regulatory authority of the States with respect to gambling and gambling-related activities not subject to the prohibition of subsection (b), but nothing in section 1085 authorizes discriminatory or other action by a State that would otherwise violate the Commerce Clause. Section 1085(g) specifies that section 1085 does not create immunity from any criminal prosecution under any provision of Federal or State law, except as provided in subsection (d), and does not affect any prohibition or remedy applicable to a person engaged in a gambling business under any other provision of Federal or State law.

Mr. President, the bill we are voting on today has been modified in several

respects from the version reported by the Judiciary Committee. All but one of those modifications affect section 1085. The other affects section 3 of the bill, which calls for a report to Congress by the Department of Justice two years after enactment.

Proceedings by Sports Organizations. The bill has been amended by adding a new subparagraph (C) to section 1085(c)(2) to authorize a professional or amateur sports organization whose games, or the performances of whose athletes in such games, are alleged to be the basis of a violation of section 1085 to institute civil proceedings in an appropriate district court of the United States to prevent or restrain the violation. The right of action provided by this subparagraph is similar to the right of action for sports organizations provided in the Professional and Amateur Sports Protection Act, 28 U.S.C. 3701 et seq., which Congress passed in 1992 to halt the spread of legalized sports betting and S. 692 is intended to reinforce. The new subparagraph limits proceedings, by sports organizations against interactive computer service providers.

Advertising and promotion of Non-Internet Gambling. The bill has been amended by adding a new paragraph (4) to section 1085(d) to address the responsibilities and immunities of an Internet service provider relating to the use of its facilities by another person to advertise or promote non-online gambling. Paragraph (4) generally mirrors the approach of paragraph (1), which addresses the responsibilities and immunities of an Internet service provider relating to the use of its facilities by another person to engage in online gambling activity. Paragraph (4) provides that, if specified conditions are met, a provider shall not be liable, under any provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, or under any State law prohibiting or regulating advertising and promotional activities, either (1) for content, provided by another person, that advertises or promotes non-Internet gambling activity that is unlawful under such Federal or State law, arising out of any of the activities described in section 1085(d)(1)(A)(i) or (ii); or (2) for content, provided by another person, that advertises or promotes non-Internet gambling activity that is lawful under both Federal law and the law of the State where the gambling activity is being conducted. To be eligible for immunity under paragraph (4), a provider must, among other things, offer residential customers at reasonable cost computer software, or another filtering or blocking system, that includes the capability of filtering or blocking access by minors to Internet gambling sites that violate section 1085. Paragraph (4) provides for injunctive relief under specified circumstances.

Horse Racing. The bill has been amended by adding language to subsection (f)(1)(B)(v)(I) to recognize, expressly, the authority of the State in which the bet or wager originates to prohibit or regulate the activity relating to live horse races described in subparagraph (B). this authority was implicit; the amendment makes it explicit.

Indian Gaming. The bill has been amended to address Indian gaming by adding a new paragraph (4) to section 1085(f). The new paragraph specifies that the prohibitions of section 1085 regarding the use of the Internet or other interactive computer service do not apply to any otherwise lawful bet or wager that is placed, received, or otherwise made on any game that constitutes class II gaming or class III gaming (as those terms are defined in the Indian Gaming Regulatory Act), or the sending, receiving, or inviting of information assisting in the placing of any such bet or wager, as applicable, if four conditions are met.

First, the game must be one that is permitted under and conducted in accordance with the Indian Gaming Regulatory Act.

Second, each person placing, receiving, or otherwise making such bet or wager, or transmitting (i.e., sending, receiving, or inviting) such information, must be physically located in a gaming facility on Indian lands when such person places, receives, or otherwise makes the bet or wager, or transmits such information.

Third, the game must be conducted on a closed-loop subscriber-based system or a private network.

Fourth, in the case of a game that constitutes class III gaming, the game must be authorized under, and be conducted in accordance with, the respective Tribal-State compacts that govern gaming activity on the Indian lands on which each person placing, receiving, or otherwise making such bet or wager, or transmitting such information, is physically located when such person places, receives, or otherwise makes the bet or wager, or transmits such information. In addition, each such Tribal-State compact must expressly provide that the game may be conducted using the Internet or other interactive computer service only on a closed-loop subscriber-based system or a private network.

To illustrate one application of the fourth condition, suppose that Person A, a player who is physically located on Indian lands in Florida, by using the Internet or other interactive computer service, places or makes a bet or wager with Person B, a person operating or employed by a casino who is physically located on Indian lands in Idaho. To be lawful under section 1085 in this illustration, the game, among other things, must be one that is expressly authorized (1) by the compact that governs gaming activity on the Indian lands in Florida on which Person A is physically located when he places or makes the bet or wager, and (2) by the compact that governs gaming activity on the Indian lands in Idaho on which Person B is physically located when the bet is placed, received, or otherwise made. In addition, both compacts must expressly provide such gaming activity may be conducted using the Internet or other interactive computer service only on a closed-loop subscriber-based system or a private network.

Paragraph (4) further provides that the requirement of compact language expressly allowing the game to be conducted using the Internet or other interactive computer service, if a closed-loop subscriber-based system or a private network is used, as set forth in paragraph (4)(A)(iv)(II), shall not apply in the case of gaming activity, otherwise subject to section 1085, that was being conducted on Indian lands using the Internet or other interactive computer service on September 1, 1999, with the approval of the State gaming commission or like regulatory authority of the State in which such Indian lands are located, but without the compact language required by paragraph (4)(A)(iv)(II). The exemption applies only until the date on which the compact governing gaming activity on such Indian lands expires (exclusive of any automatic or discretionary renewal or extension of such compact), and only to the extent that the gaming activity is conducted using the Interned or other interactive computer service on a closed-loop subscriber-based system or a private network. This exemption avoids the need to renegotiate compacts currently in effect if the specified conditions are satisfied. The exemption waives only the requirement of subparagraph (A)(iv)(II). It does not in any manner waive the compact authorization requirement of subparagraph (A)(iv)(I), the physical location requirement of subparagraph (A)(ii), the closed-loop or private network requirement of subparagraph (A)(iii), or any other requirement of subparagraph (A).

To use the previous illustration, if the compact that currently governs gaming on the Indian lands in Florida on which Person A is physically located when Person A places or makes the bet or wager does not expressly specify that the game may be conducted using the Internet or other interactive computer service (if a closed-loop subscriber-based system or a private network is used), the game may nevertheless be conducted on those Indian lands using the Internet or other interactive computer service (if a closed-loop subscriber-based system or a private network is used), notwithstanding section 1085, until that compact expires, if the game was one that was conducted on those Indian lands in Florida using the Internet or other interactive computer service on September 1, 1999, with the approval of the gaming commission or like regulatory authority of Florida. After the compact expires, however, any gaming

on those Indian lands using the Internet or other interactive computer service is subject to the requirement of express approval (limited to use of a closed-loop subscriber-based system or a private network) in subsequent compacts governing gaming activity on those Indian lands.

Rule of Construction. The bill has been amended by adding a new paragraph to section 1085(g) to make even more explicit that, except as provided in subsection (d), section 1085 does not create immunity from any criminal prosecution under any provision of Federal or State law. This amendment responds to a concern expressed by Senator LEAHY.

Report on Enforcement. Section 3 of S. 692 has been amended to require the Justice Department to include in the required report to Congress further information specified by the Gambling Impact Study Commission in its ''Final Report''.

Mr. President, S. 692 is urgently needed to address a serious social problem. It reflects the very best thinking on how to update existing law to meet the challenges of a new technology. I respectfully urge its passage.

Mr. LEAHY. Mr. President, I have long been an advocate for legislation that ensures that existing laws keep pace with developing technology. It is for this reason that I have sponsored and supported over the past few years a host of bills to bring us into the 21st Century.

This same impetus underlies my support of legislation to ensure our nation's gambling laws keep pace with developing technology, particularly the Internet. The Department of Justice has noted that ''the Internet has allowed for new types of electronic gambling, including interactive games such as poker or blackjack, that may not clearly be included within the types of gambling currently made illegal. . . .'' This new technology clearly has the potential to diminish the effectiveness of current gambling statutes.

Vermonters have spoken clearly that they do not want certain types of gambling permitted in our state, and they do not want current laws to be rendered obsolete by the Internet. Vermont Attorney General William Sorrell strongly supports federal legislation to address Internet gambling, as do other law enforcement officials in Vermont.

I believe, therefore, that there is considerable value in updating our federal gambling statutes, which is why I voted for S. 692, the ''Internet Gambling Prohibition Act,'' during Senate Judiciary Committee consideration. I support the bill as a step forward in our bipartisan efforts to make sure our federal laws continue to keep pace with emerging technologies.

I do, however, have concerns that S. 692 might unnecessarily weaken existing federal and state gambling laws.

My first concern is that the bill provides unnecessary exemptions from its Internet gambling ban for certain forms of gambling activities without a clear public policy justification. For example, the bill exempts parimutuel wagering on horse and dog racing from its ban on Internet gambling. The sponsors of S. 692 have offered no compelling reason for this special treatment of one form of gambling. Indeed, the Department of Justice is ''especially troubled by the broad exemptions given to parimutuel wagering, which essentially would make legal on the Internet types of parimutuel wagering that are not legal in the physical world,'' according to its June 9, 1999 views letter on S. 692.

Broad exemptions from the Internet gambling ban also contradict the recent recommendations to Congress of the National Gambling Impact Study Commission. After 2 years of taking testimony at hearings across the country, the Commission has endorsed the need for Federal legislation to prohibit Internet gambling. But the Commission clearly rejected adding new exemptions to the law in such a ban.

Indeed, in a letter to me dated June 15, 1999, Kay C. James, Chair, and William Bible, Commissioner, of the National Gambling Impact Study Commission, wrote:

> The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the Federal government should prohibit, *without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions,* Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction. (emphasis in the original)

My second concern is that the bill unnecessarily creates a new section in our Federal gambling statutes, which may prove inconsistent with existing law and established legal precedent. Instead of updating section 1084 of title 18, which has prohibited interstate gambling through wire communications since 1961, S. 692 creates a new section 1085 to title 18 to cover Internet gambling only. Creating a new section out of whole cloth with different definitions and other provisions from existing Federal gambling statutes creates overlapping and inconsistent Federal gambling laws for no good reason.

According to its views letter on S. 692, the Department of Justice believes overlapping and inconsistent Federal gambling laws can be easily avoided by amending section 1084 of title 18 to cover Internet gambling:

> We therefore strongly recommend that Congress address the objective of this legislation through amending existing gambling laws, rather than creating new laws that specifically govern the Internet. Indeed, the Department of Justice believes that an amendment to section 1084 of title 18 could satisfy many of the concerns addressed in S. 692, as well as ensure that the same laws apply to gambling businesses, whether they operate over the Internet, the telephone, or some other instrumentality of interstate commerce.

I want to thank the sponsors of the legislation, Senators KYL and BRYAN, for addressing my third concern in their substitute amendment. I was concerned that the bill might unnecessarily create immunity from criminal prosecution under State law for Internet gambling. Any new immunity would have been in sharp contrast to existing Federal law, which specifically does not grant immunity from State prosecution for illegal gambling over wire communications.

To address this concern, the substitute amendment adds a new Rules of Construction section, section 2 (g)(1), which I authored. This section makes it clear that, except for the liability limits provided to Interactive Computer Service Providers in section 2 (d) of the bill, S. 692 does not provide any other immunity from Federal or State prosecution for illegal Internet gambling.

Indeed, the New York Attorney General recently prosecuted an offshore Internet gambling company, World Interactive Gaming Corporation, for targeting New York citizens in violation of State and Federal anti-gambling statutes. This past July, the New York State Supreme Court upheld that prosecution.

As a former State prosecutor in Vermont, I strongly believe that Congress should not tie the hands of our State crime-fighting partners in the battle against Internet gambling when we do not mandate Federal preemption of state criminal laws for other forms of illegal gambling. Instead, we need to foster effective Federal-State partnerships to combat illegal Internet gambling.

During our consideration of the Internet Gambling Prohibition Act in this Congress and the last, the sponsors of the bill and members of the Senate Judiciary Committee have improved and refined the bill on a bipartisan basis. The bill now applies only to gambling businesses, instead of individual betters. This will permit Federal authorities to target the prosecution of interstate gambling businesses, while rightly leaving the prosecution of individual bettors to the discretion of state authorities acting under state law.

As Senators continue to work together to enact a ban on Internet gambling, we should keep these words from the Department of Justice foremost in our minds: ''[A]ny prohibitions that are designed to prohibit criminal activity on the Internet must be carefully drafted to accomplish the legislation's objectives without stifling the growth of the Internet or chilling its use as a communication medium.''

I look forward to working with my colleagues on both sides of the aisle and the administration to enact into law carefully drafted legislation to update our Federal gambling statutes to ensure that new types of gambling activities made possible by emerging technologies are prohibited.

Mr. TORRICELLI. Mr. President, I express my deep appreciation and thanks to Senator KYL for his diligent

work to help resolve my concerns. This compromise is reflected in section 1085. This language is very important to permitting parimutuel wagering on horse racing to be exempted from the prohibition on Internet gambling that we are enacting.

The new language makes explicit which was implicit and assures that every State has the right to establish requirements for Internet and phone wagering that will best serve the public and governmental interests of the State and to do so, if it wishes, before such wagering takes place. I believe this is so important because it ensures that a State will have its traditional authority to safeguard the interests of its consumers and racing industry through the regulatory and approval process of proposed phone or Internet wagering.

Mr. CAMPBELL. Mr. President, today the Senate considers S. 692, entitled the ''Internet Gaming Prohibition Act.'' As my colleagues know, I support this measure but from the day this bill was introduced I have had concerns about its scope. As Chairman of the Committee on Indian Affairs I have been concerned that existing law, namely the Indian Gaming Regulatory Act, would be irreparably harmed unless we made certain changes to the bill.

This is an important bill and I support the intent of the bill's sponsors to make it more difficult for this kind of gaming to be conducted, particularly by underage players.

If enacted, this bill would prohibit Internet gambling, but make exceptions for certain segments of the gaming industry which currently use a variety of technologies to enhance traditional gaming.

It is important for my colleagues to realize that the bill does not prohibit all forms of gaming using available high-technology. When I reviewed S. 692 for the first time, I realized that certain gaming activities currently being conducted by Indian tribes would be prohibited by this bill.

My concerns centered on the fact that the same or similar activities were allowed to other entities—such as the states, the horse-racing industry and others—that were disallowed to tribes. This fundamental inequity is what led me to propose fair treatment for tribal governmental gaming.

In addition to issues of equity, the economic impacts of Indian gaming are substantial and should be acknowledged. These revenues provide an important source of development capital and jobs for many tribes across the country. Contrary to the views many here hold, Indian gaming is very highly regulated by federal, state and tribal officials, and has been subject to federal law for eleven years.

I addressed my concerns to the Senate Judiciary Committee in June of this year and began discussions on how best to address currently-legal Indian gaming in S. 692. My main concerns with drafting any language dealing with Indian gaming and the IGRA centered on the following requirements:

1. All gaming must be legal under current federal law;

2. All class III gaming (casino style) must be conducted pursuant to a tribal state compact; and

3. All aspects of the game must take place on Indian Lands (game, player, facility, server, etc.).

It is critical to note that there is no tribe in the U.S. that is currently offering online/Internet betting. Instead, several tribes currently use widely-available technology to broadcast bingo to numerous operations located on Indian lands or to link class III games for the purpose of determining an aggregate betting pool for the purpose of offering bigger prizes.

It is my understanding in supporting the substitute along with my amendment, that S. 692 allows tribes to continue their current practices regarding the use of technology to enhance the effectiveness and profitability of their operations, but does not authorize any tribe to operate betting on the Internet as it currently perceived by the general public.

The specific provisions of my amendment address all currently legal class II and class III gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq.

Accordingly, for Indian gaming activities to not run afoul of the provisions of S. 692

1. The game must be conducted according to the requirements of IGRA.

2. All persons making or receiving a bet, or transmitting information regarding a bet must be on Indian lands. That means all aspects of the game must be located on tribal land, including the person playing the game, the actual machine which is the game, and any computer server which may be used to keep track of information relating to the play of the game. In the case of a satellite (which cannot be located on Indian land), all machinery used to receive the signal must be located on Indian land.

3. The game must be conducted on an interactive computer service which uses a closed-loop subscriber based service or a private network.

4. Where class III games are conducted, each tribe participating in a network must have a compact which authorizes games to be conducted using the technology described, that is, an interactive computer service which uses a closed-loop subscriber-based service or a private network. It is critical to understand that this means that a tribe must have a compact only in the state in which they are located, not that they compact with every state in which the network is located.

5. In jurisdictions where class III gaming is currently using technology to link games, but either have compacts which do not specifically authorize networked games, or that do authorize these games, but do not contain the specific authorization required in S. 692, the amendment allows them to continue the operations of those games until the expiration of their current compact. The current language addressing technology that is included in most compacts does not contain the exact terminology as defined in S. 692.

Additionally, there are other states where language that addresses the use of technology is not contained in the compact, but the state has consented to the use of technology. My amendment contains a ''grandfather clause'' for those operations, which will run until their compacts expire by their own terms. Once a tribe's compact expires, the compact must be renegotiated and will be required to contain language which conforms to the requirements of S. 692.

Contrary to the views of some, Indian tribes are not generally interested in operating games which are broadcast on the ''world wide web'' or the Internet, and in which a person sitting in their home may ''log on'' to a computer and begin placing bets.

Indian tribes are, however, interested in continuing the operation of the games they currently have, and which they have agreed with their states are legal. This amendment allows them to do just that.

Mr. FEINGOLD. Mr. President, I rise today to express my opposition to the Internet Gambling Prohibition Act of 1999. I voted against this bill when it was brought to the floor last year as an amendment to an appropriations bill and again this year when it came through the Judiciary Committee.

I am pleased to see that Senator KYL was able to reach an agreement with Senator CAMPBELL and others to address Indian gaming issues. The bill's special treatment of certain forms of gambling was one of the reasons I voted against this bill when it was before the Judiciary Committee. It allowed state lotteries, fantasy sports leagues, and horse and dog track racing to continue to operate over the Internet, but prohibited use of the Internet for Indian gaming, which is expressly authorized by federal law. Under Senator CAMPBELL's amendment to S. 692, Indian gaming can continue to operate over the Internet under certain circumstances.

While I am glad to see the Indian gaming issue addressed, I nevertheless remain concerned with the fact that this bill singles out one emerging technology, the Internet, to try to attack the broad, complex social problems associated with gambling. The Internet is an evolving technology, and its full potential as a medium of expression has not been reached. While I share some of the concerns about the dangers of gambling that have inspired the sponsors of this legislation, I am reluctant to start down the path of restricting the use of the Internet for any particular lawful purpose. Once we have prohibited gambling on the Internet, what will be the next on-line activity that we will try

to ban? We need to be very careful not to create a precedent that might stifle the commercial and educational development of this very exciting technological tool with unhealthy implications for the First Amendment. I fear that this bill starts us down a road in that direction.

Mr. President, in light of the expressed sentiment of this body last year, I did not object to the unanimous consent request to pass this bill in the closing days of this session, but I would like the record to reflect my continuing opposition to this bill.

Thank you. I yield the floor.

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendments be agreed to, the substitute amendment be agreed to, as amended, the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2783) was agreed to.

The amendment (No. 2782) was agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 692), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

DATE-RAPE DRUG CONTROL ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 416, S. 1561.

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

The legislative clerk read as follows:

A bill to amend the Controlled Substance Act to add gamma hydroxybutyric acid and ketamine to the schedules of control substances, to provide for a national awareness campaign, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments as follows:

[Matter proposed to be deleted is enclosed in black brackets; new matter is printed in italic.]

S. 1516

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 ''Date-Rape Drug Control Act of 1999''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Gamma hydroxybutyric acid (also called G, Liquid X, Liquid Ecstasy, Grievous Bodily Harm, Georgia Home Boy, Scoop) has become a significant and growing problem in law enforcement. At least 20 States have scheduled such drug in their drug laws and law enforcement officials have been experiencing an increased presence of the drug in driving under the influence, sexual assault, and overdose cases especially at night clubs and parties.

(2) A behavioral depressant and a hypnotic, gamma hydroxybutyric acid (''GHB'') is being used in conjunction with alcohol and other drugs with detrimental effects in an increasing number of cases. It is difficult to isolate the impact of such drug's ingestion since it is so typically taken with an ever-changing array of other drugs and especially alcohol which potentiates its impact.

(3) GHB takes the same path as alcohol, processes via alcohol dehydrogenase, and its symptoms at high levels of intake and as impact builds are comparable to alcohol ingestion/intoxication. Thus, aggression and violence can be expected in some individuals who use such drug.

(4) If taken for human consumption, common industrial chemicals such as gamma butyrolactone and 1.4-butanediol are swiftly converted by the body into GHB. Illicit use of these and other GHB analogues and precursor chemicals is a significant and growing law enforcement problem.

(5) A human pharmaceutical formulation of gamma hydroxybutyric acid is being developed as a treatment for cataplexy, a serious and debilitating disease. Cataplexy, which causes sudden and total loss of muscle control, affects about 65 percent of the estimated 180,000 Americans with narcolepsy, a sleep disorder. People with cataplexy often are unable to work, drive a car, hold their children or live a normal life.

(6) Abuse of illicit GHB is an imminent hazard to public safety that requires immediate regulatory action under the Controlled Substances Act (21 U.S.C. 801 et seq.).

[SEC. 3. ADDITION OF GAMMA HYDROXYBUTYRIC ACID AND KETAMINE TO SCHEDULES OF CONTROLLED SUBSTANCES; GAMMA BUTYROLACTONE AS ADDITIONAL LIST I CHEMICAL.

[(a) ADDITION TO SCHEDULE I.—

[(1) IN GENERAL.—Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end of schedule I the following:

[''(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substance having a depressant effect on the central nervous system, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

[''(1) Gamma hydroxybutyric acid.''.

[(2) SECURITY OF FACILITIES.—For purposes of any requirements that relate to the physical security of registered manufacturers and registered distributors, gamma hydroxybutyric acid and its salts, isomers, and salts of isomers manufactured, distributed, or possessed in accordance with an exemption approved under section 505(i) of the Federal Food, Drug, and Cosmetic Act shall be treated as a controlled substance in schedule III under section 202(c) of the Controlled Substances Act.

[(b) ADDITION TO SCHEDULE III.—Schedule III under section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended in (b)—

[(1) by redesignating (4) through (10) as (6) through (12), respectively; and

[(2) by redesignating (3) as (4);

[(3) by inserting after (2) the following:

[''(3) Gamma hydroxybutyric acid and its salts, isomers, and salts of isomers contained in a drug product for which an application has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act.''; and

[(4) by inserting after (4) (as so redesignated) the following:

[''(5) Ketamine and its salts, isomers, and salts of isomers.''.

[(c) ADDITIONAL LIST I CHEMICAL.—Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

[(1) by redesignating subparagraph (X) as subparagraph (Y); and

[(2) by inserting after subparagraph (W) the following subparagraph:

[''(X) Gamma butyrolactone.''.

[(d) RULE OF CONSTRUCTION REGARDING CONTROLLED SUBSTANCE ANALOGUES.—Section 102(32) of the Controlled Substances Act (21 U.S.C. 802(32)) is amended—

[(1) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'';

[(2) by redesignating subparagraph (B) as subparagraph (C); and

[(3) by inserting after subparagraph (A) the following new subparagraph (B):

[''(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) that the chemical is a controlled substance analogue.''.

[(e) PENALTIES REGARDING SCHEDULE I.—

[(1) IN GENERAL.—Section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(C)) is amended in the first sentence by inserting after ''schedule I or II,'' the following: ''gamma hydroxybutyric acid in schedule III,''.

[(2) CONFORMING AMENDMENT.—Section 401(b)(1)(D) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(D)) is amended by inserting ''(other than gamma hydroxybutyric acid)'' after ''schedule III''.

[(f) DISTRIBUTION WITH INTENT TO COMMIT CRIME OF VIOLENCE.—Section 401(b)(7)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(7)(A)) is amended by inserting ''or controlled substance analogue'' after ''distributing a controlled substance''.]

SEC. 3. EMERGENCY SCHEDULING OF GAMMA HYDROXYBUTYRIC ACID AND LISTING OF GAMMA BUTYROLACTONE AS LIST I CHEMICAL.

(a) EMERGENCY SCHEDULING OF GHB.—

(1) IN GENERAL.—The Congress finds that the abuse of illicit gamma hydroxybutyric acid is an imminent hazard to the public safety. Accordingly, the Attorney General, notwithstanding sections 201(a), 201(b), 201(c), and 202 of the Controlled Substances Act, shall issue, not later than 60 days after the date of the enactment of this Act, a final order that schedules such drug (together with its salts, isomers, and salts of isomers) in the same schedule under section 202(c) of the Controlled Substances Act as would apply to a scheduling of a substance by the Attorney General under section 201(h)(1) of such Act (relating to imminent hazards to the public safety), except as follows:

(A) For purposes of any requirements that relate to the physical security of registered manufacturers and registered distributors, the final order shall treat such drug, when the drug is manufactured, distributed, or possessed in accordance with an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (whether the exemption involved is authorized before, on, or after the date of the enactment of this Act), as being in the same schedule as that recommended by the Secretary of Health and Human Services for the drug when the drug is the subject of an authorized investigational new drug application (relating to such section 505(i)). The recommendation referred to in the preceding sentence is contained in the first paragraph of the letter transmitted on May 19, 1999, by such Secretary (acting through the Assistant Secretary for Health) to the Attorney

General (acting through the Deputy Administrator of the Drug Enforcement Administration), which letter was in response to the letter transmitted by the Attorney General (acting through such Deputy Administrator) on September 16, 1997. In publishing the final order in the Federal Register, the Attorney General shall publish a copy of the letter that was transmitted by the Secretary of Health and Human Services.

(B) In the case of gamma hydroxybutyric acid that is contained in a drug product for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (whether the application involved is approved before, on, or after the date of the enactment of this Act), the final order shall schedule such drug in the same schedule as that recommended by the Secretary of Health and Human Services for authorized formulations of the drug. The recommendation referred to in the preceding sentence is contained in the last sentence of the fourth paragraph of the letter referred to in subparagraph (A) with respect to May 19, 1999.

(2) FAILURE TO ISSUE ORDER.—If the final order is not issued within the period specified in paragraph (1), gamma hydroxybutyric acid (together with its salts, isomers, and salts of isomers) is deemed to be scheduled under section 202(c) of the Controlled Substances Act in accordance with the policies described in paragraph (1), as if the Attorney General had issued a final order in accordance with such paragraph.

(b) ADDITIONAL PENALTIES RELATING TO GHB.—

(1) CONTROLLED SUBSTANCES ACT.—

(A) IN GENERAL.—Section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(C)) is amended in the first sentence by inserting after ''schedule I or II,'' the following: ''gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999),''.

(B) CONFORMING AMENDMENT.—Section 401(b)(1)(D) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(D)) is amended by striking '', or 30'' and inserting ''(other than gamma hydroxybutyric acid), or 30''.

(2) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—

(A) IN GENERAL.—Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended in the first sentence by inserting after ''I or II,'' the following: ''gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999),''.

(B) CONFORMING AMENDMENT.—Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)) is amended by striking ''flunitrazepam)'' and inserting the following: ''flunitrazepam and except a violation involving gamma hydroxybutyric acid)''.

(c) GAMMA BUTYROLACTONE AS ADDITIONAL LIST I CHEMICAL.—Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(1) by redesignating subparagraph (X) as subparagraph (Y); and

(2) by inserting after subparagraph (W) the following subparagraph:

''(X) Gamma butyrolactone.''.

SEC. 4. AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS FOR GAMMA HYDROXYBUTYRIC PRODUCTS IN SCHEDULE III.

Section 307 of the Controlled Substances Act (21 U.S.C. 827) is amended by adding at the end the following:

''(h) In the case of a drug product containing gamma hydroxybutyric acid for which an application has been approved under section 505 of the Federal Food, Drug, and Cosmetic Act, the Attorney General may, in addition to any other requirements that apply under this section with respect to such a drug product, establish any of the following as reporting requirements:

''(1) That every person who is registered as a manufacturer of bulk or dosage form, as a packager, repackager, labeler, relabeler, or distributor shall report acquisition and distribution transactions quarterly, not later than the 15th day of the month succeeding the quarter for which the report is submitted, and annually report end-of-year inventories.

''(2) That all annual inventory reports shall be filed no later than January 15 of the year following that for which the report is submitted and include data on the stocks of the drug product, drug substance, bulk drug, and dosage forms on hand as of the close of business December 31, indicating whether materials reported are in storage or in process of manufacturing.

''(3) That every person who is registered as a manufacturer of bulk or dosage form shall report all manufacturing transactions both inventory increases, including purchases, transfers, and returns, and reductions from inventory, including sales, transfers, theft, destruction, and seizure, and shall provide data on material manufactured, manufactured from other material, use in manufacturing other material, and use in manufacturing dosage forms.

''(4) That all reports under this section must include the registered person's registration number as well as the registration numbers, names, and other identifying information of vendors, suppliers, and customers, sufficient to allow the Attorney General to track the receipt and distribution of the drug.

''(5) That each dispensing practitioner shall maintain for each prescription the name of the prescribing practitioner, the prescribing practitioner's Federal and State registration numbers, with the expiration dates of these registrations, verification that the prescribing practitioner possesses the appropriate registration to prescribe this controlled substance, the patient's name and address, the name of the patient's insurance provider and documentation by a medical practitioner licensed and registered to prescribe the drug of the patient's medical need for the drug. Such information shall be available for inspection and copying by the Attorney General.

''(6) That section 310(b)(3) (relating to mail order reporting) applies with respect to gamma hydroxybutyric acid to the same extent and in the same manner as such section applies with respect to the chemicals and drug products specified in subparagraph (A)(i) of such section.''.

[SEC. 5. DEVELOPMENT OF FORENSIC FIELD TESTS FOR GAMMA HYDROXYBUTYRIC ACID.

[The Attorney General shall make a grant for the development of forensic field tests to assist law enforcement officials in detecting the presence of gamma hydroxybutyric acid and related substances.]

SEC. 5. CONTROLLED SUBSTANCES ANALOGUES.

(a) RULE OF CONSTRUCTION REGARDING CONTROLLED SUBSTANCE ANALOGUES.—Section 102(32) of the Controlled Substances Act (21 U.S.C. 802(32)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'';

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.''.

(b) DISTRIBUTION WITH INTENT TO COMMIT CRIME OF VIOLENCE.—Section 401(b)(7)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(7)(A)) is amended by inserting ''or controlled substance analogue'' after ''distributing a controlled substance''.

SEC. 6. DEVELOPMENT OF MODEL PROTOCOLS, TRAINING MATERIALS, FORENSIC FIELD TESTS, AND COORDINATION MECHANISM FOR INVESTIGATIONS AND PROSECUTIONS RELATING TO GAMMA HYDROXYBUTYRIC ACID, OTHER CONTROLLED SUBSTANCES, AND DESIGNER DRUGS.

(a) IN GENERAL.— The Attorney General, in consultation with the Administrator of the Drug Enforcement Administration and the Director of the Federal Bureau of Investigation, shall—

(1) develop—

(A) model protocols for the collection of toxicology specimens and the taking of victim statements in connection with investigations into and prosecutions related to possible violations of the Controlled Substances Act or other Federal or State laws that result in or contribute to rape, other crimes of violence, or other crimes involving abuse of gamma hydroxybutyric acid, other controlled substances, or so-called ''designer drugs''; and

(B) model training materials for law enforcement personnel involved in such investigations; and

(2) make such protocols and training materials available to Federal, State, and local personnel responsible for such investigations.

(b) GRANT.—

(1) IN GENERAL.—The Attorney General shall make a grant, in such amount and to such public or private person or entity as the Attorney General considers appropriate, for the development of forensic field tests to assist law enforcement officials in detecting the presence of gamma hydroxybutyric acid and related substances.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on current mechanisms for coordinating Federal, State, and local investigations into and prosecutions related to possible violations of the Controlled Substances Act or other Federal or State laws that result in or contribute to rape, other crimes of violence, or other crimes involving the abuse of gamma hydroxybutyric acid, other controlled substances, or so-called ''designer drugs''. The report shall also include recommendations for the improvement of such mechanisms.

[SEC. 6. ANNUAL REPORT REGARDING DATE-RAPE DRUGS; NATIONAL AWARENESS CAMPAIGN.]

SEC. 7. ANNUAL REPORT REGARDING DATE-RAPE DRUGS; NATIONAL AWARENESS CAMPAIGN.

(a) ANNUAL REPORT.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall periodically submit to Congress reports each of which provides an estimate of the number of incidents of the abuse of date-rape drugs (as defined in subsection (c)) that occurred during the most recent one-year period for which data are available. The first such report shall be submitted not later than January 15, 2000, and subsequent reports shall be submitted annually thereafter.

(b) NATIONAL AWARENESS CAMPAIGN.—

(1) DEVELOPMENT OF PLAN; RECOMMENDATIONS OF ADVISORY COMMITTEE.—

(A) IN GENERAL.—The Secretary, in consultation with the Attorney General, shall

develop a plan for carrying out a national campaign to educate individuals described in subparagraph (B) on the following:

(i) The dangers of date-rape drugs.

(ii) The applicability of the Controlled Substances Act to such drugs, including penalties under such Act.

(iii) Recognizing the symptoms that indicate an individual may be a victim of such drugs, including symptoms with respect to sexual assault.

(iv) Appropriately responding when an individual has such symptoms.

(B) INTENDED POPULATION.—The individuals referred to in subparagraph (A) are young adults, youths, law enforcement personnel, educators, school nurses, counselors of rape victims, and emergency room personnel in hospitals.

(C) ADVISORY COMMITTEE.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish an advisory committee to make recommendations to the Secretary regarding the plan under subparagraph (A). The committee shall be composed of individuals who collectively possess expertise on the effects of date-rape drugs and on detecting and controlling the drugs.

(2) IMPLEMENTATION OF PLAN.—Not later than 180 days after the date on which the advisory committee under paragraph (1) is established, the Secretary, in consultation with the Attorney General, shall commence carrying out the national campaign under such paragraph in accordance with the plan developed under such paragraph. The campaign may be carried out directly by the Secretary and through grants and contracts.

(3) EVALUATION BY GENERAL ACCOUNTING OFFICE.—Not later than two years after the date on which the national campaign under paragraph (1) is commenced, the Comptroller General of the United States shall submit to Congress an evaluation of the effects with respect to date-rape drugs of the national campaign.

(c) DEFINITION.—For purposes of this section, the term ''date-rape drugs'' means gamma hydroxybutyric acid and its salts, isomers, and salts of isomers and such other drugs or substances as the Secretary, after consultation with the Attorney General, determines to be appropriate.

SEC. 8. SPECIAL UNIT IN DRUG ENFORCEMENT ADMINISTRATION FOR ASSESSMENT OF ABUSE AND TRAFFICKING OF GHB AND OTHER CONTROLLED SUBSTANCES AND DRUGS.

(a) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall establish within the Operations Division of the Drug Enforcement Administration a special unit which shall assess the abuse of and trafficking in gamma hydroxybutyric acid, flunitrazepam, ketamine, other controlled substances, and other so-called ''designer drugs'' whose use has been associated with sexual assault.

(b) PARTICULAR DUTIES.—In carrying out the assessment under subsection (a), the special unit shall—

(1) examine the threat posed by the substances and drugs referred to in that subsection on a national basis and regional basis; and

(2) make recommendations to the Attorney General regarding allocations and reallocations of resources in order to address the threat.

(c) REPORT ON RECOMMENDATIONS.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report which shall—

(A) set forth the recommendations of the special unit under subsection (b)(2): and

(B) specify the allocations and reallocations of resources that the Attorney General proposes to make in response to the recommendations.

(2) TREATMENT OF REPORT.—Nothing in paragraph (1) may be construed to prohibit the Attorney General or the Administrator of the Drug Enforcement Administration from making any reallocation of existing resources that the Attorney General or the Administrator, as the case may be, considers appropriate.

SEC. 9. TECHNICAL AMENDMENT.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by redesignating subsections (d), (e), (f), and (g) as subsections (c), (d), (e), and (f), respectively.

Amend the title so as to read: ''An Act to amend the Controlled Substances Act to direct the emergency scheduling of gamma hydroxybutyric acid, to provide for a national awareness campaign, and for other purposes.''.

AMENDMENT NO. 2784

(Purpose: To modify the short title)

Ms. COLLINS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mrs. HUTCHISON, proposes an amendment numbered 2784.

Ms. COLLINS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 1, beginning on line 4, strike ''Samantha Reid and Hillory J. Farias'' and insert ''Hillory J. Farias and Samantha Reid''.

On page 6, line 21, strike ''Samantha Reid and Hillory J. Farias'' and insert ''Hillory J. Farias and Samantha Reid''.

On page 7, line 12, strike ''Samantha Reid and Hillory J. Farias'' and insert ''Hillory J. Farias and Samantha Reid''.

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendment be agreed to, the committee amendment, as amended, be agreed to, and the bill be read the third time. I further ask unanimous consent that the Senate proceed to the consideration of the House companion bill, H.R. 2130, all after the enacting clause be stricken and the text of S. 1561, as amended, be inserted in lieu thereof. I further ask that the bill be read the third time and passed, the motion to reconsider be laid upon the table, the amendment to the title be agreed to, and that any statements relating to the bill be printed in the RECORD. Finally, I ask that S. 1561 be placed back on the calendar.

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

The amendment (No. 2784) was agreed to.

The committee amendments, as amended, were agreed to.

The bill (H.R. 2130), as amended, was read the third time and passed.

The title was amended so as to read: ''An Act to amend the Controlled Substances Act to direct the emergency scheduling of gamma hydroxybutyric acid, to provide for a national awareness campaign, and for other purposes.''

Ms. COLLINS. Mr. President, I yield to the distinguished Senator from Michigan, Mr. ABRAHAM, who has been a real leader on this bill, for any comments he might have.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. ABRAHAM. Mr. President, I wanted to make a few comments about the legislation we are about to pass. Before I do so, I would like to thank a number of people for their help in this effort.

First, I would like to thank my colleagues who cosponsored this legislation: Senators FEINSTEIN, LIEBERMAN, DEWINE, GRASSLEY, COVERDELL, and GRAHAM. Their support was crucial to moving forward with this bill and doing so in a timely fashion. Second, I would like to thank Senator HATCH, his Judiciary Chief Counsel Manus Cooney, his Deputy Chief Counsel Sharon Prost, his Chief of Staff Patricia Knight, and Bruce Artim and Pattie DeLoatche, all of whose commitment to seeing this effort through to fruition I appreciate both for the advice and guidance they provided and as the act of friendship I recognize it to be. Third, I would like to thank Senator BIDEN and his staff, especially Marcia Lee, whose assistance and cooperation in working out a final version of this bill acceptable to all involved, including the Administration, was indispensable. I would also like to thank my good friend Fred Upton, who first brought the serious problem that is the focus of this legislation to my attention, and Congressman BLILEY and his able staff, especially John Manthei, who patiently tolerated and assisted with the vagaries of bicameral legislative drafting. Finally, I would like to thank my own staff, especially my Subcommittee General Counsel Chase Hutto, who worked tirelessly and creatively on this effort, and Lee Otis, my Subcommittee Chief Counsel.

S. 1561, and its counterpart, H.R. 2130, are named for a young woman by the name of Samantha Reid. Samantha was born in the Henry Ford Hospital in Detroit on January 2, 1984. She grew up in Lincoln Park. She played trumpet in her elementary school band. She was a girl scout for eight years, with the help of her mother, Judi Clark, who was a troop leader. She was an ''all star'' 6th grade baseball player. She went on to attend Carlson High School in Gibraltar, where she played freshman basketball. Her favorite restaurant was McDonald's, and her favorite meal there was a Big Mac. She loved to go to Cedar Point Amusement Park, and got mad if she couldn't go at least twice a year. She earned her spending money by helping around the house with chores and babysitting, and indeed, on February 11, 1995, she earned an award for outstanding performance in completing babysitting training from the City of Lincoln Park. Her mother called her ''Hammy Sammy'' because of the way she always smiled in pictures. Her older brother Charles Reid, who is 18, remembers and misses her loud voice.

On January 17, 1999, Samantha died a few weeks after turning 15. She and two friends, none of them yet 16, were at a party given by a 25 year-old man in Woodhaven, Michigan. Samantha Reid drank a Mountain Dew—a soft drink—and passed out within minutes. She vomited in her sleep, and she died. Her friend, Melanie Sindone, also 15, passed out as well. Melanie lapsed into a coma, but she has survived.

These two girls had no reason to believe that they were drinking anything dangerous. But they were wrong. Their drinks had been laced with the drug GHB, commonly known as a ''date rape drug.'' Samantha was undoubtedly slipped it for the purpose that this name suggests, although she died before that purpose was accomplished.

Mr. President, GHB and its analogues are becoming increasingly common in our nation. They are finding their way into nightclubs, onto campuses and into homes. They are being used by sexual predators against young—sometimes very young—women. Their unwitting victims may be raped, become violently ill, and even die.

GHB is especially dangerous because it is relatively easy to produce. According to the DEA, the clandestine synthesis involves the use of two common, non-regulated chemicals: gamma-butyrolactone (GBL), the primary precursor chemical, and sodium hydroxide (lye). GBL is a solvent with a wide range of industrial uses. Tens of thousands of metric tons are produced annually and it is readily available from chemical supply companies. The synthesis is a simple one-pot method requiring no special chemical expertise. In addition, kits for making GHB containing GBL and sodium hydroxide are being sold on the Internet. GBL, once absorbed from the gastrointestinal tract after oral administration, is readily converted to GHB in the body and produces the same profile of physiological and behavioral effects as GHB. The combination of the ease with which GHB can be produced and widespread ignorance about GHB's dangers especially among our nation's youth has led the law enforcement community to view GHB as a serious and growing threat.

The Controlled Substances Act provides an administrative mechanism for the Attorney General, in consultation with the Secretary of HHS, to place dangerous substances susceptible of abuse on a ''schedule'' of controlled substances, thereby restricting access to them and imposing criminal penalties for their illicit sale and manufacture. The Attorney General and the Secretary are in agreement that GHB should in fact be scheduled, but they are in disagreement over which schedule it should be placed on. This is because GHB is currently under investigational use as a means of treating narcolepsy and cataplexy, afflictions affecting about 70,000 Americans, and HHS has been understandably reluctant to agree that GHB belongs on Schedule I or II, which would carry the most serious penalties for illicit sale, because the security requirements that would accompany such scheduling would interfere with this medical research. On the other hand, the DEA has been understandably reluctant to agree to any lesser scheduling, because the result would be lower penalties for the unauthorized sale and distribution of this drug. Moreover, under the Controlled Substances Act, the fact that GHB is under investigation for possible medical use precludes the Attorney General from using her emergency authority to schedule it as an ''imminent hazard to the public safety.''

The result has been an administrative deadlock that has resulted in a complete failure to schedule GHB at all. Hence legislative intervention is needed.

This legislation has been drafted as a specific response to these various competing considerations, which the current scheduling categories are not all that well suited to handle in any event. Notwithstanding the current investigational medical use, the legislation determines that GHB is an imminent hazard to public safety. It therefore directs the Attorney General to place it on the schedule on which imminent hazards are ordinarily placed, which is Schedule I. It relaxes the physical security requirements that would ordinarily apply to Schedule I substances for the investigational medical uses of the drug, however, following the recommendation of the Secretary of HHS on what is appropriate in that area and thereby avoiding interfering with the ongoing research. It also makes clear that should this research pay off with a drug that the FDA approves because it concludes that it can responsibly be prescribed to treat narcolepsy, cataplexy, or other diseases, the FDA approved drug will be classified as a Schedule III drug, although the Attorney General can impose additional record keeping requirements to help assure that it is not diverted to improper uses. Finally, anyone involved in selling or distributing the diverted product will be subject to the same tough ''Schedule I'' penalties that apply to the sale or distribution of the illicit or unapproved drug.

In practice, this means that while medical research will continue unhampered by the most cumbersome consequences of placing this drug in Schedule I, the harsh penalties provided for the sale, manufacture, and distribution of all Schedule I substances will apply to any and all illicit trafficking in GHB, whether the drug originated in a bathtub or a medical facility. This means that traffickers will be subject to a 20 year statutory maximum for distributing this drug, and that if, as in the case of Samantha Reid, the drug is slipped to someone who dies, or if it is slipped to someone who is raped or suffers serious bodily injury, that 20 year maximum become a 20 year minimum.

This legislation also addresses three other major problems society has had in responding to the threat posed by this drug. First, it would require the Attorney General to develop, and make available to Federal, State, and local authorities, model protocols for taking toxicology specimens and victim statements in connection with suspected crimes involving GHB and other controlled substances or so-called designer drugs. The Attorney General also would be required to provide training materials for law enforcement officials responsible for investigating these offenses. And finally, she would be directed to make a grant for the development of standardized tests that could be used in the field to test for the presence of these drugs.

The reason for these requirements is that even many in law enforcement are unfamiliar with the operation of GHB. As a result, they may defer testing for it or taking victim statements on the mistaken assumption that the victim is drunk and will be more coherent later, whereas in fact this drug can be processed very quickly by the body and no longer be detectable at that time. Moreover, the victim's memory may be impaired by the substance and she may forget events that she would have remembered had her statement been taken more quickly. Hence the need for model protocols, training, and tests.

Second, the legislation directs the Secretary of HHS to conduct a National Awareness Campaign about the dangers of GHB. Consciousness of the dangers of this drug is lagging far behind the threat the drug presents, and it is critical that we make it a national priority to remedy that problem.

Finally, the legislation would direct the Attorney General to examine and recommend improvements to current mechanisms for coordinating federal, state and local investigations and prosecutions in this area. And it would establish a special unit within the DEA to assess the federal response to the abuse and trafficking of GHB, other controlled substances, and other designer drugs associated with sexual assault, recommended any reallocations of enforcement resources necessary to improve that response, and direct the Attorney General to make any such reallocations she believes are appropriate.

It is time to act, Mr. President, to save young people, and young women in particular, from these deadly drugs and the predators who use them.

I ask my colleagues to give their full support to this amendment.

I also ask unanimous consent that a number of letters from families and victims of date-rape drugs be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

TRINKA D. PORRATA, DESIGNER DRUGS—TEACHING & CONSULTING,
Pasadena, CA, October 3, 1999.

Senator SPENCER ABRAHAM,
329 Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR ABRAHAM: I'm writing in support of Senate Bill 1561. For four years, my life has revolved around a world of drug abuse little known by law enforcement, medical personnel, politicians and parents. I've watched MDMA explode worldwide in the rave, college and club scenes. I've seen flunitrazepam (Rohypnol, aka roofies) make its mark on sexual assaults. I've seen LSD resurface. And, I've watched in horror as the drug gamma hydroxy butyrate (GHB) has marched coast to coast, plucking out young lives in its path, picking up momentum as it goes. I consider it simply the most dangerous drug I've encountered in 25 years as a police officer. This is because of the overwhelming amount of misinformation spread about GHB, the dramatic lack of real scientific knowledge of it,the difficulty in testing for it and recognizing it in the street, and how easily and unpredictably it kills. GHB is indeed the Bad Child of the Internet. And, it has forever change the face of sexual assault investigations.

Despite a world brimming with technology and communication devices, knowledge of this drug has been based primarily on information via the Internet that runs the gamut from outdated to totally false. Any drug abuser or drug pusher can go on the Internet and pump out volumes of lies and half truths unabated. There are thousands of websites claiming GHB to be the wonder drug that will cure anything you can think of and instructing everyone NOT to call 911 for the victim of a GHB overdose. Deadly advice indeed. Meanwhile, government, law enforcement and the medical world have failed to make significant gain in countering the flood of bad information, identifying and making available accurate testing methods for it and providing even the most basic education about GHB. The ''system'' has truly failed the American public on this drug. As a friend of Samantha Reid, the 15-year-old Michigan victim of GHB, so aptly put it, ''You tell us every day about marijuana and other drugs. Why didn't you tell us about GHB?'' Daily, I am asked by the families who have lost loved ones to GHB—''I've never heard of this drug. Why, why didn't we know about this drug?''

Each day that GHB is not a federally controlled substance is another day of failure by the ''system.'' No, controlling a drug does not solve the problem, but it allows additional resources to be plugged into the tasks of educating the public, providing more standardized information to law enforcement, and developing testing procedures. It would be a giant step toward stopping the lies about GHB as a totally safe, wonder drug.

There isn't a meaningful data collection mechanism to capture drug trends like this. Existing systems are cumbersome, far behind in reporting statistics, and non-responsive to changing trends. In early 1997, the tally of GHB-related deaths kept by the Drug Enforcement Administration was seven. We knew that there was no way to put a figure on the possible number of deaths related to GHB where neither law enforcement nor the coroners knew to test for it. During our hearings before the California Legislature, Dennis Fraga showed up on the witness list. He arrived with autopsy report in hand, showing that his 25-year-old son, Jeffery, had died from alcohol and GHB ingestion. We realized that if we hadn't known about this death, there were undoubtedly more where the coroner knew that GHB was involved but hadn't known to report it to anyone. Dr. Jim Tolliver, who was at that time tracking GHB information for the DEA, began to make inquiries around the country, and the death count rapidly jumped to 26. The death toll continued to slowly increase, based on word of mouth, followed by the DEA obtaining a copy of the autopsy to review before including each death in the tally. Still, there was no reporting mechanism, no blanket means of obtaining information. Despite DEA polling its offices, where knowledge of this drug was limited by DEA agents and local authorities, it was obvious that not all cases were being spotted. I have personally worked closely with Dr. Chris Sannerud, who is now tracking GHB data for the DEA, and have referred numerous leads about deaths to her for investigation.

The count recently jumped to 49. I would like to point out to you that of the 49, ten have been in 1999. Furthermore, 25 additional cases have come to light, all but one of them in 1999. These cases are now being reviewed. That would mean more than 30 in 1999 to date. The victims get younger. More of them involve GHB and its analogs only (no alcohol or other drugs). I receive leads on GHB related death and rape cases virtually daily. And, we have only scratched the surface at this point. Law enforcement, legislators, doctors and parents are still largely unfamiliar with GHB. Remember too, these figures do not reflect the victims of impaired drivers under the influence of GHB.

Meanwhile, the drug company and the pro-drug abuse element want to divert attention saying that it is the homebrew aspect of GHB that is the problem and that it is only dangerous with alcohol and other drugs. The homebrew aspect occasionally adds an extra element of burns from high pH levels. But that isn't the problem. It is GHB that impairs, resulting in dangerous users behind the wheel causing accidents and deaths and resulting in victims unable to protect themselves from sexual assault. Look beyond the smoke and mirrors. The fact remains: 25-year-olds don't die from a .17 blood alcohol; Jeffery Fraga died that night BECAUSE he took GHB. Samantha Reid was drinking a Mountain Dew the night she died. And 20-year olds don't die from sleeping face down on a pillow . . . unless in coma from GHB ingestion. Kyle Hagmann took it as a sleep aid (after reading on the Internet that it is ''totally safe''), not a recreational drug. It is GHB that kills.

Not nearly enough is known about this drug from a medical and scientific viewpoint. The literature is old and outdated. New information is being learned daily and still not nearly enough is known. The old literature says GHB is not addictive. We know this to be untrue. In fact, withdrawal from GHB addiction is life threatening. This is simply not a market-ready product—any drug that is leaving 13-year olds suffering pulmonary edema in our nation's hospitals and alleys is not ready for market. One doctor with nine years of GHB research walked away from it, saying a much safer, longer acting product is needed. One doctor currently researching GHB for narcolepsy first told me personally that it was eight to ten years away for being ready and changed his story only after claims were publicized that the supply would cease for research if it became a Schedule I drug. There is simply no reason to give concessions to future issues re this drug. Let the research take its course and determine the future. Other drugs have been developed in Schedule I. I personally do not believe it will be GHB, but a safer, longer acting cousin that is yet to be developed. Don't let them bypass proper research and development!!!!!

I have no doubt that if GHB is ever approved for narcolepsy, the horror of abuse will only skyrocket as doctors blatantly abuse the controversial, dangerous ''off label use'' policy that would enable them to prescribe it for anything, not just the combination of narcolepsy and cataplexy of which it is being researched. There is simply no mechanism in place that will prevent such abuse (there is plenty of evidence of abuse of other drugs because of this policy). And, I cannot imagine in my wildest dreams a company saying, ''Oh excuse me, we are making too much money!!!!'' If the Legislature is determined to deal with future issues, then I adamantly urge that this drug be specifically excluded from the ''off label use'' policy. Any use of GHB beyond narcolepsy/cataplexy would require its own proper research and development. If, as the drug company claims, their only interest is for narcolepsy/cataplexy patients, then there is simply no reason they would protest such a clause being included.

There is much work to be done on this drug in all arenas. The dangers of GHB need to made crystal clear to America's youth and parents. Law enforcement, prosecutors and medical personnel are not uniformly prepared to handle cases involving GHB. GHB has brought to the sexual assault investigation a unbelievably challenge to overcome and an added horror for rape victims that I cannot even begin to address in this document. As a start, we need to standardize all sexual assault medical kits nationwide to include urine samples from victims and upgrade investigative and testing procedures. Changes need to be made in the impaired driving world as well. Aggressive federal/state prosecution is needed against manufacturers and distributors of GHB and analogs.

The GHB death toll speaks for itself. Legislation and strong federal backing for education and enforcement is clearly overdue and urgently needed.

Sincerely,

TRINKA D. PORRATA,
Drug Consultant.

To the members of the judiciary committee:

On Jan. 17, 1999 I lost my only daughter, Samantha Reid, when GHB and/or GBL was slipped into her Mountain Dew soft drink. I knew nothing about GHB before this tragic event. I took six months off of work and began educating myself on GHB. The more I learn about this invisible predator the more concerned for our nations safety I become.

I have joined Spencer Abraham on campaigning to pass S. 1561. This bill is long overdue in our country and contains many positive programs for awareness and will give law enforcement the much needed tools necessary to prosecute GHB cases. S. 1561 will allow for education targeting teens who are now receiving false information on GHB. A nation wide awareness campaign will give many young ladies the information necessary to protect and ultimately save themselves from GHB. Parents can be reached through public service announcements giving them the opportunity to communicate the dangers of GHB to their children.

Samantha and I were not given the opportunity that S. 1561 has to offer.

Lets not wait for one more senseless death before passing this legislation. Not one more mother should have to water the grass of a fresh grave, or place wind chimes on a tender, young tree planted to shade the site of their daughter. Pumpkins for Halloween should be carved at the kitchen table together, not placed by a headstone.

Our country is in desperate need of all the good this bill has to offer.

Respectfully,

JUDI CLARK,
Rockwood, Michigan.

Mr. ABRAHAM. Mr. President, I would like to close by reading one of

those letters, the letter I received from Judi Clark, Samantha Reid's mother, that, better than anything I can say, makes the case as to why this legislation is needed now. She wrote this letter to the members of the Senate Judiciary Committee.

It is as follows:

To the Members of the Senate Judiciary Committee:

On January 17, 1999, I lost my only daughter, Samantha Reid, when GHB and/or GBL was slipped into her Mountain Dew soft drink. I knew nothing about GHB before this tragic event. I took six months off of work and began educating myself on GHB. The more I learned about this invisible predator the more concerned for our nations safety I become.

I have joined Spencer Abraham on campaigning to pass S. 1561. This bill is long overdue in our country and contains many positive programs for awareness, and will give law enforcement the much needed tools necessary to prosecute GHB cases. S. 1561 will allow for education targeting teens who are now receiving false information on GHB. A nationwide awareness campaign will give many young ladies the information necessary to protect and ultimately save themselves from GHB. Parents can be reached through public service announcements giving them the opportunity to communicate the dangers of GHB to their children.

Samantha and I were not given the opportunity that S. 1561 has to offer. Lets not wait for one more senseless death before passing this legislation. Not one more mother should have to water the grass of a fresh grave, or place wind chimes on a tender young tree planted to shade the site of their daughter. Pumpkins for Halloween should be carved at the kitchen table together, not placed by a headstone.

Our country is in desperate need of all the good this bill has to offer.

Respectfully,

JUDI CLARK,
Rockwood, Michigan.

Mr. President, I would say in closing that I am happy we have finally taken the action which Judi Clark and other parents across this country have been asking us to take, to make sure that other children will be made aware of the dangers of GHB. Hopefully the predators who use drugs such as this will be treated in the fashion they deserve, which is to be prosecuted effectively and put behind bars where they belong.

No one else should have to go through what this family has suffered.

I am very determined to not only see this legislation pass, but also to work closely with the Department of Justice, the Drug Enforcement Agency, and State and local law enforcement agencies, to make sure this is just the first step in what will ultimately be a successful campaign to rid this Nation of the illicit use of this drug, and to make sure the children of our country are no longer the victims of predators who use it for criminal purposes.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maine.

Ms. COLLINS. Mr. President, I commend the Senator from Michigan for his leadership and his eloquent statement.

Mr. HATCH. Mr. President, Today, the Senate adopted a significant measure against date rape and other heinous crimes associated with abusing certain types of drugs. I want to make a few comments on this bill, S. 1561, which addresses the abuse of the dangerous drug GHB which has been used to commit date rape and other crimes.

As Chairman of the Senate Judiciary Committee, I am proud that it was a member of our Committee, Senator SPENCER ABRAHAM, who introduced and has played the key leadership role in Senate passage of S. 1561, The Samantha Reid and Hillory J. Farias Date Rape Prohibition Act of 1999.'' I am also proud that other members of the Judiciary Committee, Senators DEWINE, FEINSTEIN, and GRASSLEY have joined Senator ABRAHAM in co-sponsoring this legislation.

It is only through the hard work and insistence of Senator ABRAHAM that this bill will pass the Senate today. I also want to commend his able staff, especially Lee Otis and Chase Hutto, who have spent considerable time and effort in improving this legislation. Their efforts were in the best tradition of staff of the United States Senate.

I also want to thank my friend on the other side of the aisle, Senator BIDEN, who has long been in the forefront of controlled substances and other drug abuse issues. I must also recognize the efforts of Ms. Marcia Lee of his staff for her diligence and creativity in developing this language.

I must also recognize the efforts of Chairmen THOMAS BLILEY and FRED UPTON for their work in developing and sheparding the House companion to S. 1561, H.R. 2310, through that body. In this regard, I must mention the efforts of John Manthei of the House Commerce Committee as well as Ms. Jane Williams of Rep. UPTON's staff. Both of them deserve recognition for their dedication to passing this bill.

S. 1561 is concerned with the proper regulation of gamma hydrobutyric acid, the chemical known on the street as GHB which has both hateful and hopeful uses. On one hand, many families across America have suffered due to abuse of this agent which has been used to lull unsuspecting women into a date-rape situation and has even resulted in death through overdose. On the other hand, GHB holds unprecedented promise to those one-quarter million Americans suffering from extreme sleep disorders such as cataplexy and narcolepsy.

Cataplexy is a debilitating condition suffered by some 70,000 Americans that results in an inability of the muscles to function. Narcolepsy, which attacks 170,000 Americans, causes a person suddenly and unpredictably to fall asleep. Neither of these terrible diseases have an effective treatment today. As author of the 1984 Orphan Drug Act which creates incentives for private sector drug firms to investigate treatments for rare diseases, I am particularly sensitive to the needs of families suffering from low-prevalence conditions. We need to do everything we can to get academic researchers and the pharmaceutical industry to find cures for the hundreds of currently untreatable rare diseases.

The problem for policymakers, both in the Congress and at the DEA, is how to encourage the use of the medically promising uses of GHB while discouraging and outlawing the illicit uses such as date rape.

While there are no known cases of diversion of this drug from the on-going and highly promising clinical trials of GHB as a treatment for cataplexy and narcolepsy, the problem of GHB abuse demands our attention.

According to DEA, hospital and law enforcement officials have reported about 5,500 cases of GHB abuse, including 49 deaths. Aggregate statistics, as alarming as they may be, cannot convey the absolute upheaval that GHB abuse can cause for an individual and a family.

Senator ABRAHAM has told me the story about the untimely death of a bright and vivacious 15-year-old young woman from Michigan, Samantha Reid. She went to a small gathering of friends, was given a drink from a soft drink bottle laced with GHB, and died. Samantha did nothing wrong. Her mother, Judi Clark, did nothing wrong. Unfortunately, this tragedy has struck this family.

Four young men have been charged under Michigan law for involuntary manslaughter and poisoning. But, given the prevalence and, as the Reid case highlights, the potential severity of GHB abuse, it seems clear—and both public health and law enforcement officials agree on this—that this chemical warrants regulation under the Controlled Substances Act. That's exactly what S. 1561 and its House companion accomplish.

Some may raise a question about whether the federal Controlled Substances Act failed to operate in a fashion that could have prevented deaths or sexual assaults through abuse of GHB.

Although there have been reports of substantial GHB abuse for several years now, I do not know why the Attorney General and Secretary of Health and Human Services have been unable to resolve the matters that have precluded this drug from being scheduled through the normal procedures under the Controlled Substances Act. I don't know why it took until September of 1997 for the DEA to request FDA to analyze the medical and scientific matters relating to GHB. I don't know why it took until May 19, 1999 to get a response to this request. I don't know why DEA has not acted in the last six months to bring this matter to a conclusion through administrative means. It should not take an act of Congress to schedule a dangerous drug under the Controlled Substances Act.

I do know that part of the unjustifiable delay in the scheduling of GHB

stemmed from the fact that there is a difference of opinion between DEA and FDA about how to schedule this drug. But that answer is not good enough. It is simply inadequate to tell a mother of a child like Samantha Reid, a promising young woman with her whole life ahead of her, that the system ''just takes time'' because two bureaucracies disagreed about how something so serious should be handled.

This situation points out that a significant breakdown in the system has occurred with respect to the scheduling of GHB. It behooves the Congress to deliberate more over ways to make the key agencies, DEA and FDA, be more responsive in the future, rather than be forced to do their jobs for them. The lesson of GHB should not be to teach the agencies to wait for Congressional action whenever the bureaucracy cannot act.

Let me just say that as a general matter I do not favor legislative scheduling or rescheduling. By statute, the responsibility for scheduling is delegated to the experts at DOJ and HHS. The world is turned upside down when DOJ informs Congress, as if did on May 3, 1999, that: ''DOJ believes that it is appropriate for Congress to schedule GHB at this time.''

By any measure, a fair reading of the Controlled Substances Act places the primary responsibility for regulating dangerous drugs upon law enforcement and public health experts at the appropriate federal agencies. I do have a concern about Congress legislating on the safety and efficacy of individual drug products, especially before clinical testing or introduction into commerce commences. Nor should we allow the Congress to be placed in the position of making technical, scientific and law enforcement judgment whenever an individual drug product with an actual or potential legitimate medicinal use is determined by experts to warrant the application of the CSA.

I am firmly behind efforts to stop so-called ''date rapes,''; this is a despicable crime and the Federal Government should take action to make sure it does not occur. While I wholeheartedly applaud the efforts of the House to strike a blow against abuse of GHB, I am concerned about Congress getting directly involved in the scheduling process as the House mandated in adopting H.R. 2130. In this regard, it was my strong sense that rather than for Congress to legislatively schedule GHB, it would have more impact to amend the statute and direct DEA to implement the Surgeon General's recommendations that were issued back on May 19, 1999.

I will not take the time today to consider the full implications of a policy of legislative rescheduling. I do plan in the future to re-examine the scheduling provisions of the Controlled Substances Act.

At this point, let me elaborate further on some of the issues I have raised.

Subsections (b) and (c) of section 201 of the Controlled Substances Act identify eight criteria that must be taken into account in scheduling a drug. With respect to scheduling a drug, these factors are:

(1) Its actual or relative potential for abuse.
(2) Scientific evidence of its pharmacological effect, if known.
(3) The state of current scientific knowledge regarding the drug or other substance.
(4) Its history and current pattern of abuse.
(5) The scope, duration, and significance of abuse.
(6) What, if any, risk there is to the public health.
(7) Its psychic or physiological dependence liability.
(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

The statute proscribes that.

The recommendations of the Secretary (of Health and Human Services) to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substances.

This is the section of the law which appears not to have functioned optimally in the case of GHB. We can, and should, do better in anticipating and combating the next GHB.

To a large degree, the legislation we adopt today implements the May 19, 1999 HHS recommendations and the accompanying ''Eight Factor Analysis Report'' that take into account both the illicit abuse of GHB as well as the highly promising legitimate uses of this substance. While I believe that the language worked out by Senators ABRAHAM and BIDEN, Chairman BLILEY, Chairman MCCOLLUM, and the DEA, is preferable to the earlier versions of the bill, I remain troubled by some aspects of how the current statute has worked and may work in the future.

First, I am troubled that if we place promising pharmaceutical candidates such as GHB into Schedule I of the Controlled Substance Act we undermine its integrity of the CSA and will discourage the legitimate, potential life-saving uses of such compounds. According to the statute, one of the three requirements of schedule I is that there is ''no accepted medical use'' in the United States. But the May 19, 1999 HHS recommendation has already found that the cataplexy product has cleared this hurdle:

. . . the abuse potential of GHB, when used under an authorized research protocol, is consistent with substances typically controlled under Schedule IV . . . An authorized formulation of GHB is far enough along in the development process to meet the standard under Schedule II of a drug or substance having a ''currently accepted medical use with severe restrictions.'' Under these circumstances, HHS recommends placing authorized formulations of GHB in Schedule III.

On October 12, 1999 DOJ sent a letter that disregards the May 19th HHS schedule III recommendation. DOJ first states ''. . . the DEA strongly supports the control of GHB in Schedule I of the CSA'' and then asserts: ''The data collected to date would support control of the GHB product in Schedule II.''

Second, in addition to giving no apparent deference to HHS on matters supposedly binding on DOJ under section 201(b) of the CSA, DOJ almost seems to be interpreting the statute as requiring full FDA approval before the ''currently accepted medical use'' language of the CSA can be satisfied. Such an outcome is neither compelled by the statute, nor does it reflect sound public health policy as it acts to discourage drug development and patient access to promising drugs in clinical trials.

I hasten to point out that I have advocated stiffening the penalties for abuse of date-rape drugs such as GHB. In 1997 I successfully led the charge to enact a law that imposed schedule I-level penalties for another date rape drug, flunitrazepam. This product was marketed for legitimate medical purposes overseas and did not meet the Schedule I requirement that ''there is lack of accepted safety for use of the drug or other substance under medical supervision.'' Therefore, the Congress passed, and the President signed, my legislation to increase the penalties for this drug. But we stopped short of scheduling the pharmaceutical into Schedule I, recognizing that the product does have accepted medical uses. It was my hope that this could be the model for GHB legislation as well.

I want to work constructively with my colleagues in Congress to achieve our common goals of taking immediate action against GHB, preserving the integrity of the CSA, and sending a strong message to those agencies charged with implementing the CSA that they must work together in a cooperative and expeditious way to protect the American public.

While I think the bill we adopt today might have been written differently, I agree with my colleagues that our foremost goal must be to take quick and decisive action with respect to the criminalization of GHB used for non-medical purposes. Senator Abraham's bill is a good bill and he deserves a lot of credit for putting this improved legislative package together.

Let me also note that the bill we have just passed includes language I drafted requiring DEA to create a Special Unit to assess the abuse and trafficking of GHB and other date rape drugs, and will identify the threat posed by date rape drugs on a national and regional basis. I am pleased to be the sponsor of S. 1947, the bill that creates this Special Unit. S. 1947 has been incorporated in the final language that we adopt today. I can assure all my colleagues that this is one Senator that will closely review the Attorney General's report on the allocation and reallocation of resources to combat date rape and other crimes related to designer drugs.

We can and should look further into the problems associated with the

scheduling of drugs under CSA and whether we need to change the relevant laws. But today we honor the memory of Hillory Farias and Samantha Reid by taking an act that will hopefully reduce the risk of GHB abuse being visited upon unsuspecting women.

ELECTRONIC BENEFIT TRANSFER INTEROPERABILITY AND PORTABILITY ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 1733, and that the Senate then proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1733) to amend the Food Stamp Act of 1977 to provide for a national standard of interoperability and portability applicable to electronic food stamp benefit transactions.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2785

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senator FITZGERALD, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine (Ms. COLLINS), for Mr. FITZGERALD, proposes an amendment numbered 2785.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Electronic Benefit Transfer Interoperabilty and Portability Act of 1999''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to protect the integrity of the food stamp program;

(2) to ensure cost-effective portability of food stamp benefits across State borders without imposing additional administrative expenses for special equipment to address problems relating to the portability;

(3) to enhance the flow of interstate commerce involving electronic transactions involving food stamp benefits under a uniform national standard of interoperability and portability; and

(4) to eliminate the inefficiencies resulting from a patchwork of State-administered systems and regulations established to carry out the food stamp program

SEC. 3. INTEROPERABILTY AND PORTABILITY OF FOOD STAMP TRANSACTIONS.

Section 7 of the Food Stamp Act of 1977 (7 U.S.C. 2016) is amended by adding at the end the following:

''(k) INTEROPERABILTY AND PORTABILITY OF ELECTRONIC BENEFIT TRANSFER TRANSACTIONS.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELECTRONIC BENEFIT TRANSFER CARD.—The term 'electronic benefit transfer card' means a card that provides benefits under this Act through an electronic benefit transfer service (as defined in subsection (i)(11)(A)).

''(B) ELECTRONIC BENEFIT TRANSFER CONTRACT.—The term 'electronic benefit transfer contract' means a contract that provides for the issuance, use, or redemption of coupons in the form of electronic benefit transfer cards.

''(C) INTEROPERABILTY.—The term 'interoperability' means a system that enables a coupon issued in the form of an electronic benefit transfer card to be redeemed in any State.

''(D) INTERSTATE TRANSACTION.—The term 'interstate transaction' means a transaction that is initiated in 1 State by the use of an electronic benefit transfer card that is issued in another State.

''(E) PORTABILITY.—The term 'portability' means a system that enables a coupon issued in the form of an electronic benefit transfer card to be used in any State by a household to purchase food at a retail food store or wholesale food concern approved under this Act.

''(F) SETTLING.—The term 'settling' means movement, and reporting such movement, of funds from an electronic benefit transfer card issuer that is located in 1 State to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction.

''(G) SMART CARD.—The term 'smart card' means an intelligent benefit card described in section 17(f).

''(H) SWITCHING.—The term 'switching' means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an electronic benefit transfer card in 1 State to the issuer of the card that is in another State.

''(2) REQUIREMENT.—Not later than October 1, 2002, the Secretary shall ensure that systems that provide for the electronic issuance, use, and redemption of coupons in the form of electronic benefit transfer cards are interoperable, and food stamp benefits are portable, among all States.

''(3) COST.—The cost of achieving the interoperability and portability required under paragraph (2) shall not be imposed on any food stamp retail store, or any wholesale food concern, approved to participate in the food stamp program.

''(4) STANDARDS.—Not later than 210 days after the date of enactment of this subsection, the Secretary shall promulgate regulations that—

''(A) adopt a uniform national standard of interoperability and portability required under paragraph (2) that is based on the standard of interoperability and portability used by a majority of State agencies; and

''(B) require that any electronic benefit transfer contract that is entered into 30 days or more after the regulations are promulgated, by or on behalf of a State agency, provide for the interoperability and portability required under paragraph (2) in accordance with the national standard.

''(5) EXEMPTIONS—

''(A) CONTRACTS.—The requirements of paragraph (2) shall not apply to the transfer of benefits under an electronic benefit transfer contract before the expiration of the term of the contract if the contract—

''(i) is entered into before the date that is 30 days after the regulations are promulgated under paragraph (4); and

''(ii) expires after October 1, 2002.

''(B) WAIVER.—At the request of a State agency, the Secretary may provide 1 waiver to temporarily exempt, for a period ending on or before the date specified under clause (iii), the State agency from complying with the requirements of paragraph (2), if the State agency—

''(i) establishes to the satisfaction of the Secretary that the State agency faces unusual technological barriers to achieving by October 1, 2002, the interoperability and portability required under paragraph (2);

''(ii) demonstrates that the best interest of the food stamp program would be served by granting the waiver with respect to the electronic benefit transfer system used by the State agency to administer the food stamp program; and

''(iii) specifies a date by which the State agency will achieve the interoperability and portability required under paragraph (2).

''(C) SMART CARD SYSTEMS.—The Secretary shall allow a State agency that is using smart cards for the delivery of food stamp program benefits to comply with the requirements of paragraph (2) at such time after October 1, 2002, as the Secretary determines that a practicable technological method is available for interoperability with electronic benefit transfer cards.

''(6) FUNDING.—

''(A) IN GENERAL.—In accordance with regulations promulgated by the Secretary, the Secretary shall pay 100 percent of the costs incurred by a State agency under this Act for switching and settling interstate transactions—

''(i) incurred after the date of enactment of this subsection and before October 1, 2002, if the State agency uses the standard of interoperability and portability adopted by a majority of State agencies; and

''(ii) incurred after September 30, 2002, if the State agency uses the uniform national standard of interoperability and portability adopted under paragraph (4)(A).

''(B) LIMITATION.—The total amount paid to State agencies for each fiscal year under subparagraph (A) shall not exceed $500,000.''.

SEC. 4. STUDY OF ALTERNATIVES FOR HANDLING ELECTRONIC BENEFIT TRANSACTIONS INVOLVING FOOD STAMP BENEFITS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall study and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on alternatives for handling interstate electronic benefit transactions involving food stamp benefits provided under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), including the feasibility and desirability of a single hub for switching (as defined in section 7(k)(1) of that Act (as added by section 3)).

Mr. FITZGERALD. Mr. President, I rise today to recognize the passage of the Electronic Benefit Transfer Interoperability and Portability Act of 1999. This legislation addreses the problem of food stamp beneficiaries being unable to redeem their benefits in authorized stores that may be located outside their state of residence.

As you may know, Congress passed legislation in 1996 that required the federal government to deliver food stamp benefits electronically, rather than using paper coupons. Most states have started the process of issuing plastic cards, very similar to ATM cards, to access these benefits. The federal government termed this new process, electronic benefits transfer (EBT).

You may have noticed a separate button on the payment terminal in your local supermarket with the designation ''EBT'' or a separate standalong payment terminal to handle these new transactions.

More than half of the country has already switched from the paper coupons

to this new EBT card. However, one significant issue is causing problems in the program for retailers, states, and recipients. That issue is the inability of recipients to use their state-issued cards across state lines. This is especially true in communities that are near a state border.

Under the old paper system, recipients could use the coupons in any state in the country. Under the new electronic system, that is the case Customers go into a food store expecting to use their federal benefits to purchase food. When they cannot use their EBT cards, they become frustrated and dissatisfied with the food stamp program.

For example, under the old system, a food stamp recipient living in Palmyra, Missouri could use his food stamp coupons in his favorite grocery store in Quincy, Illinois, just over the border. Similarly, a recipient living in Illinois could visit family in Tennessee and still purchase food for his children. Food stamp beneficiaries are not unlike the average shopper. Cross-border shopping occurs for a variety of reasons. One reason is convenience; another equally important reason is the cost of groceries. The supermarket industry is very competitive. Customers paying with every type of tender except EBT have the ability to shop around for the best prices. Shouldn't recipients of our nation's federal food assistance benefits be able to stretch their dollars without regard to state borders?

Another reason for cross-border shopping is convenience. While one of my constituents may live in the metro east area of Illinois, he or she may work in St. Louis. Under the current situation, if the only grocery store between work and home is in Missouri, the recipient cannot purchase food without traveling miles out of the way.

The legislation would once again provide for the portability of food assistance benefits and allow food stamp recipients the flexibility of shopping at locations that they choose.

Interoperability works well today with ATM/Debit cards, the type of cards that EBT was modeled after. Consumers and merchants are confident that when a MAC card issued by a bank in Pittsburgh is presented, authorization and settlement of that transaction will work the same as when a Star card, issued by Bank of America in California is presented. This occurs regardless of where the merchant is located.

Unfortunately, this is currently not the case with EBT cards. If every state operated their EBT program under a standard set of operating rules, as this legislation requires, companies operating in multiple states could be more efficient, resolve any discrepancies in customer accounts more quickly, and ultimately hold down the price of groceries for all consumers.

This legislation is more about good government than it is about food stamps. Since 1996, the transition from paper coupons to electronic benefit transfers has saved the federal government a significant amount of money. For example, while the food stamp caseload decreased 24 percent from fiscal year 1995 to 1998, food stamp production and redemption costs dropped by an impressive 39 percent. While it is estimated that the bill's implementation will cost the federal government no more than $500,000 annually, it will save at least $20 million per year when paper coupons are a thing of the past.

This legislation is sound public policy that enjoys strong bipartisan support. I thank my colleagues, Senators LEAHY, LUGAR, HARKIN, CRAIG, COCHRAN, CRAPO, KOHL, and KERREY for joining me as co-sponsors of this bill. This legislation is vitally important to every food stamp recipient, every state food stamp program administrator, and every grocery store in the country.

I thank the presiding officer, and I yield the floor.

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill be read a third time and passed, as amended, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2785) was agreed to.

The bill (S. 1733), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

MAKING TECHNICAL CORRECTIONS TO THE ENROLLMENT OF H.R. 3194

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Senate Concurrent Resolution 77 now at the desk introduced earlier by Senators LOTT and DASCHLE, and that the resolution be considered read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 77) making technical corrections to the enrollment of H.R. 3194.

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Without objection, the concurrent resolution is agreed to.

The concurrent resolution (S. Con. Res. 77) was agreed to.

The concurrent resolution (S. Con. Res. 77) is as follows:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 3194), making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2000, and for other purposes, shall make the following correction:

At the appropriate place of the bill insert the following:

COMMODITY CREDIT CORPORATION

PRODUCER-OWNED MARKETING ASSOCIATIONS FORGIVENESS

SEC. 1. The Secretary of Agriculture shall reduce the amount of any principal due on a loan made to marketing association incorporated in the State of North Carolina for the 1999 crop of an agricultural commodity by at least 75 percent if the marketing association suffered losses of the agricultural commodity in a county with respect to which—(1) a natural disaster was declared by the Secretary for losses due to Hurricane Dennis, Floyd, or Irene; or (2) a major disaster or emergency was declared by the President for losses due to Hurricane Dennis, Floyd, or Irene under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)

If the Secretary assigns a grade quality for the 1999 crop of an agricultural commodity marketed by an association described in this section that is below the base quality of the agricultural commodity, the Secretary shall compensate the association for losses incurred by the association as a result of the reduction in grade quality.

Up to $81,000,000 of the resources of the Commodity Credit Corporation shall be used for the cost of this section: *Provided,* That the entire amount necessary to carry out this section shall be available only to the extent that an official budget request for the entire amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress: *Provided further,* That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) and Section 252(e) of such Act.

SEC. 2. In administering $50,000,000 in emergency supplemental funding for the Emergency Conservation Program, the Secretary shall give priority to the repair of structures essential to the operation of the farm.

EXEMPTIONS PURSUANT TO THE FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995

Ms. COLLINS. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3111, and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3111) to exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2786

(Purpose: To provide continued reporting of intercepted wire, oral, and electronic communications)

Ms. COLLINS. Mr. President, Senator LEAHY has an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine (Ms. COLLINS), for Mr. LEAHY, proposes an amendment numbered 2786.

Add at the end the following:

SEC. 2. (a) SHORT TITLE.—This Act may be cited as the ''Continued Reporting of Intercepted Wire, Oral, and Electronic Communications Act''.

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

(1) Section 2519(3) of title 18, United States Code, requires the Director of the Administrative Office of the United States Courts to transmit to Congress a full and complete annual report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications. This report is required to include information specified in section 2519(3).

(2) The Federal Reports Elimination and Sunset Act of 1995 provides for the termination of certain laws requiring submittal to Congress of annual, semiannual, and regular periodic reports as of December 21, 1999, 4 years from the effective date of that Act.

(3) Due to the Federal Reports Elimination Act and Sunset Act of 1995, the Administrative Office of United States Courts is not required to submit that annual report described in section 219(3) of title 18, United States Code, as of December 21, 1999.

(c) CONTINUED REPORTING REQUIREMENTS.—

(1) CONTINUED REPORTING REQUIREMENTS.—Section 2519 of title 18, United States Code, is amended by adding at the end the following:

''(4) The reports required to be filed by subsection (3) are exempted from the termination provisions of section 3003(a) of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66).''.

(2) EXEMPTION.—Section 3003(d) of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) is amended—

(a) in paragraph (31), by striking ''or'' at the end;

(b) in paragraph (32), by striking the period and inserting ''; or''; and

(c) by adding at the end the following:

''(33) section 2519(3) of title 18, United States Code.''.

(d) ENCRYPTION REPORTING REQUIREMENTS.—

(1) Section 2519(2)(b) of title 18, United States Code, is amended by striking ''and (iv)'' and inserting ''(iv) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order, and (v)''.

(2) The encryption reporting requirement in subsection (a) shall be effective for the report transmitted by the Director of the Administrative Office of the Courts for calendar year 2000 and in subsequent reports.

(e) REPORTS CONCERNING PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 3126 of title 18, United States Code, is amended by striking the period and inserting '', which report shall include information concerning—

''(1) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

''(2) the offense specified in the order or application, or extension of an order;

''(3) the number of investigations involved;

''(4) the number and nature of the facilities affected; and

''(5) the identity, including district, of the applying investigative or law enforcement agency making the application and the person authorizing the order.''.

Mr. LEAHY. Mr. President, I am pleased that the Senate is today considering for final passage S. 1769, as amended by the House. I introduced S. 1769 with Chairman HATCH on October 22, 1999 and it passed the Senate on November 5, 1999. This bill will continue and enhance the current reporting requirements for the Administrative Office of the Courts and the Attorney General on the eavesdropping and surveillance activities of our federal and state law enforcement agencies. The House amendment is the text of H.R. 3111, a bill to exempt from automatic elimination and sunset certain reports submitted to Congress that are useful and helpful in informing the Congress and the public about the activities of federal agencies in the enforcement of federal law. I am also glad to support this amendment.

For many years, the Administrative Office (AO) of the Courts has complied with the statutory requirement, in 18 U.S.C. §2519(3), to report to Congress annually the number and nature of federal and state applications for orders authorizing or approving the interception of wire, oral or electronic communications. By letter dated September 3, 1999, the AO advised that it would no longer submit this report because ''as of December 21, 1999, the report will no longer be required pursuant to the Federal Reports Elimination and Sunset Act of 1995.'' I commend the AO for alerting Congress that their responsibility for the wiretap reports would lapse at the end of this year, and for doing so in time for Congress to take action.

The AO has done an excellent job of preparing the wiretap reports. We need to continue the AO's objective work in a consistent manner. If another agency took over this important task at this juncture and the numbers came out in a different format, it would immediately generate questions and concerns over the legitimacy and accuracy of the contents of that report.

In addition, it would create difficulties in comparing statistics from prior years going back to 1969 and complicate the job of congressional oversight. Furthermore, transferring this reporting duty to another agency might create delays in issuance of the report since no other agency has the methodology in place. Finally, federal, state and local agencies are well accustomed to the reporting methodology developed by the AO. Notifying all these agencies that the reporting standards and agency have changed would inevitably create more confusion and more expense as law enforcement agencies across the country are forced to learn a new system and develop a liaison with a new agency.

The system in place now has worked well and we should avoid any disruptions. We know how quickly law enforcement may be subjected to criticism over their use of these surreptitious surveillance tools and we should avoid aggravating these sensitivities by changing the reporting agency and methodology on little to no notice. I appreciate, however, the AO's interest in transferring the wiretap reporting requirement to another entity. Any such transfer must be accomplished with a minimum of disruption to the collection and reporting of information and with complete assurances that any new entity is able to fulfill this important job as capably as the AO has done.

S. 1769 would update the reporting requirements currently in place with one additional reporting requirement. Specifically, the bill would require the wiretap reports prepared beginning in calendar year 2000 to include information on the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order.

Encryption technology is critical to protect sensitive computer and online information. Yet, the same technology poses challenges to law enforcement when it is exploited by criminals to hide evidence or the fruits of criminal activities. A report by the U.S. Working Group on Organized Crime titled, ''Encryption and Evolving Technologies: Tools of Organized Crime and Terrorism,'' released in 1997, collected anecdotal case studies on the use of encryption in furtherance of criminal activities in order to estimate the future impact of encryption on law enforcement. The report noted the need for ''an ongoing study of the effect of encryption and other information technologies on investigations, prosecutions, and intelligence operations''. As part of this study, ''a database of case information from federal and local law enforcement and intelligence agencies should be established and maintained.'' Adding a requirement that reports be furnished on the number of occasions when encryption is encountered by law enforcement is a far more reliable basis than anecdotal evidence on which to assess law enforcement needs and make sensible policy in this area.

The final section of S. 1769 would codify the information that the Attorney General already provides on pen register and trap and trace device orders, and would require further information on where such orders are issued and the types of facilities—telephone, computer, pager or other device—to which the order relates. Under the Electronic Communications Privacy Act (''ECPA'') of 1986, P.L. 99–508, codified at 18 U.S.C. §3126, the Attorney General of the United States is required to report annually to the Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice. As the original sponsor of ECPA, I believed that adequate oversight of the surveillance activities of federal law enforcement could only be accomplished with reporting requirements such as the one included in this law.

The reports furnished by the Attorney General on an annual basis compile information from five components of the Department of Justice: the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service and the Office of the Inspector General. The report contains information on the number of original and extension orders made to the courts for authorization to use both pen register and trap and trace devices, information concerning the number of investigations involved, the offenses on which the applications were predicted and the number of people whose telephone facilities were affected.

These specific categories of information are useful, and S. 1769 would direct the Attorney General to continue providing these specific categories of information. In addition, the bill would direct the Attorney General to include information on the identity, including the district, of the agency making the application and the person authorizing the order. In this way, the Congress and the public will be informed of those jurisdictions using this surveillance technique—information which is currently not included in the Attorney General's annual reports.

The requirement for preparation of the wiretap reports will soon lapse so I am delighted to see the Congress take prompt action on this legislation to continue the requirement for submission of the wiretap reports and to update the reporting requirements for both the wiretap reports submitted by the AO and the pen register and trap and trace reports submitted by the Attorney General.

Mr. President, I am also pleased that the Senate is today considering H.R. 3111 to exempt from automatic elimination and sunset certain reports submitted to Congress that are useful and helpful in informing the Congress and the public about the activities of federal agencies in the enforcement of federal law. Senator HATCH and I offer as an amendment to H.R. 3111 the text of a bill S. 1769, which I introduced with Chairman Hatch on October 22, 1999 and which passed the Senate on November 5, 1999. This amendment will continue and enhance the current reporting requirements for the Administrative Office of the Courts and the Attorney General on the eavesdropping and surveillance activities of our federal and state law enforcement agencies.

For many years, the Administrative Office (AO) of the Courts has complied with the statutory requirement, in 18 U.S.C. §2519(3), to report to Congress annually the number and nature of federal and state applications for orders authorizing or approving the interception of wire, oral or electronic communications. By letter dated September 3, 1999, the AO advised that it would no longer submit this report because ''as of December 21, 1999, the report will no longer be required pursuant to the Federal Reports Elimination and Sunset Act of 1995.'' I commend the AO for alerting Congress that their responsibility for the wiretap reports would lapse at the end of this year, and for doing so in time for Congress to take action.

The AO has done an excellent job of preparing the wiretap reports. We need to continue the AO's objective work in a consistent manner. If another agency took over this important task at this juncture and the numbers came out in a different format, it would immediately generate questions and concerns over the legitimacy and accuracy of the contents of that report.

In addition, it would create difficulties in comparing statistics from prior years going back to 1969 and complicate the job of congressional oversight. Furthermore, transferring this reporting duty to another agency might create delays in issuance of the report since no other agency has the methodology in place. Finally, federal, state and local agencies are well accustomed to the reporting methodology developed by the AO. Notifying all these agencies that the reporting standards and agency have changed would inevitably create more confusion and more expense as law enforcement agencies across the country are forced to learn a new system and develop a liaison with a new agency.

The system in place now has worked well and should be continued. We know how quickly law enforcement may be subjected to criticism over their use of these surreptitious surveillance tools and we should avoid aggravating these sensitivities by changing the reporting agency.

The amendment would update the reporting requirements currently in place with one additional reporting requirement. Specifically, the amendment would require the wiretap reports prepared beginning in calendar year 2000 to include information on the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order.

Encryption technology is critical to protect sensitive computer and online information. Yet, the same technology poses challenges to law enforcement when it is exploited by criminals to hide evidence or the fruits of criminal activities. A report by the U.S. Working Group on Organized Crime titled, ''Encryption and Evolving Technologies: Tools of Organized Crime and Terrorism,'' released in 1997, collected anecdotal case studies on the use of encryption in furtherance of criminal activities in order to estimate the future impact of encryption on law enforcement. The report noted the need for ''an ongoing study of the effect of encryption and other information technologies on investigations, prosecutions, and intelligence operations''. As part of this study, ''a database of case information from federal and local law enforcement and intelligence agencies should be established and maintained.'' Adding a requirement that reports be furnished on the number of occasions when encryption is encountered by law enforcement is a far more reliable basis than anecdotal evidence on which to assess law enforcement needs and make sensible policy in this area.

The final section of this amendment would codify the information that the Attorney General already provides on pen register and trap and trace device orders, and require further information on where such orders are issued and the types of facilities—telephone, computer, pager or other device—to which the order relates. Under the Electronic Communications Privacy Act, ''ECPA'' of 1986, P.L. 99–508, codified at 18 U.S.C. §3126, the Attorney General of the United States is required to report annually to the Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice. As the original sponsor of ECPA, I believed that adequate oversight of the surveillance activities of federal law enforcement could only be accomplished with reporting requirements such as the one included in this law.

The reports furnished by the Attorney General on an annual basis compile information from five components of the Department of Justice: the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Office and the Office of the Inspector General. The report contains information on the number of original and extension orders made to the courts for authorization to use both pen register and trap and trace devices, information concerning the number of investigations involved, the offenses on which the applications were predicted and the number of people whose telephone facilities were affected.

These specific categories of information are useful, and the amendment would direct the Attorney General to continue providing these specific categories of information. In addition, the amendment would direct the Attorney General to include information on the identity, including the district, of the agency making the application and the person authorizing the order. In this way, the Congress and the public will be informed of those jurisdictions using this surveillance technique-information which is currently not included in the Attorney General's annual reports.

The requirement for preparation of the wiretap reports will soon lapse so I am delighted to see the Senate take prompt action on this legislation to continue the requirement for submission of the wiretap reports and to update the reporting requirements for both the wiretap reports submitted by the AO and the pen register and trap and trace reports submitted by the Attorney General.

Ms. COLLINS. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2786) was agreed to.

The bill (H. R. 3111), as amended, was read the third time and passed.

THIRD MILLENNIUM ELECTRONIC COMMERCE ACT

Ms. COLLINS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar No. 243, S. 761.

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

The legislative clerk read as follows:

A bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Third Millennium Digital Commerce Act''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The growth of electronic commerce and electronic government transactions represent a powerful force for economic growth, consumer choice, improved civic participation and wealth creation.

(2) The promotion of growth in private sector electronic commerce through Federal legislation is in the national interest because that market is globally important to the United States.

(3) A consistent legal foundation, across multiple jurisdictions, for electronic commerce will promote the growth of such transactions, and that such a foundation should be based upon a simple, technology neutral, non-regulatory, and market-based approach.

(4) The Nation and the world stand at the beginning of a large scale transition to an information society which will require innovative legal and policy approaches, and therefore, States can serve the national interest by continuing their proven role as laboratories of innovation for quickly evolving areas of public policy, provided that States also adopt a consistent, reasonable national baseline to eliminate obsolete barriers to electronic commerce such as undue paper and pen requirements, and further, that any such innovation should not unduly burden inter-jurisdictional commerce.

(5) To the extent State laws or regulations do not provide a consistent, reasonable national baseline or in fact create an undue burden to interstate commerce in the important burgeoning area of electronic commerce, the national interest is best served by Federal preemption to the extent necessary to provide such consistent, reasonable national baseline eliminate said burden, but that absent such lack of consistent, reasonable national baseline or such undue burdens, the best legal system for electronic commerce will result from continuing experimentation by individual jurisdictions.

(6) With due regard to the fundamental need for a consistent national baseline, each jurisdiction that enacts such laws should have the right to determine the need for any exceptions to protect consumers and maintain consistency with existing related bodies of law within a particular jurisdiction.

(7) Industry has developed several electronic signature technologies for use in electronic transactions, and the public policies of the United States should serve to promote a dynamic marketplace within which these technologies can compete. Consistent with this Act, States should permit the use and development of any authentication technologies that are appropriate as practicable as between private parties and in use with State agencies.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to permit and encourage the continued expansion of electronic commerce through the operation of free market forces rather than proscriptive governmental mandates and regulations;

(2) to promote public confidence in the validity, integrity and reliability of electronic commerce and online government under Federal law;

(3) to facilitate and promote electronic commerce by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the terms and conditions on which they use and accept electronic signatures and electronic records; and

(5) to promote the development of a consistent national legal infrastructure necessary to support of electronic commerce at the Federal and State levels within existing areas of jurisdiction.

SEC. 4. DEFINITIONS.

In this Act:

(1) ELECTRONIC.—The term ''electronic'' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) ELECTRONIC AGENT.—The term ''electronic agent'' means a computer program or an electronic or other automated means used to initiate an action or respond to electronic records or performances in whole or in part without review by an individual at the time of the action or response.

(3) ELECTRONIC RECORD.—The term ''electronic record'' means a record created, generated, sent, communicated, received, or stored by electronic means.

(4) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(5) GOVERNMENTAL AGENCY.—The term ''governmental agency'' means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the Federal Government or of a State or of any county, municipality, or other political subdivision of a State.

(6) RECORD.—The term ''record'' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) TRANSACTION.—The term ''transaction'' means an action or set of actions relating to the conduct of commerce between 2 or more persons, neither of which is the United States Government, a State, or an agency, department, board, commission, authority, institution, or instrumentality of the United States Government or of a State.

(8) UNIFORM ELECTRONIC TRANSACTIONS ACT.—The term ''Uniform Electronic Transactions Act'' means the Uniform Electronic Transactions Act as reported to State legislatures by the National Conference of Commissioners on Uniform State Law in the form or any variation thereof that is authorized or provided for in such report.

SEC. 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

To the extent practicable, the Federal Government shall observe the following principles in an international context to enable commercial electronic transaction:

(1) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law (UNCITRAL).

(2) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(3) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(4) Take a non-discriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SEC. 6. INTERSTATE CONTRACT CERTAINTY.

(a) IN GENERAL.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.

(4) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

(b) METHODS.—The parties to a contract may agree on the terms and conditions on which they will use and accept electronic signatures and electronic records, including the methods therefor, in commercial transactions affecting interstate commerce. Nothing in this subsection requires that any party enter into such a contract.

(c) INTENT.—The following rules apply to any commercial transaction affecting interstate commerce:

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be established in any manner, including a showing of the efficacy of any security procedures applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under paragraph (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(d) FORMATION OF CONTRACT.—A contract relating to a commercial transaction affecting interstate commerce may not be denied legal effect solely because its formation involved—

(1) the interaction of electronic agents of the parties; or

(2) the interaction of an electronic agent of a party and an individual who acts on that individual's own behalf or for another person.

(e) APPLICATION IN UETA STATES.—This section does not apply in any State in which the Uniform Electronic Transactions Act is in effect.

SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO ELECTRONIC COMMERCE.

(a) BARRIERS.—Each Federal agency shall, not later than 6 months after the date of enactment of this Act, provide a report to the Director

of the Office of Management and Budget and the Secretary of Commerce identifying any provision of law administered by such agency, or any regulations issued by such agency and in effect on the date of enactment of this Act, that may impose a barrier to electronic transactions, or otherwise to the conduct of commerce online or be electronic means. Such barriers include, but are not limited to, barriers imposed by a law or regulation directly or indirectly requiring that signatures, or records of transactions, be accomplished or retained in other than electronic form. In its report, each agency shall identify the barriers among those identified whose removal would require legislative action, and shall indicate agency plans to undertake regulatory action to remove such barriers among those identified as are caused by regulations issued by the agency.

(b) REPORT TO CONGRESS.—The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall, within 18 months after the date of enactment of this Act, and after the consultation required by subsection (c) of this section, report to the Congress concerning—

(1) legislation needed to remove barriers to electronic transactions or otherwise to the conduct of commerce online or by electronic means; and

(2) actions being taken by the Executive Branch and individual Federal agencies to remove such barriers as are caused by agency regulations or policies.

(c) CONSULTATION.—In preparing the report required by this section, the Secretary of Commerce shall consult with the General Services Administration, the National Archives and Records Administration, and the Attorney General concerning matters involving the authenticity of records, their storage and retention, and their usability for law enforcement purposes.

(d) INCLUDE FINDINGS IF NO RECOMMENDATIONS.—If the report required by this section omits recommendations for actions needed to fully remove identified barriers to electronic transactions or to online or electronic commerce, it shall include a finding or findings, including substantial reasons therefor, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.

AMENDMENT NO. 2787

Ms. COLLINS. Mr. President, Senators ABRAHAM, WYDEN, and LEAHY have an amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. ABRAHAM, for himself, Mr. WYDEN, and Mr. LEAHY, proposes an amendment numbered 2787.

The amendment is as follows:

The amendment is printed in today's RECORD under ''Amendments Submitted.''

Ms. COLLINS. I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 2787) was agreed to.

Ms. COLLINS. It is my understanding the Senator from Michigan, Senator ABRAHAM, has a statement to make on this important legislation.

I yield to the Senator from Michigan.

Mr. ABRAHAM. Mr. President, I will briefly comment on this legislation. First, I thank the cosponsors of this legislation, the Millennium Digital Commerce Act, and Senator WYDEN, the lead cosponsor of the legislation, and Senators MCCAIN, BURNS, and LOTT, who joined as cosponsors. I also thank Senator LEAHY, Senator SARBANES, Senator HOLLINGS, Senator MCCAIN and others who have worked with Senator WYDEN and me in moving this through the legislative process. I express my appreciation to all my colleagues.

As we move into the era of e-commerce it is important that people who wish to engage in commercial transactions online over the Internet be able to do so as effectively and efficiently as possible. Part of the challenge we confront is when people are entering into contracts in this nonwritten context, the potential exists for questions to be raised as to the validity of the contractual arrangements. Without getting into all the details, the goal of the Millennium Digital Commerce Act is to address this issue. Approximately 42 States have already passed what in effect are digital signature authentication laws which address contracts entered into online or which address the validity of contracts entered into through the web. The problem is those 42 bills are all different. It is possible for people to argue that a contract is valid in one State and not valid in the State of the other contracting party and, thus, is an invalid document.

The purpose of our legislation is to try to make all such agreements valid if they fit or meet some parameters, identical to the ones the States are moving toward; a uniform system. In short, we believe this will be an interim approach until the States have passed a model uniform act. If we don't do this, impediments will exist between parties who wish to contract via the Internet and through electronic commerce. We believe the passage of this bill will relieve those impediments and allow for e-commerce to continue to expand and grow and strengthen our economy.

I am very pleased at the passage of the bill today, and look forward to working with our counterparts in the House, they have passed a slightly different bill, to pound out a final consensus through the conferencing process and bring back to the Senate the output of that process. I hope to do this very early in the next session, so we can enact this legislation and move it to the President for his signature, and, as I said at the outset, improve the efficiency with which we engage in an expanded e-commerce universe.

I yield the floor.

Mr. LOTT. Mr. President, I want to acknowledge the significant efforts of Senator ABRAHAM to author and pass legislation aimed at facilitating the growth of electronic commerce. Commerce that everyone agrees is a significant driving force behind our nation's robust and expanding economy.

Today, the Senate passed by unanimous consent an Abraham substitute for S. 761, the Millennium Digital Commerce Act. This measure is important because it would ensure the legal certainty of electronic signatures in interstate commerce.

Mr. President, right now, there are over forty different state electronic authentication regimes in play. This patchwork of inconsistent and often conflicting state laws makes it difficult to conduct business-to-business and business-to-consumer transactions over the Internet. Those involved in electronic transactions want assurance that their contractual arrangements are legally binding.

Senator ABRAHAM took the lead on this issue and crafted a bill to ensure that a national framework would govern the use of electronic signatures. It is a rational, coherent, and minimalist approach. An approach supported by America Online, American Bankers Association, American Council of Life Insurance, the American Electronics Association, American Financial Services Association, American Insurance Association, Apple, Business Software Alliance, Charles Schwab, the Coalition for Electronic Authentication, Consumer Mortgage Coalition, DLJ Direct, the Electronic Industry Alliance, FORD, Gateway2000, General Electric Company, GTE, Hewlett-Packard, IBM, Intel, Intuit, the Information Technology Association of America, the Information Technology Industry Council, Microsoft, NCR, the National Association of Manufacturers, National Retail Federation, and the U.S. Chamber of Commerce, among others.

Mr. President, in drafting his legislation, Senator ABRAHAM included key concepts and provisions developed by the National Conference of Commissioners on Uniform State Law (NCCUSL). A NCCUSL working group, which included legal scholars, experts on electronic commerce, state officials and other interested stakeholders, spent the better part of two years drafting the Uniform Electronic Transactions Act (UETA). This model legislation was formally approved in August and is expected to be enacted on a state-by-state basis, much like the process followed in approving the Uniform Commercial Code, over the next three to five years.

Senator ABRAHAM's electronic signatures measure is timely in that it serves as an interim solution needed to fill the void until states approve the model UETA package.

I applaud the junior Senator from Michigan for his continuing leadership on technology issues and commend the Senate's action today. This is definitely a significant step in the right direction.

Mr. President, Senator ABRAHAM, my colleagues on this side of the aisle, and I agree that the measure passed today, while a significant accomplishment, only gets consumers to the 50-yard line when it comes to e-commerce. In order to get to the end-zone, Congress still needs to address the issue of electronic records.

The Millennium Digital Commerce Act that was unanimously approved by the Senate Commerce Committee in July would have also provided legal certainty to electronic records. However, eleventh hour objections from the minority, some of which were completely unrelated to this bill, thwarted repeated efforts to bring this crucial measure to the floor.

Mr. President, I would point out that the reported bill, with its electronic records provisions, had bipartisan support and was strongly endorsed by the Administration, not once, but twice. In fact the Office of Management and Budget's Statement of Administration Policy noted ''the Administration supports the passage of S. 761 . . . [Its] provisions strike the appropriate balance between the needs of each State to develop its own laws in relation to commercial transactions and the needs of the Federal government to ensure that electronic commerce will not be impeded by the lack of consistency in the treatment of electronic authentication.''

The Commerce Committee reported measure did not, as some contend, alter federal or state consumer protection laws. Instead, Senator ABRAHAM's bill simply held that records could not be denied legal effect solely, and the key word is ''solely,'' because such records were in electronic form.

Mr. President, consumers stand the most to gain from electronic records and the most to lose if such records are not clearly granted legal effect, validity, and enforceability. In order to further assuage concerns, Senator ABRAHAM, in earnest, offered a substitute version that largely incorporated key provisions of UETA, verbatim. Even so, and as perplexing as it would seem, his UETA substitute was opposed by the minority. Remember, these are the words developed and agreed to by an esteemed panel of national and state legal experts, and these are the same words that will go into effect as states adopt UETA during the next few years.

I would point out that the Department of Commerce, in its June 22, 1999 position letter supporting the Abraham substitute bill that passed the Commerce Committee, noted that ''In the view of the Administration, the current UETA draft adheres to the minimalist 'enabling' framework advocated by the Administration, and we believe that UETA will provide an excellent domestic legal model for electronic transactions, as well as a strong model for the rest of the world.''

With these glowing endorsements of both the Commerce Committee reported measure and UETA, both of which provide legal certainty to electronic records, I was surprised and dismayed that the Administration flip-flopped on the records issue at the last moment. One has to wonder what motivated this 180-degree change in position and why the Administration went to great lengths to stall and eventually oppose electronic transactions legislation that included digital records.

Consumers want and need electronic records, not only because digitized records are the equivalent of paper-notices, records, and disclosures, but also because such information is often easier to access, read, store and maintain. Electronic records will save consumers time, money, and the hassle of waiting for paper notices and disclosures. Used in conjunction with an electronic signature, electronic records, with appropriate and effective electronic disclosures, allow anyone, with a hook-up to the borderless World Wide Web, to transact business at any time and at any place.

Mr. President, it is the seamless nature of the Internet that makes it such a phenomenal communications and business medium. To ensure that no one is left out of this new millennium paradigm, the legal certainty of electronic records must be codified in federal statute—at least until UETA is adopted nationally. It is my sincere hope that Congress will address the legality of electronic records in the near term so consumers will experience the full benefits and to reap the rewards of the Internet.

Again, I want to applaud the efforts of the Senate in passing S. 761, Senator ABRAHAM's electronic signatures bill. This action is good for America's consumers, good for America's businesses, and good for our nation's economy and prosperity.

Mr. President, Senator ABRAHAM has once again proven that he is a champion of technology, a guardian of the consumer, and an extremely effective legislator.

Mr. LEAHY. Mr. President, I am pleased that the Senate today is passing the Abraham-Leahy substitute amendment to S.761, the Millennium Digital Commerce Act. This bill seeks to permit and encourage the continued expansion of electronic commerce, and to promote public confidence in its integrity and reliability. These are worthy goals—goals that I have long sought to advance. In the last Congress, many of us worked together to pass the Government Paperwork Elimination Act, which established a framework for the federal government's use of electronic forms and electronic signatures. Today's legislation is part of our continuing efforts to ease the burdens of conducting business electronically.

This is an important bill on an issue of paramount concern to American businesses that engage in electronic commerce. It has had a long journey since it was reported by the Commerce Committee in June. As reported, the bill took a sweeping approach, preempting untold numbers of federal, state and local laws that require contracts, records and signatures to be in traditional written form. I was concerned that such a sweeping approach would radically undermine legislation that is currently in place to protect consumers.

For example, the Committee-passed bill would have enabled businesses to use their superior bargaining power to compel or confuse consumers into waiving their rights to insist on paper disclosures and communications, even when they do not have the technological capacity to receive, retain, and print electronic records. Could a borrower be compelled to receive delinquency or foreclosure notices by electronic mail, even if she did not have a computer, or her computer could not read the notices in the electronic format in which they were sent? Would she be entitled to revert to paper communications if her computer broke or became obsolete? Could a company require customers to check its Web site for important safety information regarding its products, or for recall notices?

Under S.761 as reported, the company would not have been required to provide any information on paper, even if a state consumer protection law so required. Crucial information about the consumer's rights and obligations would not be received. It was federal preemption beyond need, to the detriment of American consumers.

The problem did not stop there. When information is provided electronically, for it to be useful at a later time to prove its contents, the electronic file must be tamperproof. Otherwise, a consumer could inadvertently change a single byte on the file and thus make it technically different from the original, and useless to prove its contents. The consumer would be left without any means of proving critical terms of the contract, including the terms of the warranty.

I have been working with Senator ABRAHAM and others since August to address these and other concerns I had with the bill. We crafted a bipartisan compromise several weeks ago, but it fell apart after certain industry representatives complained that it did not go far enough to relieve them of federal and state regulatory authority. Fortunately, other industry representatives recognized that this was not the primary or even an intended purpose of this legislation, and worked to get the legislative process back on track. I am pleased that we were able to do this and that we were able to reach agreement, for the second time, on an Abraham-Leahy substitute that encourages the continued expansion of electronic commerce, while leaving in place essential safeguards protecting the nation's consumers.

In a letter dated November 5, 1999, the National Conference of State Legislatures identified what it believed were four essential criteria for any federal legislation related to electronic signatures:

(1) Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time, thus giving the states time to act. (2) States

must be allowed to adopt the Uniform Electronic Transactions Act or some similar legislation. (3) Essential state consumer protections must be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures. It must not embrace any preemption of state regulatory and record keeping authority.

The Abraham-Leahy substitute meets these criteria.

Most importantly, the scope of the bill has been limited to address the principal concern of industry. When Senator ABRAHAM introduced S.761 earlier this year, he said it was designed to eliminate uncertainty about the legality of electronic contracts signed with electronic signatures. Consistent with this design, the Abraham-Leahy substitute ensures that contracts will not be denied legal effect that they otherwise have under state law solely because they are in electronic form or because they were signed electronically. However, as section 4(4) of the bill makes clear, an electronic signature is valid only if executed by a person who intended to sign the contract.

The purpose of this legislation is to facilitate electronic commerce over the Internet. It is not intended that this legislation be the basis for unfair or deceptive attempts by some to avoid providing mandated information, disclosures, notices or content. For example, when the parties have conducted a transaction entirely in person, the fine print of a form contract cannot include an agreement that the contract can be provided electronically rather than on paper. The basic rules of good faith and fair dealing apply to electronic commerce, and this legislation is not intended to be a basis upon which consumers can be asked to agree to terms and conditions for using electronic signatures and electronic records which are unreasonable based on the circumstances surrounding the transaction.

Further, accurate copies of contracts must be delivered to consumers. The Abraham-Leahy substitute amendment therefore provides that if a law requires a contract to be in writing, an electronic record of the contract will not satisfy such law unless it is delivered to all parties in a form that can be retained for later reference and used to prove the terms of the agreement. This important provision is intended to protect consumers who execute contracts online, by ensuring that contracts are provided in a tamperproof, or ''read-only'' format. The delivery of any other type of electronic record would make it useless to prove its terms in court.

The new legislation also improves on the Committee-passed version by eliminating its ''intent'' section, which established interpretive rules regarding the intent of the parties to an electronic transaction. These rules inappropriately allowed businesses to put the risk of forgery, unauthorized use, and identity theft on consumers, by making it easier for the proponent of an electronic record or electronic signature to prove its authenticity. By eliminating these rules, we have ensured that current contract and evidence laws remain in place. A person is always entitled to assert that an electronic signature is a forgery, was used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form.

Having just last year worked with Senator KYL on passage of the Kyl-Leahy substitute to S.512, the Identity Theft and Assumption Deterrence Act, to combat identity theft, we should be careful to avoid taking actions that could have the unintended consequence of making such crimes easier to commit.

In his introductory floor statement, Senator ABRAHAM stressed that S.761 was an interim measure, which would provide a national baseline for the use of electronic signatures only until the states enacted their own e-signature legislation. To ensure the temporary nature of the federal preemption, the Abraham-Leahy substitute which passes the Senate today includes a significant change from earlier versions of S.761, including the version reported by the Commerce Committee. The Committee bill preempted a state's laws until the state enacted the Uniform Electronic Transactions Act (''UETA'') as reported by the National Conference of Commissioners on Uniform State Law, or any variation that was ''authorized or provided for in such report.'' The full Senate votes today on language that gives states more leeway on the version of the UETA that they choose to pass—including more leeway to adopt strong consumer protections. The revised definition is meant to cover the electronic transactions legislation passed earlier this year by the State of California, and will preserve the capacity of states to perform their traditional role in protecting the health and safety of their citizens.

Nothing in this bill would allow any of the notices that may accompany an electronic contract to be provided electronically. This is especially important to ensure that consumers are apprised of all their rights under federal and state laws. It was the records language of S.761 that held the greatest potential to harm consumers, with its across-the-board invalidation of hard-won consumer protections embodied in such laws as the Truth in Lending Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act, and others. I am pleased that the sponsors of this legislation agreed to remove the electronic records language so that we can allow the critical provisions regarding contracts and signatures to move forward. There will be time in the coming months to revisit the broader issue of electronic records, and to craft legislation that will not place consumers at risk.

In the meantime, contrary to some of the rhetoric that has been heard of late, nothing prevents companies from providing notices and disclosures to consumers electronically, so long as they also provide paper notices and disclosures in the limited set of circumstances in which a law so requires. Requirements that certain information be provided in a particular format, or by a particular method of delivery, are often adopted to serve consumers' interests by providing them with information critical to making informed choices in the marketplace, understanding their rights and obligations during commercial transactions, and enforcing their rights when transactions go sour. Such laws should not be swept away without adequate assurance that consumers will be able to receive and retain the information electronically.

The AARP made this point in a letter to all Senators dated November 15, 1999, with respect to the more sweepingly preemptive H.R. 1714: ''The time to investigate the implications of such a pivotal change in established consumer protections . . . is before, not after, legislation is enacted. Measures to take advantage of electronic market efficiencies must be tempered by a concern for legal and technological responsibilities that are being shifted to the consumer.''

The benefits of electronic commerce should not, and need not, come at the expense of increased risk to consumers. I commend the Department of Commerce for its help in crafting a substitute amendment that is more carefully tailored to protect the interests of America's consumers. I also thank Senators SARBANES, who shared many of my concerns about the original bill's impact on consumers, and Senators ABRAHAM and WYDEN, for agreeing to address our concerns.

This bill shows what can be achieved by bipartisan cooperation and compromise. It enjoys broad support from the Administration, the states, consumer representatives, and responsible companies and trade associations that care about their customers. I urge its speedy enactment into law.

I ask unanimous consent to include in the RECORD a Statement of Administration Policy dated November 8, 1999, in support of the Abraham-Leahy substitute amendment; a letter dated November 8, 1999, from the National Automobile Dealers Association, and a letter dated November 5, 1999, from the National Conference of State Legislatures.

STATEMENT OF ADMINISTRATION POLICY,
NOVEMBER 8, 1999 (SENATE)

(This statement has been coordinated by OMB with the concerned agencies.)

S. 761—MILLENNIUM DIGITAL COMMERCE ACT
(ABRAHAM (R) MICHIGAN AND 11 COSPONSORS)

Electronic commerce can provide consumers and businesses with significant benefits in terms of costs, choice, and convenience. The Administration strongly supports the development of this marketplace and supports legislation that will advance that development, while providing appropriate consumer protection. Many businesses and

consumers are still wary of conducting extensive business over the Internet because of the lack of a predictable legal environment governing transactions. Both the Congress and the Administration have been working to address this important potential impediment to commerce.

S. 761 addresses important concerns associated with electronic commerce and the rise of the Internet as a worldwide commercial forum and marketplace. The Administration supports Senate passage of the amendment in the nature of a substitute to S. 761 expected to be offered by Senator Abraham, based on an agreement with Senators Leahy and Wyden. The Administration supports this version of S. 761 because the bill, as proposed to be amended, would: Ensure the legal validity of contracts between private parties that are made and signed electronically; preserve the ability of States to establish safeguards, such as consumer protection laws, to promote the public interest in electronic commerce among private parties just as they can now establish safeguards for paper-based commerce; cover only commercial transactions between private parties that affect interstate commerce; not affect Federal laws or regulations, but instead would give Federal agencies six months to conduct a careful study of barriers to electronic transactions under Federal laws or regulations and to develop plans to remove such barriers, where appropriate; and sunset completely as to the law of any State that enacts the Uniform Electronic Transactions Act.

NATIONAL AUTOMOBILE DEALERS ASSOCIATION, OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 8, 1999.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the National Automobile Dealers Association (NADA), I am writing to express our views on S. 761, the Millennium Digital Commerce Act.

Like many entrepreneurs throughout the country, America's new car and truck dealers are using today's technological advances to better serve customers, and at NADA we understand the desire to accelerate the role of electronic commerce. Even so, we share your desire to preserve the state's role in this process.

The automobile is one of the single biggest purchases that a consumer makes. As a result, state legislatures throughout the country have enacted various requirements and disclosures governing the purchase and sale of motor vehicles. In light of this extensive body of existing state law, an overly preemptive federal statute would deny the states the ability to protect their citizens in the manner they deem appropriate in these types of transactions.

NADA does not oppose a temporary federal rule to ensure that contracts can not be invalidated solely because they are in electronic form or because they are signed electronically. We believe, however, that any federal legislation should only be an interim measure to provide stability while the states consider the Uniform Electronic Transactions Act (UETA). Once a state adopts the UETA, the temporary federal rule should sunset.

We understand that some drafts of the legislation that have been put forward would allow the federal rule to preempt the UETA in effect in a state, thus denying the states the opportunity to be more protective of consumers should they so desire. If that provision is retained, we believe that motor vehicle transactions should not be covered by the federal rule. This exception would be necessary to ensure that the states could still perform their traditional role of establishing the legal framework for major purchases.

We appreciate the opportunity to bring our concerns to your attention, and we appreciate all your efforts in addressing these matters before the legislation moves forward in the Senate.

Sincerely,

H. THOMAS GREENE,
Chief Operating Officer, Legislative Affairs.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, November 5, 1999.

Hon. PATRICK J. LEAHY
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: The National Conference of State Legislatures understands the need to revise federal and state laws as a means of encouraging electronic commerce. In particular, NCSL understands that legislation is needed to allow the more widespread use of electronic signatures as a means of encouraging such commerce.

Over 40 state legislatures have addressed various state law issues related to the validity of electronic signatures. Nevertheless, NCSL has in principle no objection to federal legislation on this same topic, provided that it is tightly focused on removing barriers to legitimate electronic commerce and does not broadly preempt essential elements of state consumer protection and contract law.

NCSL believes that federal legislation related to electronic signatures must meet four criteria: (1) Any preemption of state law and authority must be limited in duration. The idea should be to ensure the validity of most electronic signatures for a period of time, thus giving the states time to act. (2) States must be allowed to adopt the Uniform Electronic Transactions Act or some similar legislation. (3) Essential state consumer protections must be preserved, along with the capacity of states to enact consumer protection measures in the future. (4) Any federal legislation must be limited to the topic of electronic signatures. It must not embrace any preemption of state regulatory and record keeping authority.

The version of S. 761 that is now being presented comes closer to meeting NCSL's criteria than earlier versions of the bill. In general, this ''compromise'' version is taking the right approach to the issue. NCSL looks forward to working with the sponsors and others to resolve any remaining issues of preemption and consumer protection. NCSL much prefers the new compromise to other earlier versions of electronic signatures legislation which we vigorously opposed because of its unnecessary preemption of state consumer protection and contract law.

For additional information about NCSL's position, please call Neal Osten (202–624–8660) or Michael Bird (202–624–8686).

Sincerely,

Joanne G. Emmons, *Michigan State Senate, Chair, NCSL Commerce and Communications Committee.*

Mr. ABRAHAM. Mr. President, the Senate is soon expected to pass the Millennium Digital Commerce Act—a bill introduced by Senators WYDEN, MCCAIN, BURNS, LOTT and myself which is designed to promote electronic commerce. I rise today to speak in support of this legislation and to thank the cosponsors for their tireless efforts to pass this legislation. I believe it will have a profound impact on the way commerce is conducted on the Internet.

By now, all of us have heard the prophetic pronouncements: ''The Internet will change of all of our lives.'' ''The Computer Age is reshaping the world.'' And so on. These words are true, and a review of the indicators which document the Internet's extraordinary growth bear this out. In 1993 about 90,000 Americans had access to these on-line resources. By early 1999 that number had grown to about 81 million, an increase of about 900 percent. The Computer Industry Almanac predicts 320 million Internet users world-wide by the end of the year 2000.

And now the figures are coming in on how electronic commerce is transforming the way we do business. They are equally impressive. E-commerce between businesses has grown to an estimate $64.8 billion for 1999. 10 million customers shopped for some product using the Internet in 1998 alone. And 5.3 million households had access to financial transactions like electronic banking and stock trading by the end of 1999.

While the Internet has experienced almost exponential growth since its inception, there is still room to expand. Today, new technologies enable the Internet to serve as an efficient new tool for companies to transact business as never before. This capability is provided by the development of secure electronic authentication methods. These technologies permit an individual to positively identify the person with whom they are transacting business and to ensure that information being shared by the parties has not been tampered with or modified without the knowledge of both parties. While such technologies are seeing limited use today, the growth of this application has out-paced government's ability to appropriately modify the legal framework governing the use of electronic signatures and other authentication methods.

The growth of electronic signature technologies will increasingly allow organizations to enter into contractual arrangements without ever having to drive across town or fly thousands of miles to personally meet with a client or potential business partner. The Internet is prepared to go far beyond the ability to buy a book or order apparel on-line. It is ready to lead a revolution in the execution of business transactions which may involve thousands or millions of dollars in products or services; transactions so important they require that both parties enter into a legally binding contract.

Mr. President, the Millennium Digital Commerce Act is designed to promote the use of electronic signatures in business transactions and contracts. At present, the greatest barrier to such transactions is the lack of a consistent and predictable national framework of rules governing the use of electronic signatures. Over forty States have enacted electronic authentication laws, and no two laws are the same. This inconsistency deters businesses from

fully utilizing electronic signature technologies for contracts and other business transactions. The differences in our State laws create uncertainty about the effectiveness or legality of an electronic contract signed with an electronic signature. This legal uncertainty limits the potential of electronic commerce, and, thus, our nation's economic growth.

Fortunately, the need for uniformity in electronic authentication rules was recognized early by the States. For the past two years, the National Conference of Commissioners on Uniform State Law, an organization comprised of e-commerce experts from the States, has been working to develop a uniform system for the use of electronic signatures for all fifty States. Their product, the Uniform Electronic Transactions Act, or UETA, was finished in July. As was expected, the UETA is an excellent piece of work and I look forward to the day when this model legislation is enacted by each of the 50 states.

But agreement on the final language of the UETA proposal is not the same as enactment, and despite the hard work of the Commissioners, uniformity will not occur until all fifty States actually enact the UETA. That will likely take some time. Because some State legislatures are not in session next year and other States have more pressing legislative items, it could take three to four years for forty-five or fifty States to enact the UETA. When you consider the changes that have taken place in just the last two years, it is obvious that in the high-technology sector four years is an eternity.

The Digital Millennium Commerce Act is therefore designed as an interim measure to provide relief until the States adopt the provisions of the UETA. It will provide companies the federal framework they need until a national baseline governing the use of electronic authentication exists at the State level. Once States enact the UETA, the Federal preemption is lifted.

To be specific, this legislation promotes electronic commerce in the following manner. First and foremost, the legislation provides that the electronic signatures used to agree to a contract shall not be denied effect solely because they are electronic in nature. This provision assures that a company will be able to rely on an electronic contract and that another party will not be able to escape such certainty, this bill will reduce the likelihood of dissatisfied parties attempting to escape electronic contractual agreements and transactions.

To ensure a level playing field for all types of authentication, the bill grants parties to a transaction the freedom to determine the technologies to be used in the execution of an electronic contract. In essence, this assures technology neutrality because businesses and consumers, not government, will make the decisions as to what type of electronic signatures and authentication technologies will be used in transactions.

Since the Internet is inherently an international medium, consideration must also be given to the manner in which the U.S. conducts business with overseas governments and businesses. This legislation therefore sets forth a series of principles for the international use of electronic signatures. In the last year, U.S. negotiators have been meeting with the European Commissioners to discuss electronic signatures in international commerce. In these negotiations, the U.S. Department of Commerce and the State Department have worked in support of an open system governing the use of authentication technologies. Some European nations oppose this concept, however. For example, Germany insists that electronic transactions involving a German company must utilize a German electronic signature application. I applaud the Administration for their steadfast opposition to that approach. This bill will bolster and strengthen the U.S. position in these international negotiations by establishing the following principles as the will of the Congress:

One, paper-based obstacles to electronic transactions must be eliminated.

Two, parties to an electronic transaction should choose the electronic authentication technology.

Third, parties to a transaction should have the opportunity to prove in court that their authentication approach and transactions are valid.

Fourth, the international approach to electronic signatures should take a non-discriminatory approach to electronic signature. This will allow the fees market—not a government—to determine the type of authentication technologies used in international commerce.

Mr. President, it is my hope that adoption of these principles will increase the likelihood of an open, market-based international framework for electronic commerce.

Finally, the bill directs the Department of Commerce and Office of Management and Budget to report on Federal laws and regulations that might pose barriers to e-commerce and report back to Congress on the impact of such provisions and provide suggestions for reform. Such a report will serve as the basis for Congressional action, or inaction, in the future.

Mr. President, Senator WYDEN, Senator MCCAIN, Senator BURNS, the Majority Leader and I worked very hard to address the multiple of issues and concerns raised by those most affected by this legislation, namely the high-tech industry, the states and the consumer. I also want to recognize the considerable time and effort dedicated to this legislation by Senator LEAHY, Senator HOLLINGS and Senator SARBANES. Senators LEAHY and SARBANES worked diligently with the sponsors of this bill to address protection issues. In particular, my colleagues were concerned about the effects of this legislation on the notification and disclosure requirements required by law. I understand very well the concerns my colleagues raised and I agree with many, but not all, of their conclusions.

I believe the use of electronic records in electronic transactions is crucial to real growth in electronic commerce. And if e-commerce is to truly expand the opportunities for individuals, businesses and consumers must have the freedom to agree to the types of documents and information they receive electronically. This right to choose to receive records electronically must be provided by Congress. The best way to do that is to pass laws which establish legal certainties for the sending, receipt and storage for the broad range of electronic records, and in particular, for records associated with loans and mortgages. Today, a vacuum exists with respect to these records. Aggressive businesses and small banks are filling this vacuum by providing loans and mortgages electronically even though there is question as to whether such transactions are protected under law. The increasing demand for such services demonstrates the popularity for electronic loans. By making applications easier and reducing associated consumer costs, these businesses are providing a service which is becoming increasingly popular with the American public. Rather than ignore this new market, or worse, condemn it, Congress should work with the industry and the proper regulatory agencies to ensure that these increased consumer opportunities are maintained and that relevant consumer protection provisions are modernized. I believe my proposal to permit individuals to opt-in to the receipt of records and to opt-out of receipt at any time represented reasonable middle ground on this issue, and am disappointed that my colleagues and I could not agree on a framework for records based on this model.

I intend to continue working toward a resolution which will permit individuals to have access to electronic records. It is simply in the long-term best interest of both consumers and the economy. And I am sure I will not labor on this effort alone. I am pleased to note that, among parties familiar with this debate, there is growing support for legislation to quickly address this important issue.

Mr. President, despite our philosophical differences, it was clear from the beginning that everyone involved was interested in working cooperatively to enact good legislation. And while I wish this bill could go further, I am nevertheless pleased with the product that we have passed today. So I want to thank Senator LEAHY and Senator SARBANES for their cooperation and hard work. I also want to recognize the efforts of the Ranking Member of the Commerce Committee, Senator HOLLINGS. Senator HOLLINGS made

it clear very early that he had concerns surrounding the issue of preemption. His staff and mine worked quickly and effectively to find common ground on this legislation and his spirit of compromise allowed us to move forward on a bill that I do not doubt he would have written differently. I want to thank him for his contribution.

Finally, I wish to express my thanks to the Technology Division of the State of Massachusetts. Governor Paul Cellucci's staff provided indispensable counsel on existing State law governing the use of electronic signatures and the manner in which Federal law can bolster or hamstring State contract law. I value the Governor's input and will continue to work with him to address the extent to which the States are impacted by this legislation as it advances. Of course, the business and technology sectors have also been crucial in helping to craft this bill. Representatives from the Information Technology Association of America, Ford, the Coalition for Electronic Authentication, the Information Technology Industry Council, Apple, the American Electronics Association, NCR, America Online, the Electronic Industry Alliance, Microsoft, Hewlett-Packard, IBM and the National Association of Manufacturers have each lent their time and expertise to this effort. I appreciate their contributions and look forward to continuing this effort to ensure that we develop the best approach possible to promote use of electronic signatures in business transactions.

Mr. President, despite the great work that has taken place here in the Senate, there is more work to do on this legislation. The House is currently working on a companion bill and I look forward to working with the Chairman of the Commerce Committee and other Representatives to ensure that the legislation sent to the President for his signature is the best and most effective approach to expanding electronic commerce possible.

Mr. SARBANES. Mr. President, I rise today to discuss S. 761, the Third Millennium Digital Commerce Act. This is an important bill at a pivotal time in our nation's history. The rapid growth of the Internet, and its transformation from an academic research tool to a truly global communications network, is exerting its influence in more and more areas of our daily lives.

One are of enormous change is the way in which Americans buy, sell, and trade products and services. Just as the general store gave way to the shopping mall and mail order catalogues, these now ''traditional'' forms of retailing are being supplanted by electronic commerce over the Internet. Electronic retailers are providing consumers with a broad range of new choices in goods and services.

Electronic transactions are also becoming an integral part of business-to-business relationships. Ordering, billing, and a host of other activities are now being handled by electronic means, cutting both costs and transaction times. These techniques will make our overall economy more efficient, and the benefits should eventually be passed on to consumers.

The world of electronic commerce is not without its problems, however. One of the largest of these is the lack of coherent legal framework for the conduct of electronic transactions. The commercial world is governed by a patchwork of Federal, state, and local laws. Because electronic commerce is such a recent phenomenon, it can be difficult to apply existing commercial codes and statutes to these new kinds of transactions. Often the laws are simply silent on electronic issues, leading to uncertainty for businesses and consumers alike.

One such area is electronic signatures. Technology now exists that can replace written signatures on paper documents with computer code that performs the same functions. However, many states have not yet enacted laws to ensure that digital signature technologies, when used in a reasonable and appropriate manner, will be considered valid. According to business groups, this uncertainty has had a dampening effect on the growth of electronic commerce.

Many state legislatures are hard at work to devise a workable, consistent legal framework for electronic records and signatures. Until their efforts are complete, however, S. 761, the bill introduced by Senator ABRAHAM, will serve as a stop-gap measure. It will provide a measure of legal certainty, while protecting the rights of consumers under existing laws governing many types of transactions.

I am pleased to have worked closely with Senator ABRAHAM, Senator LEAHY, Senator WYDEN, members of the Commerce Committee, industry, and consumer groups to craft a bill that answers the legal need, yet provides for continued consumer protections. I would like briefly to describe some of these critical consumer protection aspects of the bill.

While electronic commerce can provide consumers with enormous benefits, a sad stream of news articles over the past few years show clearly that there are unscrupulous operators on the Internet. The passage of this Act is intended to serve as a means of protecting consumers from deceptive practices.

To provide businesses with greater legal certainty, the bill stipulates that contracts cannot be deemed unenforceable solely because they involved the use of an electronic signature. Under this bill, companies and consumers should only be able to agree to reasonable and appropriate electronic signature technologies that provide adequate security to both parties. However, as the definition of the electronic signature makes clear, the electronic signature is only valid under this Act if the person intended to sign the contract.

The basic rules of good faith and fair dealing apply to electronic commerce, and this Act should not be the basis upon which parties to a contract can be asked to agree to terms and conditions for using electronic signatures and electronic contracts which are unreasonable based on the circumstances surrounding the transaction. For example, when the parties have conducted a transaction entirely in person, the fine print of a form contract should not include an agreement that the contract can be provided electronically rather than on paper. In addition, companies must deliver to consumers electronic records of the contract in a form they can receive, retain, and use to prove the terms of an agreement. Such an electronic record would have to be provided in a ''locked,'' or tamper proof, format.

Regarding new laws on electronic transactions, the states have been engaged for some time, through the National Conference of Commissioners on Uniform State Laws, in the formulation of a model Uniform Electronic Transactions Act (UETA). Versions of the UETA will be enacted by the individual states. The bill we are considering today includes a revised definition of UETA, changed from the bill reported by the Commerce Committee, that gives states more flexibility to pass versions of UETA that best meet the needs of their citizens. It is intended that California's recently passed version of UETA, for example, meet this test.

I would like once again to thank my colleagues, Senator ABRAHAM, Senator LEAHY, and Senator WYDEN for their hard work on this issue. I believe that we have reached an accommodation on this legislation that provides industry with the provisional legal certainty they seek, while ensuring that existing consumer laws are not diluted by the increasing use of electronic commerce. This is an important step toward making our commercial laws ready for the twenty-first century.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators ABRAHAM, LEAHY, and WYDEN for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will facilitate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and how we do business today and into the future.

I think we all recognize that we are witnessing an electronic revolution. There is no shortage of statistics to prove what we are seeing all around us. According to a recent U.S. Department of Commerce report, approximately one third of the U.S. economic growth

in the past few years has come from information technologies (over $1.1 trillion). Just this year, venture capitalists have invested more than $8 billion in Internet companies—twice the rate of last year.

According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than $300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like MicroWarehouse in Norwalk, Coastal Tool & Supply in West Hartford, and Sagemaker Inc. of Fairfield, are leading the way in the digital economy.

In the Senate, I have worked to support the growth of e-commerce by cosponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

This legislation takes further steps to continue the growth of e-commerce and is a powerful follow-on to the Internet Tax Freedom Act. With this legislation we will eliminate a major barrier to e-commerce by providing for the legal recognition of electronic signatures in contracting and by creating a consistent, but temporary, national electronic signatures law to preempt a multitude of sometimes inconsistent state laws. This bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transaction. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures only in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I would like to thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Mr. WYDEN. Mr. President, for the past several years, Congress has been working in a bipartisan way to write the rules of the digital economy. We have made significant progress on Internet taxes, privacy, encryption and the Y2K problem. Now is the time to move forward on rules for electronic signatures.

The bill before us today, S. 761, is based on the premise that it's better to be online than waiting in line. A growing number of Americans who now have to wait in line for things like a driver's license or construction permit, could see their business expedited by a few clicks of their mouse.

We live in an increasingly mobile society, where young people get recruited for jobs clear across the country. They may need to move in a hurry but don't have the time, for example, to pack up a home in Virginia and look for another one in Portland, Oregon. With the Internet, they can shop for a house in another town. With this electronic signatures bill, they can pretty much conclude the whole transaction of purchasing the house online.

The legislation puts electronic and paper contracts and agreements on equal footing legally. Like the Internet Tax Freedom Act, the bill would establish technological neutrality between electronic and paper contracts and agreements. This means consumers will enjoy the same legal protections when purchasing a car or home online as when they walk into an auto dealership or real estate office and sign all the documents in person. We worked long and hard to make sure that the system established here benefits consumers who wish to receive information electronically without treating those without computers as second class citizens.

This legislation does not address the issue of electronic records because this matter deserves more thorough study and discussion. I intend to work with all interested parties on this—from consumer groups to financial services firms—over the course of the coming months to craft legislation that will extend the benefits of this measure to electronic records in a way that continues consumer protections.

Commercial transactions have traditionally been governed by State laws which are modeled on the Uniform Commercial Code. Forty-two states have some law in place relating to digital authentication. But differences between and among these laws can create confusion for e-entrepreneurs. The unstoppable growth of electronic commerce has led the States recently to develop a Uniform Electronic Transactions Act, or UETA (as part of the Uniform Commercial Code), to serve as a model for each State legislature in developing further its own electronic signatures law. However, only one State—California—has enacted a UETA. The purpose of this legislation is to provide interim Federal legal validity for electronic contracts and agreements until each state enacts its own UETA. This means e-commerce will not be hamstrung by the lack of legal standing.

I would like to take a minute to run through the highlights of S. 761:

Technological neutrality: It allows electronic signatures to replace written signatures. In interstate commerce a contract cannot be denied legal effect solely because of an electronic signature, electronic record or an electronic agent was used in its formation.

Choice of technology: It does not dictate the type of electronic signature technology to be used; it allows the parties to a transaction to choose their own authentication technology.

Consumer protections: It protects consumer rights under State laws; it does not preempt State consumer protection laws. It assures that consumers without a computer are not treated as second class citizens. If a consumer buys a car online, the consumer cannot be forced to use the computer to receive important recall or safety notices but retains the option to continue to get such notices through the mail.

No State preemption: Its provisions sunset when a State enacts UETA.

Excludes matters of family law: It specifically excludes agreements relating to marriage, adoption, premarital agreements, divorce, residential landlord-tenant matters because these are not commercial transactions.

Report on Federal statutory barriers to electronic transactions: It requires OMB to report to Congress 18 months after enactment identifying statutory barriers to electronic transactions and recommending legislation to remove such barriers.

In conclusion, M. President, I wish to acknowledge the leadership of Sen. ABRAHAM in moving this legislation forward. He and I have teamed up successfully on other legislation, and it was a pleasure to work with him and his tireless staff on this bill. I also want to recognize the contribution of Senator LEAHY, particularly with regard to the consumer protection provisions, as well as the effort of Senator HOLLINGS. It took a bipartisan team to get this bill through the Senate today, and I look forward to continuing to work with this team as we go to conference with the House on S. 761.

I ask unanimous consent that my statement be printed in the record following Senator ABRAHAM's statement on the passage of S. 761.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Millennium Digital Commerce Act of 1999. I thank Senators ABRAHAM, LEAHY, and WYDEN for their leadership on this important issue. As a cosponsor of this legislation, I am proud of the steps it takes to support an important and still emerging technology and industry. The Millennium Digital Commerce Act will facilitate the continued growth of the Internet and of electronic commerce. With this legislation, the Senate recognizes the significant transformations taking place in our economy and how we do business today and into the future.

I think we all recognize that we are witnessing an electronic revolution. There is no shortage of statistics to prove what we are seeing all around us. According to a recent U.S. Department of Commerce report, approximately one third of the U.S. economic growth in the past few years has come from information technologies (over $1.1 trillion). Just this year, venture capitalists have invested more than $8 billion

in Internet companies—twice the rate of last year.

According to a University of Texas report, e-commerce is growing at a much faster rate than many had expected. The digital economy generated more than $300 billion in revenue in 1998 and was responsible for 1.2 million jobs. Many e-commerce companies in my State of Connecticut, like MicroWarehouse in Norwalk, Coastal Tool & Supply in West Hartford, and Sagemaker Inc. of Fairfield, are leading the way in the digital economy.

In the Senate, I have worked to support the growth of e-commerce by cosponsoring the Internet Tax Freedom Act which places a three year moratorium on new state and local taxes on the Internet in order to give the digital economy some breathing room to evolve.

This legislation takes further steps to continue the growth of e-commerce and is a powerful follow-on to the Internet Tax Freedom Act. With this legislation we will eliminate a major barrier to e-commerce by providing for the legal recognition of electronic signatures in contracting and by creating a consistent, but temporary, national electronic signatures law to preempt a multitude of sometimes inconsistent state laws. This bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transaction. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures only in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Ms. COLLINS. Mr. President, I ask unanimous consent the committee amendment in the nature of a substitute be agreed to as amended, the bill be read the third time and passed, the motion to reconsider laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 761), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

UNANIMOUS-CONSENT AGREEMENT

Ms. COLLINS. Mr. President, I ask unanimous consent at 4 p.m. the Senate proceed to the Work Incentives conference report, and that there be 120 minutes equally divided in the usual form, with an additional 10 minutes under the control of Senator LOTT. I further ask consent that following the use or yielding back of time, the vote on the adoption of the conference report occur immediately following the vote on adoption of the conference report to accompany H.R. 3195.

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

Ms. COLLINS. I further ask consent immediately following the vote on the adoption of the conference report, H. Con. Res. 236 be agreed to, and the motion to reconsider be laid upon the table.

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

CHURCH PLAN PARITY AND ENTANGLEMENT PREVENTION ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent the health committee be discharged from further consideration of S. 1309 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1309) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2788

(Purpose: To provide for a complete substitute)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senators SESSIONS and JEFFORDS. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. SESSIONS, for himself, and Mr. JEFFORDS, proposes an amendment numbered 2788.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PURPOSE.

The purpose of this Act is only to clarify the application to a church plan that is a welfare plan of State insurance laws that require or solely relate to licensing, solvency, insolvency, or the status of such plan as a single employer plan.

SEC. 2. CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW.

(a) IN GENERAL.—For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) STATE INSURANCE LAW.—A State insurance law described in this subsection is a law that—

(1) requires a church plan, or an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986 and section 3(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)(C)(i)) to the extent that it is administering or funding such a plan, to be licensed; or

(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

(c) DEFINITIONS.—For purposes of this section:

(1) CHURCH PLAN.—The term ''church plan'' has the meaning given such term by section 414(e) of the Internal Revenue Code of 1986 and section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)).

(2) REIMBURSES COSTS FROM GENERAL CHURCH ASSETS.—The term ''reimburses costs from general church assets'' means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

(3) WELFARE PLAN.—The term ''welfare plan''—

(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services; and

(B) does not include any entity, such as a health insurance issuer described in section 9832(b)(2) of the Internal Revenue Code of 1986 or a health maintenance organization described in section 9832(b)(3) of such Code, or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

(d) ENFORCEMENT AUTHORITY.—Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

(e) APPLICATION OF SECTION.—Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or beneficiary, including participants or beneficiaries who make plan contributions.

Ms. COLLINS. I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 2788) was agreed to.

Ms. COLLINS. Mr. President, I ask unanimous consent the bill be read the third time and passed, as amended, the motion to reconsider be laid upon the table and any statements be printed in the RECORD.

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

The bill (S. 1309), as amended, was read the third time and passed, as follows:

S. 1309

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

SECTION 1. PURPOSE.

The purpose of this Act is only to clarify the application to a church plan that is a welfare plan of State insurance laws that require or solely relate to licensing, solvency, insolvency, or the status of such plan as a single employer plan.

SEC. 2. CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW.

(a) IN GENERAL.—For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) STATE INSURANCE LAW.—A State insurance law described in this subsection is a law that—

(1) requires a church plan, or an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986 and section 3(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)(C)(i)) to the extent that it is administering or funding such a plan, to be licensed; or

(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

(c) DEFINITIONS.—For purposes of this section:

(1) CHURCH PLAN.—The term ''church plan'' has the meaning given such term by section 414(e) of the Internal Revenue Code of 1986 and section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)).

(2) REIMBURSES COSTS FROM GENERAL CHURCH ASSETS.—The term ''reimburses costs from general church assets'' means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

(3) WELFARE PLAN.—The term ''welfare plan''—

(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services; and

(B) does not include any entity, such as a health insurance issuer described in section 9832(b)(2) of the Internal Revenue Code of 1986 or a health maintenance organization described in section 9832(b)(3) of such Code, or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

(d) ENFORCEMENT AUTHORITY.—Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

(e) APPLICATION OF SECTION.—Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or beneficiary, including participants or beneficiaries who make plan contributions.

Mr. LEAHY. Mr. President, the Senate is today passing an important bill, S. 1257, the Hatch-Leahy-Schumer ''Digital Theft Deterrence and Copyright Damages Improvement Act of 1999.'' This legislation should help our copyright industries, which in turn helps both those who are employed in those industries and those who enjoy the wealth of consumer products, including books, magazines, movies, and computer software, that makes the vibrant culture of this country the envy of the world. This legislation has already traveled an unnecessarily bumpy road to get to this stage, and it is my hope that it will be sent promptly to the President's desk.

On July 1, 1999, the Senate passed four intellectual property bills which Senator HATCH and I had joined in introducing and which the Judiciary Committee had unanimously reported. Each of these bills (S. 1257, which we consider today; S. 1258, the Patent Fee Integrity and Innovation Protection Act; S. 1259, the Trademark Amendments Act; and S. 1260, the Copyright Act Technical Corrections Act) make important improvements to our intellectual property laws, and I congratulate Senator HATCH for his leadership in moving these bills promptly through the Committee.

Three of those four bills then passed the House without amendment and were signed by the President on August 5, 1999. The House sent back to the Senate S. 1257, the Digital Theft Deterrence and Copyright Damages Improvement Act, with two modifications which I will describe below.

I have long been concerned about reducing the levels of software piracy in this country and around the world. The theft of digital copyrighted works and, in particular, of software, results in lost jobs to American workers, lost taxes to Federal and State governments, and lost revenue to American companies. A recent report released by the Business Software Alliance estimates that worldwide theft of copyrighted software in 1998 amounted to nearly $11 billion. According to the report, if this ''pirated software has instead been legally purchased, the industry would have been able to employ 32,700 more people. In 2008, if software piracy remains at its current rate, 52,700 jobs will be lost in the core software industry.'' This theft also reflects losses of $991 million in tax revenue in the United States.

These statistics about the harm done to our economy by the theft of copyrighted software alone, prompted me to introduce the ''Criminal Copyright Improvement Act'' in both the 104th and 105th Congresses, and to work for passage of this legislation, which was finally enacted as the ''No Electronic Theft Act of 1997,'' Pub. L. 105–147. The current rates of software piracy show that we need to do better to combat this theft, both with enforcement of our current copyright laws and with strengthened copyright laws to deter potential infringes.

The Hatch-Leahy-Schumer ''Digital Theft Deterrence and Copyright Damages Improvement Act'' would help provide additional deterrence by amending the Copyright Act, 17 U.S.C. §504(c), to increase the amounts of statutory damages recoverable for copyright infringements. These amounts were last increased in 1988 when the United States acceded to the Berne Convention. Specifically, the bill would increase the cap on statutory damages by 50 percent, raising the minimum from $500 to $750 and raising the maximum from $20,000 to $30,000. In addition, the bill would raise from $100,000 to $150,000 the amount of statutory damages for willful infringements.

Courts determining the amount of statutory damages in any given case would have discretion to impose damages within these statutory ranges at just and appropriate levels, depending on the harm caused, ill-gotten profits obtained and the gravity of the offense. The bill preserves provisions of the current law allowing the court to reduce the award of statutory damages to as little as $200 in cases of innocent infringement and requiring the court to remit damages in certain cases involving nonprofit educational institutions, libraries, archives, or public broadcasting entities.

Finally, the bill provides authority for the Sentencing Commission expeditiously to fulfill its responsibilities under the No Electronic Theft Act, which directed the Commission to ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. Since the time that this law became effective, the Sentencing Commission has not had a full slate of Commissioners serving. In fact, we have had no Commissioners since October, 1998. This situation was corrected last week with the confirmation of seven new Commissioners.

As I noted, the House amended the version of S. 1257 that the Senate passed in July in two ways. First, the original House version of this legislation, H.R. 1761, contained a new proposed enhanced penalty for infringers who engage in a repeated pattern of infringement, but without any scienter requirement. I shared the concerns raised by the Copyright Office that this provision, absent a willfulness scienter requirement, would permit imposition of the enhanced penalty even against person who negligently, albeit repeatedly, engaged in acts of infringement. Consequently, the Hatch-Leahy-Schumer bill, S. 1257, that we sent to the House in July avoided casting such a wide net, which could chill legitimate fair uses of copyrighted works. Instead, the bill we sent to the House would have created a new tier of statutory

damages allowing a court to award damages in the amount of $250,000 per infringed work where the infringement is part of a willful and repeated pattern or practice of infringement. The entire ''pattern and practice'' provision, which originated in the House, has been removed from the version of S. 1257 sent back to the Senate.

Second, the original House version of this legislation provided a direction to the Sentencing Commission to amend the guidelines to provide an enhancement based upon the retail price of the legitimate items that are infringed and the quantity of the infringing items. I was concerned that this direction would require the Commission and, ultimately, sentencing judges to treat similarly a wide variety of infringement crimes, no matter the type and magnitude of harm. This was a problem we avoided in the carefully crafted Sentencing Commission directive originally passed as part of the No Electronic Theft Act. Consequently, the version of S. 1257 passed by the Senate in July did not include the directive to the Sentencing Commission. The House then returned S. 1257 with the same problematic directive to the Sentencing Commission.

I appreciate that my House colleagues and interested stakeholders have worked over the past months to address my concerns over the breadth of the proposed directive to the Sentencing Commission, and to find a better definition of the categories of cases in which it would be appropriate to compute the applicable sentencing guideline based upon the retail value of the infringed upon item. A better solution than the one contained in the No Electronic Theft Act remains elusive, however.

For example, one recent proposal seeks to add to S. 1257 a direction to the Sentencing Commission to enhance the guideline offense level for copyright and trademark infringements based upon the retail price of the legitimate products multiplied by the quantity of the infringing products, except where ''the infringing products are substantially inferior to the infringed upon products and there is substantial price disparity between the legitimate products and the infringing products.'' This proposed direction appears to be under-inclusive since it would not allow a guideline enhancement in cases where fake goods are passed off as the real item to unsuspecting consumers, even though this is clearly a situation in which the Commission may decide to provide an enhancement.

In view of the fact that the full Sentencing Commission has not had an opportunity for the past two years to consider and implement the original direction in the No Electronic Theft Act, passing a new and flawed directive appears to be both unnecessary and unwise. This is particularly the case since the new Commissioners have already indicated a willingness to consider this issue promptly. In response to questions posed at their confirmation hearings, each of the nominated Sentencing Commissioners indicated that they would make this issue a priority. For example, Judge William Sessions of the District of Vermont specifically noted that:

If confirmed, our first task must be to address Congress' longstanding directives, including implementation of the guidelines pursuant to the NET Act. Congress directed the Sentencing Commission to fashion guidelines under the NET Act that are sufficiently severe to deter such criminal activity. I personally favor addressing penalties under this statute expeditiously.

I fully concur in the judgment of Chairman HATCH that the Sentencing Commission directive provision added by the House and to send, again, S. 1257 to the House for action.

This bill represents an improvement in current copyright law, and I hope that it will soon be sent to the President for enactment.

TO AMEND THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Ms. COLLINS. Mr. President, I ask unanimous consent the Agriculture Committee be discharged from further consideration of S. 961, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 961) to amend the Consolidated Farm and Rural Development Act to improve shared appreciation arrangements.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2789

(Purpose: To provide a substitute amendment)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senator BURNS, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. BURNS, proposes an amendment numbered 2789.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHARED APPRECIATION ARRANGEMENTS.

(a) IN GENERAL.—Section 353(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(e)) is amended by striking paragraph (2) and inserting the following:

''(2) TERMS.—A shared appreciation agreement entered into by a borrower under this subsection shall—

''(A) have a term not to exceed 10 years;

''(B) provide for recapture based on the difference between—

''(i) the appraised value of the real security property at the time of restructuring; and

''(ii) that value at the time of recapture, except that that value shall not include the value of any capital improvements made to the real security property by the borrower after the time of restructuring; and

''(C) allow the borrower to obtain a loan, in addition to any other outstanding loans under this title, to pay any amounts due on a shared appreciation agreement, at a rate of interest that is not greater than the rate of interest on outstanding marketable obligations of the United States of a maturity comparable to that of the loan.''.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a shared appreciation arrangement entered into under section 353(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001(e)) that matures on or after the date of enactment of this Act.

Ms. COLLINS. Mr. President, I ask unanimous consent the amendment be agreed to, the bill be read the third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements be printed in the RECORD.

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

The amendment (No. 2789) was agreed to.

The bill (S. 961), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

Ms. COLLINS. I ask unanimous consent the Chair lay before the Senate a message from the House to accompany S. 1257.

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

Resolved, That the bill from the Senate (S. 1257) entitled ''An Act to amend statutory damages provisions of title 17, United States Code'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Copyright Damages Improvement Act of 1999''.

SEC. 2. STATUTORY DAMAGES ENHANCEMENT.

Section 504(c) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''$500'' and inserting ''$750''; and

(B) by striking ''$20,000'' and inserting ''$30,000''; and

(2) in paragraph (2), by striking ''$100,000'' and inserting ''$150,000''.

SEC. 3. SENTENCING COMMISSION GUIDELINES.

Section 2(g) of the No Electronic Theft (NET) Act (28 U.S.C. 994 note) is amended by striking paragraph (2) and inserting the following:

''(2) In implementing paragraph (1), the Sentencing Commission shall amend the guideline applicable to criminal infringement of a copyright or trademark to provide an enhancement based upon the retail price of the legitimate items that are infringed upon and the quantity of the infringing items. To the extent the conduct involves a violation of section 2319A of title 18, United States Code, the enhancement shall be based upon the retail price of the infringing items and the quantity of the infringing items.

''(3) Paragraph (1) shall be implemented not later than 3 months after the later of—

''(A) the first day occurring after May 20, 1999; or

''(B) the first day after the date of the enactment of this paragraph,

on which sufficient members of the Sentencing Commission have been confirmed to constitute a quorum.

''(4) The Commission shall promulgate the guidelines or amendments provided for under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.''.

SEC. 4. EFFECTIVE DATE.

The amendments made by section 2 shall apply to any action brought on or after the date of the enactment of this Act, regardless of the date on which the alleged activity that is the basis of the action occurred.

AMENDMENT NO. 2790

(Purpose: To provide for the promulgation of emergency guidelines by the United States Sentencing Commission relating to criminal infringement of a copyright or trademark, and for other purposes)

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS] for Mr. HATCH, for himself, and Mr. LEAHY, proposes an amendment numbered 2790.

The amendment is as follows:

On page 1, line 2, insert ''Digital Theft Deterrence and'' before ''Copyright''.

On page 2, strike lines 2 through 26 and insert the following:

Within 120 days after the date of the enactment of this Act, or within 120 days after the first date on which there is a sufficient number of voting members of the Sentencing Commission to constitute a quorum, whichever is later, the Commission shall promulgate emergency guideline amendments to implement section 2(g) of the No Electronic Theft (NET) Act (28 U.S.C. 994 note) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

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

AMENDING THE INSPECTOR GENERAL ACT

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 408, S. 1707.

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

The legislative clerk read as follows:

A bill (S. 1707) to amend the Inspector General Act of 1978 (5 U.S.C. app,.) to provide that certain designated Federal entities shall be establishments under such Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. THE TENNESSEE VALLEY AUTHORITY AS AN ESTABLISHMENT UNDER THE INSPECTOR GENERAL ACT OF 1978.

(a) FINDINGS.—Congress finds that—

(1) Inspectors General serve an important function in preventing and eliminating fraud, waste, and abuse in the Federal Government; and

(2) independence is vital for an Inspector General to function effectively.

(b) ESTABLISHMENT OF INSPECTOR GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8G(a)(2) by striking ''the Tennessee Valley Authority,''; and

(2) in section 11—

(A) in paragraph (1) by striking ''or the Commissioner of Social Security, Social Security Administration;'' and inserting ''the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority;''; and

(B) in paragraph (2) by striking ''or the Social Security Administration;'' and inserting ''the Social Security Administration, or the Tennessee Valley Authority;''.

(c) EXECUTIVE SCHEDULE POSITION.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General of the Small Business Administration the following:

''Inspector General, Tennessee Valley Authority.''.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

(2) INSPECTOR GENERAL.—The person serving as Inspector General of the Tennessee Valley Authority on the effective date of this section—

(A) may continue such service until the President makes an appointment under section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) consistent with the amendments made by this section; and

(B) shall be subject to section 8G (c) and (d) of the Inspector General Act of 1978 (5 U.S.C. App.) as applicable to the Board of Directors of the Tennessee Valley Authority, unless that person is appointed by the President, by and with the advice and consent of the Senate, to be Inspector General of the Tennessee Valley Authority.

SEC. 2. ESTABLISHMENT OF INSPECTORS GENERAL CRIMINAL INVESTIGATOR ACADEMY AND INSPECTORS GENERAL FORENSIC LABORATORY.

(a) INSPECTORS GENERAL CRIMINAL INVESTIGATOR ACADEMY.—

(1) ESTABLISHMENT.—There is established the Criminal Investigator Academy within the Department of the Treasury. The Criminal Investigator Academy is established for the purpose of performing investigator training services for offices of inspectors general created under the Inspector General Act of 1978 (5 U.S.C. App.).

(2) EXECUTIVE DIRECTOR.—The Criminal Investigator Academy shall be administered by an Executive Director who shall report to an inspector general for an establishment as defined in section 11 of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) designated by the President's Council on Integrity and Efficiency; or

(B) if that council is eliminated, by a majority vote of the inspector generals created under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) INSPECTORS GENERAL FORENSIC LABORATORY.—

(1) ESTABLISHMENT.—There is established the Inspectors General Forensic Laboratory within the Department of the Treasury. The Inspector General Forensic Laboratory is established for the purpose of performing forensic services for offices of inspectors general created under the Inspector General Act of 1978 (5 U.S.C. App.).

(2) EXECUTIVE DIRECTOR.—The Inspectors General Forensic Laboratory shall be administered by an Executive Director who shall report to an inspector general for an establishment as defined in section 11 of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) designated by the President's Council on Integrity and Efficiency; or

(B) if that council is eliminated, by a majority vote of the inspector generals created under the Inspector General Act of 1978 (5 U.S.C. App.).

(c) SEPARATE APPROPRIATIONS ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33) a separate appropriation account for appropriations for the Inspectors General Criminal Investigator Academy and the Inspectors General Forensic Laboratory of the Department of the Treasury.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this section such sums as may be necessary for fiscal year 2001 and each fiscal year thereafter.

Ms. COLLINS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1707), as amended, was read the third time and passed, as follows:

S. 1707

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

SECTION 1. THE TENNESSEE VALLEY AUTHORITY AS AN ESTABLISHMENT UNDER THE INSPECTOR GENERAL ACT OF 1978.

(a) FINDINGS.—Congress finds that—

(1) Inspectors General serve an important function in preventing and eliminating fraud, waste, and abuse in the Federal Government; and

(2) independence is vital for an Inspector General to function effectively.

(b) ESTABLISHMENT OF INSPECTOR GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8G(a)(2) by striking ''the Tennessee Valley Authority,''; and

(2) in section 11—

(A) in paragraph (1) by striking ''or the Commissioner of Social Security, Social Security Administration;'' and inserting ''the Commissioner of Social Security, Social Security Administration; or the Board of Directors of the Tennessee Valley Authority;''; and

(B) in paragraph (2) by striking ''or the Social Security Administration;'' and inserting ''the Social Security Administration, or the Tennessee Valley Authority;''.

(c) EXECUTIVE SCHEDULE POSITION.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Inspector General of the Small Business Administration the following:

''Inspector General, Tennessee Valley Authority.''.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act.

(2) INSPECTOR GENERAL.—The person serving as Inspector General of the Tennessee Valley Authority on the effective date of this section—

(A) may continue such service until the President makes an appointment under section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.) consistent with the amendments made by this section; and

(B) shall be subject to section 8G (c) and (d) of the Inspector General Act of 1978 (5 U.S.C. App.) as applicable to the Board of Directors of the Tennessee Valley Authority, unless that person is appointed by the President, by

and with the advice and consent of the Senate, to be Inspector General of the Tennessee Valley Authority.

SEC. 2. ESTABLISHMENT OF INSPECTORS GENERAL CRIMINAL INVESTIGATOR ACADEMY AND INSPECTORS GENERAL FORENSIC LABORATORY.

(a) INSPECTORS GENERAL CRIMINAL INVESTIGATOR ACADEMY.—

(1) ESTABLISHMENT.—There is established the Criminal Investigator Academy within the Department of the Treasury. The Criminal Investigator Academy is established for the purpose of performing investigator training services for offices of inspectors general created under the Inspector General Act of 1978 (5 U.S.C. App.).

(2) EXECUTIVE DIRECTOR.—The Criminal Investigator Academy shall be administered by an Executive Director who shall report to an inspector general for an establishment as defined in section 11 of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) designated by the President's Council on Integrity and Efficiency; or

(B) if that council is eliminated, by a majority vote of the inspector generals created under the Inspector General Act of 1978 (5 U.S.C. App.).

(b) INSPECTORS GENERAL FORENSIC LABORATORY.—

(1) ESTABLISHMENT.—There is established the Inspectors General Forensic Laboratory within the Department of the Treasury. The Inspector General Forensic Laboratory is established for the purpose of performing forensic services for offices of inspectors general created under the Inspector General Act of 1978 (5 U.S.C. App.).

(2) EXECUTIVE DIRECTOR.—The Inspectors General Forensic Laboratory shall be administered by an Executive Director who shall report to an inspector general for an establishment as defined in section 11 of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) designated by the President's Council on Integrity and Efficiency; or

(B) if that council is eliminated, by a majority vote of the inspector generals created under the Inspector General Act of 1978 (5 U.S.C. App.).

(c) SEPARATE APPROPRIATIONS ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33) a separate appropriation account for appropriations for the Inspectors General Criminal Investigator Academy and the Inspectors General Forensic Laboratory of the Department of the Treasury.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this section such sums as may be necessary for fiscal year 2001 and each fiscal year thereafter.

N O T I C E

Senate proceedings for today are incomplete.

Today's Senate proceedings will be continued in the next issue of the Record.