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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 10, 2001, at 2 p.m.

Senate

FRIDAY, JUNE 29, 2001

The Senate met at 9:00 a.m. and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER

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

Almighty God, reign supreme as sovereign Lord in this Chamber today. Enter the minds and hearts of all the Senators. May they be given supernatural insight and wisdom to discern Your guidance each step of the way through this crucial day. Break deadlocks, enable creative compromises, and inspire a spirit of unity. Overcome the weariness of the hard work of this past week. Give these men and women a second wind to finish the race of completing the legislative responsibilities before them.

Where there is nowhere else to turn, we turn to You. When we fail to work things out, we must ask You to work out things. When our burdens make us downcast, we cast our burdens on You. If You could create the universe and uphold it with Your providential care, You can solve our most complex problems. We trust You, Father, and place the challenges of this day in Your strong capable hands. In Your all powerful name, Amen.

PLEDGE OF ALLEGIANCE

The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 29, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. DASCHLE. Mr. President, today the Senate will resume consideration of the Patients' Bill of Rights. As we agreed last night, we now will have a series of rollcall votes, all of which were on amendments which were offered last night.

Additional amendments with votes are expected throughout the day. It would be my expectation to finish the bill, either today or tomorrow, and then move to the organizing resolution.

So as I understand it, under the unanimous consent agreement, the first amendment is to be taken up right now. I yield the floor.

RESERVATION OF LEADER TIME

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

BIPARTISAN PATIENT PROTECTION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

Pending:

Thompson amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.

Warner modified amendment No. 833, to limit the amount of attorneys' fees in a cause of action brought under this Act.

DeWine amendment No. 842, to limit class actions to a single plan.

Grassley amendment No. 845, to strike provisions relating to customs user fees, and Medicare payment delay.

Santorum amendment No. 814, to protect infants who are born alive.

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

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Nickles amendment No. 846, to apply the bill to plans maintained pursuant to collective bargaining agreements beginning on the general effective date.

Brownback amendment No. 847, to prohibit human germline gene modification.

Ensign amendment No. 849, to provide for genetic nondiscrimination.

Ensign amendment No. 848, to provide that health care professionals who provide pro bono medical services to medically underserved or indigent individuals are immune from liability.

AMENDMENT NO. 814

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 4 minutes of debate prior to a vote in relation to the Santorum amendment No. 814.

Who yields time? The Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Mr. President.

Mr. KENNEDY. Mr. President, could we have order. We have a series of votes now.

The ACTING PRESIDENT pro tempore. The Senate will come to order.

Mr. KENNEDY. We had good debates on them last evening. They are important votes. The Senator is entitled to be heard, and we want to give all those who worked on these amendments an opportunity for Senators to hear them.

The ACTING PRESIDENT pro tempore. The Senate will be in order. The Senator from Pennsylvania.

Mr. SANTORUM. My amendment is simple. My amendment says anybody born alive, any child born alive is entitled to protection under the laws of the United States of America.

Unfortunately, this amendment is necessary for two reasons. No. 1, because of the treatment of children who are delivered as a result of an abortion that was botched. We have ample testimony to, unfortunately, show that children born alive as a result of induced abortions are not cared for and are discarded, not cared for as appropriate to their gestational age. So we think it is important to make it clear there is Federal protection; that the laws of the land apply to even children who are born as a result of abortion—born alive.

The second reason is because of our courts in this country, particularly the Supreme Court, where two Supreme Court Justices in the most recent abortion decision, the Nebraska decision, stated that any procedure that the doctor would permit is OK in this country. This is just two of the nine. But they said the Federal Government and our Constitution does not allow regulation of any procedure that the doctor believes is in the best health interests of the mother. That, to me, leaves open the possibility, if the doctor decides in the health interest of a mother that the best thing is to deliver the baby alive and then kill the baby, two Justices on this Court would suggest that would be OK because we cannot regulate any procedure, and they use ''any procedure,'' that the doctor believes is the best interests of the mother.

So I think it is important for us to draw a line at least here. I am hopeful we will have unanimous support for this amendment. It is one that seems obvious on its face, but because of the courts and because of the practice in abortion clinics, it is necessary to make this statement again on the floor of the Senate.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. We yield 2 minutes to the Senator from California.

Mrs. BOXER. Mr. President, it is nice to see you in the Chair.

I say to my friend from Pennsylvania, our side has no disagreement with this whatsoever. Of course, we believe everyone born should deserve the protections of this bill. The Senator, in his amendment, mentions infants who are born and that they deserve the protections of this bill. Of course they deserve the protections of this bill. Who could be more vulnerable than a newborn baby? So, of course, we agree with that.

But we go further. We believe everyone deserves the protection of this bill: babies, infants, children, families, all the way up until you are fighting for your life because you may have a dreaded disease; you may be elderly. Everyone deserves the HMOs to act in the right way and to put your vital signs ahead of their dollar signs. That is key.

Maybe in the spirit of our Chaplain who called for unity this morning we start off this morning together, saying everyone who is born deserves the protections of this bill. We all know that, regardless of what age, we have heard stories of patients who are really disregarded in the name of the bottom line.

During times when we see CEOs in these HMOs drawing down hundreds of millions of dollars, we see little children and elderly people and those in between denied the needed care, denied the kinds of prescriptions they need.

We join with an ''aye'' vote on this. I hope it will, in fact, be unanimous. I also hope the underlying bill will get a very strong vote and we will say that all of our people deserve protection, from the very tiniest infant to the most elderly among us.

I urge an ''aye'' vote.

The ACTING PRESIDENT pro tempore. The time on the amendment has expired. The Senator from Nevada.

Mr. REID. Mr. President, during this vote, I will be conferring with the manager of the bill on the Republican side to determine what are the next two amendments after this series of votes.

I also plead with Members—the first vote is 15 minutes; the others 10 minutes—if everyone will stay where they are supposed to be, we can speed right through these votes. Senator DASCHLE has advised me and everyone here that we are going to try to maintain as close to the time for the votes as possible. So there might be some people missing votes. Everyone should know now that we are not going to keep these votes open for a long period of time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to Santorum amendment No. 814. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—98

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

NOT VOTING—2

Domenici	Murkowski

The amendment (No. 814) was agreed to.

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

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

Mr. KENNEDY. Mr. President, we have a series of votes coming up. We anticipate eight votes. We are trying to move the process along.

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

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 842

The ACTING PRESIDENT pro tempore. Under previous order, there will

now be 4 minutes of debate prior to a vote in relation to the DeWine amendment No. 842.

The Senator from Ohio is recognized.

AMENDMENT NO. 842, AS MODIFIED

Mr. DEWINE. Mr. President, I have a modification of my amendment at the desk. I ask unanimous consent that it be accepted.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The amendment is so modified.

The amendment (No. 842), as modified, is as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 303. LIMITATION ON CERTAIN CLASS ACTION LITIGATION.

(a) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by section 302, is further amended by adding at the end the following:

''(o) LIMITATION ON CLASS ACTION LITIGATION.—

''(1) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms 'group health plan' and 'health insurance coverage' have the meanings given such terms in section 733.''.

''(2) EFFECTIVE DATE.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.''.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, this amendment is a very simple one. It limits class actions filed under this bill to suits filed within one company involving one plan. It is a commonsense approach. No individual's rights are in any way violated. Individuals have the right to file suits pursuant to this bill.

In addition to that, class actions can still be filed, but they must be filed within one company, one plan. What it basically would prohibit is the big national class action suits that would possibly be filed.

We are simply trying to balance the rights of the individual and the protection of the patient with the whole problem of increasing costs.

We believe that the elimination of these national class action suits will certainly help to keep the costs down.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, we appreciate very much the work by the Senator from Ohio. We appreciate him working with us. This is another example of what can be accomplished when we work together. We will be supporting this amendment.

I yield the remainder of my time to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise only to say that in previous debate, a story was referenced about a young patient named Christopher Roe, who tragically died on his 16th birthday. It was alleged that this had nothing to do with the Patients' Bill of Rights. That, of course, is not true. Nevada, where Christopher Roe died, does not have clinical trial provisions, and this boy would have clearly benefitted from such provisions. This would have given him another chance for survival with the help of experimental treatments.

When this Patients' Bill of Rights is enacted, either Nevada would have to enact a substantially compliant clinical trial provision or the provisions in this bill would apply. I don't want people misrepresenting the notion of what is happening to some of these patients who deserve and ought to be able to expect to receive the protections under this legislation.

Young Christopher Roe died at age 16 because he was required to fight both cancer and the managed care organization at the same time. That is not a fair fight, and it should not happen in the future. If we pass this legislation, it will not happen in the future.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DEWINE. Mr. President, I yield back my time.

Mr. KENNEDY. We yield back our time.

The ACTING PRESIDENT pro tempore. All time is yielded back.

The question is on agreeing to the DeWine amendment No. 842.

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—98

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

NOT VOTING—2

Domenici	Murkowski

The amendment (No. 842) was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was agreed to.

Mr. BROWNBACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 845

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 4 minutes of debate prior to a vote in relation to the Grassley amendment numbered 845.

Mr. GRASSLEY. I yield myself 1 minute.

A point was made last night that extending the user fees in section 502 has no impact on the U.S. Customs Service budget. That is baloney. If it has no impact, why is it in the bill in the first place? Obviously, it is in the bill because it has an impact on budget scoring. Once CBO scores these funds against the Patients' Bill of Rights, these funds cannot be used by the U.S. Customs Service for customs modernization. These funds then are no longer available to offset the costs of customs modernization. We will have to find funds somewhere else; perhaps we can get them from the Health, Education, Labor, and Pensions Committee.

The U.S. Customs Service recognizes this problem: Any scoring which would limit in any way the ability to fund or offset customs activity would likely cause a critical funding shortfall in the Customs Service.

I think it is very clear.

Mr. KENNEDY. I yield 2 minutes to the Senator from North Dakota.

Mr. CONRAD. Has all time been yielded back on the other side?

The ACTING PRESIDENT pro tempore. It has not.

Mr. CONRAD. I rise for the purpose of bringing a point of order; that point of order will not be available until time has been used up on both sides.

Mr. GRASSLEY. I know the chairman is going to raise a point of order, and I want 1 minute to respond to the point of order.

Mr. KENNEDY. I ask consent that both sides yield back the time and the Senator be permitted to make a point of order and each side have 2 minutes to explain the point of order and 2 minutes to respond to that.

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

The Senator from North Dakota.

Mr. CONRAD. Mr. President, sections 502 and 503 of the bill help to ensure that the Social Security surplus is not affected by the costs associated with providing expanded patient protection.

The bill extends customs user fees beyond 2003. That is all. The bill does not change the current nature, structure, or purpose of these fees. Customs operations will not lose funds as a result of the extension of these fees. However, the net effect of accepting the Grassley amendment would be that over $6 billion in spending contained in this bill would not be offset. That is spending that represents a transfer of funds to protect the Social Security trust fund. Deleting that offset would cause the Health, Education, Labor, and Pensions Committee to exceed its committee budget allocation.

As a result, at the appropriate time I will raise the point of order.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there will be a point of order made. If a point of order is made, I am obviously going to waive it. I make clear my motion to strike would essentially allow us to replace the revenues taken from the Finance Committee's jurisdiction with general funds that are still available in the off-budget surplus. All Finance Committee members, Republicans and Democrats alike, including my respected chairman of the Senate Budget Committee, a senior member of the Senate Finance Committee, should beware, a vote against my motion is a vote for weakening the Finance Committee's jurisdiction. If your membership on the Finance Committee means anything, you need to vote in favor of my motion to strike.

Mr. CONRAD. Mr. President, this goes beyond the question of jurisdiction. This is the first test of fiscal discipline in this Chamber. Do we adhere to the Budget Act or do we abandon fiscal discipline? That is the question on this vote. Are we going to spend money that is not offset and thereby violate the allocation that has been made to this committee and exceed the allocation that has been made to this committee? I hope this body will stick with fiscal discipline and require we offset spending that is over and above the allocation to this committee. Spending, after all, is actually a transfer of funds to protect the Social Security trust fund.

Mr. President, I bring, therefore, a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The ACTING PRESIDENT pro tempore. Senator from Iowa.

Mr. GRASSLEY. I move to waive the point of order under section 904 of the Budget Act. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The yeas and nays resulted—yeas 46, nays 52, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—46

Allard	Fitzgerald	Nickles
Allen	Frist	Roberts
Bennett	Gramm	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Helms	Snowe
Chafee	Hutchinson	Stevens
Cochran	Hutchison	Thomas
Collins	Inhofe	Thompson
Craig	Jeffords	Thurmond
Crapo	Kyl	Voinovich
DeWine	Lott	Warner
Ensign	Lugar	
Enzi	McConnell	

NAYS—52

Akaka	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham	Nelson (NE)
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Inouye	Rockefeller
Carnahan	Johnson	Sarbanes
Carper	Kennedy	Schumer
Cleland	Kerry	Specter
Clinton	Kohl	Stabenow
Conrad	Landrieu	Torricelli
Corzine	Leahy	Wellstone
Daschle	Levin	Wyden
Dayton	Lieberman	
Dodd	Lincoln	

NOT VOTING—2

Domenici	Murkowski

The PRESIDING OFFICER. On this vote, the yeas are 46, the nays are 52. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 846

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate prior to the vote in relation to the Nickles amendment No. 846.

The Senator from Oklahoma.

Mr. NICKLES. Madam President, the amendment we have before us now says this should apply to all private-sector plans, including union plans. For the private-sector plans, the effective date is October 1, 2002. But for collective bargaining plans, there is a little section on page 174 that says it shall not apply until the collective bargaining agreement terminates. In many cases, collective bargaining agreements do not terminate for years and years, or they may be renegotiated.

My point is, we should make these protections apply, and hope they will apply—if they are so positive—to all Americans, including union members. Union members should have these protections.

My colleague from Massachusetts asked: Was the Senator trying to punish the unions? I am not trying to punish anybody. Shouldn't union members have the same appeals process? Shouldn't they have the same patient protections we have for all private-sector plans?

To say we are going to exempt them for the duration of their collective bargaining agreements I think is a mistake, especially when some of these agreements may not terminate for years—maybe 10 years or more. We should make this apply for all plans at the same time.

Madam President, I yield the remainder of my time to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, this morning the Senator from North Dakota got up and spoke about a young man by the name of Chris Roe from my State. He said this young man's parents would have been covered under this bill. But according to the Department of Labor, the protections in this bill do not apply to collective bargaining agreements. Because Chris Roe's parents were under a collective bargaining agreement—as a matter of fact, that collective bargaining agreement does not expire until years from now—the Roes would not be covered.

Chris Roe is no longer with us, but people in the future like him should be able to be covered under the same patient protections as everybody else under this bill.

I urge the adoption of this amendment.

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

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, this is language on page 173. It is basically boilerplate language, which means we have used identical language in the HIPAA program and also in OBRA, the pension reform. It is basically out of respect for contracts. If you read the language it says ''for plans beginning on or after October 1.'' ''For plans'' refers to insurance. Most of the insurance, 60 percent of insurance plans start in January; 40 percent go over until the next year. So this will apply at the first opportunity when those plans expire and also when collective bargaining expires.

That is our purpose, to do it in a timely way. I hope the Nickles amendment will be defeated. I will offer an amendment that will say irrespective of collective bargaining, it will have to be done within 2 years, and rollovers will not be permitted. That is the best way to do it. That respects the contracts. It was really done with the support of the insurance industry. It has been boilerplate language that has been used in a number of different bills

as a way of addressing respect for contracts.

I hope the Nickles amendment will be defeated. We give assurance to the membership that the follow-on amendment will say that every contract has to be done within 2 years and that there is no possibility, even within that period of time, for a rollover agreement.

Madam President, I move to table the Nickles amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 211 Leg.]

YEAS—54

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	McCain
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Cantwell	Hollings	Reed
Carnahan	Inouye	Reid
Carper	Jeffords	Rockefeller
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden

NAYS—44

Allard	Fitzgerald	Nickles
Allen	Frist	Roberts
Bennett	Gramm	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Helms	Snowe
Cochran	Hutchinson	Stevens
Collins	Hutchison	Thomas
Craig	Inhofe	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McConnell	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Madam president, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to table was agreed to.

AMENDMENT NO. 847, WITHDRAWN

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Brownback amendment No. 847.

Who yields time?

The Senator from Kansas.

Mr. BROWNBACK. Madam President, I want to say that I will not be requiring a vote on this amendment. At the end of a short statement, I will ask unanimous consent that the vote be vitiated. I am doing this because a number of people who looked at this amendment have said they are very interested, intrigued, and supportive, but they are not sure about the language. I think it needs to be tightened up some and reviewed.

Indeed, the chairman stated to me his desire to look at this issue in further depth later in the year. That is why I will be pulling this from a vote. We are talking about prohibiting the taking of genetic material from outside the human species and injecting it into the human species, to where it can be passed on to future generations.

I point out to my colleagues that this is the modern face of eugenics, the desire to create perfect people, as if we can become a biologically perfectible artifact. This is a dangerous thing. It is an ugly thing that has reared its head in history previously, and its modern face involves taking genetic material wherever we can find it and putting it in. It should be banned. It is currently allowed. It is currently being researched in this country. It should be stopped.

I look forward to working with the chairman of the HELP Committee to see if we can tighten up the language to address it in the Congress in the near term before people start actually doing this. It is completely allowed now, with no prohibitions. We limit it more in other species than we do in humans.

I ask unanimous consent that the rollcall vote on the Brownback amendment be vitiated and that the amendment be withdrawn.

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

AMENDMENT NO. 849

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Ensign amendment No. 849.

Who yields time? The Senator from Nevada.

Mr. ENSIGN. Madam President, I am going to ask unanimous consent in a moment to temporarily lay this amendment aside so we can work out the language. There seems to be support on both sides of the aisle for this amendment. There is just slight disagreement on the language.

I ask unanimous consent that my amendment No. 849 be temporarily laid aside to recur at the concurrence of the bill managers.

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

AMENDMENT NO. 848

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 848 by the Senator from Nevada.

Mr. ENSIGN. Madam President, we can actually have a vote on this amendment. This amendment is about protecting health care providers who voluntarily give of themselves, give of their services, and this amendment will protect them from being sued.

Last night in the debate, the Senator from North Carolina mentioned the Volunteer Protection Act of 1997 already takes care of the health care providers. In fact, it does not. It defines a volunteer as ''an individual performing services for a nonprofit organization or governmental entity who does not receive compensation or any other thing of value in lieu of compensation.''

I was speaking to one of my neighbors. He is a general surgeon. He was just in an emergency room last week. He saw a patient who did not have health insurance, could not afford to pay, and he voluntarily saw this patient. I do not think it would be right for people to volunteer and then be sued.

My amendment says if, out of the goodness of your heart, you work at a clinic, such as Dr. Chanderraj, a friend of mine who is a cardiologist in Las Vegas—he takes care of the poor on the weekends, and yet he has to carry malpractice insurance.

Many doctors and health care providers who volunteer their services for the poor should be encouraged, not discouraged, to give their services.

I urge the adoption of this amendment. It is the right thing to do, just as the Good Samaritan Act and the Volunteer Protection Act of 1997 were the right things to do.

The PRESIDING OFFICER. Time has expired. Who yields time in opposition? The Senator from North Carolina.

Mr. EDWARDS. Madam President, Senator Coverdell offered legislation in 1997, as the Senator referred to, called the Volunteer Protection Act that does what this amendment is aimed at. It provides specific protection for people who provide volunteer services. Physicians are included in that legislation.

Further, there is a specific provision in that legislation which provides that State laws can remain in effect and States are given wide latitude to opt out and enact their own legislation on this issue. There is no such provision in this amendment.

Legislation, offered by Senator Coverdell and passed in 1997, covers this issue. If the Senator wants to attempt to amend that legislation, that would be the appropriate vehicle, not this vehicle. This legislation we are debating today is the Bipartisan Patient Protection Act. It is about HMO accountability and HMO reform. These issues that are not directly related to HMO reform and HMO accountability do not belong on this legislation. For that reason, we oppose this particular amendment.

I yield the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EDWARDS. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—52

Akaka	Durbin	McCain
Baucus	Edwards	Mikulski
Bayh	Feingold	Miller
Biden	Feinstein	Murray
Bingaman	Graham	Nelson (FL)
Boxer	Harkin	Nelson (NE)
Breaux	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Shelby
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	
Dorgan	Lincoln	

NAYS—46

Allard	Enzi	Nickles
Allen	Fitzgerald	Roberts
Bennett	Frist	Santorum
Bond	Gramm	Sessions
Brownback	Grassley	Smith (NH)
Bunning	Gregg	Smith (OR)
Burns	Hagel	Snowe
Byrd	Hatch	Specter
Campbell	Helms	Stevens
Chafee	Hutchinson	Thomas
Cochran	Hutchison	Thompson
Collins	Inhofe	Thurmond
Craig	Kyl	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	
Ensign	McConnell	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as a point of information, we have the Thompson amendment. It is agreed by the managers we would have a minute on either side and then go to a rollcall vote. We ask our Members to remain in the Chamber, if they would. We are prepared.

Mr. GREGG. Madam President, if the Senator will yield, I would like to also note after the Thompson amendment it is expected the order of amendments will be Senator SMITH of Oregon for 30 minutes, Senator NICKLES for 30 minutes, Senator SANTORUM for 40 minutes, and Senator ALLARD for 30 minutes. We will enter into a unanimous consent agreement after the vote, hopefully, to get that order worked out.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 819

Mr. KENNEDY. Mr. President, I ask unanimous consent that on the Thompson amendment we have 4 minutes equally divided. I ask unanimous consent it be in order to consider the yeas and nays for a vote.

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

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

The PRESIDING OFFICER. The amendment is now pending. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time? The Senator from Tennessee.

AMENDMENT NO. 819, AS MODIFIED

Mr. THOMPSON. I call up amendment No. 819 and I send a modification to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 819), as modified, is as follows:

On page 150, strike line 17 and all that follows through page 153, line 8, and insert the following:

''(9) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—A cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102 and 103 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) or paragraph (10)(B), with respect to a participant or beneficiary, unless the requirements of subparagraph (A) are met.

''(C) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

The court in any action commenced under this subsection shall take into account any receipt of benefits during such administrative processes or such action in determining the amount of the damages awarded.

''(D) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 103 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal court proceeding and shall be presented to the trier of fact.

On page 165, strike line 15 and all that follows through page 168, line 3, and insert the following:

''(4) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), a cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102, 103, and 104 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) LATE MANIFESTATION OF INJURY.—

''(i) IN GENERAL.—A participant or beneficiary shall not be precluded from pursuing a review under section 104 of the Bipartisan Patient Protection Act regarding an injury that such participant or beneficiary has experienced if the external review entity first determines that the injury of such participant or beneficiary is a late manifestation of an earlier injury.

''(ii) DEFINITION.—In this subparagraph, the term 'late manifestation of an earlier injury' means an injury sustained by the participant or beneficiary which was not known, and should not have been known, by such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied.

''(C) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) unless the requirements of subparagraph (A) are met.

''(D) FAILURE TO REVIEW.—

''(i) IN GENERAL.—If the external review entity fails to make a determination within the time required under section 104(e)(1)(A)(i), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 104(e)(1)(A)(i).

''(ii) EXPEDITED DETERMINATION.—If the external review entity fails to make a determination within the time required under section 104(e)(1)(A)(ii), a participant or beneficiary may bring an action under this subsection and the filing of such an action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 104(e)(1)(A)(ii).

''(E) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

''(F) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 104 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal or State court proceeding and shall be presented to the trier of fact.''

Mr. KENNEDY. Can we have order, Mr. President? We have had great cooperation of the Members. We have made good progress during the morning. We thank Senator GREGG for outlining the series of amendments and

the time that will be necessary. We are moving along with consideration of the legislation. The Senator from Tennessee is entitled to be heard. Can we have order in the Senate?

The PRESIDING OFFICER. The Senate cannot proceed until there is order in the Senate. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, this amendment has to do with the exhaustion of administrative remedies. As stated the other day, we have in this underlying legislation quite an elaborate procedure for administrative review so independent entities, at at least two different levels, have an opportunity to make a determination on a claim. Then the underlying bill allows a claimant to go to court if they are not satisfied. The problem we saw in the underlying bill is in many cases there was not a requirement that that administrative process be gone through, that very easily you could jump right to the court.

I think no one really wants to do that. We have set up this administrative appeal process, which is a good one, and we want to use it.

What we seek to do in this amendment is to basically require the exhaustion of administrative review, administrative remedies, before a claimant goes to court.

We had a good discussion with the other side. The concern was expressed that the modification should recognize an injury for which a claim has been denied might later become more serious, after the timeframe for exhausting external review has expired.

That is a legitimate concern. If someone has a later-developed injury that did not manifest itself early on, there should be a provision so they are not deemed to not have exhausted administrative review so they could never go to court. So we have addressed that in this modification.

The other concern was what if the external entity simply sits on the matter and doesn't come within the 21 days allowed under the bill to make its determination. We say in this modification, if the external entity takes longer than that, we give them another 10 days and then we allow the claimant to go to court.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. THOMPSON. I ask for an additional 20 seconds.

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

Mr. THOMPSON. Under those circumstances, the claimant would still have to exhaust their administrative appeal, but they could go ahead and file the lawsuit in the meantime under, what I think are very rare circumstances. So with that modification I think we have a good process set up so this elaborate administrative process we have established in the bill will actually be utilized.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

May we have order in the Chamber, please.

Mr. EDWARDS. I thank the Senator from Tennessee. This is another example of what can be done when we tackle these problems together and try to find solutions. As the issue of scope and employer liability, with a number of Senators on both sides of the aisle, now we are doing it on the issue of exhaustion of administrative remedies, exhaustion of appeals.

This amendment meets the very principle by which we began this legislative drafting, which is we want patients to get the care they need. The most effective way to do that is to have an effective appeals process.

What we have done in this process is, No. 1, require that the patient, the claimant, go through the appeal before going to court, exhausting those appeals. That is the easiest way and the most efficient way to get them the care they need.

The second thing we do is provide an outlet in case the appeals process drags on and it does not operate the way it should. If it is longer than 31 days, then the patient will be able to go to court. But, as the Senator from Tennessee points out, they will have to simultaneously exhaust the administrative appeal.

Third, we have now provided specifically that the result of the administrative appeal will be admissible in any court proceeding, which is another important element of this amendment.

I thank my friend from Tennessee. I thank him for working with us on this issue. I think we have an issue about which we now have consensus and we are pleased to be there.

I yield the remainder of my time.

I ask for the yeas and nays.

Mr. NICKLES. Were the yeas and nays ordered on the amendment or the modification?

The PRESIDING OFFICER. They were ordered on the amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent the yeas and nays be vitiated on the amendment and they be ordered on the modification.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the Thompson amendment No. 819, as modified.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 213 Leg.]

YEAS—98

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

NOT VOTING—2

Domenici Murkowski

The amendment (No. 819), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. THOMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, how long did that vote take?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Tennessee and the Senator from North Carolina. The last amendment was an important amendment. It was a major step forward. That amendment, along with the Snowe amendment and several others that have passed, has immeasurably helped this legislation.

I thank the Senator from Tennessee and the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join with the comments of the Senator from Arizona. In the trades, that was ''a biggie.'' It was a very positive action to make sure that the exhaustion of the appeals process is a true exhaustion of the appeals process and we don't go straight to the court system. I congratulate the Senators from North Carolina and Tennessee for achieving that resolution.

AMENDMENT NO. 847

Mr. HATCH. Mr. President, I rise to oppose amendment No. 847 offered by my friend from Kansas, Senator BROWNBACK.

This amendment purports to establish safeguards with respect to medical treatments that encompass therapies directed at genetic defects. The amendment would impose criminal sanctions, including imprisonment of up to 10

years, on those who violate the restrictions on modifying the human genetic structure.

Not only is this the wrong time to consider this amendment, it is also the wrong piece of legislation on which to consider this amendment. In all candor, I must tell my colleagues that in my view, based on my preliminary reading of this amendment, I greatly doubt there will ever be a right time for this proposal.

I have no doubt that this amendment is well-intentioned.

I have worked with Senator BROWNBACK many times in the past on many issues, including many important right-to-life issues, such as outlawing partial birth abortion. Both he and I are proud to call ourselves pro-life Senators.

But, as my colleagues are aware, Senator BROWNBACK and I happen to disagree on the issue of federal funding for embryonic stem cell research. I understand and completely respect his views on this issue.

In a nutshell, the Brownback amendment attempts to regulate genetic research. But I am afraid that it might regulate this critical avenue of research right out of existence.

This is an exceedingly complex and dynamic field of science.

It is certainly not the type of legislation that we want to attach as a nongermane amendment to a bill that does not directly relate to biomedical research.

My goodness, we have our hands full enough with HMOs and the Patients' Bill of Rights. We do not need to further complicate an already complex bill with this language.

Why do we need to take floor time on this proposal? Have there been hearings on this language? Has there been a committee mark-up on this bill?

Isn't the reason why we have committee hearings and committee markups so that complex issues can be adequately aired by members of the critical committees before the full Senate debates an issue?

There is much virtue for letting legislation ripen and be scrutinized in committee before the entire body debates the merits of proposals such as this amendment.

I think we should defeat this amendment today so that the relevant committees can thoroughly review this legislation.

While I strongly believe that we should defeat this amendment on strictly procedural grounds, I do want to make a few comments on some initial problems that I have with respect to the substance of the bill.

First, because there are over 300 diseases thought to be caused by a defect in a single gene, we must be extremely careful that we do not cut off or unduly impede vital research on such diseases.

As a co-sponsor of the Orphan Drug Act of 1984, I know very well how millions of American families must struggle each day with small population but highly debilitating diseases such as multiple sclerosis, ALS, and Fragile X Syndrome.

The problem with the Brownback amendment is that it appears to thwart research on gene therapies that may lead one day to cures for many of these single-gene diseases. It would not be right for the Senate to hastily adopt language that derails research on such crippling diseases as Alzheimer's or Parkinson's.

I am concerned with what the definition of human germline gene modification in section 301 of the Brownback bill could do when it is read in context of section 302 of his legislation. The amendment's definition of human germline modification is ambiguous.

As one attorney representing the biotechnology industry has characterized the reach of this definition:

> Among other problems, which of the examples listed are ''sources'' of ''forms'' of DNA and why does it matter? Moreover, the sentence—and he is referring to the first definition in section 301 which describes human germline modification—ends by referring to ''including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.'' To what part of the first sentence defining ''human germline modification'' is the language referring? Does the last sentence of the definition, ''Nor does it include the change of DNA involved in the normal process of sexual reproduction'' prohibit in vitro fertilization? Does any part of the amendment prohibit or allow in vitro fertilization? What genetic technologies does ''normal'' cover, if any?

Without objection, I would like to place in the RECRD a copy of this legal memorandum prepared by Edward Korweck of the law firm of Hogan & Hartson. As I understand it, this memorandum was written on behalf of BIO, the biotechnology industry association.

I also ask unanimous consent to place in the RECORD a copy of a letter from BIO to Senator LOTT opposing the Brownback amendment. This letter voices its opposition to the amendment by stating:

> Let's not cripple essential medical research for a host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease, and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

This argument must be considered by all members of the Senate.

The question of how in vitro fertilization relates to the normal process of sexual reproduction is a question of great importance because it appears to directly implicate the science of embryonic stem cell research.

Specifically, we need to know this language would treat research with human pluripotent stem cells.

We all know where Senator BROWNBACK stands on that issue. While I generally agree with my friend from Kansas, I disagree with him on embryonic stem cell research.

This is an issue that deserves careful consideration by each Senate. I welcome this debate. But today is not the time. We simply need to know all the implications of the Brownback language before we even consider such legislation.

In my view, this Senate should go on record as supporting federal funding for embryonic stem cell research. And we certainly do not want to turn back the clock on the type of gene therapy research that has been conducted for over 20 years.

This is simply not the kind of measure that you try to slip into an unrelated bill.

All interested parties—patient groups, religious and advocacy organizations, scientists, health care providers, biotechnology firms—deserve to be fully consulted on how the language of this measure will affect their interests.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

BIOTECHNOLOGY INDUSTRY ORGANIZATION,
Washington, DC, June 27, 2001.

Hon. TRENT LOTT,
U.S. Senate,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the Biotechnology Industry Organization (BIO), I am writing to express BIO's opposition to an amendment that may be offered by Senator Brownback regarding germ line gene modification. This amendment may come up for a vote on the Senate floor as early as today during consideration of S. 1052—the McCain, Kennedy, Edwards Bipartisan Patient Protection Act. I urge you to vote against the Brownback amendment if it comes up for a vote.

BIO opposes germ line gene modification and we support the moratorium on germ line gene modification that has been in place for over a decade. This moratorium has allowed critical genomic research to continue while prohibiting unsafe and unethical work. To our knowledge, all scientists have complied with this moratorium.

Unfortunately, the Brownback amendment reaches far beyond germ line gene modification. It attempts to regulate genetic research—a complex and dynamic field of science that holds great potential for patients with serious and often life-threatening illnesses. This proposal also could prohibit research on human pluripotent stem cells. Since these cells have been demonstrated to form any cell in the body they hold enormous therapeutic potential.

Let's not cripple essential medical research for host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

Furthermore, to our knowledge there has been no consultation with the scientific community, researchers, physicians, or patient groups prior to the filing of the Brownback amendment. This is particularly troubling because the amendment calls for severe sanctions, including imprisonment of biotech researchers.

I urge you to vote against this amendment. If you have questions, please call me at 202–857–0244. Thank you for your consideration on this important matter.

Sincerely,

W. LEE RAWLS,
Vice President, Government Relations.

MEMORANDUM

JUNE 28, 2001.

To: Michael Werner, Esquire, BIO Bioethics Counsel.

From: Edward L. Korwek, Ph.D., J.D.

Re: Some Initial Comments/Analysis of the Brownback Amendment.

The Brownback Amendment is poorly worded and confusing as to its precise coverage. It uses a variety of scientific terms and other complex language both to prohibit and allow certain gene modification activities. Many of the sentences are composed of language that is incorrect or ambiguous from a scientific standpoint. A determination needs to be made of what each sentence of the Amendment is intended to accomplish.

As to a few of the important definitions, the term ''somatic cell'' is defined in proposed section 301(3) of Chapter 16, as ''a diploid cell (having two sets of the chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development.'' What does ''of almost all body cells'' mean? Is this an oblique reference to the haploid nature of human sex cells, i.e., sperm and eggs? Also, why is it important to describe in such confusing detail from where the cells are derived (in contrast to simply saying, for example, a somatic cell is a human diploid cell)? From a scientific standpoint, the definition of a somatic cell is not dependent on whether the cell is from living or dead human beings. More importantly, as to this human source issue, when does a ''human body'' exist such that its status as ''living'' or ''dead'' or its ''stages of development'' become relevant criteria for determining what is a ''somatic cell.''

Similarly, the definition of ''human germline modification,'' especially the first sentence, is very convoluted. The first sentence states:

''The term 'human germline gene modification' means the intentional modification of DNA of any human cell (including human eggs, sperm, fertilized eggs (i.e., embryos, or any early cells that will differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.''

Among other problems which of the examples listed are ''sources'' or ''forms'' of DNA and why does it matter? Moreover, the sentence ends by referring to ''including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.'' To what part of the first sentence defining ''human germline modification'' is this language referring? Does the last sentence of the definition, ''Nor does it include the change of DNA involved in the normal process of sexual reproduction'' prohibit in vitro fertilization? Does any other part of the Amendment prohibit or allow in vitro fertilization? What genetic technologies does ''normal'' cover, if any?

Similarly, the second sentence in the definition, stating what is not covered by the definition of ''human germline modification,'' contains three ''not'' words, leaving the reader to decipher what exactly is ''not'' human germline modification'': ''The term does not include any modification of cells that are not a part of and will not be used to construct human embryos'' (emphasis added). Also, what is an ''embryo'' for purposes of this Amendment and what does ''part of'' mean? Are (fertilized) sex cells ''part of'' an embryo?

These and other problems leave the bill unsupportable in its current form. Due to this imprecision, the amendment's impact is unclear and seemingly far reaching.

AMENDMENT NO. 848

Mr. ENSIGN. Mr. President, this pro bono amendment will benefit doctors across the country. A prime example is my neighbor, Dr. Dan McBride. Dr. McBride has provided medical care to individuals and families free-of-charge for years. He understands that not all Nevadans can afford health care insurance each month, and that many cannot even afford to go to the doctor once each year; but that does not mean that they are not deserving of proper health care. This amendment will ensure that doctors such as Dan McBride can continue providing free health care to the less fortunate without fear of lawsuits.

AMENDMENT NO. 849

Mr. KENNEDY. Mr. President, today we are at the threshold of astonishing new progress in medicine. New discoveries in genetics and other areas of biomedical research will revolutionize the diagnosis and treatment of countless disorders. This astonishing potential to relieve suffering will be squandered if patients fear that their private genetic information will become the property of their insurance companies and their employers, where it can be used to deny people health care and deny workers their jobs.

To protect all Americans against genetic discrimination in health insurance and employment, I am proud to support the important legislation that Senator DASCHLE has introduced on this issue. I commend my colleague, Senator ENSIGN for bringing this basic issue to the floor of the Senate, and I look forward to working closely with him in the days to come.

However, Senator ENSIGN's amendment has several shortcomings that lead me to believe that it is not the right policy for us to adopt to end genetic discrimination. Yet in the interests of stimulating debate on this important issue and to speed the termination of debate on the Patients' Bill of Rights, I am prepared to accept it as an amendment to the bill. But next month, in our Committee, we will have a full and thoughtful discussion of this issue in our committee and a thorough debate on the Senate floor.

Senator ENSIGN's amendment fails to provide protections that are essential. The amendment does not address the important issue of discrimination in the workplace. Genetic discrimination in employment is real and it's happening all across America. Effective legislation on this issue must include protections for workers.

We must realize that genetic information will be commonplace in medicine and we must ensure that our definitions adequately protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the Ensign amendment do not properly protect genetic information. The definitions in this legislation allow employers and others to find dangerous loopholes in the protections offered by the legislation.

Finally, the remedies in the Ensign amendment do not provide adequate remedies for those whose rights have been violated. We should make sure that we allow those whose rights have been violated to seek proper recourse.

Despite these and other flaws in the Ensign amendment, I am prepared to accept the measure as a spur to future debate on this important issue. We will start from a clean slate in our committee deliberations and we will give this issue the thorough exploration it deserves. I look forward to a fresh debate and to taking action on Senator DASCHLE's important legislation.

Mr. DASCHLE. Mr. President, in an effort to move forward and complete debate on the Patient's Bill of Rights, the Ensign amendment on genetic discrimination, along with several other proposals, were included in a managers' package without a full vote of the Senate. It must be clarified that there are several problems with the Ensign proposal as offered, and we do not support this approach for dealing with genetic discrimination.

First, the Ensign amendment does not comprehensively address the problem of genetic discrimination. This amendment only covers genetic discrimination in health insurance and is silent on discrimination in the workplace. Simply prohibiting genetic discrimination in health insurance, while allowing it to continue in employment is no solution at all. Employers will simply weed out employees with a genetic marker. Additionally, the protections the amendment provides are so riddled with loopholes that health insurance providers would still have substantial access to individuals' private genetic information.

Recently, employees working at Burlington Northern Railroad were subjected to genetic testing without their knowledge or consent. The company was attempting to determine if any of the employees had a genetic predisposition for carpal tunnel syndrome—in an attempt to avoid covering any costs associated with the injury. Giving up your private genetic information shouldn't be the price you pay for being employed.

The Ensign amendment also fails to comprehensively cover all of the insured. We must create protections for all Americans regardless of where an individual gets his or her health insurance coverage. It is unconscionable to allow genetic information to be used to discriminate against anyone—access must be limited appropriately to ensure that no American is left vulnerable.

Finally, the Ensign amendment does not create a private right action—leaving individuals without an adequate remedy. Clearly, providing protections without proper enforcement provisions makes any protection meaningless.

We've seen a revolution in our understanding of genetics—scientists have finished mapping our genetic code, and

researchers are developing extraordinary new tests to determine if a person is at risk of developing a particular disease. But with increased understanding of the possibilities of the genome uncovers, comes increased responsibilities. We simply cannot take one step forward in science while taking two steps back in civil rights.

The HELP committee will move forward with consideration of this issue this summer. We welcome the opportunity to work with Senator ENSIGN and other Republicans on a comprehensive genetic non-discrimination bill that can command bipartisan support. It is our hope that we can bring up and pass a bill later this summer.

Mr. GREGG. I now propound a unanimous consent request relative to the order of the following amendments to which we will be proceeding. The first would be Senator SMITH for 30 minutes equally divided. The second would be Senator ALLARD, 30 minutes equally divided. The third amendment would be Senator NICKLES, 30 minutes equally divided. The fourth would be Senator SANTORUM, 40 minutes equally divided. And the fifth would be Senator CRAIG, 30 minutes equally divided.

The substance of the amendments or the purposes of the amendments have been presented to the other side. I can run through those if Members wish to hear them.

The PRESIDING OFFICER. Is there objection?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator has shared the substance. Members will hear the explanations, but the Smith amendment deals with tax credits; the Allard amendment, with exclusions for smaller businesses in terms of the numbers of employees; the Nickles amendment is an expansion to other Federal health programs; Santorum deals with punitive damages; and the Craig amendment deals with medical savings accounts. We are familiar with the subject matter. We have no objection to that as an order, and we believe the time recommended will help us move this process along and will be sufficient to evaluate the amendments.

Mr. REID. Mr. President, we want to just make sure that the vote is in relation to the amendments offered in the usual form with no second-degree amendments in order prior to the vote.

Mr. GREGG. That is acceptable——

Mr. REID. And also that the time limit be as outlined and the time for debate—there would be an opportunity to file a motion prior to the vote in relation to the amendment.

Mr. GREGG. Do you mean a motion to table?

Mr. REID. Yes.

The PRESIDING OFFICER. The Senator so amends his request?

Mr. GREGG. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Mr. President, I inquire of the Senator from Nevada whether or not it would be possible to stack these votes or whether the jury is still out on that?

Mr. REID. We should wait on that. We have a number of people on this side who want to vote after every amendment. We will work on that.

Mr. GREGG. I point out to the Senator, as I know and he knows, by not stacking the votes we add a considerable amount of time to this exercise. We are trying to move these amendments in a prompt and reasonable fashion. I think that has been shown in the process throughout the weeks here. We end up delaying if we don't stack votes.

Mr. REID. The managers have worked so hard and the leaders have conferred about this legislation. We will work on that. We hope that the Senator from New Hampshire will give us a finite list of amendments. Once that happens, I am sure we can quickly arrive at a time to dispose of this and the votes could be stacked.

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

The Senator from Oregon is recognized.

MOTION TO COMMIT

Mr. SMITH of Oregon. Mr. President, I send a motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH] moves to commit the bill, S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that further reading of the motion be dispensed with.

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

The motion is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment that—

(1) strikes all after the enacting clause and inserts the text of S. 1052, as amended,

(2) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41,

(3) provides that H.R. 3, as amended pursuant to paragraphs (1) and (2), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and

(4) provides that H.R. 3, as so amended, is not subject to a budget point of order.

Mr. SMITH of Oregon. Mr. President, for myself, Senator HATCH, Senator ALLEN, and others, I have sent to the desk a motion to commit S. 1052 to the Finance Committee with instructions to make permanent the research and development tax credit. We are joined in this also by Senators CRAPO, CRAIG, BENNETT, BROWNBACK, BURNS, HUTCHINSON, ALLEN, and ENZI.

As a Member of the Senate high-tech task force, I believe that the R&D tax credit is essential to the technology community, and also to the pharmaceutical community.

This credit encourages investment in basic research that, over the long term, can lead to the development of new, cheaper, and better technology products and services. The research and development is certainly essential for long-term economic growth.

Innovations in science and technology has fueled the massive economic expansion we have witnessed over the course of the 20th century. These achievements have improved the standard of living for nearly every American. Simply put, the research tax credit is an investment in economic growth, new jobs, and the important new products and processes that we need in our lives.

The R&D tax credit must be made permanent. This credit, which was originally enacted in 1981, has only been temporarily extended 10 times. Permanent extension is long overdue.

Because this vital credit isn't permanent, it offers businesses less value than it should. Businesses, unlike Congress, must plan and budget in a multiyear process. Scientific enterprise does not neatly fit into calendar or fiscal years.

R&D development projects typically take a number of years, and may even last longer than a decade. As our business leaders plan these projects, they need to know whether or not they can count on this tax credit.

The current uncertainty surrounding the credit has induced businesses to allocate significantly less to research than they otherwise would if they knew the tax credit would be available in future years. This uncertainty undermines the entire purpose of the credit.

Investment in R&D is important because it spurs innovation and economic growth. Information technology, for example, was responsible for more than one-third of the real economic growth in 1995 through 1998.

Information technology industries account for more than $500 billion of the annual U.S. economy. R&D is widely seen as a cornerstone of technological innovations which, in turn, serves as a primary engine of long-term economic growth.

The tax credit will drive wages higher. Findings from a study, for example, conducted by Coopers & Lybrand show that workers in every State will benefit from higher wages if the research credit is made permanent.

Payroll increases as a result of gains in productivity stemming from the credit have been estimated to exceed $60 billion over the next 12 years.

Furthermore, greater productivity from additional research and development will increase overall economic growth in every state in the Union. Research and development is essential for long-term economic growth.

The tax credit is cost-effective. The R&D tax credit appears to be a cost-effective policy instrument for increasing business R&D investment. Some recent studies suggest that one dollar of

the credit's revenue cost leads to a one dollar increase in business R&D spending.

There is broad support among Republicans for the credit, and President Bush included the credit in the $1.6 trillion tax relief plan.

I urge my colleagues to support this amendment, and I thank Senator HATCH and Senator ALLEN, the chief cosponsors, for providing us with the opportunity of increasing the size of the tax cut to include this important priority but which, unfortunately, was left out of the tax bill that we recently passed.

Before I yield to Senator ALLEN for his comments, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second?

The yeas and nays were ordered.

Mr. SMITH. I yield the remainder of my time to Senator ALLEN.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I rise in support of the amendment and very much thank Senator GORDON SMITH of Oregon for his leadership and for giving us the opportunity to vote on this very important amendment and principle and tax policy that is essential for the United States to compete and succeed in the future. I also commend the Senator from Utah, Mr. ORRIN HATCH, for all his work over the years, and especially this year, in advocating this measure.

As chairman of the high-tech task force on the Republican side of the Senate, we have endorsed this idea. We have been working on this idea. Unfortunately, as the Senator said, it was not included in the tax bill. But the reason that this is so important is that research and technology—generally speaking, research in biotechnology and pharmaceuticals—is at stake with this amendment and this research and development tax credit.

Up here in Washington, we are making decisions for a year or so, or even a 5-year budget, and even once in a while we do projections over 10 years. In private industry and business, their planning needs to be long-term. In particular, when you think of research and development into pharmaceuticals, the amount of research that goes into putting forward a drug before getting it to patent, to the market, and so forth, it is not just the research and the labs; there are clinical trials that go on year after year, and hopefully you will get a patent; and for a short period of time you will have a window of opportunity on that prescription drug, for example.

So this tax policy is very important so that businesses have certainty, that there is credibility, stability, predictability to devote the millions and, indeed, in some cases, billions of dollars to research and development and technology.

The issue is jobs and competition for the people of the United States. We, as Americans, need to lead in technological advances. The R&D tax credit is very important in microchips or semiconductor chips. It is important in communications research and development. It is important in life sciences and medical sciences and, obviously, that includes biotechnology and pharmaceuticals.

Making the R&D tax credit permanent, as Senator SMITH says, actually is cost effective. It makes a great deal of sense. Studies suggest every dollar of revenue cost leads to a $1 increase in business R&D spending. These are good jobs and it also allows us as a country to compete.

A permanent extension is long overdue. As Senator SMITH said, it has been extended every now and then for a few years. Once in a while it lapses. Businesses cannot plan that way. They have to make sure it stays constant. Publicly traded companies have their quarterly reports, their shareholder reports, and the amount of investment they get in their companies based on how they are operating and managing that company.

If you have changing tax laws or lack of credible, predictable tax policies that foul up that whole system, that makes them less likely to want to invest and take the risk of billions of dollars in research and development if they are not certain of the long term.

This amendment to make the research and development tax credit permanent will spur more American investment; it will create more American jobs—and they are good paying jobs—and that will lead us to better products, better devices, better systems, and better medicines.

I hope the Senate will work in a unified fashion on this amendment by Senator SMITH to make permanent the research and development tax credit so Americans get those good jobs, but, most importantly, allow America to compete and succeed and make sure America is in the lead on technological advances, whether they are in communications, in education, in manufacturing, or the medical or life sciences.

I again thank the Senator from Oregon, Mr. SMITH, for his great leadership, as well as that of ORRIN HATCH.

I yield back the time I have at this moment and reserve whatever time may remain on our side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a Patients' Bill of Rights bill. This is not a defense bill. This is not a foreign aid bill. This is not an agriculture bill. This is not a tax bill. This is the Patients' Bill of Rights bill.

The amendment offered by my good friend from Oregon is not a Patients' Bill of Rights amendment. It is a tax amendment. In fact, he would like to report out of the Finance Committee, by his amendment, a bill that is currently in the Senate Finance Committee, a tax bill. Tax legislation does not properly lie at this moment on this bill. Pure and simple. Full stop. That ends it.

I also say to my good friend from Oregon, I agree with permanent extension of the R&D tax credit. I daresay a majority of Senators agree. I cosponsored legislation in the past. The Finance Committee reported out a permanent extension, and the Senate-passed tax bill, that huge tax bill of $1.35 trillion, included permanent extension of the tax credit. Unfortunately, it did not survive in conference, but it is clear that the R&D tax credit has enormous support in this body.

Does anybody here think there is not going to be another tax bill? Of course, nobody here believes there will not be another tax bill. There will be tax legislation this year. That is clear. The appropriate time for this Senate to appropriately include considering permanent extension of the R&D tax credit is when the tax legislation comes up.

The current provision expires December 31, not 2001, not December 31, 2002, not December 31, 2003; it expires December 31, 2004, over 3 years away. In all the years we have been extending the R&D tax credit, that is probably the longest extension that has existed.

I agree with my good friend; it should be permanent. This yo-yo, up-and-down, back-and-forth, on-again off-again application of the R&D tax credit by this body does not make good sense. It is wrong.

This is not a tax bill; this is a Patients' Bill of Rights bill. There will be tax legislation. When there is tax legislation before this body, that is the time we can appropriately consider permanently extending the R&D tax credit.

I wish my good friend would withdraw his amendment because this is not the proper time and place for it. If he does not wish to withdraw it, I urge my colleagues to not support it because this is not the time and place. Were it to pass, the door would be open and we would be writing another tax bill. We have already passed a big tax bill. We passed a tax bill of 1.35 trillion bucks. That is a big tax bill. This is not the time and place.

Mr. REID. Will the Senator yield for a question?

Mr. BAUCUS. I yield to my good friend from Nevada.

Mr. REID. Mr. President, as chairman of the Finance Committee, the Senator from Montana made commitments to a number of people, including this Senator, that he is going to do everything in his power as chairman of the Finance Committee to make sure there are other tax vehicles this year; is that true?

Mr. BAUCUS. That is absolutely true. There are many Senators who wanted to offer tax provisions to this bill but deferred, recognizing this is not the time and place. It is Ecclesiastes, Mr. President: Essentially there is a time and place for everything. This is not the right time and place for tax legislation.

Mrs. BOXER. Will my colleague yield to me for a question?

Mr. BAUCUS. I ask how much time is remaining on both sides?

The PRESIDING OFFICER. Eleven minutes to the opponents; 4 1/2 minutes to the proponents.

Mr. BAUCUS. I yield to my good friend from California.

Mrs. BOXER. I want to ask the distinguished chairman of the Finance Committee this question. As someone who comes from the largest State in the Union, on the cutting edge of high tech, making the R&D—or R&E sometimes called—tax credit permanent has been a priority of mine for a long time.

Will my friend tell me, if this is such an important priority to those who, in fact, had the majority at the time the tax bill was written, namely, the Republicans, and the President certainly was working at that time with Senator GRASSLEY, could they not have put the extension of the R&D tax credit into the big tax bill that was brought to this Chamber?

Mr. BAUCUS. Mr. President, the Senator from California makes a very good point. Clearly, the President could have included a permanent extension of the R&D tax credit in his proposed tax legislation. The Senate was then controlled by the Republican Party, and it certainly could have put in the R&D tax credit, and it probably would have survived conference if they pushed it.

I say to my friend from California, this is only speculation, but that was not provided for because the current extension, the current provision is in place at least until December 31, 2004. So there is time for the R&D tax credit to take effect, and at a later date we can make it permanent.

Mrs. BOXER. I say to my friend, then that is the same comment we can make to our colleagues who are trying to put this on a Patients' Bill of Rights. The R&D tax credit is in effect until 2004. Let's get an appropriate vehicle where we can all walk together and support the R&D tax credit and not put it on the Patients' Bill of Rights.

I thank my friend for yielding.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I say to my friend from Montana, I want to put this on whatever moves. I know it does not expire until 2004. I also know President Bush did include this in his original tax bill, but that was moved down then. It was unfortunate it was moved down.

I want to see us do it as quickly as we can for the simple reason that businesses need to make planning and expenditures that last an awful long time. The year 2004 does not fit with some of those plans that need to be made.

This is not unrelated to medicine and patients' health. Part of the technological development we are hoping to continue to provide to our people is in the pharmaceutical and biotechnological areas which do have a direct bearing on patients' health. The best right a patient can have is good health. This will facilitate that a great deal, perhaps as much as anything else in the bill.

I ask unanimous consent to send a modification of my motion to the desk.

Mr. BAUCUS. Reserving the right to object, could the Senator share with the Senate the contents of the modification; otherwise, I will be constrained to object.

Mr. SMITH of Oregon. It is simply to comply with the Parliamentarian's request to be consistent with Senate requirements.

Mr. BAUCUS. I do not object.

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

The motion, as modified, is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41,

(2) provides that S. 1052, as amended pursuant to paragraph (1), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and

(3) provides that S. 1052, as so amended, is not subject to a budget point of order.

Mr. REID. Has everyone yielded back their time?

Mr. SMITH of Oregon. I yield 1 minute to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms and small businesses against the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bill.

More important than all the procedure is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being made permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and those decisions need to be made so they can create the jobs, get our economy going again, and improve our lives.

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.

Mr. SMITH of Oregon. We yield back the remainder of our time.

Mr. BAUCUS. I ask, is all time yielded back?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes 50 seconds.

Mr. BAUCUS. Mr. President, I yield back my time and I make a constitutional point of order against Senator SMITH's motion on the grounds that the motion would affect revenues on a bill that is not a House-originated revenue bill.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask permission to enter a request for unanimous consent with the Senator from New Hampshire. I ask that the vote on the motion made by the Senator from Montana be set aside and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, we debate the Allard and the Nickles amendment, and vote on those three amendments at the conclusion of debate.

Mr. GREGG. We have 2 minutes equally divided prior to the Allard amendment and Nickles amendment to explain.

The PRESIDING OFFICER. Does the Senator so amend his request?

Mr. REID. Yes.

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

The Senator from Colorado is recognized.

AMENDMENT NO. 821

Mr. ALLARD. Mr. President, I call up amendment No. 821.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. ALLARD], for himself, and Mr. GREGG, Mr. CRAIG, Mr. NICKLES, Mr. ALLEN, Mr. INHOFE, Mr. SMITH of New Hampshire, Mr. GRAMM, Ms. COLLINS, Mr. SESSIONS, Mr. ENZI, and Mr. CAMPBELL, proposes an amendment numbered 821.

Mr. ALLARD. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To exempt small employers from causes of action under the Act)

On page 148, between lines 23 and 24, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

''(ii) DEFINITION.—In clause (i), the term 'small employer' means an employer—

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

''(II) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

''(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and

''(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

''(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

''(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

On page 165, between lines 14 and 15, insert the following:

''(D) EXCLUSION OF SMALL EMPLOYERS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1)(A) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).

''(ii) DEFINITION.—In clause (i), the term 'small employer' means an employer—

''(I) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and

''(II) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—

''(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and

''(bb) one or more small employers or employee organizations described in section 3(16)(B)(iii) in the case of a multi-employer plan.

''(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subparagraph:

''(I) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(II) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(III) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.''

Mr. ALLARD. Mr. President, my amendment provides another opportunity for the Senate to protect the country's employees of small businesses. Yesterday, the Senate voted on an amendment I offered that would have protected employees of small businesses from losing their health care insurance.

I am offering another amendment that gives Members another chance to protect those employees. My amendment, cosponsored by 12 Senators, protects employees of small businesses from losing their health insurance. My amendment exempts employers with 15 or fewer employees from unnecessary and unwarranted lawsuit.

We must protect small business employees from losing their health care insurance. Small business represents over 99 percent of all employers in America. If the Kennedy bill passes in its current form, small business employees will be subject to increased health care premiums and to the possibilities of losing their health care insurance altogether.

Based on studies from the Congressional Budget Office and the Lewin Group, the Kennedy bill will cause more than 1 million Americans to lose their health insurance. The White House estimates—and that is rather conservative, I believe, because the White House estimated even more Americans will lose their health care insurance—the Kennedy bill could cause 4 to 6 million Americans to lose their health care.

The least the Senate can do to protect small business employees from losing their health insurance and protect small employers from unnecessary liability is to pass this amendment. We are talking about employers that have 15 to 2 employees. Currently, numerous Federal laws provide exemption for small businesses and their employees.

In my previous amendment we talked about the 50 employee exemptions. The other side made the point it was unfair because we were creating a bright line and those with 49 employees would not have an opportunity to take advantage of benefits provided in the amendment as those with, say, 51 employees. This amendment draws a bright line. We are addressing the very small employers of the small business sector; that is, 15 employees or fewer. True, we have a bright line, but it is not unusual in Federal law to draw bright lines trying to differentiate where the respective law should deal with different sizes of employees, trying to draw a line between small employers and the larger employers.

Let me cite for Members some examples. The Occupational Safety and Health Act exempts businesses of 10 or fewer employees, workers, in certain low-hazard industries. The Americans with Disabilities Act defines the term ''employer'' as a person who has 15 or more employees engaged in an industry affecting commerce. This is the area where we have decided in this amendment to differentiate the very small employers from the other small businesses of this country. The Worker Adjustment and Retraining Modification Act, commonly referred to as the Plant Closing Act, defines the term ''employer'' as any business that employs 100 or more employees. The Family and Medical Leave Act, which requires employers to grant leave to parents to care for a newborn or seriously ill child, exempts businesses with fewer than 50 employees. The Fair Labor Standards Act, which established the minimum wage standards, exempts certain employers with minimum gross income—they did not use the number of employees—of less than $500,000 as an indication of what a small employer might be as it applies to that statute.

The Walsh-Healy Public Contracts Act, which contains minimum wage and overtime for federally contracted employers, exempts employers that have Federal contracts for materials exceeding $10,000, which also is indicative of a small employer. The Age Discrimination and Employment Act of 1967 exempts employers of 19 or fewer workers.

These numerous employee protections are currently in place as Federal law. The Senate should extend similar protections to employees of small business. If we do not protect employees from frivolous lawsuits, more than a million—some estimate up to 9 million employees—will lose their health care insurance.

Again, I am offering this amendment to provide the Senate with another chance to protect employees of small business from losing their health care insurance.

I inquire the time remaining on my side?

The PRESIDING OFFICER. The Senator has 9½ minutes.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, this is the third bite of the apple. The first bite was Senator GRAMM's amendment, where we were going to provide protection for all employers. Then we had the Allard amendment to protect an employer with 50 employees or less. Now with this amendment, we are down to 15.

The fact is, yesterday, if there was any question about what this legislation was really all about, it was well debated, discussed and addressed. That was in the amendment offered by Senator SNOWE of Maine and Senator DEWINE of Ohio. In their amendment, the Wall Street Journal says:

Employer protection makes gains. Senate passes rule to shield companies from workers' health plan lawsuits.

It is very clear now that the only employers, large or small, that are going to be vulnerable are those that take an active involvement in disadvantaging their employees in health care and putting them at greater risk of death or serious injury. That is it. The rest of this has been worked out. We have done it with 100 employees, we have done it with 50, and now we are down to 15. It makes no more sense today. Those employees should be adequately protected in these companies. I imagine, if the Senator is not successful

with 15, we will be down to 10, we will be down to 5, and then we will be down to 3.

We have addressed this issue. Every Member of this body ought to know it. I think this is a redundant amendment, one that we have addressed. The arguments are familiar. I yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, this is clear filibuster by amendment. I have been here a long time. I have seen this happen. As the Senator from Massachusetts pointed out, we have been here; we have done that. Next, as the Senator from Massachusetts indicated, it will be 10 employees, 5 employees, 4 employees, 3 employees.

When the time has expired on this amendment, I will offer a motion to table. This amendment should not be discussed. It should not take up the serious time of the Senate that has been so well used these past 9 days.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. I yield 2 minutes to the Senator from New Hampshire.

Mr. GREGG. I join the Senator from Colorado on this amendment. This bill is incredibly complex—to be kind. It has thousands of moving parts. The bureaucracy, which is going to be created and empowered as a result of it, is going to be massive. The lawsuits are going to be massive. The number of litigable events is going to be massive. It is going to be incomprehensible to large amounts of the American working public and their employers.

It is only elementary fairness that we say, to at least the smallest employers that are the ones creating the jobs in America today, you are not going to have to pay what will undoubtedly be your entire profit margin in order to try to comply with this new piece of legislation.

For employers that have 15 or fewer employees, it is simply fairness that we take them out from this cloud and give them the opportunity to give their people jobs and not be overwhelmed by the cost of this bill.

We have talked a lot about the costs of this bill, but let me cite a couple of figures. The cost to defend the average malpractice suit is $77,000. There are very few employers in this country that have less than 15 employees that are making more than $77,000. They are running a small business, a grocery store or restaurant, gas station, small retailer. These are the smallest businesses that create the most energy in our economy. That is where our jobs are created; they are created in these small businesses.

Let's not have those folks who are willing to be entrepreneurs for the first time in their lives, the first-time entrepreneurs who are willing to step into the risk pool of the capitalist system and, as a result, create jobs, let's not burden them with the bureaucracy and cost of this bill which we know is going to be extraordinary. Let's pass the Allard exemption for employers with 15 or fewer employees.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, let's just go back over what we are talking about this afternoon. First of all, the majority of small businessmen and women in this country are not involved in decisionmaking that affects the well-being of the employees. We know that. They basically are busy enough. It has been explained by Members that they are involved in running their businesses. This is really not an issue so much in terms of small business.

The only people that will be affected by this are the small businessmen or women who get hold of the HMO where they have the insurance and says, look, if any of my employees are going to run up a bill more than $25,000, call me up because I want to know. When that HMO calls up, the employer says: Don't give them the treatment. As a result of not giving that treatment, the child of an employee is put at risk, and perhaps dies, or the wife of an employee, who has breast cancer, is denied access into a clinical trial and may die as a result. This is only if you can demonstrate the employer is actively involved in denying the benefits to those employees. Are we going to say that all these employers, with 15 or fewer employees, are going to be completely immune from this when the only employer that has to worry about this is one who is going to be actively involved in making a decision that puts their employees at risk? We built in the protections with the Snowe-DeWine amendment. We built them in and we have supported them. But it seems to me that workers in these companies, which make up about 30 percent of the American workforce, ought to be given the same kinds of protections against the employers that are going to make that decision.

Make no mistake about it. The great majority of employers do not do that today. Only a very small group do. But if the small group that do do that are able to get away with it, there is an open invitation to other small businessmen and women, in order to keep their premiums down, to get involved in similar kinds of activities. This will offer carte blanche so that 30 percent of the American workforce will not be covered one bit with this legislation. It makes no sense. It didn't make any sense when it was first offered by Senator GRAMM; it didn't make any sense when it was offered previously by Senator ALLARD; and it makes no sense at this time.

The only people who have to worry are those employers that are going to connive, scheme, and plot in order to disadvantage their employees in ways that are going to bring irreparable harm, death, and injury to them. If you want to do that to 30 percent of the workforce and put them at that kind of risk, this is your amendment.

I do not think we should. I hope the amendment will be defeated.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Massachusetts has 9 minutes 23 seconds remaining. Who yields time?

Mr. ALLARD. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

Mr. NICKLES. My friend and colleague from Massachusetts said if you want to do this, you should sponsor this amendment. I am not sure I want to do what he just described, but I want to sponsor this amendment with my colleague and friend from Colorado. I ask unanimous consent to be listed as a cosponsor.

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

Mr. NICKLES. This amendment is vitally important for small business. This bill, the underlying bill, says employers beware, we are coming after you because we do not exempt employers.

Interestingly enough, we exempt Federal employees, we exempt Medicare, we exempt government plans, but we do not exempt private plans. Anybody who has a private plan, employers beware because they can sue you and they can sue the plan.

Oh, I know we came up with a little cover, and maybe you can put the liability under the form of a designated decisionmaker, and they can assume it. But guess what? They are going to charge the employer for every dime they think it is going to cost. And my guess is, the designated decisionmaker will want to have enough cover so they don't go bankrupt, so they are going to charge a little extra to make sure they have enough to protect them from the liability and the costs that are associated with this plan.

The cost of health care is exploding. Health care costs went up 12.3 percent nationally last year. They are supposed to go up more than that this year. That is not for small businesses. The cost of health care for small business is 20, 21, 22 percent, and that is without the cost of this bill.

CBO estimates the cost of this bill is 4.2 percent. But if you assume there is going to be a whole lot of defensive medicine, you can probably double that figure. And with the liability, you are probably looking at another 9 or 10 percent on top of the 20 percent for small business. Those are not figures I am just grabbing out of the air, I think they are the reality.

My friend and colleague from Colorado, Senator ALLARD, is saying: Wait a minute. Let's exempt small employers, those people struggling to buy health care for the first time. Let's protect them and make sure they won't be held to the liability portions.

Federal employees are not able to sue the Federal Government. Why should we say: Oh, yes, you can have a field day on small employers. The only way to purely protect them—to surely protect them—is to adopt the Allard amendment.

I urge my colleagues to vote in support of the Allard amendment to protect small businesses.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado has 4 minutes 25 seconds remaining.

Who seeks time?

Mr. ALLARD. Mr. President, I say to the majority I would like to be able to wrap up on my amendment, if I might.

Mr. KENNEDY. Why don't you wrap up.

Mr. ALLARD. If you have finished, I will wrap up and then yield the time.

Mr. KENNEDY. Don't get too provocative.

Mr. ALLARD. Don't get too provocative? Maybe the Senator from Massachusetts would like to respond?

Mr. KENNEDY. That is all right.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Thank you, Mr. President.

Mr. President, I have had the experience of starting a business from scratch and having to meet a payroll. As far as I am concerned, too few Members of the Senate have ever had the opportunity to be in business for themselves and had to meet the challenges of meeting a payroll. But I personally know how legislation such as this can affect your business. I have had to face those tough decisions. They are not pleasant.

There are a lot of small business employers all over this country that are sending letters to Members of this Senate about the very same concerns that have been expressed by the Senator from Oklahoma, the Senator from New Hampshire, and numerous other Senators, at least on this side of the aisle, about the impact of this particular piece of legislation on small business.

Let me take one example. There is a Mr. Terry Toler, for example, of Greeley, CO. I represent the State of Colorado. He runs a small construction business. He employs three workers. The health insurance he provides to his employees also helps take care of the needs of his family. Terry cannot afford the costs that would come with the Kennedy bill in its current form.

Last year, Terry's company had a 65-percent increase in health insurance premiums and costs. This increase was on top of Terry's other insurance costs, including equipment insurance, professional liability insurance, and general liability insurance. If this bill is passed in its current form, the company's health insurance rates will increase even further. As a result, he may have to drop the health insurance he provides for his employees and his family.

My amendment will protect Terry and his employees from losing their health insurance. Terry is one of hundreds of small employers in Colorado that would be forced to jeopardize their health care insurance. We need to protect hard-working employees from losing their health insurance.

Let me share some further concerns of this small businessman. Large employers can obtain health insurance at a much lower rate. As a result, small business employers cannot compete with larger companies. In a tight labor market, employers compete for the best employees. These are all competitive issues about which a small businessman is concerned. When this kind of legislation moves forward, you can understand their concerns.

I have heard comments from another small businessman in Springfield, CO, who has expressed his concern. He writes:

> Health care costs are already prohibitive. Adding the law-given right to sue for punitive damages can only increase costs. A patient bill of rights is important, but not at the price of Kennedy's bill.

He further states:

> . . . liability limits are a good way to help cap rising health care costs.

As an employer, he must evaluate the price tag that comes with paying for health care. He believes it is prohibitive.

According to a recent survey of some 600 national employers, 46 percent of employers would likely drop health care coverage for their workers if they were exposed to new health care lawsuits.

This is not a good bill for small business. The adoption of the Allard amendment would make it better. So I am asking my colleagues in the Senate to join me in protecting employees of small business, thus protecting the employees' health care they currently enjoy. If the Kennedy bill passes in its current form, the health care protection of more than 1 million Americans will be jeopardized. Colleagues should support this amendment to protect employees' health insurance and limit small employer liability.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 3 seconds remaining.

Mr. ALLARD. I reserve the remainder of my time.

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

Mr. KENNEDY. I say to the Senator, I am going to make a brief statement, and then he can wind up. I will yield him 2 minutes after I make a brief statement.

The PRESIDING OFFICER. The Senator has 9 minutes.

Mr. KENNEDY. I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, we acknowledge the burden that is placed upon small business and the costs of their insurance. The Senator is quite correct that they pay anywhere from 20 to 30 percent more. They are constantly having to look at newer kinds of companies as they are being knocked off the insurance rolls. We understand that. We are prepared to work with the Senator on this.

This is an important issue. I am amazed that small businesses in my own State can really survive with the problems they have. We ought to be able to find ways to help and assist them; but this is not it.

We had $3.5 billion of profits last year from the industry. They have already asked for a 13-percent increase in their premiums this year. They were 12 percent last year. That is generally, without this.

We have been over this during the debate, that the cost of this is less than 1 percent a year over the next 5 years. We have also gone over this and found out that some of the wealthiest Americans are the heads of these HMOs. Mr. McGuire makes $54 million and got $350 million in stock value last year—$400 million. That has something to do with the premiums for those companies.

This is a very simple kind of question. He talks about protecting the employers. We are interested. They are protected unless they go out and change and manipulate their HMO to disadvantage the patients who are their employees and deny them the kinds of treatments that would be protected and with which we are all protected.

I am reminded, myself, that my son had cancer. I was able to get a specialist for him and to be able to get into a clinical trial. I want those employees who are represented by the 15 not to be denied that same opportunity. I did not have someone who was riding over that and denying me that. But that is happening in America. It might not be happening in Colorado, but it is happening in America, where employers are calling up and saying: Don't put them in those clinical trials. We are here to stand and say: We are going to protect them. We will work with you, with the small business, but let us protect the women who need that clinical trial for cancer and the children who need that specialist. Why deny them those protections? That is what this amendment is all about.

I am prepared to yield the last 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the Senator from Massachusetts.

I am continuing to hear from small business employers. And other Members of this Senate, as well, are hearing the same message I am. They are concerned about the rising cost of health care and the impact it will have on their business and the impact this particular piece of legislation is going to have on costs.

They are also concerned about the increased number of lawsuits that will be faced by small business employers if this particular piece of legislation passes.

My amendment provides some relief for small businesses of 15 employees or

fewer. When you first glance at this bill, as I did, you say: It looks as if the employer has been exempted. But when you read the fine print, then you see there is a circle around it, and you find that the small businessman gets pulled in and becomes subject to lawsuits, more lawsuits than he is facing now. That puts at jeopardy the health care he is currently providing for his employees.

I am asking the Members of the Senate to join me to make sure small business doesn't get pulled into this ever-expanding web of tangled lawsuits into which they are going to be pulled if this particular bill passes.

The Allard amendment is a good amendment. I hope Members of the Senate will join me in protecting small business, those of 15 employees or fewer.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. ALLARD. Mr. President, I ask unanimous consent to print in the RECORD an editorial run in the Fort Collins Coloradoan.

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

PATIENTS' BILL OF RIGHTS NOT END-ALL TO HEALTH CARE ISSUES

Physician (and consumer), heal you, should be the motto for the Patients' Bill of Rights now under consideration by Congress.

The legislation, which actually includes several amendments, focuses on whether consumers can sue their health care providers for not approving treatment deemed medically necessary. Congress should restore that power to consumers, but only if the suits are based on actual damages, rather than punitive penalties. Those penalties have led to some outrageous settlements, and those legal costs have been passed on to employers and employees.

But consumers would be unwise to believe that this legislation can solve the broader issues of the rising cost of health care.

Many symptoms combine to make medical care costly: Pharmaceutical companies are advertising directly to consumers rather than doctors, which means patients may demand the more expensive brand-name medicines. Low deductibles for doctor office visits benefits consumers upfront, but health care providers shift their expenses by demanding higher premiums, which have increased sometimes 10-fold in the past decade for employers.

Publicly owned health care providers face the sometimes-conflicting mission of answering to stockholders, who want profits, and their customers, who demand lower premiums and broader access to care. All the while, health care CEOs are receiving bonuses worth millions.

Managed care is not all negative. Without a cooperative system, many individuals could not afford even simple doctor's visits to maintain their health. Those without insurance usually have to turn to acutely expensive emergency rooms for health care. The focus on preventive care came about, in part, from health care providers who were seeking to keep their costs down, but the process also keeps patients healthy.

Legislation will not replace the need for innovation and close scrutiny by consumers and health care professionals regarding how the system works. Some providers are using a triage-type system to evaluate and treat patients efficiently; employers are shopping around to find health plans that fit their needs; providers are considering tiered-cost plans; and patients bear responsibility for keeping themselves as healthy as possible.

Congress should allow patients the right to sue providers and exempt employers who have no control over medical decisions. Still, turning the decision over to the courts in expensive and unwieldy, with lawyers seeing the most benefit. Another option is to rely on a binding mediation process or an independent panel to weigh medical coverage decisions to keep the focus on health care and off litigation.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table the Allard amendment and ask for the yeas and nays. Under the previous agreement, that will be set aside and we will go to the Nickles amendment now.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 850

The PRESIDING OFFICER. Under the previous order, the pending amendment is set aside and the Senator from Oklahoma is recognized.

Mr. NICKLES. 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 Oklahoma [Mr. NICKLES] proposes an amendment numbered 850.

Mr. NICKLES. 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:

(Purpose: To apply the patient protection standards to Federal health benefits programs)

On page 131, after line 20, insert the following:

TITLE III—APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(a) APPLICATION OF STANDARDS.—

(1) IN GENERAL.—Each Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incorporated into this section.

(2) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—Any individual who receives a health care item or service under a Federal health care program shall have a cause of action against the Federal Government under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a group health plan;

(B) the Federal Government shall be deemed to be the plan sponsor of each Federal health care program; and

(C) each individual eligible for benefits under a Federal health care program shall be deemed to be a participant, beneficiary, or enrollee under that program.

(b) FEDERAL HEALTH CARE PROGRAM DEFINED.—In this section, the term ''Federal health care program'' has the meaning given that term under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b) except that, for purposes of this section, such term includes the Federal employees health benefits program established under chapter 89 of title 5, United States Code.

Mr. NICKLES. Mr. President, this amendment expands the coverage of the bill basically to all Americans.

I have heard countless sponsors of the bill say we should cover everybody who needs basic protections. I have heard it time and time again. I have heard it on national TV shows, Sunday morning shows: We should make this apply to everybody. Some argue, shouldn't these protections be reserved to the States because they have historically done it? But the legislation before us says, no, the Federal Government will do it; we will do it for all private plans. Usually they don't even say all private plans. They usually say for all plans.

The truth is, the legislation we have is a mandate on the private sector, but we have exempted the public sector.

It is amazing to me, almost hypocritical—I don't want to use that word, impugning anybody's motives—but it bothers me to think we are so smart and wise that we are going to mandate these patient protections on every plan in America, supersede State protections already present, and we don't give them to a group of employees over whom we really have control. We do have control over the Federal employees health care plan. We can write that plan. We have control. We write the checks. Federal employees pay about a fourth, but the Federal Government pays three-fourths. We have direct control over Federal employee plans, but they are not covered by this bill.

Federal employees in the State of Delaware or California or Oklahoma usually get their health care from Blue Cross or Aetna or whomever. They get it just like any other employee, but they are Federal employees. They don't get the patient protections under this bill. They don't have the appeals process under this bill. They don't have the legal recourse that is under this bill. They don't have the patient protections that are dictated in this bill. All other private sector employees will. Does that really make sense? Is that equitable? I am not sure.

My friend and colleague Senator KENNEDY just talked about clinical trials, and maybe they help somebody. I looked at the language for Federal employees. We are getting ready to mandate a very expensive provision, probably fairly popular, that says under the McCain-Kennedy bill we pay for all trials, for all purposes, if it has any Federal connection whatsoever. Federal employees aren't covered by the clinical trials section of this bill.

They may be under individual plans, but they are not by mandate, by patient protections. Some plans may offer them; some plans may not. There is not a dictate.

We are getting ready to mandate a very expensive comprehensive list of clinical trials for every private sector plan in America, but not for Federal employees. I find that interesting.

We are getting ready to mandate an emergency room provision that includes prudent layperson, poststabilization, and ambulance care provisions. I mention this for the Senator from Delaware because I believe the State of Delaware is passing a patient protection program but they only cover prudent layperson. That is what Federal employees do. Federal employees don't have poststabilization and ambulance. That means our staffs, our employees, don't have the same patient protections that we are getting ready to mandate on every other health care plan in America. I find that to be very inconsistent.

I could go on and on and on. The OB/GYN provision: Federal employees get to have one visit. This is dictated or mandated—one visit to an OB/GYN. Under the bill we have before us, it basically allows the OB/GYN to authorize any OB/GYN care, without any other authorization requirements. That sounds unlimited to me, a much more expensive provision than what we have for Federal employees.

It is almost the case all the way through the bill. For pediatricians under the McCain-Kennedy bill, we allow parents to designate a pediatrician for their children. That sounds fine. I am sure if we voted on that, it would be unanimous. That is not a dictate for Federal employees. Some plans may have it; some plans may not.

My point is, Federal employees don't have these patient protections. We are getting ready to mandate something on the private sector that we forgot to do for the public sector.

It is interesting because I know President Clinton made a big deal out of the fact, saying: Congress is not acting. I am going to have an Executive order and make Federal employees have these patient protections. I will do it by Executive order. Well, he didn't do as much as we are getting ready to do on the private sector. That is my point.

I expect that what we are getting ready to do, that the patient protections we are passing, the examples I have listed—and that is not the total—are much more expansive than what has already been done. The same thing would apply for Medicare. If all these patient protections that have been espoused are so important, shouldn't we give those to senior citizens? Shouldn't senior citizens have the same expedited review process, internal/external appeal process, as we are going to mandate on all the private sector? I would think so. We all love our senior citizens, our moms and dads and grandparents. Surely we should give them the same protections we are getting ready to mandate. They don't have it. They can spend days in an appeals process and never get out of the appeals process.

What about Indian Health Service? What about our veterans? Our veterans aren't covered by this bill. They don't have the same patient protections. They don't have the same expedited review process. Shouldn't they be covered?

Granted, this amendment could cost a lot of money, but this bill will cost a lot of money. I have heard a lot of people say this bill only costs a Big Mac a month, it is not all that expensive, it is only just a little bit. I disagree with that. I am also struck by the fact that we are quite willing to mandate this on every city, every State, every private employer, but we don't mandate it on Federal employees. We don't do it on Federal programs. We do it on State programs. We do it on city programs. We don't have any objection to dictating how other governments have to do it. We will tell them how to do it. We just don't think the Federal Government should do it. We don't think the programs under Federal control should do it. I find that very inconsistent.

If this is that great of a program, and I have some reservations. I think this bill goes too far.

I think we are superseding State regulations, and I have stated that. I lost on that amendment. Maybe that amendment can be fixed in conference, but for crying out loud, we should be consistent. I have heard proponents say time and time again that this bill is not at all expensive. If so, shouldn't it apply to Federal employees? If we are going to mandate Blue Cross/Blue Shield in Virginia to provide this for all private sector plans, union plans, nonunion plans, and they also have governmental plans—the same Blue Cross—shouldn't they apply to governmental plans? They have to do it for Virginia. Shouldn't they have to do it for the Federal Government? That is my point.

There is some inconsistency here. If these are such great protections and they are not that expensive, we should make sure they apply to our employees as well. Senator KENNEDY mentioned clinical trials, as if that was a mandate. Some of the Federal plans cover clinical trials. Not all do. We are getting ready to mandate them for every plan in the country. Shouldn't we have it for Federal employees as well—maybe for the sons and daughters of the staff members working here? Shouldn't they have access to those just as the private sector will now have access to them?

The appeals process: This is one of the real keys. There have been hours of debate on the floor saying that on appeals every individual should have rights of internal review, and then the external review should be done by an independent entity not controlled by the employer. Guess what Federal employees have? If they are denied care, they can appeal. But to whom? They appeal to the Office of Personnel Management—to their employer. The employer might subcontract it, but basically it is the employer, the Federal Government. It is not totally independent when the Federal Government might be making that decision. Shouldn't we give Federal employees that same independent external review?

My amendment would make this bill applying to the public sector include Federal employees, Medicare, Medicaid, Indian health, veterans, and civil service. I think it would help show that if we are going to provide these protections for the private sector and, frankly, mandate them, they should apply to the public sector as well.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have listened closely. I will come to the substance of the Senator's amendment in just a minute. I listened to him very carefully about his great enthusiasm for the Federal employee program. It is a fact that 100 Members have that program here in the Senate. It is interesting because the taxpayers pay for 75 percent of it. So it is always interesting for those of us who have been trying to get a uniform, or a national health insurance program. I favored a single payer for years. I am glad to do it any way that we are able to do it.

But I am glad to hear from my good friend from Oklahoma how much he believes in the value of the Federal employee program of which 75 percent is paid for every Member in here by the Federal Government. When any of us talk about trying to expand health insurance to try to include all Americans, oh, my goodness, we are going to have the Federal Government pay for any of these programs? My goodness. I welcome the fact that the Senator from Oklahoma is so enthusiastic about that concept, about having a uniform concept. It is interesting, you know, Mr. President. Many Americans probably don't know it. When you come in and sign on, there is a little checkoff when you become employed in the Senate. You check it and you are included in the Federal employee program. You have probably 30 or 35 different options. I wish the other American people had those kinds of options. No, we don't get any kind of support for trying to give the American people those kinds of options.

But do you know what, Mr. President? All these Senators who are always against any kind of health insurance for all Americans are down there checking that off as quick as can be to get premiums subsidized 75 percent by the taxpayers. Wonderful. Now they come up and say, well, they don't have all of the protections on it.

I want to say to the good Senator that I am very inclined to take the

amendment. I would like to take the amendment. We are studying now the budget implications because I don't want to take it and then find out that we have the Senator from Oklahoma come over and say we have exceeded the budget limitations and then you have a blue slip and therefore the whole bill comes down. We know what is happening now. The basic protections of this legislation, according to the Congressional Research Service—the patient protections in the McCain-Edwards-Kennedy bill would apply, with the exception of the right to sue. That is what we are checking out at the present time in terms of what would be the estimation. Otherwise, I am all for it.

We have now in the Medicare systems that are involved in HMOs, they have the right to sue on this. As we saw some of those elements on the executive order, they have not been altered by the administration. I would like to make them statutory. No one would like to make them statutory more than I. I am about to wrap my arms around the Senator and bring him in and say I am in on this.

Hopefully, as our leader pointed out, after all the lectures that I have had—I don't say that in a derogatory way to my friend from Oklahoma—about health insurance—we heard about how we are going to increase the numbers of those who are going to lose their health insurance. We are not dealing with that problem, with the 43 million.

We will have an opportunity to invite your participation on these issues. We had some votes on the extension last year in terms of the parents on the CHIP program and virtually every Republican voted against it. To the extent that we saw progress made with the good support of Senator SMITH and RON WYDEN, we now have about $28 billion, $29 billion in the Finance Committee that can be used for the expansion of health care. We certainly want to utilize that. That is only a drop in the bucket. Our attempts in the past to get reserve funds out of the Finance Committee, which the Senator is on, so we could move ahead with a health insurance program have fallen on deaf ears.

I hope that all those—I will have a talk on that later on because I am taking all of those statements and comments made by our Republican friends over the period of the past days, all talking about health insurance, and we will give them a good opportunity. Hopefully, they won't have to eat their words. We will welcome some of their initiatives. We know what they are against. We want to know what they are for in terms of getting some health insurance.

Well, I will say that I am going to recommend to our side that we accept the Nickles amendment. So I am prepared. The Senator made such a convincing argument, and it has taken a little while. He left out HCFA. That was the only thing he left out. That is why we have been so persuaded. I know HCFA is not going to have anything to do with this amendment the Senator offers because, otherwise, I know he would not offer it.

Mr. REID. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. REID. Would the Senator from Oklahoma agree to a voice vote because it appears he is going to win so overwhelmingly?

Mr. NICKLES. I will think about that. How much time remains?

The PRESIDING OFFICER. Five minutes. The Senator from Massachusetts has almost 9 minutes.

Mr. NICKLES. Mr. President, I neglected to do this earlier and I meant to do it. I wanted to compliment Senator GREGG and Senator KENNEDY for their leadership on this bill and their leadership on the education bill because it is kind of unusual that we have two committee chairmen and two people who are responsible for moving two major pieces of legislation consecutively. So they combined and spent about the last 2 months on the floor. That is not easy.

I have always enjoyed debating and working with my friend and colleague from Massachusetts, and we are good friends. Occasionally, we agree. We have had two or three amendments, and we have had great oratory and, occasionally, we still agree on amendments. I appreciate that. We ended up coming together basically on covering union plans today. We got very close to an agreement. We will make that, I guess, in the managers' amendment. I appreciate that. I appreciate his willingness to accept this amendment.

I will be very frank and say we don't know how much this is going to cost, but frankly, we don't know how much this costs in the private sector. There is a point to be made. The Senator said maybe we can accept it, and possibly it can work out to give patient protections, but I don't know about the right to sue. That might be pretty expensive. We are doing that on the private sector as well. We do not know how much that is going to cost, but it will be very expensive.

Federal employees have a lot of protections, but they do not have near the protections we are getting ready to mandate on the private sector.

Medicare has some patient protections. They do not have near the patient protections that we will be mandating on the private sector. They do not have an appeals process that is as expedited as this. I do not have a clue whether Medicare can comply with this language. It takes, in many cases, hundreds of days to get an appeal completed in Medicare. We have a very expedited appeals process in this bill. I happen to support that appeals process, and it would be good if Medicare could have a very concise, complete, final appeals process and one, hopefully, that would be binding. We improved the appeals process in this bill today with the Thompson amendment, and I compliment Senator THOMPSON for his leadership on that bill.

I would be very troubled to go back to my State of Oklahoma and have a town meeting and tell employers they have to do this, this, this, and this; they have to have this in their plans; if things do not work out, they might be sued for unlimited damages, and have one of them raise their hand and say, ''Did you do that for Federal plans,'' and say, ''No, we didn't. We just did it for you. We think maybe we are not going to do it for ourselves.''

We have control over Federal plans. Those are the ones over which we really have control. I would find it very troublesome. I was one of the principal sponsors of the Congressional Accountability Act a few years ago who said Congress should live under the rules like everybody else. I remember some of my colleagues saying: Don't do that; if we make the Capitol comply with OSHA, it is going to be very expensive. If you walk into the basement of the Capitol today, you will find a lot of electrical wires that would not pass any OSHA inspection.

It bothers me to think we are going to mandate on every private sector health care plan: You have to have this, this, this, and this, all very well-intentioned, I might add, but some of which will be pretty expensive. I would find it troubling if we mandate that on the private sector and say: Oops, we forgot to do it for Federal employees.

That is the purpose of my amendment. I appreciate the willingness of my colleague from Massachusetts to accept the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I listened to the Senator talk about being in a town meeting and the questioner says: How in the world, Senator, can you apply all these provisions to our small business and you are not doing that to the Federal employees?

I would think at a town meeting in my State of Massachusetts someone might stand up and say: Senator, how come your health care premium is three-quarters paid by the taxpayers; why don't you include me? That is what I would hear in my State of Massachusetts. That is what I hear.

Maybe they are going to ask you about the right to sue where hard-working people have difficulty putting together the resources to get the premiums and get the health care. They wonder why the Federal Government is paying for ours. If we are being consistent with that, I say to the Senator from Oklahoma, we ought to be out here fighting to make sure their health care coverage is going to be covered. I do not see how we can have a town meeting and miss that one.

It is interesting, as we get into the Federal employees, we have 34, 35 different choices. What other worker in America has that kind of choice? The people say, what about your appeal? Generally speaking, you do not need an

appeal; you can just go to another health care policy. We have that choice, but working Americans do not. They are stuck with the choices in the workforce. We can get on with those differences. But I am still in that wonderful good moment of good cheer for my friend from Oklahoma. I urge all our colleagues to support this well-thought-out, well-considered amendment. I look forward to working with him on other matters on health care to make sure we are going to do for the others, the rest of the people of Massachusetts and Oklahoma, as well for them as we do for ourselves in health care.

I am ready to yield back the time or withhold my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague. He mentioned the fact that the Federal Government pays three-fourths of the cost of health care for Federal employees. That is correct. With some companies it is more and some companies it is less.

The Federal Government pays 100 percent of my salary. The Senator from Massachusetts might want the Federal Government to pay 100 percent of the salaries in Massachusetts; I don't know. I appreciate his willingness to accept the amendment. I am not going to ask for a recorded vote.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. NICKLES. I yield back my time.

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes remaining.

Mr. KENNEDY. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to amendment No. 850.

The amendment (No. 850) was agreed to.

Mr. KENNEDY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Regular order, Mr. President.

MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there are now 4 minutes evenly divided prior to the vote on the point of order on the motion to commit. Who yields time?

Mr. REID. Mr. President, the participants are not here. We ask the roll be called.

The PRESIDING OFFICER. All time is yielded back.

Under the precedents and practices of the Senate, the Chair has no power and authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate: Is the point of order well taken? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The yeas and nays resulted—yeas 57, nays 41, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—57

Akaka	Dorgan	Lieberman
Baucus	Durbin	Lincoln
Biden	Edwards	McCain
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Miller
Breaux	Fitzgerald	Murray
Byrd	Graham	Nelson (FL)
Cantwell	Grassley	Nelson (NE)
Carnahan	Harkin	Nickles
Carper	Hollings	Reed
Chafee	Inouye	Reid
Cleland	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Conrad	Kennedy	Schumer
Corzine	Kerry	Snowe
Daschle	Kohl	Stabenow
Dayton	Landrieu	Torricelli
DeWine	Leahy	Wellstone
Dodd	Levin	Wyden

NAYS—41

Allard	Enzi	Roberts
Allen	Frist	Santorum
Bayh	Gramm	Sessions
Bennett	Gregg	Shelby
Bond	Hagel	Smith (NH)
Brownback	Hatch	Smith (OR)
Bunning	Helms	Specter
Burns	Hutchinson	Stevens
Campbell	Hutchison	Thomas
Cochran	Inhofe	Thompson
Collins	Kyl	Thurmond
Craig	Lott	Voinovich
Crapo	Lugar	Warner
Ensign	McConnell	

NOT VOTING—2

Domenici	Murkowski

The PRESIDING OFFICER (Mr. BROWNBACK). On this vote, the yeas are 57, the nays are 41. The point of order is sustained and the motion falls.

AMENDMENT NO. 821

Under the previous order, there are now 4 minutes evenly divided prior to voting on a motion to table the Allard amendment No. 821.

Who seeks time?

Mr. KENNEDY. Mr. President, Senator ALLARD isn't going to use his time. I would be glad to yield back at this time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, if I might, I would like to give a brief explanation of what this amendment is all about. The Allard amendment says that if you are a small businessman—you have between 2 and 15 employees—you are exempt from the provisions of this bill. That means you do not have to face the increased burdens of having to face lawsuits. And it means you will not have to face the increased burdens of higher premium costs on your insurance.

So it is a very straightforward amendment. It is an amendment that is strongly supported by the small business community. Probably most of you have been getting calls into your offices from small businesspeople concerned about how this is going to impact their small business. So it is an important small business vote.

I ask for a ''nay'' vote on the motion to table.

The PRESIDING OFFICER. Who seeks time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, over the past several days, Members, in a bipartisan way, have worked very hard and successfully in shielding employers from frivolous suits. As the Wall Street Journal today points out: ''Senate passes rule to shield companies from workers' health plan lawsuits.''

When this bill is passed, the only employers that have to worry in this country are going to be those employers that call their HMOs and tell them to discontinue care when their workers run up a bill of more than $20,000 or $25,000. They are not going to let women into the clinical trials. They won't let children get their specialty care. They will not let the other employees get the rights that they have.

Employers, today, overwhelmingly do not do that; but a few do. If we adopt this amendment, this is going to be an invitation to other employers. The ones that are violating the spirit of the law will get lower premiums, and this will be an incentive for others as well.

This will be the third time we have voted on this issue. It seems to me we have a balance now as a result of a bipartisan effort. We ought to respect that and guarantee to those employees across this country—the workers—the absolute patients' rights which this bill provides.

So I hope we will support the tabling motion by the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered on the motion to table the Allard amendment.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—55

Akaka	Dodd	Lieberman
Baucus	Dorgan	McCain
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Fitzgerald	Nelson (NE)
Byrd	Graham	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Snowe
Clinton	Kennedy	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wellstone
Daschle	Landrieu	Wyden
Dayton	Leahy	
DeWine	Levin	

NAYS—43

Allard	Gramm	Roberts
Allen	Grassley	Santorum
Bennett	Gregg	Sessions
Bond	Hagel	Shelby
Brownback	Hatch	Smith (NH)
Bunning	Helms	Smith (OR)
Burns	Hutchinson	Specter
Campbell	Hutchison	Stevens
Cochran	Inhofe	Thomas
Collins	Kyl	Thompson
Craig	Lincoln	Thurmond
Crapo	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McConnell	
Frist	Nickles	

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, we have an order that has been worked out by our friend and colleague. We are in the process now of working toward that. I think we go to Senator SANTORUM next, for 40 minutes, Senator CRAIG for 30 minutes after that, and then Senator BREAUX after that. The general intention is to go to the Senator from Pennsylvania for 40 minutes equally divided, followed by Senator CRAIG.

Mr. REID. If my friend from Massachusetts will yield for a brief inquiry, it is my understanding—Senator JUDD GREGG is not on the floor, but I think he has agreed to this. If there is a problem, I will be happy to reverse it—that the matter to come up would be Senator BREAUX's amendment after Senator SANTORUM, with 1 hour evenly divided. If there is any problem, we will reverse it. JUDD GREGG and I have spoken about that.

Mr. WARNER. Reserving the right to object, I had discussed with one of our managers the appropriate time at which we could consider the amendment which I have at the desk, in sequence, and the yeas and nays have been ordered. What would be a time that you could indicate to the Senator from Virginia it could be taken up?

Mr. REID. We can do it after Breaux.

Mr. WARNER. Will the leader put that in, that it be taken in sequence after Senator BREAUX? Could it be amended so my amendment could be brought up after Senator BREAUX?

Mr. REID. Reserving the right to object, it is my understanding that the Senator wanted a half hour.

Mr. WARNER. Equally divided.

Mr. REID. We have not seen the amendment of the Senator from Virginia, so maybe we should not agree on time but agree on the sequence.

Mr. WARNER. We can have it sequenced. I will submit the amendment and the Senator can establish a time.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. FRIST. Reserving the right to object, I would like to talk to Senator GREGG on the time agreement and also restrictions on the amendment with Senator BREAUX. If I can have an opportunity to check with Senator GREGG.

Mr. KENNEDY. We are operating on good-faith agreements. We have done very well. This is the intention. We will wait to hear from the Senator.

I understand Senator CRAIG and Senator SANTORUM want to change the order. Senator CRAIG will be the next amendment, followed by Senator SANTORUM.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order of the Santorum amendment and the Craig amendment be switched and that the time allotted be the same. Senator SANTORUM is still perfecting a portion of his amendment.

Mr. REID. Mr. President, we were planning on the other order. The person who will be responding to the Senator from Idaho is not here.

Mr. KENNEDY. We prefer to go the other way. We announced the order, and this has changed. We will need to put in a quorum call to get the personnel who will be addressing this amendment.

Mr. CRAIG. I am sorry for this delay.

Mr. KENNEDY. We are moving along, and we will do the best we can. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 851

Mr. CRAIG. Mr. President, there was an agreement that the Santorum amendment would proceed and I would follow. We agreed we would switch those. I think that is the current agreement that has been accepted. I see the Senator from Montana is on the floor, the chairman of the Finance Committee, so with that, I send my amendment to the desk.

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

The clerk will report.

The legislative clerk read as follows:

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

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

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding making medical savings accounts available to all Americans)

At the appropriate place insert the following:

SEC. . SENSE OF THE SENATE REGARDING FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) FINDINGS.—The Senate finds:

(1) Medical savings accounts eliminate bureaucracy and put patients in control of their health care decisions.

(2) Medical savings accounts extend coverage to the uninsured. According to the Treasury Department, one-third of MSA purchasers previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings out of reach for millions of Americans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that a patients' bill of rights should remove the restrictions on the private-sector medical savings account demonstration program to make medical savings accounts available to more Americans.

Mr. CRAIG. Mr. President, I had planned up until an hour ago to offer a detailed amendment on medical savings accounts that I think fits appropriately into any discussion about patient's rights in this country. The first and foremost right is access to health care, relatively unfettered access to health care. The problem with that under the current scenario on the floor is it would bring about a point of order and I do not want this issue to fall based on that.

Certainly it is appropriate we are here and we are taking the necessary and adequate time to debate patient's rights in American health care. I am proud of my party. Republicans have a solid record on protecting patients and their rights. We have fought for patients' rights from the very day we defeated the Clinton health care plan a good number of years ago, which was a massive effort to use government to take over our health care system, which would have largely let bureaucrats decide whether your family would get the medical care they need.

It was a Republican Congress that stood up for patients' rights by creating medical savings accounts for the first time. Medical savings accounts, in my opinion, are the ultimate in patient protection for they throw the lawyers, employers, and bureaucrats out of the examining room and leave decisions about your health between you and your doctor.

What has been most fascinating under the current medical savings account scenario in our country is that we have limited them to about 750,000 policies. Yet, a good many people have come to use them even though we have made it relatively restrictive and we have not opened it up to the full marketplace.

What is most fascinating about the use of medical savings accounts is the category that all Members want to touch. We hear it spoken of quite often. That is the large number in our country of uninsured. Since we offered up a few years ago this pilot program, 37 percent of those who chose to use it were the uninsured of America. In other words, it became one of the most attractive items to them because it offered them at a lower cost full access to the health care system.

It proves something many colleagues do not want proved: That given the opportunity, Americans can afford to

health coverage if the price is right and the strings are not attached and they can, in fact, become the directors of their own health care destiny. I think it is fascinating when you look at this chart. Under the current scenario, of over 100,000 MSA buyers, one-third were previously uninsured.

With medical savings accounts, you choose your own doctor. Also, if you believe you need a specialist, you have direct access to a specialist. You don't need an HMO or an insurance company working with or telling your doctor what you may or may not do. Of course, the debate for the last week has been all about that, all about the right of a patient to make the greater determination over his or her destiny and to have that one-on-one relationship with the health care provider. There is no question that if you are independent in your ability to insure or you have worked a relationship with your employer so you are independent through a medical savings account, then you can gain direct access to an OB/GYN. If your child is ill, you have direct access to a family pediatrician. With MSAs there are no gatekeepers; you are the gatekeeper. There are no mandatory referrals; you are the one who makes the decision, you and your doctor. The only people involved in your personal decisions, once again: Your family, you, and the medical professional you have chosen or to whom your doctor has referred you. That is the phenomenally great independence to which we are arbitrarily deciding Americans cannot have free access.

I hoped to offer a much broader amendment, but I knew it would have to face that tough test of dealing with the Senate rules and all of that because it would deal with taxes and it would deal with revenue. As a result, instead of making the changes in the law that ought to be made because even the program I am talking about that has been so accepted expires this year and it is the responsibility of this Congress to expand it and make it available, here instead we are still talking about the rights of lawyers, not the rights of the patient.

The rights of the patient are optimized if you provide the full marketplace access to medical savings accounts. Since we introduced the limited pilot program, wonderful things have happened. The very people we were trying to reach, the uninsured, are able to afford health coverage. And, in our society today, many of the uninsured are the children of working men and women who can't afford to add them as an extra beneficiary to their health care coverage because of the costs. Yet they found they were able to do that when their employer that allowed them to have a medical savings account.

Medical savings accounts combine low-cost insurance, and a tax-preferred savings account for routine medical expenses. The catastrophic insurance policy covers higher cost items beyond what the savings account covers.

That is why I think it is important that this Senate now express its will and its desire to continue to support medical savings accounts. That is why it appropriately fits inside the broad discussion of a Patients' Bill of Rights.

I do not question any Senator's motive on the floor. Republican and Democrat alike want to make sure all Americans have access to health care. We want a Patients' Bill of Rights that works. We have had a President say very clearly, unless you can provide us with a Patients' Bill of Rights that creates stability, that allows the kind of flexibility we need to assure that employers can continue to provide health care without the risk of being dragged into court because of a health care program that they may be a sponsor of, then he will veto it.

But here is a President who also supports maximizing choices in the marketplace. How you maximize choices in the marketplace for the patient today is to allow open access to a medical savings account program that optimizes all the flexibility we have talked about. You reach out and bring in the uninsured of America and allow them to develop the one-on-one relationship with their doctor that has historically been the standard of health care in our country.

I retain the remainder of my time.

The PRESIDING OFFICER (Ms. STABENOW). WHO YIELDS TIME?

Mr. BAUCUS. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I appreciate the efforts of the Senator from Idaho for small businessmen and women, for families who are unable to afford health care costs to be able to invest in a medical savings account. But I would like to put this issue in the context of this entire debate.

One of the first amendments proposed in this debate was to provide tax relief—not a sense of the Senate but an actual amendment to the pending legislation to provide tax relief for small businessmen and women to get deductibility for their health care plans, at that time 100-percent deductibility on their health care plans.

At that time I said I was willing to support the amendment and I was willing to support two additional tax incentives for low-income American families so they could afford health care. That offer was rejected. That offer was rejected by the opponents of this legislation as not being enough. They needed a multitude of tax provisions in this bill.

At that time I said OK, then I will not support them unless we have some kind of narrowing—as I said, as many as three. That offer was rejected.

Here we are at 2 o'clock on Friday afternoon, after many days of debate, and we are talking about a sense-of-the-Senate resolution on medical savings accounts.

I am sorry. They should have taken advantage of the opportunity that I and the sponsors of this legislation would have provided to provide legislative—not sense of the Senate —relief for small businessmen and women, for allowing families to establish medical savings accounts, and perhaps another bill. That offer was rejected.

At this time I would then have to oppose this sense-of-the-Senate resolution. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Madam President, I yield myself such time as I consume.

This is a Patients' Bill of Rights bill. This is not a tax bill. This is not a Department of Defense bill. This is not a agriculture bill. This is not a foreign policy bill. This is a Patients' Bill of Rights bill.

The amendment offered by my friend from Idaho is not a Patients' Bill of Rights amendment; it is a tax amendment. We will have ample time this year to take up tax legislation. We will take up tax legislation at some time, even though we had a huge tax bill already this year. When I say ''we,'' I mean the Finance Committee. That is because the budget resolution provides $28 billion for health insurance benefits for Americans who are now uninsured.

I guess the committee will report out legislation this year which will include expansion of some benefits, perhaps under CHIP, but perhaps also some tax provisions. There are many Senators who have good ideas to encourage Americans to have more health insurance—credits, deductions, and so forth. MSAs is just one way. MSAs, I might say, are actually, under the law, reserved for the most wealthy Americans. It is a particular kind of savings account which enjoys very lucrative, very beneficial status with respect to our tax laws; that is, contributions are not deductible, inside buildup is not taxed, withdrawals for medical purposes are not taxed, and only withdrawals for nonmedical purposes are, but not in the case when a person reaches the age 65. Essentially, they can be converted by wealthier people into a retirement account beyond a savings account.

They are just one way of, perhaps, providing health insurance for Americans. The main point being this is not a tax bill. The Finance Committee will take up health insurance legislation this year as provided under the budget resolution. At the time we consider MSAs, we will consider other appropriate ways to encourage Americans to have more health insurance. That is the appropriate time for this body to consider health insurance legislation. That is when the Finance Committee can consider all the various ideas and report out a bill to the Senate which, in a more orderly way, because it is a tax bill which is dealing with tax matters, particularly health insurance, will help more Americans.

I also say to my good friend from Idaho, as referred to by my friend from

Arizona, it is now 2 o'clock Friday afternoon. We have been on this Patients' Bill of Rights bill a long time. It is very good legislation. We are going to finally pass a Patients' Bill of Rights, after I don't know how many years, tonight. That is my guess.

We will not pass it tonight—who knows when we will ever get to finally pass it—if we start going down this road of adopting sense-of-the-Senate resolutions.

This is the first sense of the Senate. We have not had one before. This particular resolution says this bill should include expansion of medical savings accounts. If we are not going to add savings accounts here, we are, in effect, deciding we should not add medical savings accounts, a tax bill, on this bill.

I respectfully suggest to all my colleagues, the proper vote here is to vote no because it is, in effect, a tax provision. It is a sense of the Senate. We have not done that before. We are about ready to conclude passage of this bill and we will take up health insurance, tax legislation, at an appropriate time later.

I reserve the remainder of my time.

Mr. GRASSLEY. Mr. President, I want to discuss my vote on the Criag amendment that it is the sense of the Senate that the Senate act to expand access to Medical Savings Accounts.

I commend Senator CRAIG for offering this amendment. I support expanding access to MSAs. I recently introduced S. 1067, the Medical Savings Account Availability Act of 2001, with my colleague from new Jersey, Senator TORRICELLI. My support for MSAs is long standing. Senator TORRICELLI and I introduced in the last Congress a comparable bill to expand access to Medical Savings Accounts. I think we will improve access to MSAs with the support of Senator CRAIG and many other Senators, particularly on my side, who I know want to see MSAs within the reach of everyone.

As my colleagues know, I have argued during this debate that tax material should not be included in this bill. I do not consider this amendment a tax amendment because, if adopted, it would not have the effect of changing tax law.

Earlier in this debate, I sought and received agreement from the Chairman of the Finance Committee that health related tax matters will be considered at a markup of the Finance Committee in the near future. I look forward to pursuing this issue at that time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I inquire how much time remains on my side.

The PRESIDING OFFICER. The Senator has 6 minutes 20 seconds.

Mr. CRAIG. I inquire if the Senator has anyone else who would wish to speak to it on his side. If not, I will wrap up.

Mr. BAUCUS. Madam President, I will wait until the Senator concludes and then I will make a judgment whether I want to make another statement.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I allocate myself 5 minutes so I would like to conclude the debate of my amendment. Let me speak briefly to what the chairman of the Finance Committee said.

First of all, I ask him to read my sense of the Senate. It has nothing to do with taxes at this moment. His underlying argument that the responsibility for MSAs, when you are making substantive changes in current law, is a finance responsibility and a tax provision, is correct. My amendment is not a tax provision.

It is asking the Senate to speak to the importance of doing what the Senator from Montana has said he will do this year. That is what my amendment says—that medical savings accounts are important. Do they belong in a Patients' Bill of Rights? Absolutely they do. If you want to optimize the rights of a patient or of a potential patient in America's health care system, then you give them full access—not limited and restricted access to medical savings accounts.

Let me correct one other thing that I think is important. As to this old bugaboo ''it is just for the rich'' that we heard coming from the chairman of the Finance Committee, will he tell me that one-third of the 100,000 people who are uninsured and have never had insurance before because they couldn't afford it are somehow ''closeted rich'' people? I doubt it very much. These are the working poor of America—not the working wealthy—who found an opportunity to provide health care for themselves, their spouses, and their families because the Federal Government, through the Congress, opened up a limited window of opportunity for them to use a medical savings account to their advantage.

That is what that is all about. The House is looking to provide medical savings accounts in their Patients' Bill of Rights. The President supports medical savings accounts. It is not an agriculture bill. It is not a bill for the Interior Department. It is a bill for Americans seeking health care in the system today.

Why shouldn't we debate that right to have optimum access to the market on a Patients' Bill of Rights? Because it doesn't involve a lawyer? That is a good reason to debate it, because it doesn't involve a lawyer and it doesn't involve a Federal bureaucrat at HCFA, and it doesn't involve an HMO or an insurance company. It involves the patient who holds that medical savings account and his or her doctor.

That is what this issue is all about. You darned well bet it is important that our Congress express to the American people that we should make medical savings accounts increasingly available.

I am pleased to hear the chairman of the Finance Committee speak about addressing that this year because this year it expires. We should not allow that to happen.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I will make a couple of points.

If you read it, it makes clear that this is a sense-of-the-Senate tax provision. It says sense of the Senate, and the Patients' Bill of Rights should remove the restrictions on the private sector medical savings account demonstration program to make medical savings accounts available to more Americans.

Medical savings accounts is a tax provision. This says remove restrictions to make it more available; to, in effect, change the tax law to make it more available.

It is clearly a sense-of-the-Senate tax bill.

Second, it has been asserted that it is for the working poor. I have a distribution chart furnished by the President which indicates what income groups of Americans utilize medical savings accounts. By far, the greatest income level to use medical savings accounts is that with adjusted gross income—the total gross is a lot more—of between $100,000 and $200,000. Those people are hardly the working poor. For those in the lowest category—those with adjusted gross incomes of under $5,000—you get 111 returns. For those in the earlier category that I mentioned—those in the $100,000 to $200,000 adjusted gross income—you get 9,400 returns.

It is not for the working poor. That is not the main point. The main point is that this is a sense-of-the-senate tax provision.

We should not go down this road. We will at the appropriate time later this year in the Finance Committee work on a measure to protect and provide more health insurance for those who do not have health insurance and report that legislation at the appropriate time to the floor.

I yield the remainder of my time. If the Senator from Idaho will yield the remainder of his time, I will make a motion with respect to this amendment.

Mr. CRAIG. Madam President, I believe that we have the opportunity to express the will of the Senate. The Congress has moved slowly but grudgingly toward medical savings accounts and has created flexibility. We have a good opportunity to do so this year. Today, we have an opportunity to express our will to do that once again. I hope we will do so.

I yield the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. BAUCUS. Madam President, I am going to move to table.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. I move to table the Craig amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—53

Akaka	Dayton	Leahy
Baucus	Dodd	Levin
Bayh	Dorgan	Lincoln
Biden	Durbin	McCain
Bingaman	Edwards	Mikulski
Boxer	Enzi	Miller
Breaux	Feingold	Murray
Byrd	Feinstein	Nelson (FL)
Cantwell	Graham	Reed
Carnahan	Harkin	Reid
Carper	Hollings	Rockefeller
Chafee	Inouye	Sarbanes
Cleland	Jeffords	Schumer
Clinton	Johnson	Snowe
Collins	Kennedy	Stabenow
Conrad	Kerry	Wellstone
Corzine	Kohl	Wyden
Daschle	Landrieu	

NAYS—45

Allard	Gramm	Nickles
Allen	Grassley	Roberts
Bennett	Gregg	Santorum
Bond	Hagel	Sessions
Brownback	Hatch	Shelby
Bunning	Helms	Smith (NH)
Burns	Hutchinson	Smith (OR)
Campbell	Hutchison	Specter
Cochran	Inhofe	Stevens
Craig	Kyl	Thomas
Crapo	Lieberman	Thompson
DeWine	Lott	Thurmond
Ensign	Lugar	Torricelli
Fitzgerald	McConnell	Voinovich
Frist	Nelson (NE)	Warner

NOT VOTING—2

Domenici	Murkowski

The motion was agreed to.

Mr. REID. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 841, AS MODIFIED

Mr. SANTORUM. Madam President, I call up my amendment No. 841, with the modification I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 841, as modified.

Mr. SANTORUM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To dedicate 75 percent of any awards of civil monetary penalties allowed under this Act to a Federal trust fund to finance refundable tax credits for uninsured individuals and families)

At the end, add the following:

SEC. ___. REFUNDABLE TAX CREDITS FOR THE UNINSURED FINANCED WITH CERTAIN CIVIL MONETARY PENALTIES.

(a) PAYMENT OF CERTAIN PENALTIES TO SECRETARY OF THE TREASURY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, 75 percent of any civil monetary penalty in any proceeding allowed under any provision of, or amendment made by, this Act may only be awarded to the Secretary of the Treasury.

(2) CIVIL MONETARY PENALTY.—For purposes of this section, the term ''civil monetary penalty'' means damages awarded for the purpose of punishment or deterrence, and not solely for compensatory purposes. Such term includes exemplary and punitive damages or any similar damages which function as civil monetary penalties. Such term does not include either economic or non-economic losses. Such term does not include the portion of any award of damages that is not payable to a party or the attorney for a party pursuant to applicable State law.

(b) ESTABLISHMENT OF TRUST FUND.—

''SEC. 9511. HEALTH INSURANCE REFUNDABLE CREDITS TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Health Insurance Refundable Credits Trust Fund', consisting of such amounts as may be—

''(1) appropriated to such Trust Fund as provided in this section, or

''(2) credited to such Trust Fund.

''(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN AWARDS.—There are hereby appropriated to the Health Insurance Refundable Credits Trust Fund amounts equivalent to the awards received by the Secretary of the Treasury under section ___(a) of the Bipartisan Patient Protection Act.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Health Insurance Refundable Credits Trust Fund shall be available to fund the appropriations under paragraph (2) of section 1324(b) of title 31, United States Code, with respect to assistance for uninsured individuals and families with the purchase of health insurance under this title.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

Mr. SANTORUM. Madam President, one of the things I have repeatedly stated when I have spoken on this bill is that in S. 1052 there isn't any provision that provides for access to insurance. There is nothing that increases the number of insured. There are pages and pages and pages in this legislation that will decrease the number of insured and increase the rate of insurance in this country. If you would take a public poll, or take one in this Chamber, and were to ask people what is the biggest problem in the area of health care in this country, I think the overwhelming response would be the lack of insurance for 43 million Americans.

The bottom line is that we should be discussing how we are going to solve the biggest problem in the health care system, and that is providing some assistance for those who don't have employer-provided health insurance. We do not do that in this bill.

In fact, it has been stated over and over again that this bill will add to the ranks of the uninsured. That is not a positive step forward. We can talk about the positive things—and there are positive things in this legislation, which I have been historically in favor of but in my mind they are counterbalanced—in fact, overwhelmed—by the increase in the uninsured that will happen as a result of several provisions of this act.

One of the things I am going to do with this amendment is I hope to take one of those negative provisions—that being unlimited punitive damages in State court and a $5 million cap on punitive damages in Federal courts—and channel some of that cost that is going to be borne by the insurance system and employers, and put that back into the system in the form of a trust fund for those who do not have employer-provided health insurance. So this is an amendment that will take 75 percent of all punitive damage awards that occur as a result of the causes of action provided for in this bill and create a trust fund which will be used to finance those who do not have employer-provided health insurance—in other words, the uninsured.

I think that is a way to ameliorate some of the damage caused by this legislation. The cost pulled out of the health care system through litigation, and through punitive damages in particular, will drive up the cost of health insurance. That money will go to lawyers, to a select few—principally the lawyers, but to a select few clients, patients, such as the gentleman from California who a couple of weeks ago hit the ''lottery,'' with a $3 billion punitive damage verdict.

If that kind of award occurs within the health care system, imagine the impact on all of the insured in this country. Imagine the cost that is going to have to be borne by the millions of people who have insurance with a $3 billion punitive damage award. How much are your insurance rates going to go up if an award such as that is given?

The least we can do is take the potential of a back-breaker award, or a series of back-breaker punitive damage awards, and put that back into the system in a way that helps those who do not have insurance.

So what I am suggesting is really a way to avoid some of the criticism that has been leveled against this bill, that this is full of litigation and costs, without any benefit coming back into the system. Remember, what we are concerned about here—yes, we are concerned about individual cases, obviously. But we also have to be concerned about the greater picture, which is making sure the public generally has

insurance and has quality health insurance.

As you can see from this chart, there is a real difference between the kind of health care people get when they are insured versus when they are not insured. This says ''nonelderly adults with barriers to care by insurance status.'' In cases where they had procedures needed, but did not get the care for a serious problem, only 3 percent of the people who had insurance ended up in that category. So if they have insurance, if they have a serious problem and a prescribed solution, they basically get the care. But if they are not insured, 20 percent—almost seven times the number of the uninsured—do not get the care they need. This says ''skipped recommended test or treatment.'' If they are insured, 13 percent of the people skip those tests. If you are not insured, almost 40 percent skip that.

Did not fill a prescription: 12 percent if you are insured; 30 percent if you are not insured.

Had problems getting mental health care: 4 percent versus 13 percent.

If we are concerned about quality care being provided to everyone, then we have to address the issue of the uninsured. This bill just deals with those who have insurance. I remind people, this bill only deals with people who have insurance. The biggest problem with patient care is those who do not have insurance, and that is displayed on this chart. We all know that is the fact from our own lives, knowing people who do and do not have insurance.

We cannot walk out of here with our arms raised high saying we have a great victory for patients when we accomplish two things: No. 1, we provide a little bit of protection—and that is what we do, provide a little bit of protection—for those who have insurance but cause millions of people who have insurance to lose their insurance and end up with vastly inferior care. We provide a little bit of benefit for a lot, but we harm a lot of people profoundly in the process.

Again, this is a pretty minimal amendment. We allow for 25 percent of the punitive damages to stay with the lawyer—to stay with the client so they get a little piece of this pie. The lawyer gets paid, although if they have a big punitive damage award, they probably get a big settlement in a lot of other areas, too. In this $3 billion award, they got $5.5 million in compensatory damages. Nobody is going poor, from the lawyer's perspective, on filing this case.

When it comes to potential enormous awards for punitive damages, we need to plow some of this money back into the system. I am hopeful the Senate will take a step back and say this is one of the reasonable suggestions that can come about if we are willing to take seriously this matter of providing quality health care, not just for those who have insurance but plowing that money back for those who do not.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from North Carolina.

Mr. EDWARDS. Madam President, I will first talk about what exactly the Senator from Pennsylvania is talking about when he talks about punitive damages. Punitive damages can only be awarded in a case where, in this context, an HMO or a health insurance company has engaged in virtual criminal conduct. They have to have acted maliciously, egregiously, outrageously for there to be a punitive damages award.

Now let's talk about it in the context of a real case. Let's suppose some young child needs treatment or a test and the insurance company executives meet and say: We are not paying for that test, and we do not care what the effect is. If something bad happens, so be it. We will live with that, but we are not paying for it. Even though it is covered by our policy, even though we know we are supposed to pay it, we refuse to pay it, period.

Let's suppose because that child fails to get some treatment or test that they should have gotten, the child was paralyzed for life. Then a group of Americans sitting on a jury listens to the case, as they do in criminal cases every day in this country, and decides the HMO has engaged in criminal conduct and awards punitive damages on that basis.

First of all, I say to my friend from Pennsylvania, I doubt if the parents of that child crippled for life believe they have hit the lottery. That child's life has been destroyed because of intentional criminal conduct on behalf of a defendant, in this case the HMO and the health insurance company.

It is not abstract. This is conduct that was specifically aimed at that child. It is not abstract to the world. This is something that was aimed specifically at the child who is sitting in that courtroom, and the jury found—in order for this to be possible, the court requires that the jury find that the HMO has engaged in outrageous, egregious conduct.

This is what this amendment does: It says we are going to take away 75 percent of that child's punitive damages award. That is what it says. We are going to impose a 75-percent tax on that child.

That is a real case. This is not an abstract academic exercise. This is reality. I say to my colleague, if we are going to start taxing people around this country 75 percent of their money—that would be that child's money in this case. It does not belong to the Senator from Pennsylvania; it does not belong to me and, by the way, it does not belong to the Government unless this amendment is adopted. It belongs to that child. If we are going to start taking 75 percent of people's money, let's not stop at that child. Why don't we consider taking 75 percent of the $400 million that the CEO of one of these HMOs apparently made last year? That will help. We can go around the country and start picking all kinds of groups of people and put that money in a pot and do what we choose with it.

This is not a serious response to a serious problem. My friend from Pennsylvania and I agree that the uninsured are a very serious problem in this country. It is an issue we need to address, and we need to address it in a serious way. None of us suggest that what we are doing with this Patient Protection Act will solve that problem. It will not. We have work left to do. There is no doubt about that. But we need to do that work in a serious, thoughtful, comprehensive way that will deal with the kids and the elderly in this country who do not have access to health insurance and who, as a result, do not have access to quality health care. The way to accomplish that is not by imposing a 75-percent tax on people, families who have been hurt by HMOs.

Mrs. BOXER. I ask the Senator to yield me 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. EDWARDS. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator EDWARDS for using a hypothetical example of why this is a very cruel amendment which I hope will be voted down overwhelmingly. But I have a real case I can talk about in a moment.

This morning—it seemed like a very long time ago, and it was—I voted for an amendment by Senator SANTORUM to protect infants, to say that infants who are born should have the protections of this bill. I said to him: I certainly agree that infants, children, and teenagers all the way up to the elderly, the most frail, should be covered by this bill.

What does my friend now suggest? A 75-percent tax on pain and suffering to go to the Federal Government for a Government program. This is unbelievable to me. A 75-percent tax on families who may be suffering because a child is permanently disabled, made blind, paralyzed, forever in a wheelchair, and then having to pay 75 percent of a punitive damage award that could go to help ease the pain of that child, that could hire people to take care of that child.

This is a cruel amendment. My friend always says he is for the children. This is not for the children. This is not for the families. This is not for the patients. This amendment will take the funds away from those families who are in desperate need of money to build a life for someone deeply harmed by an HMO that had no conscience.

As my friend says, punitive damages are not gotten lightly. It has to be proven that you were willful, that you

were vicious in your intent. And then to say to that family: No, you have to give up 75 percent of that fund that you won because you were a victim. It is a victim's tax. It is a victim's tax that goes to a Federal fund, to a Government program.

I always thought my friends on the other side trusted local people, a jury of our peers. They say: A local judge, someone from the community who can look at that family and understand what it means when they have a child permanently disabled.

A family with a little child in a wheelchair was coming to my office several years ago. The child was hooked up to every conceivable tube imaginable. The child was blind. There were caps on those punitive damages. And there was not enough money to hire the people that family needed to give their child the most decent life possible.

Now on top of this, as I understand this amendment, even in cases where there is a cap on punitive damages, this amendment still takes away 75 percent of the punitive damage. That is a slap at that victim, that child, the parents, the very children my friend said he cared about just 7 hours ago. This is an amendment that says the Federal Government is more important than your family. The Federal Government will reach into a local jury; the Federal Government will take 75 percent of your award, of your punitive damages award, and put it into a Government fund.

This is a terrible amendment. I hope it will be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I make one clarification: There are eight States that currently do this. One of them is the State of the Presiding Officer. The State of Georgia takes 75 percent of punitive damages, less attorney fees, and puts them in the State treasury. That is the State law in at least eight States. Georgia was, in fact, the model we used for this legislation.

By the way, those States are exempt from this provision so we don't take both the State and the Federal. If there is a State law, those are excluded under this act. This is hardly punitive. These are punitive damages, not compensatory damages. These are not pain and suffering.

I yield 2 minutes to the Senator from Louisiana.

Mr. BREAUX. I was not going to say anything, but the arguments have nothing to do with the substance of the amendment. Everybody ought to realize punitive damages have nothing to do with awarding a person who has been injured. A person who has been injured is compensated for economic losses, and there is no cap on economic losses. They are compensated by pain and suffering. There are no caps on pain and suffering. Punitive damages have one purpose. That is to punish the person who has caused the injury. That is the only purpose for punitive damages, to say to a company or an HMO, your conduct has been so outrageous, so egregious, you will be punished. That has nothing to do with the compensation for the injured plaintiff or child. They have already been taken care of.

The concept of taking punitive damages and saying, we will use those damages to help people who do not have insurance, is a novel idea. Other States have done it. It is a good approach. I think we should support it because it has nothing to do with taking away anything to which an injured person is entitled. They have already been compensated in this bill with unlimited, uncapped economic and noneconomic pain and suffering damages. The arguments that I have heard have no merit considering the nature of the amendment.

Mr. SANTORUM. I make clear a couple of issues. Eight States have already passed legislation that redirects punitive damages to specific purposes. I mentioned Georgia is one; Florida allocates money into the medical assistance trust fund; Illinois, into the department of rehabilitative services; Iowa puts money into the civil reparations trust fund; Kansas puts money directly in the State treasury; Missouri, to the tort victims compensation fund; Oregon, to the criminal injury compensation account; Utah, anything in excess of $20,000 in punitive damages goes to the State treasury.

This is not a brand new concept but a concept States have adopted because they understand, as the State of Georgia, that these are punitive damages, not compensatory damages. These are to punish people. We are saying, if you punish a guy who does a bad thing, who is a criminal, the crime is against everyone. Those who are not in the courtroom should be benefiting from this. That is the uninsured.

What will happen if those punitive damages are awarded to the individual or to the lawyer—because they get a big chunk? There will be more uninsured because the cost of health care will go up. This is punishing people who have insurance with higher premiums and higher rates. As the Senator from Louisiana said, we are already compensating the victim. They are getting unlimited compensation. There are no limits in State or Federal court for any compensation that is due this person. Who we are punishing here with punitive damages are the people who are going to lose their insurance because of high rates of insurance because of these punitive damages, and we will punish people who are going to keep their insurance and have to pay a lot more.

This is a modest amendment that tries to lessen the heavy hammer of cost that this bill puts in place. I am hopeful we get bipartisan support for it.

I reserve the remainder of my time.

Mr. EDWARDS. I will respond briefly to the Senator from Pennsylvania and the Senator from Louisiana.

First, I suggest to the Senator from Louisiana, when an HMO does something egregious, criminal, to a child, and in my example that child is crippled for life, that crime is not against all of us; it is against that child. It is that child who is in court. It is that child to whom the jury has awarded these damages. They didn't award it to us or the people in the gallery; they award it to that child. When we go in and take 75 percent of that child's money, it is a tax any way you cut it.

We can talk around this and talk about it for the next 15 minutes or 15 hours. That money does not belong to us. It belongs to that child and that crime was committed against that child and that is whose money we are taking. It is a tax.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 4½ minutes.

I have listened to my friend from Pennsylvania talk about the uninsured. But where was the Senator from Pennsylvania when President Bush asked for $80 billion to develop a program to cover the uninsured in this country, and they reported back $1.6 trillion and wiped that program out? We could have had a real program for the uninsured, but I didn't hear the Senator from Pennsylvania talk about that.

I didn't hear the Senator from Pennsylvania talk about when we were trying to develop the CHIP program; let's get behind it and fight for that program and take on the tobacco companies. They are the ones that are basically funding the CHIP program now, which has been extended to cover 6 million children in this country. I didn't hear the Senator from Pennsylvania talking about that.

Where was he last year when we had the family care, $60 billion to cover 8 million Americans, the parents of the CHIP programs? The Senator from Pennsylvania opposed that.

So with all respect, to offer an amendment to try to help the children of this country with their health insurance has no relevancy in terms of the voracity of the commitment of that side of the aisle in terms of trying to do something for the children of this country.

The record has not been there. To try to offer some amendment this afternoon and cry crocodile tears all over the floor about what we are doing for children when they basically have refused to address this issue in a serious way is something the American people see through.

We understand what is happening, even in this bill where you could have an important impact in terms of children who are covered. They have been supporting the attempts to water it down in terms of the HMOs.

That has been the record: Opposition to this HMO—the Patients' Bill of

Rights, to guarantee the children who do have health insurance are going to get protections. And they have been fighting it every step of the way. Then they say: Oh, well, we are really interested in children because we are going to give them this refundable credit on it.

It doesn't carry any weight. The American people can see through this. Let's get about the business of passing a real Patients' Bill of Rights and then let's go out and try to pass a real health insurance bill that will do something about the remainder of the children who need the care and also the parents of those children who need it in long-term family care. Let's do something to look out after our fellow citizens.

I withhold the remainder of my time.

Mr. SANTORUM. I just want to remind the Senator from Massachusetts that the Smith-Wyden amendment that provided $28 billion for those who do not have insurance passed and that is now law. It was in the budget. So I have been a supporter of money and a substantial amount of money for those who do not have insurance.

I have sponsored a piece of legislation, with Senator TORRICELLI, that is called Fair Care, which provides tax credits for the uninsured at the cost of around $20 billion a year.

So I suggest to the Senator from Massachusetts——

Mr. KENNEDY. Will the Senator yield on my time?

Mr. SANTORUM. One second—I just suggest to the Senator from Massachusetts, to impugn me personally and suggest I am disingenuous by proposing that we provide some money in punitive damages, not damages to compensate for injury but damages to punish someone who did a wrong—why should that go to an individual as opposed to society, which was wronged by that activity, as all criminal activity is. It is a crime against society. We do not compensate, as you know, when we prosecute someone criminally. The individual does not get benefit from that punishment.

So punitive damages are there to punish, not to compensate. I know the Senator from North Carolina knows that. That is why they are called punitive—punish; compensatory—compensate. There is a difference. That language is not there for window dressing; it is there for substantive difference.

What I am suggesting is that these punitive—punishment—damages should not further punish people who have insurance because they are the ones ultimately to be punished. Several States have recognized this and have plowed that money back into the system to help those who would otherwise be punished by this money coming out of the system of health insurance.

So I just suggest that my commitment here is sincere and my object here I think is worthy of support.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. First I say to my colleague, we can keep talking about this. The truth of the matter is the criminal conduct we are describing here is committed against a particular patient; in my example, against that particular child. We are taking 75 percent of that child's money, any way you cut it. It is a tax. The Government is taking their money, and there is no reason to do that. It makes no sense whatsoever.

I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from North Carolina for yielding 5 minutes.

Let me say I am one of the few Members on the floor of the Senate who practiced law before he was elected to Congress, who was in a courtroom, involved in a case which had a punitive damage verdict. That is very rare in American law. It happened to me. I was on the defense side. I was defending a railroad in a lawsuit brought by the survivors of an elderly man who was killed at a railroad crossing in November of 1970 near Springfield, IL.

There was a row of cars, train cars, parked near this crossing. This elderly man, late at night, crept up on the crossing to see if he could get across. His car stalled in the crossing. He tried to get out, couldn't, and the train came through and killed him.

When the jury in Illinois sat down and looked at it, they said if you measure the value of an elderly man's life, there is not a lot of compensation. But when they looked at the railroad I was defending and found out we had done the same thing time and time and time again, they decided this railroad needed to receive a message. So they imposed a punitive damage verdict of over $600,000 on the railroad I represented, to send a message to this railroad to stop parking these train cars so close to a crossing that people could get injured and killed. That was a punitive damage verdict in a relatively small town in Illinois.

The Senator from Pennsylvania now wants us to say that three-fourths of the verdicts just like that should be taxed and taken by the Federal Government. He does not believe the family of the person who was killed at the crossing should get the money. He thinks the Federal Government should take the money.

He has some good purposes for the money to be spent. I don't question that. But this is a rather substantial tax which he said we should take to deal with the uninsured in America. Why is it the Senator from Pennsylvania did not suggest we tax the profits and salaries of the HMOs and the health insurance executives? According to Senator KENNEDY's statement the other day, one of these HMO executives, in 1 year, made $54 million in salary and over $300 million in stock options.

I do not hear the Senator from Pennsylvania suggesting we tax that to pay for the health insurance needs of America. No, let's take it away from the families of those who were killed at railroad crossings. Let's take it away from the families of children who were maimed, with permanent injuries they are going to face for a lifetime. He would not dare reach into the pockets of the executives of these health insurance companies and tax them.

Come to think of it, just 6 weeks ago we gave them a tax break here, didn't we?—a $1.6 trillion tax break for those executives. But a new tax on the family of those who come to court looking for compensation for real injuries and death in their own family?

We should reject this amendment. We know what it is all about. We are this close to passing a Patients' Bill of Rights with two fundamental principles, principles that say: First, doctors make medical decisions, not health insurance companies in America; and, second, when the health insurance companies do something wrong, they will be held accountable as every other business in America.

There are those on the other side of the aisle who hate those concepts just as the devil hates holy water. But I will tell you, families across America know they are sensible, sound values and principles. All of this fog and all this smokescreen about taxing punitive damages for the good of America—why aren't you taxing the executives' salaries at the health insurance companies who are ripping off people across America? Instead, you are passing tax breaks for those very same people.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will be happy to work with the Senator from Illinois to tax HMO executives and lawyers who get big awards out of the health care system equally. If you would like to propose an amendment, I will work with you so all lawyers and all health executives who profit from the health care system will have that money plowed back in. I did not hear that. I don't think I heard that. I think I just heard one side of that argument.

I will be happy to yield a minute to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Listening to all this screaming and hollering, obviously somebody has been stuck by this amendment. What does this amendment do? The bill before us, under the best set of circumstances, is going to cost 1.2 million people in America their health insurance by driving up the cost of health care. And one of the primary factors driving up that cost is litigation.

What the Senator from Pennsylvania has proposed is to take the part of these massive settlements that has nothing to do with compensating the person who has been injured—it has to

do with punishing reckless and irresponsible behavior—and using that to help buy health insurance for the very people who will lose their health insurance as a result of all of these lawsuits.

Are we concerned about people without health insurance or are we concerned about plaintiffs' lawyers? It seems to me I hear more screaming about plaintiffs' lawyers than I do health insurance.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SANTORUM. I yield a minute to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to agree with the Senator from Texas. Essentially, with these increased damages from punitive damages, oddly enough, the way insurance works in America, the premium payers are going to pay more. The more big verdicts that are rendered, the more premium payers will pay, raising rates for innocent people who had nothing to do with the misconduct that resulted in the punitive damages, resulting in higher costs so more people economically will drop off the insurance rolls.

We have a real problem with the uninsured in America. It seems to me this is a solution that is very creative. It is a solution that has been talked about by legal scholars for some time—what to do with punitive damages. Why, the part of it you pay for pain and suffering, you pay for contract laws—the victim gets that. But what about the money that is to punish the company? Where should it go?

I suggest the Senator is correct; it go to the uninsured and help people be insured.

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

Mr. SANTORUM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. EDWARDS. Mr. President, I yield 1 minute to the Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleague for yielding. I see my good friend from Texas. He and I have worked over the years on litigation matters and have authored litigation reform bills and a variety of other measures to reform the legal system.

I think it is important to remember that we have had great debates over the years about victims' rights and how important it is that victims be remembered when crimes are committed.

It seems to me that on this particular proposal and in this case when a person is subject to criminal conduct—that is what this amounts to—they have been victimized. This is not just compensatory damage for a mistake that is made. If you have been a victim of criminal conduct and are going to be deprived of the award that a jury provides you, that is fundamentally wrong. It ought to be defeated on just that point.

I have listened to and have engaged in debates on victims' rights. Victims are sick and tired when criminal behavior is committed and they are not considered when the matters have come before the bar of justice. When an individual, a child, or an adult is found to be injured as a result of criminal conduct, that is what punitive damages are. I think they deserve to receive that award.

Mr. EDWARDS. Mr. President, the Senator from Connecticut is exactly right. When we have a victim, such as a child who has been injured by the criminal conduct of an HMO, it is fundamentally wrong to take 75 percent of that child's money. And that is to whom it belongs. No matter what they say, and no matter how long we talk about it, it belongs to that child. To take 75 percent of that child's money is wrong, and we should vote against this amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I have been listening to this debate, and I think some good points have been made on both sides. But is the standard for recovery of punitive damages in this case criminal conduct, or wanton misconduct, or intentional infliction of distress? I would be surprised if the standard for punitive damages is criminal conduct.

Is that the case?

Mr. SANTORUM. No. If it takes a long time to answer, I am not going to yield the rest of my time to define that answer.

Mr. EDWARDS. If the Senator will yield time to me, I will be happy to answer that question. I can't answer it yes or no.

The answer is reckless, intentional, outrageous conduct.

Mr. SANTORUM. Which is not criminal.

Mr. EDWARDS. Of course, it is criminal conduct.

Mr. THOMPSON. No, no, no. Reclaiming my time, let's not gild the lily. I think you have some good points. Let's not try to convince people that wanton misconduct and willful misconduct is the same as criminal misconduct. It is not.

Mr. SANTORUM. Mr. President, let me reclaim my time. It is quickly running out.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. EDWARDS. Will the Senator yield for a response to that question?

Mr. SANTORUM. Mr. President, I ask unanimous consent for an additional minute to finish this colloquy so it doesn't impinge on my time.

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

Mr. EDWARDS. The language of the legislation is that reckless, intentional conduct is criminal conduct—all over America.

Mr. THOMPSON. No. It isn't.

Mr. EDWARDS. I respectfully disagree. Somebody who engages in reckless conduct in the operation of an automobile has engaged in criminal conduct. Somebody who engages in reckless conduct that causes the death of another person has engaged in criminal conduct. I respectfully disagree with the Senator.

Mr. THOMPSON. If I could respond, conduct that is subject to civil litigation versus conduct that is subject to criminal litigation, the conduct that the Senator described may, in fact, turn out to be also in addition to having civil exposure having criminal exposure, or it may not. But the conduct very well may be reckless, or even intentional, and constitutes conduct that is subject to punitive damages which can still not be criminal.

My only point is that it is not the same. It is not the same. The same conduct can in some cases be both, but in the civil context if——

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

Mr. THOMPSON. All right.

The PRESIDING OFFICER. The Senator from Pennsylvania has 1 minute.

Mr. SANTORUM. Mr. President, I reiterate that this amendment is about taking money. The concern of this bill is that excessive costs will drive up the rates for insurance. We are taking some of this excessive cost that is built into this bill and plowing it back into the system to make sure that we don't have more uninsured if we don't take care of it.

I wish to make one additional point. Back in 1992, the House sponsor of the McCain-Kennedy bill, JOHN DINGELL, proposed using 50 percent of punitive damage awards to help compensate people—in this case, to prevent medical injuries. This is not a punitive damage measure. This is a measure that understands that punitive damages should go to benefit those in society who could be hurt by their increased cost of insurance. That is what this amendment does.

I hope we can get some bipartisan support for it.

I ask for the yeas and nays.

The PRESIDING OFFICER. All time has expired.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Arkansas (Mrs. LINCOLN) is necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.

I further announce that, if present and voting, the Senator from Hawaii (Mr. INOUYE) would vote ''aye.''

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

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

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—50

Akaka	Durbin	Miller
Baucus	Edwards	Murray
Bayh	Feingold	Nelson (FL)
Biden	Feinstein	Reed
Bingaman	Graham	Reid
Boxer	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Jeffords	Schumer
Carper	Johnson	Shelby
Cleland	Kennedy	Snowe
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Leahy	Thompson
Daschle	Levin	Torricelli
Dayton	Lieberman	Wellstone
Dodd	McCain	Wyden
Dorgan	Mikulski	

NAYS—46

Allard	Ensign	Lugar
Allen	Enzi	McConnell
Bennett	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Smith (NH)
Byrd	Hatch	Smith (OR)
Campbell	Helms	Stevens
Chafee	Hutchinson	Thomas
Cochran	Hutchison	Thurmond
Collins	Inhofe	Voinovich
Craig	Kyl	Warner
Crapo	Landrieu	
DeWine	Lott	

NOT VOTING—4

Domenici	Lincoln
Inouye	Murkowski

The motion was agreed to.

Mr. DASCHLE. Mr. President, the distinguished Senator from New Hampshire has been working with colleagues on his side of the aisle to come up with a finite list. We have an amendment to be offered by Senator CARPER and an amendment to be offered by Senator KENNEDY. Those are the only two amendments on our side. I yield the floor for purposes of describing the list on the Republican side.

Mr. GREGG. Mr. President, the list on our side includes the following amendments. If there is somebody else who has an amendment and I have not spoken to them, raise your hand.

The amendments are: Senator CRAIG, long-term care; Senator CRAIG, nuclear medicine; Senator KYL, alternative insurance; Senator SANTORUM, uninsured; Senator BOND, punitive damages; Senator FRIST, liability. There are pending in the order we talked about, Senator WARNER; Senator ENSIGN on genetics, and I understand his pro bono amendment is being agreed to; and Senator THOMPSON, which I understand also has been agreed to.

Mr. THOMPSON. No.

Mr. GREGG. It has not. And then Senator FRIST has a substitute.

Is there anybody else who has an amendment?

That appears to be our list.

Mr. DASCHLE. Mr. President, I ask unanimous consent that be deemed as the finite list of amendments to be offered to this bill.

Mr. CRAIG. Reserving the right to object.

Mr. DASCHLE. Mr. President, is there an objection?

Mr. NICKLES. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I just tell the majority leader, we have not had a chance to run that by our colleagues. We have been shopping amendments, and the Senator from New Hampshire is to be congratulated that he has reduced the number of amendments substantially. We will need a few minutes at least to run this by the rest of our colleagues to make sure they know that if they have additional amendments to be considered, they need to get them on our list.

If the majority leader will please withhold the request, we will shop it around.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, while Senators are working out their amendments, I think there ought to be an Independence Day speech. I assume we are going home for the Fourth of July. So if there is no objection, I have a speech in hand. (Laughter.)

Mr. MCCAIN. Reserving the right to object. (Laughter.)

In admiration of the Senator's tie, how long is the speech?

Mr. BYRD. Well, now, in the face of that extraordinary compliment, I would say it is just half as long as it would have been otherwise. (Laughter.)

Mr. MCCAIN. No objection.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

INDEPENDENCE DAY

Mr. BYRD. Mr. President, the Senate will shortly recess, hopefully, for the Independence Day holiday. Many Members will return home to meet with their constituents. Some will perform a time-honored ritual and take part in bunting-swagged Independence Day parades, sweating and waving from the backs of convertibles somewhere in the line-up between the pretty festival queens, brightly polished antique cars, flashing fire engines, and, hopefully, ahead of the prancing equestrian groups. It is an American tradition as familiar and as comforting as the fried chicken and the apple pie that everyone will enjoy. Families and friends will gather to watch the fireworks light the evening sky.

This first Independence Day of the new millennium calls to mind an earlier year two centuries ago. The year was 1801. Of course, then, as now, there had been a hotly contested election. Control of government passed from one party to another. It took a vote in the electoral college to decide the Presidency, and the House of Representatives put Thomas Jefferson into the White House instead of Aaron Burr.

Passions ran high and many strong words were uttered. Grudges were nursed, and we feel those same passions today, and with the recent change of party control in the Senate, some angry feelings have been fanned anew. It is, perhaps, a good time as we celebrate the 225th anniversary of our country's independence as a new nation, a new government created under God in as thoughtful and inspired a manner as man can devise, to recall these words from President Jefferson's inaugural address:

> During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and write what they think; but this being now decided by the voice of the Nation, announced according to the rules of the Constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possesses their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things.

The language that came from Jefferson's inaugural speech may be archaic, but the message rings true through the ages and is contemporary still. It reminds us of the great luxury of our liberty—the freedom to say what we think and the ability to stand up for what we believe. It also reminds us of the need, then as now, to remember, protect, and preserve our liberty as our greatest common good. For that, we must stand together as a people united in, as Jefferson says later in his speech, ''. . . The preservation of the general government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad . . . .''

Americans are fortune's children. We are the lucky citizens of a great and novel experiment in government, the golden children of a 225-year-old alchemy that blended the best of all governmental forms into a wholly new metal, a grand representative government that has endured the trials of centuries. We enjoy power coupled with restraint; wealth with generosity; individual opportunity with concern for the less fortunate. Though at times it seems that we are consumed by petty squabbles or diverse interests that

threaten to fragment us as a people, each year on the glorious Fourth of July we are given a chance to come together proudly as one American people, to honor, in Jefferson's words, ''[T]he wisdom of our sages and the blood of our heros . . .'' that have been devoted to the principles embodied in our Constitution and our government.

This next Wednesday evening, as fireworks thunder over the Jefferson Memorial in Washington and are mirrored in the reflecting pond around it, patriotic strains will fill the air. Similar scenes will play out around the country. Whether in Washington or in small towns or medium-sized cities around the Nation, or in large cities, we may all be proud to be Americans first and foremost. Whatever other allegiances we might have, to party, church, state, or community, we are Americans first. Let us celebrate that and let us not forget it.

As you light your sparklers and fountains, as you hear the martial music of John Phillip Sousa, as you applaud the fireworks displays, as you eat the first sweet corn and tomatoes from the garden, look around you and feel proud. Be proud that 225 years ago, bold men risked their lives and their fortunes and their sacred honor to give us this wonderful system of States, this amazing governmental system, this land of the free, this home of the brave united as one nation under God and under the red, white, and blue flag of the United States of America. Feel glad that so many of your fellow citizens are standing at your shoulders watching the parade, or sitting nearby with their families looking up at the sky ablaze with man-made stars. In these crowds is our hope for a long future as a people united still under Old Glory, and under the Constitution of the United States.

Mr. President, Thomas Jefferson spoke of our constitutional government as the ''sheet anchor'' of our peace and safety. He chose his nautical allusion fittingly. A sheet anchor, according to the Merriam-Webster Dictionary, is a noun that first appeared in the 15th Century. It is a large, strong anchor formerly carried in the waist of a ship and used as a spare in an emergency, but the phrase has also come to be used for something that constitutes a main support or dependence, especially in times of danger. Truly, then, the Constitution is not just the organizing construct of our government, but also, as Jefferson saw it, the tool by which our Nation would preserve our liberties. It is fitting, then, to close with the words of the poet Henry Wadsworth Longfellow, who wrote about the republic in ''The Building of the Ship.''

Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis but the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights from the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, ours prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee—are all with thee!

Mr. President, I yield the floor.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I certainly join my colleagues in expressing our warm appreciation for our senior colleague, our President pro tempore, for addressing the Senate in such a stirring manner. It lifts the hearts of all of us in this late hour on a Friday afternoon, which has, I guess, a degree of uncertainty as to the manner in which we are going to proceed.

BIPARTISAN PATIENT PROTECTION ACT—Continued

AMENDMENT NO. 833, AS FURTHER MODIFIED

Mr. WARNER. Mr. President, I have an amendment which has been pending. I send to the desk a modification of that amendment.

The PRESIDING OFFICER. Without objection, the amendment is modified.

The amendment (No. 833) as further modified, is as follows:

On page 154, between lines 2 and 3, insert the following:

''(11) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, the amount of an attorney's contingency fee allowable for a cause of action brought pursuant to this subsection shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

''(B) DETERMINATION BY DISTRICT COURT.—The last Federal district court in which the action was pending upon the final disposition, including all appeals, of the action shall have jurisdiction to review the attorney's fee in accordance with subparagraph (C) to ensure that the fee is a reasonable one and may decrease the amount of the fee in accordance with subparagraph (C).

''(C) DETERMINATION OF REASONABLENESS OF FEE.—

''(i) INITIAL DETERMINATION OF LODESTAR ESTIMATE.—

''(I) IN GENERAL.—To determine whether the attorney's fee is a reasonable one, the court first shall, with respect to each attorney representing the plaintiff in the cause of action, multiply the number of hours determined under subclause (II) by the hourly rate determined under subclause (III).

''(II) NUMBER OF HOURS.—The court shall determine the number of hours reasonably expended by each such attorney.

''(III) HOURLY RATE.—The court shall determine a reasonable hourly rate for each such attorney, taking into consideration the actual fee that would be charged by each such attorney and what the court determines is the prevailing rate for other similarly situated attorneys.

''(ii) CONSIDERATION OF OTHER FACTORS.—A court may increase or decrease the product determined under clause (i) by taking into consideration any or all of the following factors:

''(I) The time and labor involved.

''(II) The novelty and difficulty of the questions involved.

''(III) The skill required to perform the legal service properly.

''(IV) The preclusion of other employment of the attorney due to the acceptance of the case.

''(V) The customary fee of the attorney.

''(VI) Whether the original fee arrangement is a fixed or contingent fee arrangement.

''(VII) The time limitations imposed by the attorney's client on the circumstances of the representation.

''(VIII) The amount of damages sought in the cause of action and the amount recovered.

''(IX) The experience, reputation, and ability of the attorney.

''(X) The undesirability of the case.

''(XI) The nature and length of the attorney's professional relationship with the client.

''(XII) The amounts recovered and attorneys' fees awarded in similar cases.

''(D) RARE, EXTRAORDINARY CIRCUMSTANCES.—Notwithstanding subparagraph (A), in rare, extraordinary circumstances, the court may raise the attorney's fee above the ⅓ cap imposed under subparagraph (A) to ensure a balance of equity and fairness to both the attorney and the plaintiff.

On page 170, between lines 21 and 22, insert the following:

''(9) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, subject to subparagraphs (C), (D), and (E), the amount of an attorney's contingency fee allowable for a cause of action brought under paragraph (1) shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

''(B) DETERMINATION BY COURT.—The last court in which the action was pending upon the final disposition, including all appeals, of the action may review the attorney's fee to ensure that the fee is a reasonable one. In determining whether a fee is reasonable, the court may use the reasonableness factors set forth in section 502(n)(11)(C).

''(C) EQUITABLE DISCRETION.—A court in its discretion may decrease the amount of an attorney's fee determined under this paragraph as equity and the interests of justice may require.

''(D) RARE, EXTRAORDINARY CIRCUMSTANCES.—Notwithstanding subparagraph (A), in rare, extraordinary circumstances, the court may raise the attorney's fee above the ⅓ cap imposed under subparagraph (A) to ensure a balance of equity and fairness to both the attorney and the plaintiff.

''(E) NO PREEMPTION OF STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney's contingency fee that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings such a cause of action.

Mr. WARNER. Mr. President, I want to comply with the wishes of the distinguished leaders.

Mr. DASCHLE. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate is not in order. The Senate will suspend. Please take your conversations off the floor.

Mr. WARNER. Mr. President, I wish to accommodate the managers, but I am ready to proceed. I think I can describe my amendment in about 10 or 15 minutes or less. I urge colleagues to accept that offer to move ahead and give equal time to each side.

Mr. REID. I am sorry, I say to my friend, the distinguished Senator from Virginia, we have had trouble hearing over here.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Virginia is entitled to be heard.

The Senator from Virginia.

Mr. WARNER. I say to my good friend, the distinguished majority whip, I am seeking now to address my amendment. It has been pending for some several days. I am perfectly willing to enter into a time agreement. I need but, say, 15 minutes.

Mr. REID. Say 30 minutes evenly divided?

Mr. WARNER. I am quite agreeable to 30 minutes equally divided.

Mr. REID. Our anticipation now—we will work this out, speaking with the managers of the bill—is to offer side by side with yours, or second degree, whatever your manager wishes to do, but you should go ahead and proceed. We are available during our 15 minutes to respond.

Mr. WARNER. Mr. President, might I have clarification? If I understand it on the second-degree, in the event it seems we need some adjustment in the time agreement with which to address that——

Mr. REID. Why not take an hour evenly divided, and if we don't need it, we will yield back the time?

Mr. GREGG. Mr. President, I am not sure what the Senator from Virginia wishes to do. I hope they will not second degree your amendment but, rather, offer an amendment which would be a stand-alone, side-by-side amendment.

Mr. REID. I am sorry, did you say you wanted to offer it side by side? That is what we want to do.

Mr. WARNER. That is perfectly agreeable. Could my amendment be voted on first?

Mr. REID. Of course—well, let me not get my mouth ahead of my head.

In the past what we have done, Mr. President, is the second-degree amendment could be a second-degree amendment that appears to be the one we would ordinarily vote on first. Through all these proceedings, the stand-alone was the one we would vote on first. In other words, that could have been a second-degree. That is what we have done in the past.

Mr. GREGG. Actually, we did reverse the order on the Snowe——

Mr. REID. It is not important whether it is first or second. Do you agree?

Mr. EDWARDS. We should go first.

Mr. REID. Through these entire proceedings—I don't know how many votes it has been now, but certainly it is lots of them—the one that would have been the second-degree should be voted on first. We think we should do it in this instance.

Mr. WARNER. Mr. President, I believe I have the floor. I believe the amendment is up. We are simply discussing a time agreement. I am not prepared to yield the right that I believe I now have with respect to proceeding with this amendment. But I want to accommodate my distinguished friend. He has been most helpful for 3 or 4 days, as I have worked on this amendment.

Could you be more explicit exactly what you think you would like to have? I understand you have to consult with others.

Mr. REID. What we would like to do is offer an amendment that would be voted on, a companion to yours.

Mr. WARNER. Fine.

Mr. REID. The only question now, it seems, is which one would be voted on first. What we have done during these entire proceedings except for one bipartisan amendment that was offered by the Senator from Maine, the one that would have been a second-degree is voted on first. We think we should follow that same order.

Mr. WARNER. I simply ask as a matter of courtesy—some 3 days I have been working with you—just allow mine to be voted first. Certainly we could have discussion on the one that is in sequence. I am confident Members will very quickly grasp the basic, elementary framework that I have in my amendment. And I presume any companion amendment you or others wish to introduce would likewise be very elementary. We could quickly make decisions, all Senators, on it and proceed with our business this afternoon.

Mr. REID. I say to the Senator from Virginia, I know some of our friends would rather we went first. We feel pretty confident of our vote, so we will go second.

Mr. WARNER. Mr. President, I like a man who is audacious. I accept that challenge. We will proceed on mine. I need only about 10 minutes to address it.

Mr. DASCHLE. Will the distinguished senior Senator from Virginia yield for a unanimous consent request.

Mr. WARNER. Oh, yes.

Mr. DASCHLE. We were able to reach this agreement with the cooperation of all our colleagues. I think we are now prepared to propound the agreement.

Mr. President, I ask unanimous consent that the following be the only first-degree amendments remaining in order to S. 1052, except the Warner and Ensign amendments which have been laid aside and which now are being debated, that they be subject to relevant second-degree amendments; all amendments must be offered and disposed of by the close of business today; and that upon disposition of these amendments the bill be read a third time and a vote on final passage of the bill occur without any intervening action or debate:

Frist substitute; Frist, liability; Craig, long-term care; Craig, nuclear medicine; Kyl, alternative insurance; Santorum, unions; Nickles, liability; Bond, punitives; Thompson, regarding point of order; Kennedy, two relevant; Daschle, two relevant; Carper, relevant, to be offered and withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, I ask if the majority leader would be willing to adjust his unanimous consent so Senator ENSIGN could modify his amendment, which is pending, and also, because we have not seen the Kennedy, Daschle, or Carper amendments, we would want to reserve the right to have a second-degree amendment.

Mr. DASCHLE. The amendments are subject to second degrees, of course. I ask consent the Ensign amendment be allowed to be modified.

Mr. CRAIG. Reserving the right to object.

Mr. GREGG. Reserving the right to object.

Mr. THOMPSON. Reserving the right to object, a simple point: My amendment was listed as one having to do with a point of order. If we could correct that, it actually has to do with venue.

Mr. DASCHLE. I ask consent the clarification be made with regard to the Thompson amendment.

Mr. GREGG. I also ask that the Nickles amendment be defined as relevant, rather than liability, and, since the majority leader has asked to reserve two relevant amendments, the Republican leader be given two relevant amendments.

The PRESIDING OFFICER. Does the majority leader modify the request?

Mr. DASCHLE. I ask unanimous consent that the request be so modified.

The PRESIDING OFFICER. The request is modified.

The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire of the majority leader, is it your intent to at least shape the field of amendments into a set number but there is no time tied to those? Is that correct?

Mr. DASCHLE. That is correct.

Mr. CRAIG. Thank you.

The PRESIDING OFFICER. Is there objection to the request. Without objection, it is so ordered.

Mr. DASCHLE. I thank our colleagues.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, if I may just proceed, my understanding is that we have 30 minutes equally divided under the time agreement. Is that correct?

The PRESIDING OFFICER. That has not been propounded.

Mr. WARNER. Mr. President, I suggest we just leave it open. I want to

give adequate opportunity to those who wish to address this subject. I will proceed.

Mr. President, for some time I have followed this bill very carefully. I am, of course, quite aware of the name of it—the Patients' Bill of Rights. I want to ask the Senate to give serious consideration to protecting the right of a patient to receive what I regard as a fair return on such awards as a court may approve, presumably, by a jury recognizing the plaintiff's case has merit and assigns an award figure.

The McCain-Kennedy-Edwards bill provides new rights. But there is nothing in there to give the patients the protection from what could well be perceived by many as an unfair allocation of that award between attorneys and patients. Therefore, I think there should be a framework of caps on the maximum amount of the award to be made.

May I explain it.

It is kind of complicated because we have a Federal court and a State court. While I don't know the ultimate finality of this legislation, at this point the amendment provides for the treatment of caps in both courts, and they are somewhat different.

In addition, I believe very strongly that there is in rare instances and under extraordinary circumstances a case where an attorney would be entitled to in excess of the one-third cap that I am proposing in both Federal and State courts. An allowance has to be made for the exceptional type of case.

I am proposing a framework of caps. It would be giving the court the right to only approve attorney's fees in a case up to one-third of the award of the damages. It could well be that the client may have struck an arrangement with his attorney for less than one-third. It recognizes that situation.

Having the one-third cap strengthens the ability of the patient—the client—to get a fee structure which is consistent with their receiving the majority of the ultimate one-third as the basic structure in both the Federal and the State court.

In addition, in both Federal and State court, we have exceptions in rare cases, and extraordinary facts, where the judge can go above the one-third with no cap.

We have reposed confidence in our judiciary system. Indeed, we have reposed confidence in those members of the bar. Many years ago, I was privileged to be an active practitioner before the bar and had extensive trial experience as assistant U.S. attorney and some modest trial experience in other areas.

I recognize that the vast majority of the bar will work out a fee schedule with their client in such a way that there will be an equitable distribution. But there are instances where the patient could well be deserving of the award by the court and then prohibited from getting what I perceive as a fair and proportionate share by someone who does not follow the norm.

The norm in most cases does not exceed one-third. Contingent fees are usually one-third or less. Therefore, we put in the cap of the one-third.

I also want to make it clear that there is a good deal of expense to a lawyer associated with representing a client. They pass it on to the client, of course, but that expense is over and above the fees. If it is a 2-week trial with a lot of expenses associated with it, it does not come out of the one-third allocation. It is over and above, and again subject to the court's discretion.

We lay out a formula for the Federal courts under the lodestar method. That is a formula that was approved by the Supreme Court of the United States as it relates to attorney fees in Federal cases.

Here are basically the factors the court would review in the Federal system: The time involved by the attorney; the difficulty of the questions involved; the skill requisite to perform the legal services; or the preclusion of employment of the attorney due to acceptance of the case.

In other words, he is giving up other opportunities to take on this case.

What are the customary fees that are before the courts and the bar in the jurisdiction that the case is held? Whether the fee is fixed or contingent; time limitations imposed by the client on the circumstances; the amount involved in the return of the jury in most instances; the experience and reputation and the ability of the particular attorney, and on it goes. But it is carefully worked out through many years of following these cases.

Therefore, I believe that we are giving protection to the patient. For rare and extraordinary cases, the court can go above it. In some instances, the court will decide that the one-third is not appropriate, and that it should be some fee less than a third, again protecting the interests of the patient.

I find this a very reasonable amendment. It certainly comports with the basic objectives of this law; namely, to give some benefits to those who have suffered the grievances which are designated in this law.

I also recognize the Federal-State law; that is, what we call States rights. I have been a strong proponent of that throughout my career in the Senate.

I provide that in the case of a State court, if the State in which that court sits has a framework of laws which govern attorney fees, then this amendment does not apply.

I repeat that the State law would govern the return to the attorney of that amount to which he or she is entitled for their services—not this proposed amendment.

Mr. President, I see my colleague in the Chamber.

I yield the floor for the moment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have a unanimous consent request I am going to propose in just a minute—or in even less than a minute.

Senator GREGG is in the Chamber, and I appreciate his listening.

Mr. President, I ask unanimous consent that I be recognized to offer an additional first-degree amendment, with 30 minutes for debate in relation to the Warner amendment and the Reid amendment to run concurrently prior to a vote in relation to the Warner amendment—which the Senator from Virginia indicated he wanted first—followed by a vote in relation to the Reid amendment, with no second-degree amendments in order prior to the votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 852

Mr. REID. Mr. President, Senator WARNER and I have worked side by side all the time I have been in the Senate on the Environment and Public Works Committee. I have been his subcommittee chairman; he has been my subcommittee chairman. Twice I have been chairman of the full committee. I have been the ranking member of that committee.

There is no one I have worked with in the Senate who is more of a gentleman than the Senator from the Commonwealth of Virginia, Mr. WARNER. He has been a pleasure to work with. We tried to work this out on the attorney's fees. We have been unable to do that. But his amendment is, in my opinion, very complicated. It is going to create litigation, not solve it.

We have a fair way to address this issue. Even though personally, as an attorney, I had done a great deal of defense work where I was paid by the hour and a significant amount of work where I was paid on a contingency fee basis many years before I came back here, I think contingent fees should be based upon whatever the States determine is appropriate.

But I am willing to go along with the basic concept of the Senator from Virginia; and that is we will go for a straight one-third, no complications. It is very simple: A straight one-third.

Senator WARNER's proposal introduces a complex calculation in every case and ignores the agreements between injured patients and their lawyers. This proposal portends to tell State judges how to apply State law. We do not need to do that here in Washington.

This proposal ties only one side's hands in litigation. HMOs can hire all the attorneys they want and plaintiffs cannot. There is no restriction on how much money the attorneys for the HMOs make. We are not going to get into that today. We could. It would be a very interesting issue to get into.

But what we are saying is, when you walk down in the well to vote on the amendments, we have a very simple proposal: It is one-third, period. Under

Senator WARNER's proposal, it is something, and we will figure it out later based on how many hours, and where you did it, and what kind of case it was. Ours is simple, direct, and to the point. It would only complicate things to support the amendment of my friend from Virginia.

Mr. President, at this time, after explaining my amendment, I call my amendment forward and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 852.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To limit the amount of attorneys' fees in a cause of action brought under this Act)

On page 154, between lines 2 and 3, insert the following:

''(11) LIMITATION ON AWARD OF ATTORNEYS' FEES.—

''(A) IN GENERAL.—Subject to subparagraph (B), with respect to a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under this subsection and prevails in that action, the amount of attorneys' contingency fees that a court may award to such participant, beneficiary, or estate under subsection (g)(1) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved by the court in such action) may not exceed an amount equal to ⅓ of the amount of the recovery.

''(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of an award of attorneys' fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the following:

''(9) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' contingency fees, subject to subparagraph (B), a court shall limit the amount of attorneys' fees that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) to the amount of attorneys' fees that may be awarded under section 502(n)(11).

''(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys' fees allowed under subparagraph (A) as equity and the interests of justice may require.

Mr. REID. Mr. President and Members of the Senate, the language in this amendment was not made up in some back room by my staff or somebody from downtown. It was taken—every word of it—directly from the amendment originally offered by the Senator from Virginia—exactly identical, not a word changed.

Certain paragraphs were taken out of his amendment. It is far too complicated. But every word in my amendment is directly from the amendment offered by the Senator from Virginia. I ask Senators to support my amendment, what should be a bipartisan amendment.

There are some people who want no restrictions. We have acknowledged that we are going to, in this instance, have a restriction. If there is going to be one, it should be direct and to the point, as is this one.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield whatever time the Senator from Delaware wants.

Mr. BIDEN. Five minutes.

Mr. REID. Five minutes.

Mr. WARNER. Mr. President, for clarification, are we under a time agreement?

Mr. REID. Yes, we are.

Mr. WARNER. Was that in the unanimous consent agreement?

Mr. REID. Yes. But I say to the Senator, whatever time you need we can yield to you.

Mr. WARNER. Fine.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I always find these debates about attorney's fees fascinating. I find my friends on both sides of the aisle who usually are seeking to restrict attorney's fees are the most big-time free enterprise guys in the world. They are people who tell us we should not freeze and/or put limitations on the amount of money energy companies can make, even though it bears no relationship to cost. They are folks who told us out in California—when you have utility companies gouging the public—that we should not, even though we have authority under Federal law, put on some limitations. They are folks who tell us that, notwithstanding the fact that a drug company may be able to manufacture a pill for one-quarter of 1 cent and sell it for $75, there should not be any relationship between the amount of cost involved and the profit made.

I find it absolutely fascinating. For example—I am not going to do it—a great amendment to the amendment by my friend from Virginia would be the following: That any fee charged by an HMO for health care coverage must bear direct relationship to their cost and cannot exceed a profit rate of X amount. That would be fair, right?

All these folks who can't afford health insurance, who are getting banged around and battered, we are trying to help, but I imagine I would not get many votes for that. I bet my friend from Virginia would not vote for that because that is free enterprise.

My grandfather Finnegan used to have an expression. He said: You know, it's kind of fascinating. There's free enterprise for some people, free enterprise for the poor, and socialism for the rich. You find yourself in a position where, if you are representing the right interest, we talk about free enterprise; if you don't like the interests that are at stake, you find that you should have socialism, you should have imposed limitations on fees or on profits, based on whether you like what is going on.

I do not know whether most people know this, that an awful lot of these folks who want to bring suit against a giant company don't have any money. These giant companies, they have a lot of money and a lot of lawyers. So what they do is, they depose you to death, which costs thousands and thousands and thousands of dollars.

So what happens? You go to a lawyer, and you say: Look, I have this claim. And the lawyer sits down and says: OK, who knows what the jury will do, and who knows what will happen with regard to the defense that is going to be put up? And it seems to me you have a case. You have a 60-percent chance of winning this case. I'll tell you what I will do. I am going to front all the expenses. I am going to take all the chances.

It is sort of free enterprise. It may cost that law firm $50, $500, $5,000, $50,000, $100,000, and they are betting on the come. They are betting on the come. Some law firms actually risk their solvency on a case that they believe is worth pursuing.

Then you are going to come along and say: By the way—after the fact, after the risk is taken on behalf of a client, where you may get absolutely nothing and you may end up in the hole, losing a lot of money, because I can tell you, major corporations do what they are entitled to do under this system. They have batteries of lawyers, and they just depose the devil out of you. It costs. For example, the person taking down my comments right now, the cost to the American taxpayer for that transcription is hundreds of thousands of dollars a year—millions of dollars a year. We need to have a record, and we do it.

The same thing happens in the depositions. Somebody sits with a little machine like that and types away. So if I am the deep-pocket company and I want to run you out, all I do is I keep deposing you; I keep submitting interrogatories; and I run your cost up because you have to pay for that.

I guess the only point I am trying to make is—and I don't want to take the time because I am sure everybody's mind is already made up on this thing—if you feel good about lawyer bashing, if you feel good about making the case that you should have to justify, on an hourly basis, exactly what you do, and all of these things, not calculate the risk, not calculate the cost, then fine, have at it.

But I don't know; what is good for the goose isn't good for the gander. If we do this with regard to attorney's fees and we don't do this with regard to health care costs and fees, what is the fundamental difference? Tell me the fundamental difference, all of a sudden, in the great interest of my friends to protect the poor, aggrieved plaintiff, who has been wronged by the insurance company. At any rate, I am as anxious to get out of here as everybody is. I

wanted to make it clear: I think this is bad law, bad policy, a bad idea, and it is, in a literal sense, discriminatory.

Mr. REID. Mr. President, this legislation that is now before the body is not about attorney's fees. It is about patient protection, making sure people in America have certain rights that have been taken away from them. We want to reestablish something that is kind of old-fashioned in the minds of many—that is, when you go see your doctor, the doctor determines what kind of medicine you need and what kind of care you need. That is what this legislation is all about. It is not about attorney's fees.

If the people on the other side were interested in saving money, one of the amendments they should have would address the compensation of some of these employees. There is a list, and you can go to the top 10. The first one, including stock options, made $411,995,000 last year. That is just a little item they might be concerned about a little bit. We have a lot of money that isn't necessarily needed.

This is not about how much money people make. What it is about is trying to pass a Patients' Bill of Rights. I ask that we move forward as quickly as possible and vote and get on with the rest of the legislation.

The PRESIDING OFFICER. Who yields time?

Mr. REID. The Senator from Tennessee may have some of mine.

Mr. THOMPSON. A couple of minutes, if I may, Mr. President.

I have been listening to the debate. We are making it much more complicated than it needs to be. We are talking about whether or not this is a good idea. The sponsors of these two amendments always come forth with good ideas. I will not debate that these are possibly a couple of those good ideas.

I am afraid we are not permitted to get that far because not every good idea is constitutionally permissible. I simply do not see our authority, even if we want to do this under the Constitution, to say to a State court, having lifted the preemption that was there before, that in its deliberations and in its lawsuits it will be trying, that we have, in a government of enumerated powers, the authority to reach in and do that. This is not raising an army. This is not copyrights and patents. This is not interstate commerce. I simply see no basis of authority for the Congress to do this, whether it is a good idea or not in our system of enumerated powers.

If I am incorrect about that or there is something I am not thinking about, I will stand corrected. That is a concern of mine.

I yield the floor.

Mr. WARNER. Mr. President, if I could reply to my distinguished colleague, that very question I entertain because I take pride in my record of some 23 years in this body to protect State laws.

The first thing I did under my amendment was say, if there is a body of State law, then my amendment doesn't apply to those decisions in State courts. So I think there is some dozen or so that have a statutory framework for the regulation of attorney fees. Those States are the one side.

But we find authority that it is within the power of the Congress to regulate interstate commerce. We have a proposed bill giving new rights to litigants. We believe that comes within that clause. That is how I proceed to do it.

We are just very fearful, I say to my distinguished colleague, that patients will not be able to, without this authority of some cap, obtain a fair allocation of these proceeds in some few cases. I myself have a high confidence in the bar and the courts to exercise equity and fairness. In some instances, it might not prevail.

We have studied cases here where some lawyers are getting $30,000 per hour, in some of these tobacco cases. Mind you, $30,000 per hour. I just think it is time that we, the Congress of the United States, do what we can within the framework of our constitutional law to exercise and put a cap on that.

I say to my good friend from Nevada, he has marked up an earlier version of my bill. And at least you started with a pretty good base here, but you took out the essence of it. We did remain with a one-third fee, but giving the court the right to raise or lower this fee without any guidance whatsoever, even without the guidance of the word ''reasonableness'' put into the proposal by my friend from Nevada.

It seems to me that, while we are apart, we could possibly bridge our differences, if I could have the assurance that a patient, as we now call them under this proposed legislation—plaintiff, under ordinary circumstances—is given reasonable protections. I have tried to give the court the flexibility in those instances where, for example, if a trial took 2 or 3 weeks and then, through no real fault of the attorney or anyone else, there somehow was a mistrial—I have tried them myself. Jurors get ill, sick. For whatever reason, the court pronounces a mistrial and the attorney has to go back and try the whole case over again—that begins to add up in time and expense, and so forth. That attorney should be fairly compensated, and his client has to recognize that in rare and extraordinary cases the court can adjust the fee above the one-third. I find in here no guidance whatsoever.

Under the Federal law, I laid down a formula which has been approved by the Supreme Court and is followed now in our Federal system.

I further point out to my distinguished colleague from Nevada that the ERISA framework of laws governs much of the action in Federal court. And there ERISA puts an affirmative duty on a judge to review that attorney's fee. You are, in effect, modifying the framework of ERISA here, as I read it quickly, and not putting that affirmative duty on the court in the Federal system to review those attorney fees.

Mr. REID. Mr. President, I apologize to my friend. Did the Senator from Virginia ask me a question?

Mr. WARNER. Yes, I had been going on for some minutes now. I will go back over it again. I say to my good friend, you took an earlier version of my amendment, and in striking it out, No. 1, you left the one-third cap in, but you give the discretion to the judge to go up or down, with no guidelines by which that jurist goes up or down. In other words, there is no even standards of reasonableness. It could be implied, of course. But I looked upon the lodestar method, which is followed by the Federal courts in arriving at a fair and equitable fee situation. I just believe there is no guidance for the jurist in the proposal of my colleague.

Mr. REID. I say to the Senator from Virginia, in every State court in America, every day judges are called upon to use their discretion to determine attorney's fees. In estate cases, in cases where people are hired to represent indigent defendants, there are a multitude of cases in which judges every day use their discretion to make awards of attorney's fees.

Here, as the Senator has given a number of examples, if the judge, in rare instances, would find that somebody has been paid too much under the contract, he can take a look at that. Or there may be some very complicated appeal and maybe he would decide that there should be a little more there.

Tobacco has nothing to do with this.

Mr. WARNER. I missed the word. What has nothing to do with this?

Mr. REID. The Senator talked about the tobacco litigation. I say that has nothing to do with this matter now before the Senate because these attorney's fees were very high, of course, and litigation results because these attorneys recovered not hundreds, thousands, millions, but billions of dollars. Tobacco attorneys were hired by State attorneys general. I don't think there is anything that I can ever even contemplate that would be the same in relation to tobacco and these HMO cases. I would say that we have pretty well formulated both of our positions.

I respectfully say that the Senator from Virginia is taking away the discretion the State judges have. It makes it very complicated to determine attorney's fees. What we have come forward with is a process that is very specific, direct, and to the point, and leaves some discretion with State judges.

(Mr. NELSON of Florida assumed the chair.)

Mr. WARNER. I want to make it clear. I think it is clear in the amendment that the expenses are over and above the allocation of fees.

Mr. REID. I took that directly from your original amendment.

Mr. WARNER. I was also quite anxious to ensure that if a State has a

framework of law regarding the award of attorney's fees, this does not apply. I think it is important that we honor those States that have a framework and laws which set attorney's fees, which is in my amendment. I am just trying to help you improve yours so that you prevail.

Mr. REID. Well, I guess there is some reason that could be done. That is only going to complicate what we have. We are trying to give as much discretion as possible to State judges. I think they need that. I think one of the problems that I have with the Senator's original amendment is it takes away from State law, from what States can do. It seems interesting to me that we are so in tune with States rights around here all the time, unless it comes to something dealing with injured parties—whether it is product liability cases or whatever. We suddenly want to take away what the States have worked on for all these decades. I think my friend's amendment takes away a lot of what we have with our States.

Mr. WARNER. Mr. President, I will read to my friend section (E) of my amendment, page 6:

NO PREEMPTION OF STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney's contingency fee that may be incurred for the representation of a participant or beneficiary—

And so forth. In other words, if the State has a framework of State laws, we in the Congress should not be trying to amend them, as I fear you are doing through an omission in yours. I have protected it in mine.

Mr. REID. Well, I understand what the Senator's intent is. When you are looking for intent, you want to be as precise and direct as possible. I respectfully say we should get on with the vote. I think we have said everything, but maybe not everyone has said it. You and I have.

Mr. WARNER. Let me point out one other thing. Again, there is a difference as to how these things are treated under Federal and State. As I said, ERISA gives certain protections that are involved in the Federal court. There Federal law requires relief grievance under ERISA and that is not found in my friend's amendment. You say it is implicit in every court in the land; therefore, it is not needed to be expressed. Is that your point?

Mr. REID. The reason we took your basic amendment and made it directly to the point as to the one-third is it becomes too complicated for a court to determine attorney's fees based on the complicated program you have set up. Ours is simple and direct. In rare instances, a judge can step in and raise them or lower them.

Mr. WARNER. I wanted to make sure they were explicit. That is my view. We have a difference of opinion on that.

Mr. President, I will soon suggest the absence of a quorum so I have some period of time to reflect on perhaps other suggestions I might have. I am willing to allow these amendments to be laid aside if the Senator would agree to proceed with others.

Mr. REID. We have been laying aside things so long——

Mr. WARNER. If that is of no help, we need not do that.

Mr. REID. I have no problem having a quorum call and we can talk. I really think we have to move on. I am willing to take my chances, whatever they might be. Other people are waiting around to offer amendments. We should move on if we can.

Mr. THOMPSON. Mr. President, I am prepared to move forward with an amendment, if that is desired by my two colleagues, while you have your discussions. If you want to go into a quorum call, we will wait.

Mr. REID. I would be happy to set these two amendments aside and let my friend from Tennessee, who offered probably the best elucidation on attorney's fees today—No. 1, he was concise and to the point. I think probably both of these are unconstitutional. I am willing to go forward.

I ask unanimous consent that the two amendments by Senators REID and WARNER be set aside and that the Senator from Tennessee be allowed to call up an amendment. The Senator's amendment is on the improved list, correct?

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are laid aside.

The Senator from Tennessee is recognized.

AMENDMENT NO. 853

(Purpose: To clarify the law which applies in a State cause of action)

Mr. THOMPSON. I send to the desk an amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 853.

On page 170, between lines 21 and 22, insert the following:

''(9) CHOICE OF LAW.—A cause of action brought under paragraph (1) shall be governed by the law (including choice of law rules) of the State in which the plaintiff resides.''

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I let the amendment be read because it is probably the shortest amendment that will be considered tonight. It is very simple and straightforward. Basically, what it says is that in these lawsuits that we are dealing with, we apply the law of the State of residence and citizenship of the plaintiff in this case.

Let's go back just a bit and understand the lawsuit scheme that we have created by this litigation. We have created a Federal cause of action in Federal court for matters that are essentially contract; and we have created a State cause of action in State court for matters that have to do with medically reviewable situations.

What that has left us with is the ability of a claimant to bring a State court claim in any State where the defendant is doing business. If you have a medical insurer and they are doing business in several States, even though you live in Tennessee, you could bring your lawsuit in any number of States where that insurer is doing business. That is simply known as forum shopping.

The reason people do that is different States have different laws in terms of limitations on recovery. They have different rules of evidence. Some allow punitive damages—most do. Some cap those punitive damages. Some don't allow punitive damages at all. So I don't believe we want to create a situation where if we are going to have this liberal litigation scheme that we have set up, that we allow it to occur anywhere in the country, which might be the case with regard to some big defendants.

Now, employers in some cases are going to be defendants also, I believe it is quite clear. You not only have the insurance companies, but you also have the employers to look at and to see whether or not they are doing business in these various States and, if they are, then you could bring your lawsuit in any of those States in which they are doing business. I don't think that serves the purposes that we are trying to serve with this legislation.

Therefore, we have the authority, and I think it would be a wise exercise of our authority and discretion, to limit those lawsuits. If you are from the State of Tennessee and you have a legitimate claim and you want to bring a lawsuit, you ought to be bound by the law in the State from which you come. You should not be able to forum shop.

Now, there might be some Federal causes of action that are also of the medically reviewable kind. We have been talking in this debate for several days about State causes of action, but what we are really dealing with is the laws of those States. They are causes of action based on the laws of individual States. So if a person wants to bring his lawsuit, he can still bring it in Massachusetts if he lives in Tennessee, but he is bound by the law of Tennessee.

If there is a diversity situation in Federal court, where the Federal court has jurisdiction and you have a doing-business requirement satisfied as far as the corporate defendant is concerned, for example, you have diversity. You still are bound by the law of your home State. So that would prevent forum jumping.

I believe this is desirable. I heard several expressions of agreement with the proposition we did not want to create a system of forum shopping in this litigation. We are going to have this law apply to all 50 States. There will be lawsuits produced in all 50 States, and all 50 States have laws that will be applicable in the suits wherever they are

brought. A citizen ought to be bound by the laws of his or her State and not be able to shop all over the country for a potentially better situation than what they have in their State. It is a State cause of action. They should be bound by the laws of their home State.

That is the amendment. I hope my colleagues will see the wisdom of it and will reach agreement on it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Tennessee, his argument is persuasive enough that all the managers on our side left the floor, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. AKAKA. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for 5 minutes.

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

(The remarks of Mr. AKAKA are located in today's RECORD under ''Morning Business.'')

Mr. KENNEDY. Mr. President, I express great appreciation also for the Senator's strong support for our Patients' Bill of Rights. This has been an issue in which he has taken a great personal interest. He has been one of the strong supporters of this legislation for many, many years. Although he has not been a member of our committee, this is a matter I know he cares deeply about. He has been a strong supporter of all the amendments that have protected patients, and I don't think there has been a member who has been a stronger advocate for the patients and their rights than our good friend, the Senator from Hawaii. I thank him very much for his statement and all the work he has done to help bring the bill to where it is.

Mr. GREGG. Mr. President, I understand the Senator from Nevada will modify his amendment and we will have a voice vote, and the Senator from Tennessee will have an amendment agreed to, also. Hopefully, we can dispose of those two amendments right now.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 849, AS MODIFIED

Mr. ENSIGN. Mr. President, I call up amendment numbered 849 and I send a modification to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The amendment will be so modified.

The amendment (No. 849), as modified, is as follows:

Subtitle C of title I is amended by adding at the end the following:

SEC. 122. GENETIC INFORMATION.

(a) DEFINITIONS.—In this section:

(1) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(2) GENETIC INFORMATION.—The term ''genetic information'' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of such individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(3) GENETIC SERVICES.—The term ''genetic services'' means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

(4) GENETIC TEST.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites, including analysis of genotypes, mutations, phenotypes, or karyotypes, for the purpose of predicting risk of disease in asymptomatic or undiagnosed individuals. Such term does not include a physical test, such as a chemical, blood, or urine analysis of an individual, including a cholesterol test, or a physical exam of the individual, in order to detect symptoms, clinical signs, or a diagnosis of disease.

(5) GROUP HEALTH PLAN, HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include a third party administrator or other person acting for or on behalf of such plan or issuer.

(6) PREDICTIVE GENETIC INFORMATION.—

(A) IN GENERAL.—The term ''predictive genetic information'' means—

(i) information about an individual's genetic tests;

(ii) information about genetic tests of family members of the individual; or

(iii) information about the occurrence of a disease or disorder in family members.

(B) LIMITATIONS.—The term ''predictive genetic information'' shall not include—

(i) information about the sex or age of the individual;

(ii) information about chemical, blood, or urine analyses of the individual, including cholesterol tests, unless these analyses are genetic tests, as defined in paragraph (4); or

(iii) information about physical exams of the individual, and other information relevant to determining the current health status of the individual.

(b) NONDISCRIMINATION.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—A group health plan, and a health insurance issuer offering health insurance coverage, shall not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan or coverage based on genetic information (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in relation to the individual or a dependent of the individual.

(2) NO DISCRIMINATION IN RATE BASED ON PREDICTIVE GENETIC INFORMATION.—A group health plan, and a health insurance issuer offering health insurance coverage, shall not deny eligibility or adjust premium or contribution rates on the basis of predictive genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

(1) LIMITATION ON REQUESTING OR REQUIRING PREDICTIVE GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage, shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage, that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the group health plan, or a health insurance issuer offering health insurance coverage, shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in subsection (d), of such predictive genetic information.

(d) CONFIDENTIALITY WITH RESPECT TO PREDICTIVE GENETIC INFORMATION.—

(1) NOTICE OF CONFIDENTIALITY PRACTICES.—A group health plan, or a health insurance issuer offering health insurance coverage, shall post or provide, in writing and in a clear and conspicuous manner, notice of the plan or issuer's confidentiality practices, that shall include—

(A) a description of an individual's rights with respect to predictive genetic information;

(B) the procedures established by the plan or issuer for the exercise of the individual's rights; and

(C) a description of the right to obtain a copy of the notice of the confidentiality practices required under this subsection.

(2) ESTABLISHMENT OF SAFEGUARDS.—A group health plan, or a health insurance issuer offering health insurance coverage, shall establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality, security, accuracy, and integrity of predictive genetic information created, received, obtained, maintained, used, transmitted, or disposed of by such plan or issuer.

(3) COMPLIANCE WITH CERTAIN STANDARDS.—With respect to the establishment and maintenance of safeguards under this subsection or subsection (c)(2)(B), a group health plan, or a health insurance issuer offering health insurance coverage, shall be deemed to be in compliance with such subsections if such plan or issuer is in compliance with the standards promulgated by the Secretary of Health and Human Services under—

(A) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

(B) section 264(c) of Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(e) SPECIAL RULE IN CASE OF GENETIC INFORMATION.—With respect to health insurance coverage offered by a health insurance issuer, the provisions of this section relating to genetic information (including information about a request for or the receipt of genetic services by an individual or a family

member of such individual) shall not be construed to supersede any provision of State law that establishes, implements, or continues in effect a standard, requirement, or remedy that more completely—

(1) protects the confidentiality of genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for or the receipt of genetic services by the individual or a family member of such individual); or

(2) prohibits discrimination on the basis of genetic information than does this section.

At the end of title II, insert the following:

SEC. 203. ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.

Section 2721(b)(2) of the Public Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (b), (c), and (d) of section 122 of the Bipartisan Patient Protection Act and the provisions of section 2702(b) to the extent that the subsections and section apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

Mr. ENSIGN. I ask that the yeas and nays be vitiated.

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

Mr. ENSIGN. Mr. President, I understand both sides have agreed to this amendment. It has to do with genetic testing. We debated it last night. I appreciate Senators KENNEDY, GREGG, and MCCAIN working together, along with the White House, to make sure we are not discriminating against people based on genetics; that people with the breast cancer gene or colon cancer gene, or whatever gene they may have been born with, will not be discriminated against in the future. I appreciate everybody working with us on this matter.

Mr. KENNEDY. Mr. President, we are prepared to accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 849), as modified, was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was agreed to.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 853

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. I believe I am correct in saying my amendment has been accepted and it is agreeable to have a voice vote.

Mr. KENNEDY. The Senator is correct.

The PRESIDING OFFICER. The question is on agreeing to the Thompson amendment, No. 853.

The amendment (No. 853) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 833, AS FURTHER MODIFIED

Mr. REID. Mr. President, I ask that the amendment of the Senator from Virginia be called up, the yeas and nays be withdrawn, and it be agreed to by voice vote.

Mr. WARNER. Reserving the right to object, should we lay out a full understanding of our agreement?

Mr. REID. I think we should just vote.

Mr. WARNER. Your amendment is withdrawn?

Mr. REID. Yes.

Mr. WARNER. I send a modification to the desk.

Mr. REID. This is the Warner substitute.

Mr. WARNER. Mr. President, my modification has been sent to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 833), as further modified, is as follows:

(Purpose: To limit the amount of attorneys' fees in a cause of action brought under this Act)

On page 154, between lines 2 and 3, insert the following:

''(11) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, the amount of an attorney's contingency fee allowable for a cause of action brought pursuant to this subsection shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

''(B) DETERMINATION BY DISTRICT COURT.—The last Federal district court in which the action was pending upon the final disposition, including all appeals, of the action shall have jurisdiction to review the attorney's fee to ensure that the fee is a reasonable one.

On page 170, between lines 21 and 22, insert the following:

''(9) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding an attorney's fee, the amount of an attorney's contingency fee allowable for a cause of action brought under paragraph (1) shall not exceed ⅓ of the total amount of the plaintiff's recovery (not including the reimbursement of actual out-of-pocket expenses of the attorney).

''(B) DETERMINATION BY COURT.—The last court in which the action was pending upon the final disposition, including all appeals, of the action may review the attorney's fee to ensure that the fee is a reasonable one.

''(E) NO PREEMPTION OF STATE LAW.—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney's contingency fee that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings such a cause of action.

Mr. WARNER. We have worked it out together. I ask that the yeas and nays be withdrawn.

The PRESIDING OFFICER. Without objection, the yeas and nays are vitiated.

Mr. WARNER. I understand we will proceed to a voice vote and the amendment of my distinguished colleague will be withdrawn.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 833), as further modified.

The amendment (No. 833), as further modified, was agreed to.

Mr. WARNER. I thank my distinguished colleague from Nevada.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 852, WITHDRAWN

Mr. REID. I ask unanimous consent my amendment be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. As I understand it, we are down to two amendments on our side: Senator KYL's and Senator FRIST's, which will be the substitute.

I hope we can get a time agreement on Senator KYL. How much time does the Senator need? He does not know. And Senator CARPER, on the other side, is going to make a statement and maybe offer an amendment.

Before they go, since people are a little confused, so they can get ready, we are heading toward the finish line. Before we get to the finish line, I want to mention that a lot of people do a lot of work around here. They are called the staff. They are extraordinary. I especially want to thank my staff, Senator KENNEDY's staff, Senator FRIST's staff, who have worked so hard on this. I am sure there are many folks on the other side, but I specifically want to thank Stephanie Monroe of my staff, Colleen Cresanti, Steve Irizarry, Kim Monk, and Jessica Roberts for all they have done to make this process move smoothly for me and allow me to be successful. They really have put in extraordinary hours. I greatly appreciate it. They are exceptional people, and we thank them very much.

Now I suspect the Senator from Arizona is probably ready.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I may say to my friend from Arizona, we have not seen his amendment. If we could see it? I wonder if, in the meantime, we could have

the Senator from Delaware make a statement.

Mr. KYL. Might the Senator from Nevada yield? I have given a copy both to Senator MCCAIN and also to Senator GREGG to give to you. I am sorry if you do not have it yet. Maybe Senator KENNEDY has a copy.

Mr. KENNEDY. I just received this a minute ago. I am just reviewing it. We will be prepared to go ahead in a few moments. I know the Senator from Delaware has waited. I understand it is a short statement. Then I hope we go to the amendment and we will be prepared to enter a short time agreement or whatever limitation to which the Senator from Arizona will be agreeable.

Mr. REID. I ask the Senator from Delaware, through the Chair, how much time he wishes to take.

Mr. CARPER. No more than 15 minutes.

Mr. REID. The Senator from Delaware wishes to speak for up to 15 minutes. I ask unanimous consent he speak at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Delaware.

AMENDMENT NO. 855

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

The legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER] proposes an amendment numbered 855.

Mr. CARPER. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To disallow punitive damages)

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

''(10) STATUTORY DAMAGES.—The remedies set forth in this subsection shall be the exclusive remedies for any cause of action brought under this subsection. Such remedies shall include economic and noneconomic damages, but shall not include any punitive damages.

Mr. CARPER. Mr. President, the amendment before us, which I will ask to be withdrawn in a few moments, is one Senator LANDRIEU and I offer, and I know has the support of a number of Members of this body from both sides of the aisle.

A great deal of effort has gone into crafting a compromise with respect to the appropriate venue, Federal or State, for bringing litigation in cases where an HMO has acted inappropriately.

As I have studied this issue over the last week or so, the way the underlying bill assigns venue for State action and for action that is more appropriate in the Federal courts, I have come to believe that the sponsors of the legislation figured it out just right. When it comes to determining damages that might be assigned in cases brought in Federal courts, I personally have concluded that there should not be a cap with respect to economic damages.

I further agree with the approach that is taken in the underlying bill, that in cases where noneconomic damages are sought in Federal courts, particularly in cases where children may be involved who are not working, who do not have a livelihood, or in cases where a spouse—perhaps a woman, but it could easily be a man—who is not in the workforce and stays at home with a family, we may not, if we cap noneconomic damages, be really fair to that young person or to the spouse who is working from the home.

However, with respect to damages at the Federal level, as they pertain to punitive claims, I am not comfortable with the approach that is embodied in the underlying bill. Senator BREAUX and Senator FRIST have offered an approach which I think is better in this regard, and I just want to mention it. It deals with whether or not there should be punitive damages awarded on actions taken in Federal courts. I conclude they have it right and those punitive damages should not be allowed in the Federal courts.

Having said that, for actions that are brought in State courts, the laws and rules of the States should prevail. If there are caps in the State courts, that is the business of the States, and that is appropriate. If there are no caps on punitive damages in actions brought before the State courts, that is appropriate as well.

As we try to find the compromise here, I believe the underlying bill has it right with the appropriate middle ground on caps and venue. I believe the underlying bill has it right with respect to damages in a Federal action: No caps on either economic or noneconomic damages. I also believe the underlying bill has it right with respect to the proper venue, State versus Federal.

I believe my friend from Louisiana and my friend from Tennessee have a better idea with respect to punitive damages and they simply should not be allowed in Federal court.

Senator LANDRIEU is probably en route to the Chamber now to say a few words with respect to the amendment. I do not see that she has arrived yet. If I may, I would like to just reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I want to add a word for my colleague from Delaware. He and I have been working together on this legislation since it came to the floor and beforehand. He has a very well thought out position. Some of his positions I do not entirely share, but he has been very careful and very thoughtful about all these issues and has been working very vigorously with us on this legislation. He cares deeply about patient protection. He cares deeply about making sure that people all over this country have real patient's rights. He cares deeply about the uninsured. This is an issue he and I have talked about many times. He has made enormous contributions to the legislation that is now on the floor.

I thank the Senator from Delaware for all of his work in this regard, and I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Let me say, too, to my friend from North Carolina, I thank him very much for his overstatement of my contribution. He is very generous.

I say back to you, you have been just a terrific manager and cosponsor of this legislation, and thank you for giving us the opportunity to work closely with you and your staff.

That having been said, I still do not see Senator LANDRIEU joining us on the floor. Were she here, she would speak in support of this amendment, but would go on to add some concerns she has with respect to capping noneconomic damages, particularly as they pertain, as I referred to earlier, to young people and spouses who may be staying at home and are not in the workplace.

Mr. EDWARDS. I thank my colleague.

AMENDMENT NO. 855 WITHDRAWN

Mr. CARPER. That having been said, Mr. President, I ask unanimous consent that the amendment be withdrawn, and I yield the remainder of my time.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The Senator from New Hampshire.

Mr. GREGG. I rise to say I wish we were voting on the amendment of the Senator from Delaware. I believe the punitive damages issue in this bill is a major issue.

I understand the decision not to go forward. We know the probable outcome of the vote. But there is no question in my mind that his amendment would cause a movement in the right direction on the issue of punitive damages. This bill, as all of us have pointed out who have concerns about it, is going to be candy land for lawyers. One of the reasons it is going to be is because of the punitive damage language which allows forum shopping for the best punitive damage opportunities; whereas, under today's law, punitive damages are radically distributed, and should be because the purpose is to create quality health care, and punitive damage awards would drive up insurance costs. That is passed on to the consumer, which means fewer people can afford insurance.

As a practical matter, I want to say that I think the Senator from Delaware is on the right track, and I hope the conference will listen to his comments.

Mr. CARPER. Mr. President, will the Senator yield? I say to my friend from New Hampshire that my fervent hope is that when the bill passes the Senate

and later the House, and the conference committee is established, the conferees will have a full opportunity to revisit this issue. My hope is that the final compromise will reflect this amendment.

I also want to express to the Senator from New Hampshire my heartfelt thanks for the leadership he has provided to the Republican side of the aisle on this issue, and my appreciation for a chance to work with him, as well as the Senator from Massachusetts.

Thank you.

Mr. GREGG. I thank the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

AMENDMENT NO. 854

Mr. KYL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 854.

Mr. KYL. 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:

(Purpose: To permit choices in costs and damages)

On page 156, between lines 15 and 16, insert the following:

''(17) DAMAGES OPTIONS.—

''(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

''(i) Equitable relief as provided for in subsection (a)(1)(B).

''(ii) Unlimited economic damages, including reasonable attorneys fees.

''(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (notwithstanding the definition contained in paragraph (2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section.''.

On page 170, between lines 21 and 22, insert the following:

''(9) DAMAGES OPTIONS.—

''(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

''(i) Equitable relief as provided for in section 502(a)(1)(B).

''(ii) Unlimited economic damages, including reasonable attorneys fees.

''(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.''

Mr. KYL. Mr. President, it has been requested that the time agreement on this amendment be 30 minutes on my side and 10 minutes in opposition, with an up-or-down vote at the conclusion of the debate. I propound that unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, that is fine with no second degrees in order. Is that right?

Mr. KYL. That would be my understanding. I thank the Senator from Nevada.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. KYL. I do indeed modify my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KYL. Mr. President, I rise to introduce the consumer health care choice amendment. This amendment would amend section 302 of the underlying legislation to provide that employers and health plan issuers would be free to offer, and participants and beneficiaries free to choose, health plans with two remedy options, in addition to the underlying plan: equitable relief—the benefit or value of the benefit; and unlimited economic damages.

The bill provides damages as provided under S. 1052 unlimited economic and non-economic, and up to $5 million in punitive damages.

This amendment applies only to the new remedies established by S. 1052 for Federal contract actions and state ''medically reviewable'' claims. It explicitly protects the regulation of medical care delivery under state law.

The problem: Increased premium costs lead to greater numbers of uninsured. The Congressional Budget Office predicts that S. 1052 would result in a 4.2 percent increase in premiums costs. This predicted increase is in addition to the 10–12 percent increase employers are already facing this year.

The CBO report illustrates the cold truth about a critical, but often overlooked, public policy issue: The irrefutable link between health-care premium increases and the number of Americans without insurance. As the Congress debates the various health-care proposals, we must keep this linkage in mind.

Supporters of S. 1052 are quick to claim that their bill will improve health care, but not so quick to admit that it will also raise costs and cause the ranks of the uninsured to swell. We know this will happen, because cost increases will cause some employers to stop offering health-care coverage, making insurance unaffordable for more Americans. This fact is politically inconvenient.

We should keep an important statistic in mind. According to the Lewin Group consulting firm, for each one percent premium increase, an additional 300,000 citizens lose their insurance.

As I mentioned, the Congressional Budget Office predicts that S. 1058 will increase premiums by 4.2 percent. A premium increase of this amount would cause about 1.3 million Americans to become uninsured as a result of S. 1052. The Office of Management and Budget recently predicted that between 4–6 million more Americans would become uninsured as a result of S. 1052.

How can we call this a Patients Bill of Rights when it will result in fewer patients?

I believe our first goal should be to ''do no harm''; or, at a minimum, to reduce the harm, as my amendment will do.

My amendment would allow employers or plans to offer two options for employees to voluntarily choose, in addition to the general plan covered by this bill, Option No. 1: A low premium policy with a remedy limited to the benefit, or the value of the benefit. Option No. 2: A mid level premium policy that would allow for full economic damages only.

There are in addition to the higher premium policy that would allow for the full range of damages provided under S. 1052.

This amendment should be appealing to employers and plans as a way to control their costs and appealing to employees as a way to hold down their premiums by voluntarily limiting their right to sue.

Data from the CBO and the Kaiser Family Foundation estimate that S. 1052 would cost a typical family with health coverage roughly $300 per year. Certainly, we should promise not to pass legislation that would reduce or completely consume the $300 or $600 rebate that many Americans will be receiving sometime this summer as a result of the tax-relief bill just signed into law by President Bush.

If adopted, this amendment would afford Americans a chance to recoup some of the loss imposed by S. 1052.

Some have argued that so-called patients' rights legislation that includes an unlimited right to sue is overwhelmingly popular with Americans. It is worth noting that a Kaiser Family Foundation/Harvard School of Public Health Survey from January 2001 asked the following question to voters: ''Would you favor a law that would raise the cost of health plans and lead some companies to stop offering health care plans to their workers?'' In answer to this question, only 30 percent voiced support, and 70 percent voiced opposition to such a law.

Fortunately, we don't have to force people to make that choice. We can give them a choice. For those who prefer the right to sue and are willing to

pay they have their plan. For those who are willing to forgo lawsuit, they can buy their plan. And, state remedies apply in any event—so called ''quality of care'' suits.

Certainly, enhancing a patient's right to sue is cold comfort to those who currently can't afford health insurance, or those who lose their coverage due to increased costs.

Clearly, the proposed legislation to reform health care comes with a steep price tag attached. Before we commit to passing legislation, perhaps we should first promise not to pass a bill that will lead to more uninsured Americans.

My amendment would merely reduce this price tag, and reduce the harm we will do by enacting S. 1052.

This amendment is very simple. I ask for my colleagues' attention because I can't imagine that anyone would want to oppose this amendment if the concern is really about patients rather than lawyers.

Let me restate that. If we are really concerned about health care for patients rather than fees for lawyers, this amendment will probably do more to provide that we keep people insured than anything else we have done during the last week because it provides for a simple option.

For any plan of an employer that provides coverage under this bill, they may also offer another option. That option is a plan that would enable their employees to forego damages in court. It is that simple. You can't just do that. You have to be providing a plan that is covered by this act, so that the full benefits, including all of the rights to go to court and file lawsuits for damages, are preserved. You still have the right to choose that policy.

We all know that policy is going to cost more money. The reason it is going to cost more money is because lawsuits drive up the cost of insurance, which drives up premiums, which means that fewer employers can pay for insurance, which means that fewer employees are insured. And that is what is concerning all of us.

This amendment makes it possible to offer, in addition to the higher cost policy, a lower cost policy that would say you can forego your rights to litigation. You can just receive the benefits that ERISA provides for today. Those benefits are health care that you contracted for—or the dollar value of that health care.

There is a second option in here. That is a limited one, which is you could also go to court and get unlimited economic damages, but no pain and suffering damages or punitive damages. Maybe some companies would write that kind of a policy, too. But either of those policies would have a lesser premium than the policy that would be offered as the underlying plan under this legislation.

To some who say there might be a case where there is a quality of care decision which just needs to go to court, and damages need to be collected, my amendment specifically protects all of the State court litigation that is currently developing about quality of care.

Even if an employee exercised an option to buy this lower cost policy, that employee would still have all of the rights of litigation for damages in State court.

Some have said: Isn't this a little bit similar to the Enzi amendment? The answer is no. The Enzi amendment said if a particular group of employees were merely offered a specific kind of policy, they wouldn't be covered by the act. That is not my amendment. All employers are covered by the act under my amendment. It is just if they offer a plan to their employees, they may in addition to that plan offer this lower cost alternative.

Why do I offer this?

As we know, the Congressional Budget Office predicts that the underlying bill would result in a 4.2-percent increase in premium costs. This is in addition to the 10- or 12-percent increase that employers are already facing this year.

The Congressional Budget Office report illustrates the cold truth that has been overlooked in this debate; that is, the irrefutable link between health care premium increases and the number of Americans without insurance.

There is a study by the Lewin Group, a consulting firm, which says that for each 1 percent of premium increase, an additional 300,000 citizens lose their insurance.

We have CBO's estimate that the cost of premiums is going to increase 4.2 percent. We have a study that says every 1 percent, an additional 300,000 people lose their insurance.

Do the math. Under this bill, more than a million Americans are going to lose their insurance if something isn't done to keep the cost of those premiums down.

The Office of Management and Budget recently predicted that between 4 million and 6 million more Americans would become uninsured as a result of S. 1052.

That is where this amendment comes in. It is probably the best way to ensure that we can get premiums down over an alternative that doesn't have as much risk for the insurer, and, therefore, won't have to have as high a premium.

But I reiterate, it is not in lieu of the benefits that we are promising under this bill but, rather, in addition to. It is an option.

For this to occur, three voluntary decisions would have to be made.

First of all, some insurance companies would have to develop a product that they might offer to employers or plans to sell for their lower cost option.

Second, employers would have to decide that in addition to the plan offered under the bill, they would offer one of these lower cost alternatives that is on the market.

Third, employees would have to decide to take advantage of that lower cost option.

It is all a matter of choice. Nobody is making anybody do anything. None of the benefits under the legislation go away at all, nor is the State court remedying.

It seems to me, since it is all voluntary, that there is nothing mandatory but it gives us one opportunity to reduce premium costs. We all ought to be supportive of this proposal.

I ask that the remaining time that I have not be yielded but, rather, see if there are any others who might wish to speak.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, if Senator KENNEDY will allow me to speak at this point, let me say, first of all, that I think progress is being made. Senator REID has been working. Everybody has been trying to cooperate. I believe, after this very important amendment, we will have the substitute, and hopefully we would be ready to go to final passage.

I don't want to usurp the majority's role here, but I want people to realize that we are to the point where perhaps we can begin to wrap this up.

I thank Senator KYL for agreeing to not have lengthy debate. He feels very strongly about it, and this is certainly a very good and valuable alternative.

I heard Senator BOND of Missouri say repeatedly that when it comes to health care, we should make it available, affordable, and safe. One of our greatest concerns about this bill in its present form is health insurance for patients, and what they have available through managed care is not going to be affordable. Rates are going to go up. They are going to lose coverage for a variety of reasons. So it is a question of availability and affordability.

This is a good, viable alternative. This provides a low-cost option that will, hopefully, result in more people keeping their coverage. But it is an option. It is not in place of; it is in addition to what will be available otherwise. It just gives plans the option of offering a low-cost alternative that forgoes lawsuit damages under the law. The State court would still have the ''quality of care'' damage available. Those lawsuits would still be there. You don't replace that.

So I want to emphasize, it is not in lieu of but it is in addition to the plans offered under the bill. This really is about patients, and it really is about the freedom to have a choice, to have an option to choose to have this coverage but not going to lawsuits later on. By paying less, they will be able to afford it. That will give them an option. I think this would be a very attractive way to make sure it is available and affordable.

I would like to speak at greater length on this myself, but in the interest of time I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I commend the Senator from Arizona, Mr. KYL, for his amendment, which is strikingly similar in concept—as he and I discussed off the floor earlier—to the Auto Choice proposal I have introduced each of the last two Congresses, cosponsored by Senator Moynihan and Senator LIEBERMAN.

Essentially what is envisioned in these kinds of choice proposals is giving the consumer the option of opting out of the litigation lottery in return for a lower premium and lower cost.

I want to ask the Senator from Arizona if it is his view that this is similar in concept to the Auto Choice measure that I just described that we have discussed off the floor.

Mr. KYL. Mr. President, if I may answer the question of the Senator from Kentucky, I am remiss for not acknowledging that my idea for this amendment came exactly from the proposal the Senator has just discussed. It seemed to me that if it worked well in that context, it would also work well in this context. I should have mentioned that earlier. I know the Senator did not ask the question to get credit, but credit certainly is due him for this idea.

Mr. MCCONNELL. I cannot announce the support of others, but I wanted to mention that on the Auto Choice bill there was also the support of Michael Dukakis, JOE LIEBERMAN, Pat Moynihan, the Democratic Leadership Council, the New York Times, and the Washington Post.

I cannot say for sure that they would support the amendment offered by the Senator from Arizona, but the concept he describes of giving the consumer the option—the consumer gets the option of leaving aside the litigation lottery in return for a lower premium and defined benefits provided for that lower premium. It does not really deny anybody. It does not deny them the right to sue. It does not put a cap on damages. It does not tell the lawyers what to charge. It simply says to the consumer: You have a choice.

What the Senator from Arizona is suggesting is to take what is a sound idea for the automobile insurance market, Auto Choice, and apply it to the health insurance market.

Under his amendment, employers would have the option of offering their employees up to two additional insurance choices. Given the additional causes of action permitted under this bill, I believe giving consumers the option not to participate in the personal injury litigation lottery is only appropriate.

It is important to note, just like my Auto Choice option, choosing Senator KYL's ''Health Choice'' option would be completely voluntary to both the employer and the employees. An employer who offers his employees health insurance would not be allowed to offer only the limited-litigation health policies. Nothing in the Kyl amendment would. The employer must offer the plans envisioned in the Kennedy-McCain bill.

Therefore, nothing in the Kyl amendment would take away any right. It would merely allow consumers who don't want to sue their health insurance plan, a lower cost health insurance option.

While we have made significant progress at improving this legislation, many of us on this side of the aisle have lingering concerns that this bill will dramatically increase the number of uninsured Americans. We ought do everything possible to minimize this impact and that is why I wholeheartedly endorse the proposal of the Senator from Arizona. Patients need more choices and should not be forced into a system of jackpot justice without their consent.

As the Senator from Arizona has pointed out, we hope not to have a greater number of uninsured when this is all over. One of the great fears many of us have who are going to be voting against this bill is that that is exactly what the result of it will be. But the Senator from Arizona has astutely offered an amendment that will certainly provide an opportunity for a number of people to receive lower premiums and thereby, hopefully, reducing the increase in the number of uninsureds which so many of us fear.

So I express my strong support for the Senator's amendment. I tell him, I think it is a very good idea. I hope the Senate will support it. It seems to me it is entirely consistent with the theme of the underlying bill. I commend the Senator from Arizona for his fine amendment.

Mr. KYL. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as I listened to the proposal by the Senator from Arizona, the thought came to my mind about the right of an individual to waive rights. That is deeply ingrained as part of the law of the United States, so much so that when you talk about constitutional rights in a criminal case—where the rights are much more deep-seated, much more profound, based on the Constitution—that right to waive does exist.

In a sense, what the Senator from Arizona is proposing is that an individual who seeks health insurance would have the right to waive certain rights, which is recognized in law.

The keyword which I found persuasive in what the Senator from Arizona had to say was the word ''voluntary.'' I would add to that—I think this is part of his concept—that it be a knowing waiver—a voluntary, knowing waiver. And I would expect that, as part of that, the individual would have counsel to understand his rights, because you cannot understand your rights for damages—the complexities—unless you know what they are, and whatever may be said about lawyers on this floor, you need a lawyer to tell you what your rights are. Then the individual would be in a position to evaluate the reduction in premiums, and thereby which savings would be passed on to him for what he was giving up.

In that context, I think the proposal passes muster.

Mr. KYL. I thank the Senator.

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I, too, thank the Senator from Arizona, Mr. KYL, for bringing this amendment to us.

This debate has been framed as though everybody had all of their insurance paid for by the company for which they work. I know that is not the case. Throughout America, most people participate in the cost of their insurance. So it is going to be very important for every individual who has to participate in the cost of their insurance to be searching, with their employer, for a lower cost way of doing it. This is one of those solutions. This is very innovative. It will fill a void we have left by doing the bill, particularly if the estimates are true on how much insurance is going to go up based on this ability to sue. If it goes up dramatically, there are going to be a lot more people who are going to hope there is this kind of an alternative around.

So I congratulate the Senator from Arizona for this approach.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I also join in congratulating the Senator from Arizona. This seems to be the most commonsense amendment we have seen since we have been discussing this issue. It provides choice and provides an opportunity for lower cost insurance, and it allows people to choose what they want to pay for, for what they get.

So I urge support for the Senator's amendment and thank him for it.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I also urge support for Senator KYL's amendment because I think it deals with the essential nature of what this whole debate is about; that is, the tradeoff between coverage and cost. That is what the whole debate is about.

Some would have us believe we can have additional coverage without additional cost. It cannot happen. Somebody pays the freight sooner or later. We all know it is going to result in additional health care costs.

So what this amendment does is recognize that tradeoff, and it provides the individual the opportunity to make that choice—recognizing that tradeoff—which results in a very good approach and a very good amendment.

So I urge my colleagues to give serious consideration to supporting this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join with my colleagues in congratulating Senator KYL for bringing this amendment forward. It is exactly one of the

items we need to improve this bill significantly. This bill has a lot of problems. We all know that. But an amendment such as Senator KYL's will at least help it out in some parts. It will be very constructive to the whole process. I certainly hope my colleagues in the Senate will join in supporting it. It is the right amendment. I congratulate him for bringing it forward.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. How much time do we have?

The PRESIDING OFFICER. The opponents have 10 minutes under the previous order.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, having been on the floor for the better part of the last 8 or 9 days, I rarely have heard such wonderful statements and comments about any amendment as have been given to the Senator from Arizona. I have gone back and read it and reread it and thought that somehow I must be making a mistake in thinking that this amendment just didn't make it, but in any event, the Senate is going to make that judgment.

I read the Kyl amendment and it reminded me of the great French philosopher who said that laws, in their sublime impartiality, treat the rich and the poor alike, from sleeping under the bridges and stealing bread. This is just exactly what the Kyl amendment does.

Mr. GREGG. Will the Senator yield? That quote would be much better if it were read in French.

Mr. KENNEDY. Petite a petite, l'oiseau fit son nid.

To continue, this is what this amendment does. It says that any employer can go out and sell an insurance policy that is consistent with this bill. It doesn't indicate what contribution the employer has to make. It doesn't indicate that the employer has to make any contribution at all. All it says is he has to sell it.

On the other hand, they can sell the other policy—that is cheap—which the employer can help subsidize for that employee. And that basically undermines this whole bill and denies all of the workers all of the protections that we have talked about. That is a great choice. That is really a wonderful choice to have. And we all know what can happen. This basically undermines the whole concept of this legislation.

There is no guarantee under the Senator's proposal that there is going to be a comparable and that the employer is going to do it. All they have to do is just sell the policy. So this is an extremely unfair and weighted alternative. Basically, it will provide a way, a vehicle for millions and millions and millions of hard-working American families to lose the benefits of this legislation, and it just doesn't make sense.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. I believe that perhaps if Senator KYL or others can yield back their time, we are ready to go to the Frist-Breaux substitute. Senator FRIST is here ready to proceed. Is that acceptable on all sides?

Mr. REID. We would vote on the Kyl amendment subsequent to the Frist-Breaux amendment being offered.

Mr. LOTT. That is correct. We would vote in stacked series, Kyl, Breaux-Frist, and then I presume we would be ready for final passage.

Mr. KYL. Mr. President, if I could just conclude my remarks in support of my amendment and in response to Senator KENNEDY, how much time remains under my time?

The PRESIDING OFFICER. The Senator has 12 minutes.

Mr. KYL. I understand that Senator FRIST would like to quickly proceed. There are several people who would like to speak in support of my amendment. Therefore, what I would like to propose is that we lay my amendment aside, go to Senator FRIST, and I take up the remainder of my time prior to the vote.

Mr. REID. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is laid aside.

AMENDMENT NO. 856

Mr. FRIST. Mr. President, I call up amendment No. 856 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for himself and Mr. BREAUX, proposes an amendment numbered 856.

Mr. FRIST. 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.'')

Mr. FRIST. Mr. President, I will be brief, given the late hour.

At this juncture, I have introduced an amendment which is a comprehensive approach to the Patients' Bill of Rights. Essentially this bill is the Frist-Breaux-Jeffords bill which was introduced on May 15 of this year, modified with several of the amendments, which we will speak to shortly in the introduction either now or, if we have an interruption, we will speak to them in the 15 minutes on this side.

What I wish to stress is that this amendment is a comprehensive replacement amendment for the bill. It involves strong patient protections, access to specialists, access to specialty care, access to emergency rooms, elimination of gag clauses, continuity of care.

It has a strong appeals process, internal and external appeals. It requires full exhaustion of the internal and external appeals process. If the external decision—again, that is an independent physician, unbiased, independent of the plan—overrides the plan, then and only then does one go to court for the extraordinary damages. At any time during the appeals process you can go for what is called injunctive relief. Once you go for these damages, what are they? Economic damages are unlimited; noneconomic damages are $750,000 or three times economic damages. And that is a change from the underlying Frist-Breaux-Jeffords bill.

There are no punitive damages. In our bill, as I mentioned, we require full exhaustion of the internal and external appeals process. We go to Federal court. We have not had very much debate over the last week on the Federal versus State court. Senator BREAUX will be speaking more directly to that. It is critical, we believe, that we take this new Federal cause of action to the Federal courts. There are strong timelines.

The purpose of this amendment is to make sure people get the care they need when they need it—not a year later or 2 years later or 5 years later. It is a balanced approach. The amendment itself is the Frist-Breaux-Jeffords of May 15. We have included the amendments put forth by Senator THOMPSON and modified by Senator MCCAIN on the exhaustion of internal/external appeals. We have also included the Snowe-DeWine language. That is the direct decisionmaker language that they drew upon from our bill, the Frist-Breaux-Jeffords bill. But we took the specific Snowe-DeWine amendment and placed it in our bill; in addition, the amendment of Senator BOND, with the 1 million uninsured, then the liability would be repealed, which passed on the floor, is also a part of our bill.

Secondly, we did raise the noneconomic caps from $500,000 to $750,000 or three times economic damages.

As a physician, as someone who has taken care of patients, as someone who recognizes that the purpose of a Patients' Bill of Rights is for patients to get the care when they need it, not extraordinary lawsuits, not frivolous lawsuits and skyrocketing costs, all of which will be absorbed by the 170 million people, we believe this bill is the balanced, responsible way of delivering a strong enforceable Patients' Bill of Rights.

I yield, if I might, to the cosponsor, coauthor of the bill, Senator BREAUX. Senator JEFFORDS will be speaking a little bit later. The three of us, as part of the Frist-Breaux-Jeffords amendment, have worked very hard over the last 2 years to put together this balanced bill, the only tripartisan bill in the Senate which comprehensively addresses the Patients' Bill of Rights.

I yield to Senator BREAUX.

Mr. BREAUX. Mr. President, do we have a time agreement on this amendment?

The PRESIDING OFFICER. There is no time established on this amendment.

Mr. BREAUX. Let's try it without an agreement. We will see how it goes without any kind of agreement.

Mr. President, I rise to comment on the bill that is now before the Senate. It is the Frist-Breaux-Jeffords substitute bill.

Before doing so, while the Senator from Tennessee is still on the floor, I want to say something about how enjoyable it has been to work with him. While most of us are going to be leaving this Chamber tonight or tomorrow sometime to spend time with our family on vacation or have an enjoyable period of time that we can rest and relax, the Senator from Tennessee, because of what he does professionally and what he believes in, is going to be leaving on a flight tonight to go to Africa. He is going to Africa to do surgery on women and children and families who cannot afford health care on the continent of Africa.

I want to say how proud all of us can be of one of our colleagues who has that type of attitude. He not only serves his constituents in Tennessee in this body but also serves so much of humanity in various places in the world by volunteering at his own cost, on his time, with his medical expertise, serving people who have no health care. We are talking about a Patients' Bill of Rights on the floor of the Senate. He really, truly is practicing that by providing medical services to people who can't afford it in various parts of the world.

For those who are interested in getting a Patients' Bill of Rights enacted into law, let me say that, without the amendment that we have offered, the bill will not become law because the President has clearly indicated he will veto a bill that does not contain some of the main principles that you can find in the Frist-Breaux-Jeffords substitute.

What I am talking about is not that complicated. The White House has said we are creating new Federal rights, Federal remedies, and we are amending a Federal statute—the ERISA laws of the United States. If there is going to be any litigation dealing with these new Federal rights, they ought to be handled in the Federal courts. Why do we recommend that? Why does the President say that is important? So we can have one consistent way of handling all of these potential suits that will be filed. Instead of having 50 different courts, with 50 different jurisdictions, with 50 different rules of evidence and 50 different procedures on how to handle litigation, you would have any disputes dealing with these Federal rights handled in the Federal court systems of the United States.

Our opponents argue that the Federal courts don't want any more suits to be filed. Neither do the State courts. There is not a State court or district court anywhere in the United States that is going to say we need more litigation, come sue on a State level. Neither the Federal nor State courts want any additional litigation because they are as full as they possibly can be. So the argument that the Federal courts don't want them—well, neither do the States. I think from a matter of trying to make sure we have a system that works, that is, a national system that protects Federal rights, it should be in Federal court.

If this is not part of the final package, the final package, indeed, will not become law, and that would be a very serious mistake for the people in this country.

Second, we have recommended some type of caps—a reasonable amount of caps on noneconomic damages. We have no caps on economic damages, of course, but we suggested a cap of $750,000 for pain and suffering, for noneconomic damages, or three times the amount of economic damages, whichever is greater. We tie it to inflation. I think that is reasonable.

We had also suggested something I think would be very important for the patients and, indeed, the lawyers who are concerned about litigating cases. There are no caps on our bill for gross negligence. At an earlier time we had offered that there would be no caps for wrongful death if a person was killed as a result of some decision made dealing with medical necessity. Then there would be no caps whatsoever either for gross negligence or wrongful death.

Those two ingredients are very important. What happens when this bill leaves this body, if we are truly interested in getting an agreement, is that somehow between now and the time this bill gets down to the White House, these concerns are going to have to be addressed in a fashion that I think means they are going to have to be adopted. It does us no good to have a bill that is going to be vetoed. We will help no patients. They get a good political issue, but they don't get any help, any guarantees. We will have spent all of this time arguing about things that cannot become law. So I think the clear thing that our bill provides, which I think is absolutely essential either now or at some time, is that we have a degree of Federal jurisdiction that enforces the Federal rights that we are creating in this legislation, and that we address the question of unlimited damages in a way that allows the White House to be able to sign this bill.

I will tell you that in reading what we have done with all of the amendments—the Snowe, Thompson, and DeWine amendments —where we have split jurisdiction, and the Kennedy-McCain bill which says some of the suits will be in State court and some in Federal court, our suggestion is just the opposite. The new rights will be in Federal court, and all the previous ones in the State courts will remain.

We need to do some work on this. We have created something that is as complicated as the Egyptian hieroglyphics. If you had a flowchart on what we are suggesting in the bill now before the Senate, we could not figure out where you go and when you go to the different courts and for what rights. That is unacceptable. This thing needs a lot of work before it can become law because I am afraid that what we have created tonight in this bill is unmanageable and unworkable. Our suggestion makes it a great deal better.

I am under no illusions about what is going to happen, but I know I am also not under any illusions about what can be signed into law and what cannot. I fear that what we have tonight cannot be signed into law without the recommendations we have made.

I yield the floor. I see my colleague from Vermont is also with us.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, for nearly 5 years, Congress has debated how best to enhance protections for patients enrolled in managed care plans without unduly increasing health care costs, imposing significant burdens on America's employers, and adding to the ranks of the uninsured. Our debate over the last two weeks has given us ample opportunity to thoroughly discuss these critical issues.

Through the amendment process the McCain-Edwards-Kennedy bill has been significantly improved. I particularly commend Senator SNOWE for her amendment on employer liability and Senator THOMPSON for his amendment on exhausting the appeals process.

However, I believe the McCain-Edwards-Kennedy bill is still fundamentally flawed in two critical areas. First, the bill would subject plans to excessive damages in the new federal cause of action. And second, by subjecting plans and employers to a new State cause of action, the bill destroys the current national uniformity for employers. The bill would subject employers or their designated agents to lawsuits in 50 different States.

The better alternative to the McCain-Edwards-Kennedy bill is our amendment. It is based on the legislation that I introduced with Senator FRIST and Senator BREAUX. It has much in common with the McCain-Edwards-Kennedy bill. They share 11 provisions that provide new patient protections. Each provides for information to assist consumers in navigating the health care system. Most importantly, the bills provide for an internal and external independent review process with strong new remedies when the external view process fails. Our primary area of disagreement lies in the degree that employers are protected from multiple causes of action in multiple venues and the provision of a reasonable cap on damages.

President Bush has made clear that our amendment meets the principles he has outlined for patient protection legislation that he would sign into law. This balanced legislation also is supported by a wide range of groups representing nearly 400,000 of America's physicians and health professionals.

Our amendment protects all Americans in private health plans and at the

same time, it gives deference to the states to allow them to continue enforcing managed care laws consistent with the new federal rules.

Under our amendment health plans that fail to comply with independent review decisions or that harm patients by delaying coverage will be held accountable through expanded federal court remedies, including unlimited economic damages. In addition, patients can go to court at any time to get the health benefits they need through injunctive relief if going through the internal or external review process would cause them irreparable harm.

We hope that everyone who is committed to passing legislation that can become law this year will join us in supporting this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, over the course of the last 2 weeks, during the course of this debate, we have made great progress and consensus has been reached on many issues, beginning with the issue of scope, how many Americans would be covered by this patient protection legislation.

We have worked with Senators across the aisle and have been able to resolve that issue and resolve it in a way that all Americans are covered and there is a floor of protection for all Americans.

Second, we were able to resolve the issue of access to clinical trials, an issue on which there has been some disagreement in this body.

Third, we have been able to resolve the issue of employer liability in a way that protects employers from liability without completely eliminating the rights of patients. We have done it in a balanced way so that 94 percent—every small employer in America—are 100-percent protected.

We have also resolved the issue of exhaustive appeals so patients will go through the appeals process to get the care they need before they go to court.

Medical necessity is another issue resolved during the course of this debate.

All of these issues are the issues of great work many days, many hours of compromise, negotiation, and consensus reached in the Chamber of the Senate. This substitute abandons a number of those consensus agreements, starting with the issue of scope.

On the issue of scope, the Senator from Louisiana and I were able to fashion a provision that provides a floor and protects all Americans. That provision was voted on and consensus was reached. That consensus provision is not in this substitute.

Second, on the issue of exhaustion, the Senator from Tennessee and I worked to fashion a provision that provides that all patients exhaust the appeals before they go to court in a way that does not prevent patients who have an extended appeal from being harmed by that extended appeal. In other words, if it goes on 31 days or more, they can go to court simultaneous with the appeal. That exhaustion provision on which there was a huge vote in favor of it in the Senate is not in this substitute.

Third, the independence of the review panels: I concede I have not seen the language, but assuming it is the same language that was originally in the Frist-Breaux bill, it has no provision specifically requiring the so-called independent review panel be, in fact, independent; nothing requiring that the HMO not be able to control or dictate who, in fact, is on the appeals panel. It is like the HMO being able to pick the judge and the jury. So there is not established to anyone's satisfaction that, in fact, that appeals panel will be independent.

Finally, on the issue of going to Federal court versus State court, the American Bar Association, the Federal judiciary, the U.S. Supreme Court, the State attorneys general, all the objective, large legal bodies in this country have said that these cases should go to State court.

That is what our legislation provides. Unfortunately, under this substitute, the vast majority of cases would, indeed, go to Federal court.

Many Americans live hundreds of miles from the closest Federal courthouse. It would be much more difficult for these injured patients to get a lawyer to represent them in a Federal action, particularly one that might take place hundreds of miles away, and most important, and the reason so many of these objective bodies said these cases belong in State court, is that it will take so long to get the case heard. There is such a backlog already, it makes no sense to send these cases to Federal court.

What we have done instead is say: You, HMO, if you are going to overrule doctors, if you are going to make health care decisions, we are going to treat you exactly as we treat the other health care providers. We treat them exactly the same. It is the reason this is such a critical provision to the American Medical Association, to all the doctors groups across this country and to the consumer groups across America.

There are fundamental differences in our underlying legislation, as amended, and in the substitute, starting with the issue of scope, about which we have reached consensus, going to the issue of exhaustion of administrative remedies, which is not in this substitute; the required independence of the review panel is not in the substitute; the requirement that the cases that every objective body says should go to State court, including the U.S. Supreme Court, those cases go to Federal court instead under this provision.

We have made tremendous progress. I am very pleased with the work of all of our colleagues—Republicans, Democrats, and Independent—in this process. The work has been productive. We have done important work in the Senate, but it is not important to us. It is important for the people of this country, the families of this country who deserve more control over their health care decisions, who deserve real rights, enforceable rights.

That is what we have been able to accomplish over the last 2 weeks. Unfortunately, in every respect in which this substitute is different from the underlying legislation, as amended, it favors the HMO versus the patient. In every respect, we favor the patient; they favor the HMO.

I say to my colleagues who sponsored this amendment, I know they are well-intentioned. I know they worked very hard on it. I respect every one of them, and I respect the work they have done, but I believe the work we have, in fact, done in this Chamber over the last 2 weeks is a much better product and, most importantly, will provide meaningful protections for the patients and families of this country who deserve finally to have the law on their side instead of having the law on the side of the big HMOs.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. There is no time limit.

Mr. KENNEDY. Mr. President, I thank my good friend, Dr. FRIST. Senator FRIST has been the chairman of our Public Health Subcommittee and he and I have worked on a lot of different health care issues together.

I thank Senator JEFFORDS who has been a strong ally on many health care issues over a long period of time.

I have also worked extensively with the Senator from Louisiana, Mr. BREAUX, on many health care issues.

The fact is, when you have this combination of people making a strong recommendation, it is worthy for the Senate to give a true examination of their product and their recommendation this evening.

Having said all of that, it is worthwhile in the final minutes of this debate and before action that we give special consideration to the viewpoints of the doctors, the nurses, and the patients who have followed this issue and have really breathed life into this issue over a long time.

Tonight, at this time, there is only one matter that is before us that has the complete support of the medical profession, the nurses, the doctors, all of the groups that represent the children in this country, all the groups that represent the disability community, all of the groups that represent the Cancer Society, all the groups that represent the aged, all the groups that represent the special needs of people who have special medical challenges. They have had a chance to review each and every provision. They know every aspect of every page of all the legislation and the amendments, and they come down virtually unanimously in

support of the McCain-Edwards legislation.

Senator EDWARDS has already outlined and Senator MCCAIN will further outline the various concerns.

Let me mention matters we have focused on during this debate.

The clinical trials: We are in the century of life sciences, and we are putting resources into and investing in the NIH. We are never going to get the benefits of the research in the laboratory to the bedside unless we have effective clinical trials.

We have strong commitments on clinical trials; Breaux-Frist is short on that, and it will take up to 5 years to begin the clinical trials.

Specialty care: We guarantee specialty care. Any mother who brings in a child who has cancer will be able to get the specialty care. Breaux-Frist does not provide it. If it is not within that particular HMO, then it is not a medically reviewable decision. There are restrictions in the bill.

We have debated the issues of the appeals. Breaux-Frist still has provisions where the HMO will be selecting the appeal organization, which is effectively selecting the judge and jury in these appeals.

Liability: As has been pointed out, Breaux-Frist brings all the liability into the Federal system. Every patients group and every group that concerned itself about getting true accountability for patients understands the importance of keeping liability in the State court.

Even though the words are similar, although we have the issues of medical necessity, although we use the words of specialization, although the words of appeals are used in both bills, there is a dramatic and significant difference. Those are the two choices before the Senate.

I thank our colleagues and friends on the other side. There really is only one true Patients' Bill of Rights that is going to protect the patients in this country, the families, the children, the women, the workers in this Nation, and that is the McCain-Edwards bill. I hope we support that shortly.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask unanimous consent action with respect to Ensign amendment No. 849 be vitiated and the Senate vote in relation to the amendment following the disposition of the Kyl amendment, with up to 10 minutes equally divided for debate prior to that vote.

Mr. LOTT. Reserving the right to object, I hope the Senator will withhold. I think a continued effort is underway, and if he will withhold at this point—I prefer not to object—let's see if we can't work it out.

Mr. ENSIGN. I withdraw my unanimous consent request.

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

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Senators BREAUX and FRIST for their efforts. I believe they have a goodwill attitude toward this issue. I especially thank Dr. FRIST for his leadership not only on this issue but on so many other health care issues that come before the Senate. I respect their commitment in protecting patients and holding health plans accountable. I do not believe the substitute has a mutually shared goal.

Both my colleagues, Senators EDWARDS and KENNEDY, point out some of the differences between our two bills. I remind Members that the amendment does provide very limited relief in Federal court and would only allow a handful of cases to be addressed: Only those patients who receive approval from the external medical review can go to court.

Numerous States, including my home State of Arizona, have enacted laws that permit injured patients to hold plans legally responsible for their negligent medical decisions. I believe this substitute nullifies these laws. My colleagues may assert they do not preempt State law, but I respectfully disagree. Delaying and denying care by an HMO is not a contract issue for Federal court. Delaying and denying of care is a medical malpractice and should be determined in State court.

As we know, this is a substitute. Over the last 2 weeks we have made some very important changes to this legislation, which is the appropriate way to legislate. We have made important changes on employer liability thanks to Senator SNOWE and Senator DEWINE and others; exhausting administrative procedure, thanks to Senator THOMPSON and Senator EDWARDS; limits on legal fees, an effort undertaken by Senator WARNER; reasonable scope, protecting all Americans, limitations on class action suits, and venue to prevent forum shopping, in which Senator THOMPSON and others were involved.

Some of these have been included in the substitute, and some have not. I believe all of these changes that have been made through open and honest debate on this legislation should be included.

Again, we still have avoided the fundamental issue of State and Federal court. I believe that issue is not resolved to the satisfaction of the patient as opposed to the HMO.

I take an additional minute to thank a number of people including the White House staff, Josh Bolton and Anne Phelps; Senator GREGG's stewardship on this side has been exemplary; Senators FRIST and BREAUX have obviously been very helpful; Senators SNOWE, LINCOLN, DEWINE, NELSON, and THOMPSON. I thank both leaders, Senator DASCHLE and Senator LOTT, as well as Senator REID and Senator NICKLES, who have been involved in this issue for a long time, as well as Senator EDWARDS and Senator KENNEDY.

Soon we will vote on this legislation. I believe we will prevail. I think this, like the campaign finance reform bill, has been open, honest, fair debate on which all sides have been heard, and I think, again, the Senate can be proud, no matter what the outcome, of the way we proceeded to address this issue which is important to so many millions of Americans.

This is an important issue to American citizens. This is an important issue to the person who cannot contribute a lot of money to American political campaigns. This is an important issue to average citizens whose voices are oftentimes drowned out in Washington, in my view, by the voices of the special interests, whether they be trial lawyers, insurance companies, HMOs, or others.

I think putting patients first and the HMOs second, as we crafted this legislation, is an important outcome and why I have to oppose the substitute and urge my colleagues to vote favorably when we reach final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I will make two or three comments. First, I compliment and congratulate Senator KENNEDY and Senator GREGG for their patience and leadership in managing this bill and also managing the education bill. Also, I congratulate Senator MCCAIN and Senator EDWARDS for their contribution because they are going to pass a bill, and Senator DASCHLE, as well.

This has been a battle that some have been wrestling with for a long time. As a matter of fact, a year ago we passed legislation that was called Patients' Bill of Rights Plus. In my opinion, it is far superior to the legislation we are getting ready to pass tonight. It was legislation that allowed every plan to have an appeal, internal and external, and it was binding —not binding by lawsuits, but if you did not comply with external appeal, you could be fined $10,000 a day—a different approach. I think it is far superior.

In looking at the language we have today and in the underlying bill, the so-called McCain-Edwards-Kennedy bill, maybe some modest improvements have been made. It is the bill that will finally pass, but it is a bill that the President will not sign and the President shouldn't sign.

I hope we will pass good legislation but not pass legislation that will dramatically increase health care costs, as I am afraid it will. There has to be some reason that employers that voluntarily supply health care, purchase health care for their employees, that employers of all sizes are almost unanimous in their opposition. They are not compelled to buy health care for employees, but they want to. Now we are getting ready to threaten them with unlimited liability. We keep hearing about suing the HMOs, but suing the HMOs and/or employers and threatening them with unlimited liability, economic damages, unlimited noneconomic damages, pain and suffering—there are costs included.

Somebody said we solve that because we have a designated decisionmaker. If

there is a designated decisionmaker, the net result is, well, if you are going to hand off your liability to me, what am I protecting? What am I insuring?

With contracts that can be abrogated or breached, an independent reviewer can say, you have to cover other things, and you have a lot of liability if things do not work out. The net result will be the independent reviewer will say, defensive medicine, we will pay for anything because they don't want to be sued. They don't want to be liable. Then they increase premiums because whatever the liability is, they don't know how much it is or how expensive it is, and they will increase their rates. They don't plan on losing money and they don't want to go out of business, so there will be a lot of defensive medicine and they will charge extra premiums to the employer to make sure they don't go out of business.

So the cost estimates, some people have said, are 4- or 5-percent per year increases on top of the already 13- or 20-percent increases built in, in increased costs for health care. They are probably much more. The costs of the bill could increase the cost of health care by 8 to 10 percent. We should know that.

Again, we should do no harm. We should not pass legislation that will not work, that will do harm. It will do harm if you increase the number of uninsured. It will do harm if you price insurance out of the realm of affordability for millions of Americans. I am afraid that is what we are doing.

There is one other issue that has not received maybe enough attention. Senator COLLINS and Senator NELSON raised that. That is the issue of scope: Should the Federal Government be taking over regulating that the States do? I am concerned about the language. It was modified modestly. It said the States have to be substantially compliant with these new Federal regulations. That language goes so far that really the States are going to have to adopt almost identical language to what we have put in this bill. The net result? If they don't, HCFA takes over—the Health Care Financing Administration.

A couple of points: HCFA can't do it, HHS can't do it, the Department of Labor cannot do it. I want to make that point one final time.

We are ready to pass this mandate and say to the States: If you don't do it, Federal Government, you do it. If the States don't, you do it.

The Federal Government does not have the wherewithal to do it. Every State has hundreds of personnel involved in enforcing insurance regulation, and we are saying, you do it or we are going to take over. That is one of the largest unfunded mandates ever proposed by Congress.

I am a little mad at myself for not being able to offer a point of order that this is an unfunded mandate. One of the reasons I cannot is that it was not reported out of committee.

The unfunded mandates bill, the Congressional Accountability Act, says we have a report that comes out with the committee report and we can raise a point of order if you have an unfunded mandate on cities, counties, States, and the private sector. We cannot do that because we don't have a committee report because the bill was not reported out of committee. It was a year ago, but it is not now.

My point is this is an enormous unfunded mandate on counties and cities and States. We are mandating this on all those employees, saying: We know best, the Federal Government knows best. States, we know you have an emergency room procedure, but we are going to dictate a more expensive one.

I could go all the way down the list. My point is, even though we have done it, we cannot enforce it. You have nonenforceable provisions. There is no protection there. It may make us feel better, we may tell the American people we have provided the protections, but we cannot enforce it because the Federal Government cannot and should not take over State regulation of insurance. That is a mistake.

I am afraid the combination of the two, the expanded liability—you can sue employers and the providers for unlimited damages in State and/or Federal court for economic and noneconomic, unlimited in both cases. You can jury shop. You can find a place that would work. That is going to scare employers. Employers beware, the bill we are passing tonight makes you liable. You are going to have to pay a lot more in health care costs as a result of the bill we are passing tonight.

Again, my compliments to the sponsors. They worked hard. The opponents worked hard. We will pass a bill tonight. But I hope it will be improved dramatically in conference so we will have a bill that is affordable, will not scare people away from insurance, will not increase the number of uninsured by millions. My prediction is this bill would increase the number of uninsured by millions and cost billions and billions of dollars. I hope that is not the case. I hope it is fixed and improved in conference and we will have a bill that President Bush can sign and become law and of which we will all be proud. Unfortunately, I think the underlying bill does not meet that test.

With great reluctance I am going to be voting no on the underlying McCain-Kennedy-Edwards bill. I urge my colleagues to do likewise.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret deeply I will not be able to vote for this bill. My State does not have a problem with the HMOs that other people have expressed. Our State would be mandated by this bill to change its laws. The sensible amendment offered by Senator COLLINS was defeated. The Allard amendments that dealt with small business were defeated. The mandates in this bill will hamper our development of a sound health care delivery system for Alaska.

It is a vast area with a few people. We do not need the interference of the Federal Government. We need help. I think this bill will interfere with what we are doing. I hope by the time it comes out of conference I will be able to support it. I commend everyone who has tried, but this, the underlying bill, will not help our people; it will hurt them; and I cannot support it.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I think this bill is a lot better than when we started. There remains one area, of course, where we have substantial disagreement, and that has to do with where the lawsuits are going to be brought. The underlying bill still has a bifurcated system where some suits can be brought to State court and some in Federal court. I think that is the main thing the Frist-Breaux-Jeffords amendment tries to address.

We all can read the handwriting on the wall. I think we know how this is going to go. But it is very important our colleagues understand what we are doing. With regard to the underlying bill, there is a presupposition, apparently, that a client will walk into a lawyer's office with a tag around his neck saying, I'm a State suit, or, I'm a Federal suit. That will not be the case. There will be many cases that are mixed. Some will have to do with coverage denial, some will have to do with medically reviewable claims, some will be more of a contract case, some will be more of a tort case. Arguably, it could go in either court. Some will go to Federal court and the defendant will object and say, no, you belong in State court, and the judge will rule. Then there will be an appeal in that venue. Then that will be determined, and then it will go possibly to the opposite court. In other words, there will be litigation at one or more levels in order to determine where you are going to litigate.

Some, on the other hand, will go to State court, and there will be a fight there as to whether or not that belongs in State court. It may be remanded over to Federal court.

Some will come in with cases, parts of which will arguably be in Federal court and parts of the same case could arguably be in State court.

All I am suggesting is there is no easy solution to this. It has been pointed out that there are some down sides to bringing them in Federal court, too. They are overcrowded. We have heard examples of federally related lawyers and judges saying it ought to be in State court. If you took a poll among the State-related lawyers and judges, they would say just the opposite. But at least you avoid the problems I am talking about.

We are going into a system now where we are creating new law; we are creating new defendants. But wait, it is not just HMOs and employers. The

independent decisionmakers are subject to liability, too. The independent medical reviewer is subject to liability, too. They have a higher standard. I believe it is a ''gross or willful misconduct'' standard. It is a higher standard, but they can be sued for settlement value or whatever.

We have a complicated liability framework, so you have different people, different standards, new lawsuits. It is going to be extremely confusing for a long time, and it is going to result in much higher costs.

The tradeoffs may be there. The decisions were made that we adopted this in view of all that. But I think it is very important that at a time when health care costs are already going up in double digits, we are doing something that quite clearly is going to result in much more litigation, much more confusion about that litigation. Somebody ultimately has to pay for all that. It is going to ultimately result in higher costs to our citizens. I think it is important we understand that before we cast these votes.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. We are just about at the point now where I think we can begin voting on amendments. I ask unanimous consent that following the first amendment, all other votes be limited to 10 minutes. I ask further that the two managers be permitted to offer a joint managers' amendment following the passage, prior to the close of business today.

Mr. LOTT. Reserving the right to object, Mr. President, I will not object, I just want to clarify where we are. I believe we are ready to recognize Senator KYL—he had a little time left on his amendment—and then I believe we will be ready to have the three votes: Kyl amendment, Breaux-Frist, and final passage.

Mr. GREGG. Reserving the right to object, on the managers' package we are working to try to reach an agreement. Hopefully, we will reach an agreement. If we do not reach agreement—is my understanding correct that we have to reach agreement by the end of today? What is the parliamentary situation if we do not reach an agreement by the end of today?

Mr. DASCHLE. Mr. President, there would not be a managers' amendment if we couldn't find mutual agreement on the amendment.

Mr. GREGG. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 854

Mr. KYL. Mr. President, I ask unanimous consent Senator NICKLES be shown as a cosponsor of amendment No. 854.

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

Mr. KYL. There are two people I know of who would like to speak briefly on my amendment. I would like to respond briefly to what Senator KENNEDY said and then summarize.

May I begin by congratulating the authors of the underlying legislation and expressing appreciation for all those who have worked with me. Especially I want to thank my colleague, JOHN MCCAIN, and congratulate him for his successful efforts in moving this legislation forward. It is not always easy when colleagues from the same State are not in total agreement on everything, but he let me know early on when I first came to the Senate he didn't expect to agree with me on every issue. He said he might even be in disagreement on some matters with me from time to time.

I appreciate his efforts and the efforts of all of those who have worked with me.

Just to summarize for those who were not here earlier, my amendment is very simple. It merely provides an option for employers that offer plans that are covered by this bill to also provide an alternative for their employees. That would permit the employees to have as their remedy the receipt of the health care or for the cost of that health care rather than going to court and getting damages as they are permitted to do under the bill. This should provide a lower cost alternative that could be made available to them. That, in turn, should provide a way for employers that might otherwise have to reduce the number of employees covered, or not have insurance for their employees at all, to continue to provide that coverage.

As I pointed out before, according to the Congressional Budget Office information, and the Lewin Group, probably over a million American citizens will lose their health care as a result of the increased expenses that could result from this legislation.

The effort that we have all tried to engage is to find ways to reduce those costs so premiums won't go up as much and so employers can continue to provide the care. The best way to do that is to allow them to provide a purely voluntary option for their employees to accept, which would not have the same lawsuit damage option but would provide them the health care for which they have contracted. It is about health benefits rather than lawsuits. We think this would provide the remedy for that.

The only comment that Senator KENNEDY made in opposition was that we are not regulating how the employer would have to contribute toward the insurance policies for their employees. That is very true. We are not doing that in the underlying bill. We are not doing it in the Breaux-Frist amendment. We are not doing it in my amendment. I don't think anybody here has suggested we should be mandating from the Federal Government how much money the employers have to pay for their insurance option that they provide for their employees. I do not think that is a relevant point.

I reserve the remainder of my time for those who wish to speak to it. Then I will be prepared to yield back.

Mr. KENNEDY. Mr. President, I will just take 1 minute.

The Kyl amendment will permit a company to offer a sham policy and a real policy. To get the real policy, an employee will have to weigh all of his or her rights under the liability provisions of the McCain-Edwards bill. Those are the alternatives. It basically undermines the whole concept of this legislation because it will permit employers and HMOs to escape any kind of accountability upon which this legislation is built. That creates a massive loophole which is undermining the whole purpose of this legislation.

I hope the amendment will be defeated.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the hour is late, but the Kyl amendment is important. There is no sham here at all. It is the marketplace at work—voluntarily to provide the employee with options. The employer must provide health care programs if they are going to provide health care programs that fit this bill, that fit the Patients' Bill of Rights, but in doing so they also can provide a voluntary option if the employee chooses to take it, which simply says you waive your rights to a lawsuit. And guess what. It might cost that employee less money. Yet he and she, and their families, might still be covered.

Isn't that a reasonable option and a voluntary option to provide to the marketplace?

How dare we say that every attorney ought to have a right here? Why not say every employee has a right to a marketplace of options that this voluntary approach that the Senator from Arizona provides gives to the health care system of our country?

I support the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, over the past 8 days we have had amendment after amendment that have created massive loopholes in the very basic and fundamental fabric of this legislation, which is to protect patients, protect families, protect doctors, and protect medical decisions against the bottom line of HMOs.

This is another one of those in the parade, and it should be rejected.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask for 1 minute.

Mr. President, the option provided by Senator KYL is not a loophole. It is an option. Under his plan, all policies that an employer would offer would provide the external and internal reviews that we have in all of the plans. The option to go to specialists, the gag rule protections that we have made a part of this bill—all of that would be in the plan.

It would simply give the employee an option, if he thought it would save him money and he or she didn't intend to sue for benefits, to choose a policy that could be cheaper and simply not have certain lawsuit rights but, in fact, that operate for liability purposes under current law. It is no worse than current law. It is no better than current law. That is an option that could save a working family money that they need for their budget.

For those who want all matters to be exactly the same, I don't see why they would resist such an option. I think it is good for the employees.

I salute Senator KYL. I also note that Senator JEFFORDS had a hearing recently on the uninsured in America. We know there are over 40 million uninsured and that every 1 percent increase in insurance costs causes 300,000 people to drop off the insurance rolls.

I think it is a good move. I support it.

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KYL. Mr. President, there is nothing mandatory in this legislation. It is all voluntary. It is a simple choice for the employees. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. Is all time yielded?

Mr. KYL. Mr. President, I yield all time on this side.

The PRESIDING OFFICER. The question is on agreeing to the Kyl amendment No. 854. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Colorado (Mr. CAMPBELL), and the Senator from Texas (Mr. GRAMM) are necessarily absent.

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

The result was announced—yeas 42, nays 54, as follows:

[Rollcall Vote No. 218 Leg.]

YEAS—42

Allard	Frist	Roberts
Allen	Grassley	Santorum
Bennett	Gregg	Sessions
Bond	Hagel	Shelby
Brownback	Hatch	Smith (NH)
Bunning	Helms	Smith (OR)
Burns	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Ensign	McConnell	Voinovich
Enzi	Nickles	Warner

NAYS—54

Akaka	Bingaman	Cantwell
Baucus	Boxer	Carnahan
Bayh	Breaux	Carper
Biden	Byrd	Chafee
Cleland	Harkin	Mikulski
Clinton	Hollings	Miller
Conrad	Inouye	Murray
Corzine	Jeffords	Nelson (FL)
Daschle	Johnson	Nelson (NE)
Dayton	Kennedy	Reed
Dodd	Kerry	Reid
Dorgan	Kohl	Rockefeller
Durbin	Landrieu	Sarbanes
Edwards	Leahy	Schumer
Feingold	Levin	Stabenow
Feinstein	Lieberman	Torricelli
Fitzgerald	Lincoln	Wellstone
Graham	McCain	Wyden

NOT VOTING—4

Campbell	Gramm
Domenici	Murkowski

The amendment (No. 854) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 856

The PRESIDING OFFICER. The question is on agreeing to the Frist-Breaux substitute amendment No. 856.

Mr. EDWARDS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), the Senator from Texas (Mr. GRAMM), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Mississippi (Mr. LOTT) are necessarily absent.

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

The result was announced—yeas 36, nays 59, as follows:

[Rollcall Vote No. 219 Leg.]

YEAS—36

Allard	Enzi	McConnell
Allen	Frist	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Breaux	Hagel	Smith (NH)
Brownback	Hatch	Smith (OR)
Bunning	Helms	Stevens
Burns	Hutchinson	Thomas
Cochran	Hutchison	Thompson
Collins	Jeffords	Thurmond
DeWine	Kyl	Voinovich
Ensign	Lugar	Warner

NAYS—59

Akaka	Dorgan	McCain
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Byrd	Graham	Nickles
Cantwell	Harkin	Reed
Carnahan	Hollings	Reid
Carper	Inhofe	Rockefeller
Chafee	Inouye	Sarbanes
Cleland	Johnson	Schumer
Clinton	Kennedy	Shelby
Conrad	Kerry	Snowe
Corzine	Kohl	Specter
Craig	Landrieu	Stabenow
Crapo	Leahy	Torricelli
Daschle	Levin	Wellstone
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NOT VOTING—5

Campbell	Gramm	Murkowski
Domenici	Lott	

The amendment (No. 856) was rejected.

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

The motion to lay on the table was agreed to.

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

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

Mrs. LINCOLN. Mr. President, I wish to enter into a colloquy with the distinguished manager of the bill to clarify the intent of the sponsors.

Section 202 of the bill amends the Public Health Service Act with a new section 2753 that applies all of the requirements of title I of the Patients Bill of Rights to each health insurance issuer in the individual market.

Current law, at section 2763 provides that none of the preceding requirements of the ''individual market rules'' apply to health insurance coverage consisting of ''excepted benefits''.

Similar provisions exist in current law at section 2721 of the Public Health Service Act for the group insurance market. A parallel provision exists in ERISA at section 732 for ''excepted benefits''.

Is it the intent of the managers of the bill that current law section 2763 and the parallel provisions for the group market in the Public Health Service Act and ERISA remain in full force notwithstanding the language of new section 2753?

In other words the requirements of title I of the Patients Bill of Rights would apply to individual and group health insurance other than ''expected benefits'' coverage.

Mr. KENNEDY. The Senator is correct. It is the intent of the managers of the bill that the requirements of title I do not apply to insurance coverage consisting of ''excepted benefits''.

Ms. CANTWELL. Mr. President, I rise today to speak in support of the bipartisan McCain-Edwards-Kennedy Bipartisan Patient Protection Act. Managed care reform, particularly the enactment of a comprehensive Patients' Bill of Rights, is one of the most important issues currently before either body of the U. S. Congress. After all the debate we have had on the floor in the last two weeks, I believe we are at the cusp of providing true, meaningful protections for every American in every health care plan.

Unfortunately, while over 160 million Americans rely on managed care plans for their health insurance, HMOs can still restrict a doctor's best advice based purely on financial costs. The fact is, we know that the great promise of managed care—lower costs and increased quality—has in all too many cases turned into an acute case of less freedom and greater bureaucracy.

I want to tell my colleagues about the Malone family from Everett, Washington. Their son, Ian, was born with brain damage that makes it very difficult for him to swallow, to even cough and gag properly. He cannot eat or breathe without being carefully watched. He's fed through a tube in his stomach since he can't swallow.

The doctors at Children's Hospital in Seattle—one of the best pediatric care institutions in the world—said that Ian could leave the Intensive Care Unit but would need 16 hours of home nursing care a day for Ian. And while initially the Malone's health insurance company paid for this care, it decided to cut it off. Ian's father says that ''The insurance company told us to give Ian up for adoption and let the taxpayers step in and pay for his care. They didn't care. It was all about saving money.''

It seems that the week's rhetoric has centered on the idea of business and employers versus patients—as if these two interests are inherently antithetical, rather than complementary. But they are not. In fact, I believe the Bipartisan Patient Protection Act is a balanced approach to protecting patients and protecting the business of managed care.

My home State of Washington has been a leader in providing health care to all of its citizens and has enacted strong patient protections at the state level. Under Washington State law, patients have the right to accurate and accessible information about their health insurance; the right to a second opinion; timely access to services by qualified medical personnel; the right to appeal decisions to an independent review board; and the ability to sue providers for damages if they are substantially harmed by a provider's decisions.

I believe that States are the laboratories of democracy and I do not take lightly the possibility that any federal legislation would undermine or preempt state law. I spent six years on the Health Care Committee in the State House of Representatives and just this last year Washington passed a comprehensive Patient's Bill of Rights. In issues such as the one before us this week, it is paramount that federal legislation enhance state protections, not undermine them.

And that is what this bill does. The McCain-Edwards-Kennedy compromise explicitly preserves strong state patient protection laws that substantially comply with the protections in the Federal bill. This is an extremely important point. The standards for certifying state laws that meet or exceed the Federal minimum standard ensure that only more protective State laws replace the Federal standards.

But I find it ironic that opponents of a strong, enforceable, Patients' Bill of Rights have traditionally limited the scope of the patient protections in their managed care reform legislation to those individuals in self-insured plans, which are not regulated by the States, and assert that the States are responsible for the rest.

This approach denies Federal protections to millions of Americans—teachers, police officers, firefighters and nurses who work for State and local governments; most farmers and independent business owners who purchase their own coverage; most workers in small businesses who are covered by small group insurance policies, and millions more who are covered by a health maintenance organization. We need federal protections so that all Americans are guaranteed basic rights.

In fact, no state has passed all the protections in the bipartisan McCain-Edwards-Kennedy Patients' Bill of Rights. To fail to enact this bill would mean that neighbors, and sometimes workers in the same company, will have different protections under the law. The scope of this legislation simply ensures that all Americans in all health plans have the same basic level of patient protections.

Let me focus for a few minutes on what this bill does.

This bill protects a patient's right to hear the full range of treatment options from their doctors, and it prohibits financial incentives to limiting medical care.

This bill allows patients to go to the first available emergency room when they are facing an emergency—regardless of whether that particular E.R. is in their managed care network.

This bill allows women to go directly to their obstetrician or gynecologist without going through a ''gatekeeper,'' and it allows parents to bring their children directly to pediatricians instead of having to go through primary care physicians.

This bill allows patients with life-threatening or serious illnesses, for whom standard treatments are ineffective, to participate in approved clinical trials.

This bill has laid out stringent, tough, enforceable internal and external review standards, and we have ensured that a truly independent body has the capability and authority to resolve disputes for cases denying access to medical care.

This bill promotes informed decision-making by patients, by requiring health plans and insurance companies to provide details about plan benefits, restrictions and exclusions, and other important information about coverage and rights under the legislation.

Finally, the Bipartisan Patient Protection Act holds insurers and HMOs accountable for their acts.

Twenty years ago, very few Americans were in managed care plans. Since the early 1990s, however, insured workers' enrollment in traditional fee-for-service plans has dropped from about 50 percent to under 25 percent. The broad shift to managed care has been driven, largely, by cost concerns. But in our need to control health care costs, it is imperative that we do not forget what we are supposed to be doing—providing health care.

There will be few issues more important in the 107th Congress than the one we are voting on today. Health care affects people personally, every day of their lives, and we have a real responsibility to ensure that any changes we make put the patient's interests first. That is what this bill does, and I proudly rise in support of the Bipartisan Patient Protection Act.

Mr. FEINGOLD. Mr. President, I was prepared to offer an amendment to S. 1052 concerning mandatory arbitration to ensure that HMOs are held accountable for their actions, which after all is one of the primary purposes of this bill. I have been asked not to offer that amendment, so I wanted to discuss it with the lead sponsors of the bill and ask them to clarify their intent.

Some managed care organizations currently require patients to sign mandatory binding arbitration contracts before any dispute arises. These provisions effectively deny injured patients the right to take their HMO to court. Instead they are forced to go into binding arbitration, which can be a stacked deck against patients. We have spent much of the past 10 days debating whether injured patients should be able to go to court to vindicate their rights. It is clear that a majority of the Senate supports such rights, otherwise we would not be about to pass this legislation. So I am asking my colleagues to clarify that it is the intent of the sponsors that injured patients are granted legal rights under this legislation that permit them to go to either state or federal court to pursue compensation and redress, notwithstanding a mandatory arbitration provision in an HMO contract. Can they further clarify that it is not the intent of the sponsors of this legislation that patients can lose the legal rights we are providing in this bill by being forced into mandatory binding arbitration? In these arbitrations, the HMO chooses the arbitrator, there are substantial up-front costs that the patient has to bear, there is limited discovery, no right to appeal, and no public record or precedential value of the decision.

Mr. MCCAIN. I thank my friend from Wisconsin for raising this very important issue about this legislation. We have come very far on this legislation. It is the intent of the bill's sponsors and of the majority about to pass this bill that patients will have the full legal rights provided under this historic legislation. It is not our intent to provide these important legal rights on the one hand and then allow them to be taken away by mandatory arbitration contracts entered into before a dispute arises. We have said that this bill gives patients the right to an external appeal process and to go to court, and we intend that cases arising under these rights should be heard by the external reviewer in court, and not by private arbitrators.

Mr. KENNEDY. If the Senator would yield, I agree that our bill would be severely undermined if health insurers could avoid the protections we have tried to guarantee in this bill by inserting a clause in the fine print of the contract to require binding arbitration of disputes that might later arise.

Mr. EDWARDS. I agree with my distinguished colleagues that HMOs should not be permitted to revoke the protections we have worked so hard to provide in this bill through the use of mandatory binding arbitration provisions in their contracts. Patients have no ability to bargain over the fine print of the health insurance contracts. That is why we have had to provide federal standards in this bill, and it would be wholly contrary to the approach of this bill to allow a backdoor route for these standards and protections to be avoided.

Mr. FEINGOLD. I thank my colleagues, the prime sponsors of this legislation for these clarifications. Based on these assurances, I will not offer my amendment. I yield the floor.

Mr. ROCKEFELLER. Mr. President, during the past five years, we have debated the merits and faults of assorted patients' rights legislation. We have offered statistics, we have shared stories, and we have reduced strong legislation—legislation that held the real possibility of protecting all Americans—to weaker law that protects a minority of the population. Our work at times spoke of this issue in the abstract, yet there is nothing abstract about it. The 180 million Americans enrolled in health care plans have always understood exactly what it means to have insufficient coverage. However, they are not sitting on the edges of their seats, watching our heated arguments and waiting breathlessly for an outcome. Instead, they are engaged in the battles they have fought for far too long, and their disputes have far higher stakes. They are, quite literally, fighting with managed care organizations for their lives. The American people are tired, Mr. President, and deserve relief from these battles. They deserve good health and the peace of mind that comes with quality care. It is time we cast aside our partisan bickering and give the American people the right to health care, as well as the right to seek redress if denied quality health care. It is time to pass the Patients' Bill of Rights.

Recognizing that 43 million Americans go without health insurance each day, and millions more carry partial to inadequate health coverage, I have worked with my colleagues both in committee and on the floor to deliver quality care that truly benefits patients. I am convinced that such health care coverage must include liability when needed care is denied, resulting in injury or death. Quality care must also include patients' access to medical specialists, and an appeals and review process when such access is denied. The McCain-Edwards-Kennedy bill includes these stipulations and goes one step further. It ensures that, for the first time, all Americans enrolled in health plans will be given access to the care they need.

With this in mind, I would like to enthusiastically endorse the McCain-Edwards-Kennedy Patients' Bill of Rights. A bipartisan effort in all regards, the legislation before us will ensure access to the quality of care that all Americans need—access which they deserve. First and foremost, it grants every individual with health coverage the same quality care. Under this McCain-Edwards-Kennedy legislation, for example, women, children, and the critically ill—often, the groups that are denied the care they need—will be given access to doctors who will determine their best medical interests.

If denied such care, patients will also be given the opportunity to immediately appeal decisions. By employing independent review boards, victims will be able to seek second opinions prior to the denial of care. The McCain-Edwards-Kennedy bill ensures access to medical treatments, before it is too late. To date, thousands of patients have died as a result of decisions made by non-medical HMO personnel who merely sought to reduce cost and increase profits. With this legislation, that need not happen ever again.

We have now come to agreements so that the pending legislation will allow employees to seek punitive damages only if their employers willfully and negligently deny medical care that results in injury or death. Though some might argue that this will increase the cost of health care and, by extension, increase the number of uninsured in America, studies in states that have implemented similar protections have shown that this just is not the case. This right serves as a check against irresponsible decision-making and is critical to the legislation before us.

Finally, the McCain-Edwards-Kennedy Patients' Bill of Rights provides hope for those suffering from chronic illness by encouraging the use of clinical trials if no other treatment exists. Alzheimer's, AIDS, and cancer patients, for example, have real hope that alternative therapies may improve their suffering and offer a long-term cure. This element of the legislation is long overdue. I fought along with other members of this body for this right as part of the Medicare program—yet the same opportunity does not exist for those with private coverage. It is a right—and it is time to help the seriously ill so that they can fight their illness, not their insurance company.

We have been debating this issue for five years, in spite of the fact that we all agree patients deserve quality health care. Here on the floor, we concur on many of the issues that held this legislation up in conference last year. I was a member of that conference committee, and can safely say the negotiating we have done here has greatly improved the bipartisan support for the Patients' Bill of Rights, previously lacked in conference. We have negotiated and agree upon scope between state and federal law, and on the definition of ''medical necessity,'' as well as employer liability. We all agree that women should have access to OBGYN care, children should have access to pediatric care, and all patients should have access to emergency room care. I ask, then, what is holding us back? Indisputably, Americans have suffered too long and have endured too much. They deserve quality care—they deserve the Patients' Bill of Rights, and we must give it to them. I urge my colleagues to vote for the McCain-Edwards-Kennedy Patients' Bill of Rights.

Mr. KOHL. Mr. President, I rise today in support of S. 1052, the Bipartisan Patients Protection Act. After nearly 5 years of debate and partisan fighting, I am pleased that the Senate has finally passed a real, meaningful bipartisan Patients Bill of Rights. It is a step that is long overdue.

For many years, the growth of managed care arrangements helped to rein in the rapidly growing costs of health care. That benefits all patients across the Nation and helps to keep health care costs in check for everyone.

However, there is a real difference between making quality health care affordable and cutting corners on patient care. In Wisconsin, we are lucky that most health plans do a good job in keeping costs low and providing quality care. But too often across this nation, HMOs put too many obstacles between doctors and patients. In the name of saving a few bucks, too many patients must hurdle bureaucratic obstacles to get basic care. Even worse, too many patients are being denied essential treatment based on the bottom line rather than on what is best for them.

The Patients Bill of Rights will ensure that patients come first—not HMO profits or health plan bureaucrats. It makes sure that doctors, in consultation with patients, can decide what treatments are medically necessary. It gives patients access to information about all available treatments and not just the cheapest. Whether it's emergency care, pursuing treatment by an appropriate specialist, providing women with direct access to an OB-GYN, or giving a patient a chance to try an innovative new treatment that could save their life—these are rights that all Americans in health plans should have. And questions concerning these rights should be answered by caring physicians and concerned families—not by a calculator. This bill puts these decisions back in human hands where they belong.

This legislation will also make sure these rights are enforceable by allowing patients to hold health plans accountable for the decisions they make. First, all health plans must have an external appeals process in place, so that patients who challenge HMO decisions may take their case to an independent panel of medical experts. The External Reviewer must be independent from the plan, and they must be able to take valid medical evidence into account when deciding whether a treatment was inappropriately denied. The vast

majority of disputes can and will be resolved using this external review process.

I was pleased that during the course of this debate, the Senate adopted an amendment that further clarified the rules of the external review process. I shared the concerns of Wisconsin employers and insurers that the original version could have potentially allowed an external reviewer to order coverage of a medical service that the health plan specifically disallowed in its plan. I strongly support the creation of a strong, independent external review process to address disputes between a patient and their insurer over whether a service is medically necessary. At the same time, I believe employers who offer their employees health care coverage and enter into a contract with a health plan should have a level of certainty as to the specific services that are not covered under the plan.

That is why I voted for the McCain-Bayh-Carper amendment, which preserves the sanctity of the contract and makes it crystal clear that a reviewer may not order coverage of any treatment that is specifically excluded or limited under the plan. At the same time, it still allows reviewers to order coverage of medically necessary services that are in dispute. In addition, if a health plan felt that a reviewer had a pattern of ordering care of questionable medical benefit, the plan could appeal to the secretary to have that reviewer decertified.

I recognize that some preferred the approach offered by Senators NELSON and KYL in addressing this issue. However, I opposed the Nelson-Kyl amendment because it went a step too far. By attempting to have the Federal Government create a national definition of ''medical necessity,'' it would create a regulatory nightmare for patients and providers, and could potentially result in a definition that nobody supports and is too rigid to move with the advances in medical technology and treatment. The compromise amendment offered by Senator MCCAIN struck a more appropriate balance by protecting the sanctity of health plan contracts while allowing patients real recourse through an external appeal for medical necessity disputes.

Beyond the external review process, if a health plan's decision to deny or delay care results in death or injury to the patient, this bill ensures that the health plan can be held accountable for its actions. And this bill, as amended, includes clear protections for employers. I was pleased to support the amendment offered by Senators SNOWE and NELSON which further clarified the difficult issue of employer liability.

Let me make it clear that our main objective is to make sure that patients have access to the treatments they need and deserve, and that if a health plan wrongly delays or denies treatment that causes injury or death, that patients can hold their health plans accountable—just like they would hold their doctor accountable if their doctor's action caused injury or death. In other words, the patient should be able to hold accountable that entity who directly made the decision to deny care, and I think it's critical that we shield from liability all employers who had no hand in making that decision.

That is why I supported the amendment by Senators SNOWE and NELSON, which provides strong protections for employers from being sued by allowing them to choose a ''designated decisionmaker'' to be in charge of making medical decisions and to take on all liability risk. In the case of an employer who offers a fully insured health plan, the health insurance company which the employer contracts with is deemed to be that designated decisionmaker, and the employer is therefore protected from lawsuits. In the case of an employer that offers a self-insured health plan, that employer may contract with a third-party administrator to administer the benefits of the plan. That third party administrator would agree to be the designated decisionmaker and the employer is shielded from lawsuits. Only those employers that act as insurers and directly make medical decisions for their employees can be held accountable. This group accounts for only approximately 5 percent of all employers in the country.

This bill now makes it clear that employers—who voluntarily provide health coverage to their employees and the vast majority of which do not act as insurers by making medical decisions—are shielded from lawsuits. This is in total agreement with President Bush's stated principles of a Patients Bill of Rights he could sign, where he said, and I quote: ''Only employers who retain responsibility for and make final medical decisions should be subject to suit.'' That is exactly what this bill does. It is one of the main keys to making the rights in this bill enforceable, and I strongly urge that this right be retained in any bill that is sent to the President.

Most importantly, this bill gives all of these protections to ALL Americans in managed health care plans, not just a few. All 170 million Americans in managed health plans deserve the same protections—no matter what State they live in.

As someone who comes from a business background, I understand the concerns of employers. Some of my colleagues on the other side have claimed that our bill will increase health care costs so much that it will make it impossible for employers and families to afford coverage. But the Congressional Budget Office reported that the patient protections in our bill will only increase premiums by 4.2 percent over 5 years. This translates into only $1.19 per month for the average employee. CBO also found that the provision to hold health plans accountable—the provision the other side opposes the most and claim would cause health care costs to skyrocket—would only account for 40 cents of that amount. An independent study by Coopers and Lybrand indicates that the cost of the liability provisions is potentially less than that, estimating that premiums would increase between three and 13 cents a month per enrollee, or 0.03 percent. This is a small price to pay to make sure that health plans cover the health care services we all deserve.

I believe this bill meets the President's principles for a real Patients Bill of Rights, and I hope that when the House passes its bill, we can come together and send a bill to the President he will sign. The time has come to end this debate and finally act to protect patients. There is no reason whatsoever to continue to allow health plans to skimp on quality in the name of saving profits. Patients have been in the waiting room long enough. It is time for the Senate to act and make sure they receive the health care they need, deserve, and pay for.

Mr. FEINGOLD. Mr. President, the lobbying on this bill has been intensive. There's been a great deal of coverage in recent weeks about the wealthy interests that have collided over whether the nation should have a Patients' Bill of Rights, and what that bill should look like.

I think even the media has had a tough time figuring out which side of this debate has the power of the ''special interests'' on their side. Some have said the money is on the side of the McCain-Kennedy-Edwards bill, since interests supporting the bill include the American Association of Trial Lawyers, the American Medical Association, and labor unions like AFSCME.

Others say that the special interests are weighing in against the Patients Bill of Rights, because of the powerful business and insurance coalitions fighting to defeat this legislation.

So who is right. Where is the money in this debate? The answer is simple, there are donors on both sides. Wealthy interests aren't aligned exclusively on one side or the other. So for the information of my colleagues and the public, I thought I would take a moment to call the bankroll by examining the donations the interests on both sides have given in the last election cycle.

I will start with massive effort to defeat this legislation, brought to us by a coalition of insurance and business interests that represent some of the most powerful donors in the campaign finance system today.

Opposition to McCain-Edwards-Kennedy is being spearheaded by the Health Benefits Coalition. An analysis by the Center for Responsive Politics puts the cumulative donations of the members of the Health Benefits Coalition at $12.9 million in the last election cycle. That figure includes soft money, PAC money and individual contributions made by the members of the Coalition.

The Coalition includes corporate members such as Blue Cross/Blue

Shield, Aetna Inc., and Humana Inc. But perhaps more importantly, the Coalition also includes major business and insurance associations. These organizations include the Chamber of Commerce, the Business Roundtable, the American Association of Health Plans, the Health Insurance Association of America, the National Retail Federation, the National Restaurant Association, and the Food Marketing Institute, to name just a few. And of course whenever organizations like these join together in a legislative fight, they carry with them the collective clout of all the major political donors they represent.

The Health Insurance Association of America is an enormous coalition of the insurance industry. The insurance industry itself gave nearly $40.7 million in PAC, soft, and individual donations in the 2000 election cycle.

The American Association of Health Plans, the trade association for HMOs and PPOs, spent a total of nearly $2.5 million on lobbying in 1999 alone. According to a recent New York Times article, AAHP has budgeted $3 to $5 million to make their case against the Patients' Bill of Rights, and they are willing to spend, quote, ''whatever it takes,'' unquote, to get the job done.

The Business Roundtable also has spent money on an ad campaign against the bill, and so has the Health Benefits Coalition itself.

The cumulative clout of these expenditures, lobbying expenditures, soft money, PAC money and ad campaigns, from some of the biggest and most powerful organizations in Washington, hasn't gone unnoticed. This is an all-out blitz.

And this bankroll wouldn't be complete without a description of some of the interests giving their support to provisions in this bill: The American Medical Association, the Association of Trial Lawyers of America, and labor unions, including the American Federation of State, County and Municipal Employees.

According to the Center for Responsive Politics, AFSCME gave more than $8.5 million in soft, PAC and individual contributions in the last election cycle. The Association of Trial Lawyers of America gave more than $3.6 million in PAC, soft and individual contributions during that same period, and the AMA gave more than $2 million.

We don't know yet whether the will of the people will be heard above the din of lobbying calls, TV ad blitzes and the cutting of soft money checks to the political parties. I hope we pass a strong Patients' Bill of Rights. But whatever the outcome of this bill, we have to ask ourselves if this is the way we want to legislate, and the way we want our democracy to function. I think when the public hears that this debate pits wealthy interests against each other—in some kind of showdown at Gucci Gulch—they tune us out, because suddenly it's no longer about them, it's just another story about how big money rules American politics. And when that's the case, all of us lose, no matter which side of this debate we're on, because our legislative process is diminished, and the American people's faith in us is diminished along with it. I thank the chair and I yield the floor.

Mr. LEAHY. Mr. President, today's passage of the Bipartisan Patient Protection Act marks a major step forward in the struggle for a meaningful Patients' Bill of Rights. I am hopeful that with the adoption of this landmark legislation, patients throughout the country can feel a sense of relief knowing their rights will now be protected.

Over the past two decades, our Nation's healthcare delivery system has seen a seismic transformation. Rapidly rising healthcare costs have encouraged the development and expansion of managed care organizations, specifically health maintenance organizations. Unfortunately, the zealous efforts of HMOs to contain these costs have ended up compromising patient care and stripping away much of the authority of doctors to make decisions about the best care for their patients.

During the past several years, many Vermonters have let me know about the problems they face when seeking health care for themselves and their families. Like most Americans, they want: greater access to specialists; the freedom to continue to be treated by their own doctors, even if they switch health plans; health care providers, not accounting clerks at HMOs, to make decisions about their care and treatment; HMOs to be held accountable for their negligence.

The Bipartisan Patient Protection Act is the solution that Americans have called for—patient protections that cover all Americans in all health plans by ensuring the medical needs of patients are not secondary to the bottom line of their HMO.

Too many times, I have heard from Vermonters who have faced difficulty in accessing the most appropriate healthcare professional to meet their needs. This legislation will solve that problem by giving Vermonters—and all Americans who suffer from life-threatening, degenerative and disabling conditions—the right to access standing referrals to specialists, so they do not have to make unnecessary visits to their primary care physician for repeated referrals. These patients will also be able to designate a specialist as their primary care physician, if that person is best able to coordinate their care.

This legislation makes important strides in allowing patients access to a health care provider outside of their plan when their own plan's network of physicians does not include a specialist that can provide them the care they need. This provision is especially important for rural areas, like many parts of Vermont, which tend to not have an excess of health care providers. Women will now be able to have direct access to their OB/GYN and pediatricians can be designated as primary care providers for children.

If an individual gets hurt and needs unexpected emergency medical care, the Bipartisan Patient Protection Act takes important steps to ensure access to emergency room care without a referral. If a woman is suffering from breast cancer, this bill will protect her right to have the routine costs of participation in a potentially life-saving clinical trial covered by her plan. This bill puts into place a wide range of additional protections that are essential to allowing doctors to provide the best care they can and to allow patients to receive the services they deserve.

Many of our States have already adopted patient protection laws. My home State of Vermont is one state that currently has a comprehensive framework of protections in place. This Federal legislation will not prohibit Vermont or any other state from maintaining or further developing their own patient protections so long as the laws are comparable to the Federal standard. I am pleased that this bill will allow states like Vermont to maintain many of their innovative efforts, while also ensuring that patients in states that currently have no laws in place will receive the basic protections they deserve.

Each of the important protections I have highlighted will only be meaningful if HMOs are held accountable for their decisions. The key to enforcing these patient protections rests in strong liability provisions that complement an effective and responsive appeals process. The Bipartisan Patient Protection Act provides patients with the right to hold their HMO liable for decisions that result in irreparable harm or death. Managed care organizations are one of the very few parties in this country that are shielded from being held accountable for their bad decisions. The time has come for that to change. Opponents of patients' rights legislation have been vocal in suggesting that by allowing patients to hold HMOs liable in court, there will be an explosion of lawsuits, causing the costs of healthcare insurance to skyrocket. This has not been the case in states like Texas, that have already enacted strong patient protections. Rather, it has been shown that most cases are resolved through the external appeals process and that only a very small fraction of cases ever reach the court room. Under this legislation, a patient must exhaust all internal and external appeals before going to court.

I have heard from many Vermonters concerned about the potential impact of new HMO liability provisions on employers. I am disappointed that the opponents of this legislation have exploited and misrepresented this part of the bill. Rather than attempting to alleviate concerns by explaining the liability provisions, they have instead resorted to a scare tactic strategy. If you listen to some opponents of this

bill, you would think that any employer who offers health coverage will be sued. I would like to take this opportunity to clarify some of the facts.

The Bipartisan Patient Protection Act protects employers with a strong shield that only makes the employer accountable when he or she directly participates in health treatment decisions. The bill also clearly states that employers cannot be held responsible for the actions of managed care companies unless they actively make the decision to deny a health care service to a patient. This only occurs in about five percent of businesses —generally those employers large enough to run their own health plan. Those few companies that directly participate in the decision to deny a health care benefit to a patient, should accept legal responsibility for those decisions.

After nearly 5 years of debate in Congress, the American people are finally closing in on the patients' rights and protections they deserve. But there is still more work to be done. The House of Representatives must consider this important issue in a timely manner and I am hopeful their bill will include provisions similar to the bipartisan patient protection legislation passed in the Senate. Most importantly, I am hopeful that President Bush will hear the voices of Americans and not those of the special interests and their well-financed lobbyists, and sign this important legislation into law. The American people have spoken; the time for enacting strong patient protections is long overdue.

Mr. KERRY. Mr. President, I am proud to support the bipartisan McCain-Kennedy Patients Bill of Rights. It is legislation that is long overdue. Time and again, we have heard the 180 million Americans enrolled in managed care demand patient rights. Time and again, Members of this Senate have promised to provide them those rights. Finally, with the Patients Bill of Rights legislation before us, we stand ready to deliver.

The McCain-Kennedy Patients Bill of Rights ensures Americans that they can receive the very health care they pay for. In exchange for their monthly premiums, patients deserve a guarantee that they can see their own doctor, visit a specialist, and go to the closest emergency room; a guarantee that their doctor can discuss the best options for treatment, not just the cheapest; and a guarantee that their doctor's orders will be followed by their HMO. The McCain-Kennedy bill guarantees all of those rights.

When those rights are violated, and harm results from the delayed application or outright denial of treatment, the McCain-Kennedy bill guarantees patients that they can hold their health plan accountable. And, that is what all of the rights to access care hinge upon—the ability to hold a health plan liable if access to care is denied.

We have spent days on the floor of the Senate debating the issue of liability. But, the argument here is simple. In this country, if the decision of an individual or corporation results in harm or death to a consumer, the decision-maker is held accountable. That holds true for every individual, and for every company except an HMO. HMOs, businesses who make countless decisions daily that affect the health of millions of Americans, do not face this same accountability. The number of patients who are suffering as a result is staggering.

Every day, 35,000 patients in managed care plans have necessary care delayed. Too many of these patients pay the ultimate price for the callousness displayed by these managed care plans. I would like to share the story of one woman from my state of Massachusetts who lost her life after being denied care by her HMO.

Mrs. White was diagnosed with leukemia in October 1997, and was unable to find a bone marrow match for transplant. After 2 years of battling the disease she went into remission. She then learned that Massachusetts General Hospital was working with a newly-developed anti-rejection drug which would allow patients like herself, with less than perfectly-matched donors, to have bone marrow transplants. But, her HMO denied her care the day before she was due to be admitted to the hospital.

Six months later, Mrs. White enrolled in a new health plan which covered the costs of the transplant. However, during the 6-month impasse, Mrs. White fell out of remission, and her body was less able to sustain the new bone marrow. She died 3 months after the procedure was performed.

Real stories like these demonstrate why HMOs must be held accountable for their decisions. Real people like Mrs. White are the reasons why there are liability provisions in the McCain-Kennedy Patients Bill of Rights—liability protections that allow patients to sue their health plans in state court when an HMO's decision to withhold or limit care results in injury or death. My colleagues on the other side of the aisle seek to misconstrue that point. But, let's be clear: this bill establishes the right to sue an HMO as a protection for America's patients, not as a reward to America's trial lawyers.

Opponents of the Kennedy-McCain Patients Bill of Rights have predicted that the liability language in the bill will cause a future flood of frivolous lawsuits against managed care companies. But recent history paints a very different picture.

The President's home State of Texas enacted a patients bill of rights—which includes a provision to hold HMOs accountable—in 1997, albeit without the support of then-Governor Bush. Since that time, 17 lawsuits have been brought against managed care insurers in Texas. Let me repeat that—17 lawsuits in 4 years. That is a trickle, not a flood, of litigation.

Mr. President, no one wants to encourage unnecessary lawsuits that increase the cost of providing health care. That is why the McCain-Kennedy bill sets out a comprehensive internal and external review process that seeks to remedy complaints before they reach a courtroom. Except in cases of irreparable harm or death, patients must exhaust this review process before pursuing a legal remedy.

But we must establish a legal remedy. A right without legal recourse fails to exist. The liability provision in this legislation simply establishes a mechanism by which to enforce the very patient protections it provides. Managed care insurers can easily avoid any liability, as long as they act responsibly and ensure that their patients receive the quality medical care prescribed for them by their physicians.

Let's be clear about another issue.

As chairman of the Small Business Committee, I am well aware of the substantial challenges small businesses face in providing employee benefits while holding down costs. I understand the concerns small business owners have over the Kennedy-McCain bill's potential to expose them to liability for the sole, laudable initiative of offering health insurance coverage to their employees. But that is not the intent of this legislation.

The McCain-Kennedy bill only holds accountable those employers who directly participate in the medical decisions governing an employee's care if harm or injury occurs. The logic here is simple. If employers act like HMOs, it is only fair that they be held to the same accountability standards. For employers who do not directly participate in these medical decision there should be no liability.

I understand that many businesses remain weary of the safeguards against employer liability that are included in the Kennedy-McCain legislation. Negotiations are underway to strike a compromise and strengthen these safeguards so that we may arrive at a Patients Bill of Rights that we all can support. I join all of my colleagues in hoping that those negotiations bear fruit.

Another attack on this Patients Bill of Rights legislation that we have heard—not just in this chamber but across the television airwaves—is that this bill will cause insurance premiums to increase dramatically. Nothing could be further from the truth. According to the most recent estimate from the Congressional Budget Office, this legislation will cause premiums to increase an average of 4.2 percent a year. For the average employee, that equates to $1.19 per month in additional premiums, a small price to pay for meaningful patients rights extended in this bill.

Many of my colleagues across the aisle argue that this minor increase will cause large numbers of Americans to become uninsured when, in fact, no evidence exists to support this. Nevertheless, I am encouraged by their concern for the uninsured in our country,

the 43 million Americans—the 15 percent of our population—who have no health care coverage at all. I challenge my colleagues on both sides of the aisle to continue the discourse on this critical issue and look forward to working towards extending health coverage to every American once we have passed this bipartisan Patients Bill of Rights.

The McCain-Kennedy Patients' Bill of Rights legislation has widespread support from patients groups and health care providers—the two parties that we should really be focused on in this debate. To date, over 500 health care provider and patients' rights groups have endorsed our bill.

An April 2001 Kaiser Family Foundation poll found that 85 percent of Americans supported a comprehensive Patients' Bill of Rights that includes provisions to hold HMOs accountable. Mr. President, patients and health care providers have spoken loud and clear. They want expanded rights for patients now, rights that our legislation will provide. I urge all of my colleagues to pass the McCain-Kennedy Patients Bill of Rights.

Mr. CORZINE. Mr. President, I rise to talk specifically about how important the Patients' Bill of Rights is to improving the mental health care Americans receive.

For far too long, mental health consumers have been discriminated against in the health care system—subjected to discriminatory cost-sharing, limited access to specialists, and other barriers to needed services.

This is particularly true of the mental health care that children receive. More children suffer from psychiatric illness than from Leukemia, AIDS and diabetes combined. Yet, while we recognize the human costs of these physical illnesses, we often forget the cost of untreated psychiatric illness. For young people, these costs include lost occupational opportunities because of academic failure, increased substance abuse, more physical illness, and, unfortunately, increased likelihood of physical aggression to themselves or others.

That is why I am so pleased that McCain-Edwards-Kennedy goes a long way towards addressing the inequities in mental health care and ensuring access to needed mental health care services.

For example, the proposal ensures access to critical prescription drugs.

We have made tremendous progress in developing medication to treat mental illnesses. Although medication is often only one component of effective treatment for mental illnesses, access to the newest and most effective of these medications is crucial to successful treatment and recovery.

These new medications are more effective, have fewer side effects, and save money in the long run. Yet unfortunately, all too often managed care organizations prevent patients from accessing these life-saving drugs.

How? They use restrictive formularies that restrict access to preferred drugs—often the newer and more effective ones. The HMO's are, in effect, undermining our own drug regulations and approval processes.

Fortunately, the bipartisan McCain-Edwards-Kennedy Patients' Bill of Rights protects patients by providing exceptions from the formulary when medically indicated. So, when a doctor thinks a certain medication is the best treatment for a patient, that patient will get that medication.

Also—and this is a critical difference with the Breaux-Frist alternative—our bill requires that non-formulatory medication be subject to same cost-sharing requirements. Breaux-Frist does not—continuing the discriminatory treatment of mental health treatments.

The McCain-Edwards-Kennedy proposal is also superior for mental health care because it ensures access to specialists. The bill allows standing referrals—so that primary care providers do not have to continue authorizing visits. It also requires plans to allow patient access to non-participating providers if the plan's network is insufficient. So that patients can see the provider who can best meet their needs. The Breaux-Frist plan—in another contrast—does not allow access to out-of-network specialists.

In the end, this can result in more costly treatment. And for some illnesses, the longer the duration or the greater the number of significant episodes, the harder to treat and more intractable the disease becomes.

Finally, the McCain-Edwards-Kennedy proposal, unlike Breaux-Frist, provides the right to a speedy and genuinely independent external review process when care is denied.

Let me just tell the personal story of a constituent of mine to illustrate the importance of these protections. Earlier this year, a mother in Gloucester County, NJ wrote to me about problems she had encountered getting treatment for her daughter. Her teenage daughter had attempted suicide, and been hospitalized for 8 days. She was diagnosed with depression and borderline personality disorder, and both her physician and therapist recommended intensive outpatient therapy, called ''partial care'' therapy. But the managed behavioral care organization determined that this treatment was not ''medically necessary.'' Instead of the intensive five and a half hour, twice a week therapy program, the insurer wanted to send her for one hour a week of therapy. This, despite the recommendation of her physician and therapist.

Like any loving parent would, the mother fought back, calling the company many times. She was told to wait—even though, to quote her letter, her daughter ''was self-mutilating and her behavior was becoming dangerous to herself and possibly others.'' The mother finally enlisted the help of several people at the treatment program, who also wrangled with the company, and she even wrote to my office, and I wrote to the company on their behalf. Eventually, the company relented, and her daughter is now doing well in that intensive eleven hour a week program.

But it shouldn't have to be like that for families. Doctors, not insurers, should decide what treatment a patient receives. When a physician says that a certain therapy is necessary to help a suicidal teenager, an insurance company should cover it. As my constituent so poignantly wrote to me about her daughter, and I quote: ''This treatment is important and necessary [because] by learning the skills she needs to cope with her illness she can have a safe, normal, adolescence and adult life. If we address this illness now instead of waiting until the next time she hurts herself we have a better chance of her leading a happy and normal life.''

Unfortunately, a study by the National Alliance for the Mentally Ill found that less than half of surveyed managed behavioral health care companies define suicide attempt as a medical emergency.

This year, 2,500 teenagers will commit suicide in the United States. Over 10 million children and adolescents have a diagnosable psychiatric illness that results in a academic failure, social isolation and increased difficulty functioning in adulthood. Only one out of five will get any care and even less will get the appropriate level of care they need and deserve.

So unless we provide critical patient protections, including the right to a fair and independent appeals process for review of medical necessity decisions, more families like my constituent will have to wonder if an insurance company will cover critical care that a doctor has prescribed for a loved one.

In sum, the McCain-Edwards-Kennedy bill will provide people access to the mental health care they need to lead healthy, productive lives. I am pleased to support it.

HARKIN PEER-REVIEW AMENDMENT

Mr. HARKIN. Mr. President, for too long, American families have been left in the waiting room while HMOs refuse to provide the health care services that families need and deserve. The results have often been tragic.

Now we are on the verge of a big victory for the American people—passing a meaningful Patient's Bill of Rights. S. 1052 represents the culmination of five long years of bi-partisan work to ensure that patients in managed care get the medical services they need, deserve, and have paid for. We have debated this issue for years, negotiated differences of opinion to find common ground, and worked across party lines to develop the best bill possible.

S. 1052 truly represents the best of all our collective ideas and most importantly, meets the needs of the American people.

Let me say that again. This bill—the McCain-Edwards-Kennedy bill—meets

the needs of the American people. And when you cut through the rhetoric and political posturing, that is what this debate is all about—guaranteeing the American people basic and fundamental health care rights.

One of the cornerstones of a meaningful Patients' Bill of Rights is access to a swift internal review and a fair and independent external appeals process. Without a strong review system in place—where real medical experts make the decisions and not the HMO accountants—all the other protections would be compromised.

Our amendment would strengthen the review system to ensure the integrity of the appeals process and protect patients by requiring that the appropriate health care professional makes the medical decision. It ensures that health care professionals who can best assess the medical necessity, appropriateness, and standard of care, make determinations regarding coverage of a denied service.

As currently drafted, S. 1052 only requires that physicians participate in the review process. While the bill does not prohibit non-physician providers from participating in a review at a physicians discretion, it does not guarantee their involvement in relevant medical reviews.

I think we all agree that the intent of the appeals process is to put medical decisions in the hands of the best and most appropriate health care providers. In many cases, this will undoubtably be a physician. However, when the treatment denied is prescribed by a non-physician provider, it is critical that the case be reviewed by a provider with similar training and expertise.

For example, when a 59-year-old man fell in his home, he experienced increased swelling, decreased balance, decreased range of motion. decreased strength and increased pain in his right ankle and knee. A physical therapy treatment plan would have included specific exercises to increase strength, range of motion, and balance—enabling the patient to better perform activities of daily living and to prevent further deterioration of his health.

A reviewer who was not a licensed physical therapist, and did not have the expertise, background, or experience as a physical therapist, denied physical therapy coverage.

Without physical therapy intervention, the patient was severely limited in activity and spent significant time in bed. The time in bed resulted in further deterioration of the original problems and the development of wounds from the prolonged static position in bed.

A physical therapist reviewer would have recognized the importance of patient mobility while in bed to prevent bedsores and interventions to improve the patient's function with his right ankle and knee to enable him to independently walk.

Utilizing health care professionals with appropriate expertise and experience in the delivery of a service that has been denied by a health plan guarantees beneficiaries the best possible review of their appeal.

My amendment is supported by a wide range of health care professionals, including:

The American Association of Nurse Anesthetists, The American Chiropractic Association, The American College of Nurse Midwives, The American College of Nurse Practitioners, The American Occupational Therapy Association, The American Optometric Association, The American Pharmaceutical Association, The American Physical Therapy Association, The American Podiatric Medical Association, The American Society for Clinical Laboratory Science, The American Speech-Language-Hearing Association, The National Association of Orthopaedic Nurses, The National Association of Pediatric Nurse Practitioners, The National Association of Social Workers, and The Center for Patient Advocacy.

I do not believe that non-physician providers were deliberately excluded from the review process. In fact, just the opposite is true—I believe it was the intent of the bill's authors to develop the best possible review process. However, unless my amendment is adopted, I worry that we will fall short of our shared goal of giving patient's access to the best and most appropriate health care services in every instance.

Mr. MCCONNELL. Mr. President, I rise today to discuss the patient protection legislation currently before the Senate. Over the past decade, as private health coverage has shifted from traditional insurance towards managed care, many consumers have expressed the fear they might be denied the health care they need by a health plan that focuses more on cost than on quality.

In response to these concerns, the Senate has considered several bills to provide sensible patient protections to Americans in managed care plans. During the last Congress, the Senate took at least 19 rollcall votes and passed two pieces of comprehensive patient protection legislation. Like many of my colleagues, I found these debates quite instructive, in that they called the Senate's attention to the numerous areas where there already exists a great deal of bipartisan agreement.

I believe that every American ought to have access to an emergency room. No parent should ever be forced to consider bypassing the nearest hospital for a desperately ill child in favor of one that is in their health plan's provider network. If you have what any normal person would consider an emergency, you should be able to go to the nearest hospital for treatment, period.

I believe that every American ought to be able to designate a pediatrician as their child's primary care physician. This common-sense reform would allow parents to take their child to one of their plan's pediatricians without having to get a referral from their family's primary care physician.

I believe a doctor should be free to discuss treatment alternatives with a patient and provide them with their best medical advice, regardless of whether or not those treatment options are covered by the health plan. Gag clauses are contractual agreements between a doctor and an HMO that restrict the doctor's ability to discuss freely with the patient information about the patient's diagnosis, medical care, and treatment options. We all agree that this practice is wrong and have voted repeatedly to prohibit it.

I believe that consumers have a right to know important information about the products they are purchasing, and health insurance is no different. Health plans ought to provide their enrollees with plainly written descriptions of the plan's benefits, cost sharing requirements, and definition of medical necessity. This will ensure that informed consumers can make the health care choices that are in their best interests and hopefully prevent disputes between patients and their plans.

In addition, the following examples highlight areas of bi-partisan agreement: Cancer Clinical Trials—Health plans ought to cover the routine costs of participating in clinical trials for patients with cancer; Point of Service Options—Health plans for large employers ought to offer a point of service option so that patient's can go to a doctor outside their plan's network, even if it means paying a little more; Continuity of Care—We ought to ensure that pregnant and terminally ill patients aren't forced to switch doctor's in the middle of their treatment; Formulary Reform—Health plans ought to include the participation of doctors and pharmacists when developing their prescription drug plans, commonly known as formularies; and Self-Pay for Behavioral Health Services—Individuals who want to pay for mental health services out of their own pockets ought to be allowed to do so.

These are items for which there is broad support among Democrats, Republicans, the White House, and most importantly, the American people. While their may not be unanimous agreement on every detail, I believe these disagreements could be resolved in relatively short order.

This may lead one to ask one very important question , ''If these ideas are so popular, why haven't they already been enacted?''

The answer is very simple, lawsuits. The Kennedy-McCain bill insists on vast new powers to sue. Leafing with abandon through the yellow pages under the word ''attorney'' is not what most Americans would call health care reform.

Simply put, I believe that when you are sick, you need to go to a doctor, not a lawyer. I am opposed to increasing litigation for the simple reasons that it will drive up premiums, force

21,000 Kentuckians out of the health insurance market, prevent millions more uninsured from being able to purchase insurance, and aggravate an already seriously flawed medical malpractice system. I am opposed to exposing employers to onerous lawsuits, simply for doing what's right by their employees and providing them with health insurance. We ought to herald these employers, not sue them. While I am pleased the Senate adopted Ms. SNOWE's additional employer protections, I am still concerned that millions of Americans may lose access to the quality health care that their employers provide.

The proponents of these costly new liability provisions contend that you can't hold plans accountable without expanding the right to sue employers and insurers. I couldn't disagree more. The proper way to ensure that plans are held accountable is to provide strong, independent external appeals procedures to ensure that patients receive the care they need. Far too many Americans are concerned that their health plan can deny them care. I believe that if a health plan denies a treatment on the basis that it is experimental or not medically necessary, a patient needs the ability to appeal that decision. The reviewer must be an independent, medical expert with expertise in the diagnosis and treatment of the condition under review. In routine reviews, the independent reviewer must make a decision within 30 days, but in urgent cases, they must do so in 72 hours. After all, when you are sick, don't you really need an appointment with your doctor, not your lawyer.

As if driving 1.26 million Americans out of the health insurance market wasn't reason enough to oppose the Kennedy-McCain bill, I am also strongly opposed to expanding liability because it exacerbates the problems in our already flawed medical malpractice system. I might not be so passionate in my opposition to new medical malpractice lawsuits, if lawsuits were an efficient mechanism for compensating patients who were truly harmed by negligent actions. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases, which was published in the New England Journal of Medicine. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance and avoid lawyer's fees and litigation costs. In the report's conclusion, the researchers found that ''there was no association between the occurrence of an adverse event due to negligence or an adverse event of any type and payment.'' In everyday terms, this means that the patient's injury had no relation to the amount of payment recieved or even whether or not payment was awarded.

These lawsuits drag on for an average of 64 months—that is more than 5 years. Even if at the end of this 64 months, only 43 cents of every dollar spent on medical liability actually reaches the victims of malpractice, source: RAND Corporation, 1985. Most of the rest of the judgement goes to the lawyers. That is right, over half of the injured person's damages are grabbed by the lawyers. Why would anyone want to expand this flawed system, which is so heavily skewed in favor of the personal injury lawyers?

Prior to the first extensive debate on this legislation in the Senate in 1999, The Washington Post said that ''the threat of litigation is the wrong way to enforce the rational decision making that everyone claims to have as a goal'', source: The Washington Post 3/16/99, and that the Senate should enact an external appeals process ''before subjecting an even greater share of medical practice to the vagaries of litigation'', source: The Washington Post 7/13/99. More recently, the Post said that: ''Our instinct has been, and remains, that increasing access to the courts should be a last resort that Congress should first try in this bill to create a credible and mainly medical appellate system short of the courts for adjudicating the denial of care'', The Washington Post, 5/20/01. The Post is not alone in this view. My hometown paper, the Louisville Courier-Journal agreed when it stated that ''there is good reason to be wary of giving patients a broad right to sue.''

Over the past two weeks, the Senate has had numerous opportunities to improve this legislation. Unfortunately, the Senate missed far too many of them. In particular, we missed an opportunity to improve Kennedy-McCain bill when the Senate rejected Mr. FRIST's Amendment, which would have established a more responsible mechanism for holding HMO's accountable in court and ensuring that patient's receive the care they need.

As I noted earlier, I support a majority of the patient protections included in this bill. That is why I take no joy in voting against this legislation. However, my concern for the 21,000 Kentuckians who will lose insurance because of the vast expansion of liability included in this bill prevents me from being able to support it. My colleague from Kentucky, Dr. ERNIE FLETCHER, has developed a compromise proposal in the House of Representatives which represents an improvement over the bill the Senate just passed. Therefore, I am hopeful that the House of Representatives will improve this product and that the Conference Committee will return to the Senate a bill that I can support, and that the President can sign into law.

Mr. HATCH. Mr. President, this is an important bill.

I want to see a Patients' Bill of Rights signed into law, but I am afraid some of my colleagues here, on the other side of the aisle, have rejected any efforts to move the reasonable Frist-Breaux-Jeffords bipartisan, or I should say tri-partisan bill. They have put lawyers and litigation ahead of patients and medical care.

I would like to say a few words on the liability provisions of this legislation.

We all recognize that the liability provisions of this legislation are critical. These elements are key to providing patients with quality health care instead of extended court time.

When I refer to the liability provisions, of course I am talking about a family of issues, including: exhaustion of appeals, employer liability, caps on damages, and class action lawsuits. Each of these is important, and indeed critical to patient care and health care delivery, and needs to be addressed and corrected before the President can sign a bill.

With regard to the provision on exhaustion of appeals, I believe the Thompson amendment, which we just approved is certainly a big improvement over the McCain-Kennedy language. The amendment will make certain that no judicial proceedings commence prior to patients exhausting all of the internal and external review mechanisms. This is purely a common sense amendment, which properly maintains emphasis on speedy resolution of patient problems without lengthy and costly court proceedings.

I want to emphasize that nothing in the amendment prohibits patients from having their day in court. Nor does this amendment prevent them from receiving immediate, needed care. It just requires them to go through the internal and external review process before going to court for damages. The amendment still allows for those patients who really need immediate care to get that care while they go through the administrative appeal process.

It is important to underscore that no one will suffer irreparable harm under the amendment.

To reiterate, this amendment does not prohibit patients from going to court for care; it simply asks them to go through internal and external review before going to court to seek liability and damages. What is wrong with that?

If we go down the route of the McCain-Kennedy bill, we are not helping the patient get care. What we are doing is rendering both the internal and new external appeal process pointless. Why are we bothering to establish stricter standards for internal reviews and set up an external appeal process if the work of the appeals panel doesn't matter and can be bypassed through a judicial process? Unfortunately, that is exactly what McCain-Kennedy does—allows patients to bypass the administrative appeal process and go directly to court.

The main difference between the McCain-Kennedy bill and the Thompson amendment is this—with Thompson, we emphasize care over court. The Thompson amendment places the emphasis where it should be—on guaranteeing that people get the health care that they need, when they need it.

I believe the Thompson amendment is important in a number of ways. It will help curb unnecessary lawsuits. It provides patients with a fair review process. And most importantly, it codifies current law by allowing patients to file injunctive relief when they need immediate care.

The Thompson amendment will not only protect the rights of patients but will also improve the McCain-Kennedy legislation.

As far as employer liability is concerned, the language of the McCain-Kennedy legislation was completely unacceptable. The bill claimed to limit federal or state causes of action against a group health plan, employer, or plan sponsor, but it specifically authorizes a cause of action against an employer if such person or persons directly participated in the consideration of a claim for benefits and in doing so failed to exercise ordinary care. But, at the same time, the McCain-Kennedy bill specifically excluded any cause of action against a doctor or hospital.

I think the Snowe-DeWine amendment adopted yesterday starts to address these concerns. The Snowe-DeWine language includes protections for employers who delegate plan decision making to a third party. It helps strengthen the definition of the designated decision maker so that some employers will not be unfairly exposed to liability. However, other employers would not be protected. I am serious when I say this could result in employees losing health coverage. Employers will not want to chose between offering health insurance to their employees and opening themselves up to liability and huge court costs.

I find it ironic that my colleagues on the other side of the aisle, who always claim they are trying to find ways to lower the uninsured population, are actually pressing for legislation that will dramatically increase the uninsured population.

And if you don't believe me, talk to any expert who is not a trial lawyer because the message is loud and clear that unless the bill is improved, health coverage will be severely jeopardized, and employees will lose their insurance. Is this the result that we want, especially in legislation that claims to be a Patients' Bill of Rights? I think not.

As far as damage caps are concerned, the Frist-Breaux-Jeffords legislation is a step in the right direction. The McCain-Kennedy language is not.

The problem with the current McCain-Kennedy legislation is that it allows patients to go both to federal and state court to collect damages. For federal causes of action, economic and non-economic damages are unlimited. And even though the bill's proponents claim there are no punitive damages provisions, as a former medical malpractice attorney, I know punitive damages when I see them.

Supporters of the McCain-Kennedy approach claim their bill doesn't allow punitive damages in federal court. That is absolutely not true. Under their bill, a defendant in federal court can be hit with up to $5 million in ''civil assessment'' damages. Let's call it like it is. The purpose of the civil assessment is to punish providers, plain and simple. The bill includes no limits on state law damages. It is very apparent to everyone in this chamber that the trial lawyers have been principally involved in drafting these liability provisions and they have done so with their own interests in mind. This provision is simply not in the best interest of the American people.

The McCain-Kennedy language allowing for unlimited damages is unworkable. Economic and non-economic damages are uncapped. In my opinion, non-economic damages should be capped.

Another issue that is extremely important is class action. The McCain-Kennedy language had no restrictions on class actions on its newly permitted state causes of action nor for its newly created federal causes of action for damages. Fortunately, the DeWine language attempts to restrict the litigation nightmare that would have resulted from the McCain-Kennedy language.

Finding common ground on these issues—exhaustion of appeals, employer liability, caps on damages and class action is crucial to the success of the Patients' Bill of Rights legislation. It is incumbent upon us to do this right and to do what is in the best interest of patients, not trial attorneys. I am confident that if we are all willing, we can make these provisions legally sound. We have spent far too many years on this issue not to do it right. We have a real opportunity to pass meaningful patients' rights legislation. Let's not squander this opportunity by acting expeditiously.

Mr. CORZINE. Mr. President, I rise to speak about an issue that has been touched upon by many people during this debate on the Patients' Bill of rights, the problem of the uninsured.

Let me first say that I am very pleased that today we are passing a strong, enforceable Patients' Bill of Rights.

I commend the bill's authors, Senators MCCAIN, EDWARDS and KENNEDY, for the tremendous job they have done in crafting a bipartisan bill that will provide strong patient protections and curb insurance company abuses.

This legislation is an example of how, working together, we can improve the health care Americans receive. But it is just the first of many steps we should be taking to ensure that all Americans receive quality health care.

During the debate on the Patients' Bill of Rights I have heard many Senators argue that this legislation will lead to more uninsured Americans. Indeed, some of my colleagues have faulted supporters of the bill for not doing anything to help the uninsured.

As someone who have been talking about this issue for several years, I am thrilled to hear that my colleagues are concerned about the problem of the uninsured.

It is a national disgrace that 42 million Americans do not have health insurance.

Who are the uninsured? They are 17.5 percent of our nonelderly population. A shameful 25 percent are children. The majority—83 percent—are in working families.

The consequences of our Nation's significant uninsured population are devastating. The uninsured are significantly more likely to delay or forego needed care. The uninsured are less likely to receive preventive care. Delaying or not receiving treatment can lead to more serious illness and avoidable health problems. This in turn results in unnecessary and costly hospitalizations. Indeed, my own state of New Jersey struggles to deal with the costs of charity care provided to the uninsured.

In 1999, for the first time in a decade we saw a slight decrease in the uninsured. But we still have so far to go.

I believe that health care is a fundamental right, and neither the Government nor the private sector is doing enough to secure that right for everyone.

We ignore the issue of the uninsured at our peril and at a great cost to the quality of life—and to the very life—of our citizens.

That is why I am developing legislation that will provide universal access to health care for all Americans.

My legislation will have several main components:

Large employers would be required to provide health coverage for all their workers. The private sector must do its part—a minimum wage in America should include with it minimum benefits, among them health insurance. But unfortunately, the current system puts the responsible employer who provides health insurance at a disadvantage relative to the employers who do not.

Small businesses, the self-employed and unemployed would be able to buy coverage in the Federal Employee Health Benefit Program. If it is good enough for Senators, it is good enough for America.

Those who are between the ages of 55 and 64 would be able to buy-in to the Medicare program.

And we would provide help to small businesses and to low-income workers.

But although I am passionate about universal access to health care, I realize we can't get there yet. Not because the popular will is not there, but because the political will isn't.

So I support incremental changes, starting with the most vulnerable populations, and building on Medicaid and CHIP, success public programs.

I am working on a proposal that would expand Medicaid to cover all persons up to 200 percent of the Federal poverty level—an efficient way to reach nearly two-thirds of the uninsured.

I am also a strong supporter of the Family Care proposal, which would cover the parents of children already enrolled in the CHIP program. My own state of New Jersey is in fact leading the way on the issue of enrolling parents with their kids.

Finally, I was pleased to be an original cosponsor of Senator BINGAMAN's bipartisan legislation, the Start Healthy, Stay Healthy Act, which would expand coverage for children and pregnant women. It is based on the common sense principal that children deserve to start healthy and stay healthy.

I often say that we are not a nation of equal outcomes, but we should be a nation of equal beginnings.

Until we give all Americans access to health care, however, we cannot live up to that promise.

But although we cannot get to universal access this year, I believe we can and should be doing all that we can to make incremental progress.

In conclusion, I am heartened that in this debate on the Patient's Bill of Rights so many of my colleagues have expressed concern about the problem of the uninsured. Indeed, I am hopeful that we have turned a corner on this critical issue.

As we move forward, I welcome the opportunity to work with any of my colleagues, on either side of the aisle, to find ways to significantly address the problem of the uninsured. There can be no greater purpose to our work in the Senate.

Mr. LIEBERMAN. Mr. President, I rise to speak about the McCain-Edwards-Kennedy Patients' Bill of Rights. It has been 4 years since the first managed care reform bill was introduced in Congress. After years of unyielding and unproductive debate, we came together this week to find common ground for the common good, and pass a bill that will significantly improve the quality of medical treatment for millions of American families. We have worked very hard to get to this day, and with the unfailing commitment of my colleagues on both sides, we have produced a bill that I am very proud to support.

This bill does more than just provide new assurances to patients. It will provide a whole new framework for the delivery of health care in this country, helping to transform our managed care system from one in which health plans are immune for the life and death decisions they make every day to a more fair and accountable system for America's families.

The purpose of this legislation has broad—and I emphasize broad—bipartisan support. According to a CBS news poll from 6/20/01, 90 percent of Americans support a Patients' Bill of Rights.

Two years ago, 68 Republicans in the House of Representatives voted for the Norwood-Dingell Patients' Bill of Rights legislation that allowed patients to sue HMOs if they are denied a medical benefit that they need. The Ganske-Dingell bill in the House of Representatives currently has strong support from both Democrats and Republicans. I urge my colleagues in the House to take up the Ganske-Dingell Patients' Bill of Rights and pass it without delay so that we can send a bill to the president for signature.

We need to enact a patients' bill of rights now. Every day that goes by, nearly 50,000 American people with private insurance have benefits delayed or denied by their health plans. These critical decisions made by health plans impact thousands of families at times of great stress and worry. Our most fundamental well-being depends on our health. Anyone who has had a sick family member can tell you of the anxiety they experience during a medical emergency or prolonged illness. It is our obligation and within our ability to make it easier for these families. This bill will do just that.

Opponents of this legislation express concern that if this bill is signed into law, we will see a flood of lawsuits. I would like to point out that in the 4 years since Texas enacted legislation allowing patients to hold their health insurer liable for denying care, there have been very few lawsuits filed. Four million people in Texas are covered by that State's patient protection law. Only 17 lawsuits have been filed.

The appeals process in this bill is fair and binding. With a strong and swift appeals process, patients should be able to receive the care they need, when they need it. The need for recourse in court should be minimal.

It was never the intent of this legislation to encourage more lawsuits. The sole purpose for this bill is to deliver health care to the people who need it. I remain hopeful that as it is the case in Texas, there will be very few lawsuits once this bill becomes law.

Rather, under this Patients' Bill of Rights, patients will get the care they need and deserve with less delay and less dispute. No longer will a cancer patient have to worry about access to clinical trials for new treatments. No longer will a family with a sick child have to worry about access to a pediatric specialist. No longer will a pregnant woman have to worry about switching doctors mid-pregnancy if her doctor is dropped from a plan.

Doctors will be able to prescribe the care they feel is necessary without feeling pressured to make cost-efficient decisions. And managed care companies will be held responsible when their denials of care threaten the lives of patients.

In sum, under this legislation, our health care system will better reflect and respect our values, putting patients first and the power to make medical decisions back in the hands of doctors and other health care professionals.

We can all be proud of this outcome and the path we followed to get here. The Senate worked through a lot of complicated issues and problems, reconciled legitimate policy differences, and reached principled compromise where we could. The result is real reform, and a bill of rights that is right for America.

Mr. LEVIN. Mr. President, I support the strong, enforceable Patients' Bill of Rights which the Senate is finally going to vote on today. After years of consideration, and a hard legislative battle over the last few weeks, the bipartisan vote which this bill is about to receive on final passage reflects the overwhelming support the bill has from the American people.

The Patients' Bill of Rights assures that medical decisions will be made by doctors, nurses and hospitals, not by someone in an insurance office somewhere with no personal knowledge of the patient and no professional background to make medical judgments. It guarantees access to needed health care specialists. It requires continuity of care protections so that patients will not have to change doctors in the middle of their treatment. And, the bill provides access to a fair, unbiased and timely internal and independent external appeals process to address denials of needed health care. This legislation will hold HMOs accountable for their decisions like everyone else in the United States. The Patients' Bill of Rights also assures that doctors and patients can openly discuss treatment options and includes an enforcement mechanism that ensures these rights are real.

We have taken a big step forward today on comprehensive managed care reform for 190 million Americans. I am hopeful that the House of Representatives will again pass a real Patients' Bill of Rights and that the President will reconsider his stated intention to veto the legislation.

Mr. MCCAIN. Mr. President, I thank all my colleagues, both supporters and opponents of our legislation, for their patience, their courtesy, and their commitment to a full and fair debate on the many difficult issues involved in restoring to doctors and HMO patients the right to make the critical decisions that will determine the length and quality of their lives.

I think we are all agreed on this one premise, that the care provided by HMOs has been inadequate in far too many instances. This failure is attributable to the fact that virtually all the authority to make life and death decisions has been transferred from the people most capable of making medical decisions to those people most capable of making business decisions. I do not begrudge a corporation maximizing its profits, exercising due diligence regarding its fiduciary responsibility to its shareholders. The corporate bottom line is their primary responsibility, and I respect that. But that is why, we should not grant them another, competing responsibility, especially when that secondary responsibility is the life and health of our constituents. I know

that even the opponents of our legislation are agreed on returning more authority to doctors and their patients, and addressing many of the most distressing failures of managed health care.

Where we differ, and differ significantly, is over the questions of remedies for negligence on the part of the insurers, and though we have tried to find common ground we are not there yet. But the Senate, seldom acts in perfect unison, and the majority has spoken in support of our legislation. I am grateful for that, for I come to appreciate just how important this matter is to the American people, and I am proud of the Senate for taking this step in addressing the people just concerns.

We have made considerable progress in reconciling differences of opinion on several issues, from employer liability to class action suits to establishing a reasonable cap on attorney fees, and exhausting all other remedies before going to court. We have addressed small, but important issues like protecting from litigation doctors who volunteer their time and skill to underprivileged Americans. I want to thank all senators involved in reaching those compromises, Senators DEWINE, SNOWE, LINCOLN, THOMPSON, and NELSON especially, for their diligence and good faith. I know they want to pass a bill that the President will sign, as do I, and they have worked effectively toward that end.

I know that we have outstanding differences remaining. I know that the President is not persuaded that the legislation that we have adopted today is the best remedy for the urgent national problem we all recognize. I pledge to continue working with the administration and with our friends on the other side of the Capitol to see if we might yet reach common ground on all the important elements of this legislation. I am convinced that we can get there, and I appreciate the President's dedication to that same end.

I thank the sponsors of this legislation, Senator EDWARDS, the always formidable Senator KENNEDY, Senators SPECTER and CHAFEE, and all the other cosponsors for their skill, hard work, and dedication. I thank them also for their patience. We are not always on the same side of a debate, and I suspect that working at close quarters with me can prove challenging even when we are in agreement.

I thank Senators FRIST, BREAUX, and JEFFORDS and all those who supported their alternative legislation. Throughout this debate they have been motivated by their convictions about what is in the best interests of the American people, as have Senator NICKLES, the Republican manager, Senator GREGG, and all Senators who have disagreed with the majority over some provisions in this legislation. I commend them all for their principled opposition.

I am grateful for the leadership of Senators LOTT and DASCHLE, and the assistant majority leader, Senator REID, for their skill, courtesy, and fairness in managing this debate.

Finally, let me thank those who do most of the work around here but get the smallest share of the credit for our accomplishments, our staffs. I want to thank the minority staff director of the Commerce Committee, Mark Buse, committee counsel Jeanne Bumpus, and most particularly, my health care legislative assistant, Sonya Sotak for their extraordinary hard work, and talented counsel to me and other members. I thank the staffs of Senators EDWARDS, and KENNEDY, leadership staff for the majority and minority, and all staff who have made our work easier and more effective.

This has been a good, long, open, and interesting debate, distinguished by good faith on all sides. It has been privilege to have been part of it. We have achieved an important success today in addressing the health care needs of our constituents. We have much work to do, and I want to continue working with other Members, our colleagues in the other body, and with the President and his associates to make sure that we will enact into law these important protections for so many Americans who have waited for too long for them. We have been negligent in addressing this problem, but today we have taken an important step forward in correcting our past mistake. With a little more good faith and hard work, we will give the American people reason to be as proud of their government as I am proud of the Senate today.

Mr. DASCHLE. Mr. President, it has been more than 5 years since we began this effort to make sure that Americans who have health insurance get the medical care they have paid for.

It has been more than three years since the first bipartisan Patients' Bill of Rights was introduced in the House . . . and nearly 2 years since the last time we debated a real Patients' Bill of Rights in the Senate.

Today—at long last—the Senate is doing what the American people want us to do. Today—at long last—we are standing up for America's families.

Today—at long last—we are telling HMOs they are going to have to keep their promises and provide their policyholders with the health care they've paid for.

The bill we are about to vote on provides comprehensive protections to all Americans in all health plans.

It is a good bill—and a remarkable example of what we can achieve in this Senate when we search together in good faith for a principled, workable compromise.

Over the last 10 days, we have stood together—Republicans and Democrats—and rejected amendments that would have made this bill unworkable. And we have accepted amendments that made it better.

Thanks to the hard work of Senators SNOWE, DEWINE, LINCOLN and NELSON, we provided additional protections for employers who offer health insurance.

With help from Senators BREAUX and JEFFORDS, we agreed that states can continue to use their own standards for patient protection.

With Senator BAYH and Senator CARPER's help, we strengthened the external review process to ensure the sanctity of health plan contracts.

At the same time, we turned back an array of destructive amendments designed to weaken the protections in this bill.

We live in an amazing time. Some of the most remarkable advances in health care in all of human history are occurring right now. Polio and other once-feared childhood diseases have been all but wiped out in our lifetimes because of increased immunization rates. We are seeing organ transplants, bio-engineered drugs, and promising new therapies for repairing human genes.

But medical advances are useless if your health plan arbitrarily refuses to pay for them—or even to let your doctor tell you about them.

This bill guarantees that people who have health insurance can get the care their doctors say they need and deserve.

It ensures that doctors, not insurance companies, make medical decisions.

It guarantees patients the right to hear of all their treatment options, not just the cheapest ones.

It says you have the right to go to the closest emergency room, and the right to see a specialist.

This bill says that women have the right to see an OB/GYN—without having to see another doctor first to get permission.

It guarantees that parents can choose a pediatrician as their child's primary care provider.

It allows families and individuals to challenge an HMO's treatment decisions if they disagree with them.

And, it gives families a way to hold HMO's accountable if their decisions cause serious injury or death—because rights without remedies are no rights at all.

This bill achieves every goal we set for it over the past 5 years, and we owe that to the stewardship and commitment of Senators MCCAIN, EDWARDS, and KENNEDY.

During these last 10 days, they have shown a seemingly limitless ability to find the workable middle ground without sacrificing people's basic rights. They have put the Nation's interests ahead of their own partisan interests. I thank them for their service to this Senate, and to our Nation.

I also want to thank Senators NICKLES and GREGG for being honest with us about their disagreements with this bill, and fair in the way they handled those disagreements.

This is the way the Senate should work. A Senate that brings up important bills and allows meaningful debate on them is a tribute to us all.

One final reason I found this debate so encouraging is the great concern we

heard expressed by many opponents of this bill for the growing number of Americans who have no health insurance. We agree that this is a serious problem, and look forward to working with those Senators to address it as soon as possible.

The effort to pass a Patients' Bill of Rights now returns to the House.

Last year, 68 House Republicans joined Democrats to pass a strong patient protection bill very much like this one. We urge our colleagues in the House to resist the special interests one more time. Together, we can send a strong, enforceable Patients' Bill of Rights to President Bush.

We hope that when that happens, the President will reconsider his threatened veto. We hope he will remember the promise he made last fall to the American people to pass a national Patients' Bill of Rights.

Texas has proven that we can protect patients' rights—without dramatically increasing premiums. It is time—it is past time—to pass a Patients' Bill of Rights to protect all insured Americans.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), the Senator from Texas (Mr. GRAMM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Mississippi (Mr. LOTT) are necessarily absent.

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

The result was announced—yeas 59, nays 36, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—59

Akaka	Dodd	McCain
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Biden	Edwards	Murray
Bingaman	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Reed
Byrd	Graham	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Hollings	Sarbanes
Carper	Inouye	Schumer
Chafee	Johnson	Smith (OR)
Cleland	Kennedy	Snowe
Clinton	Kerry	Specter
Collins	Kohl	Stabenow
Conrad	Landrieu	Torricelli
Corzine	Leahy	Warner
Daschle	Levin	Wellstone
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NAYS—36

Allard	Burns	Frist
Allen	Cochran	Grassley
Bennett	Craig	Gregg
Bond	Crapo	Hagel
Brownback	Ensign	Hatch
Bunning	Enzi	Helms
Hutchinson	McConnell	Smith (NH)
Hutchison	Nickles	Stevens
Inhofe	Roberts	Thomas
Jeffords	Santorum	Thompson
Kyl	Sessions	Thurmond
Lugar	Shelby	Voinovich

NOT VOTING—5

Campbell	Gramm	Murkowski
Domenici	Lott	

The bill (S. 1052), as amended, was passed.

(The bill will be printed in a future edition of the RECORD).

AMENDMENT NO. 860

Mr. REID. Mr. President, on behalf of Senator KENNEDY and Senator GREGG, the managers of this bill, and me, I send this managers' amendment to the desk and ask unanimous consent it be agreed to.

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

The amendment (No. 860) was agreed to.

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

UNANIMOUS CONSENT REQUEST—H.R. 1668

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of H.R. 1668, which is now at the desk; that the bill be read three times, passed; and the motion to reconsider be laid upon the table with no intervening action.

Mr. NICKLES. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. NICKLES. Reserving the right to object, I will object on behalf of other Members. This bill has not yet been referred to committee. I personally have no objection to the bill, and I expect I will be supportive of it, but it should be referred to the committee so interested Members who have an interest in this particular issue can vet it, maybe improve it, maybe we can pass it. I hope we can pass it as expeditiously as possible.

At this time I object.

Mr. REID. I say to my friend, the distinguished Republican whip, I regret this, especially in that I have just completed reading John Adams, the new book out. It is a wonderful book. I recommend it to my friend.

I regret there is an objection to clearing this legislation. This bill, as my friend indicated, authorizes the Adams Memorial Foundation to establish a commemorative work on Federal land in the District of Columbia and its environs to honor former President John Adams and his legacy.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I share my colleague's enthusiasm, both for President Adams and also for David McCullough's book. He is a great historian. I have not finished it. I started it. I look forward to completing it and learning a little bit more about the history of one of America's great Presidents, one of our real founding patriots.

Again, this is going to be referred to the Energy Committee where I and others, I think, will try to be very supportive in a very quick and timely fashion so the entire Senate can, hopefully, vote on this resolution.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent the order for the quorum call be dispensed with, and I ask unanimous consent to speak for 10 minutes in morning business.

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

SHINE SOME LIGHT ON THE BLUE SLIP PROCESS

Mrs. FEINSTEIN. Madam President, we are all waiting for the majority leader to come to the floor and deliver the reorganization message. As part of that, I believe he is going to announce that Senator LEAHY, the chairman of the Judiciary Committee, is going to make public the blue slip process.

As a member of that committee, I would like to take a few moments and make a few comments about my experience with the blue slip—in essence, what I think about it.

For those who do not know what the blue slip is, it is a process by which a Member can essentially blackball a judge from his or her State when that Member has some reason to do so.

Why would I object so much? I object so much because there is a history of this kind of thing. Historically, many private clubs and organizations have enabled their board of directors to deliver what is called a blackball to keep out someone they don't want in their club or organization. We all know it has happened. For some of us, it has even happened to us.

The usual practice was, and still is in instances, to prevent someone of a different race or religion from gaining access to that organization or club. This is essentially what the blue slip process is all about.

The U.S. Senate is not a private institution. We are a public democracy. I have come to believe the blue slip should hold no place in this body. At the very least, the use of a blue slip to stop a nominee, to prevent a hearing and therefore prevent a confirmation, should be made public. I am pleased to support my chairman, PAT LEAHY, and the Judiciary Committee in that regard.

Under our current procedure, though, any Member of this Senate, by returning a negative blue slip on a home State nominee, or simply by not returning the blue slip at all, can stop a

nomination dead in its tracks. No reason need be given, no public statement need be made, no one would even know whom to blame. With a secret whisper or a backroom deal, the nomination simply dies without even a hearing. This is just plain wrong.

I have watched the painful process over the last 9 years. During 6 of those years, the blue slip itself contained the words, ''no further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home State Senators.'' As a result, I saw nominees waiting 1, 2, 3, even 4 years, often without as much as a hearing or even an explanation as to why the action was taken. These nominees put their lives on hold. Yet they never have a chance to discuss the concerns that may have been raised about them. These concerns remain secret and the nomination goes nowhere.

As a member of the Judiciary Committee, I believe our duty is either to confirm or reject a nominee based on an informed judgment that he or she is either fit or not fit to serve; to listen to concerns and responses, to examine the evidence presented at a hearing, and to have a rationale for determining whether or not an individual nominee should serve as a district court judge or circuit court judge or even a U.S. Supreme Court Justice. That duty, in my view, leaves no room for a secret block on nominees by any Member which prevents their hearing and confirmation.

I believe in the last three Congresses, based on information I have been able to come upon, that the blue slip has been used at least 21 times. Consider this: An individual graduates college with honors, finishes law school at the top of the class; he or she may even clerk for a prestigious judge or join a large law firm, or maybe practice public interest law or even serve as staff of the Judiciary Committee. In fact, a nominee can spend years of his or her life honing skills and developing a reputation among peers, a reputation that finally leads to a nomination by the President of the United States to a Federal court.

This must be the proudest day of his or her life. Then the nominee just waits. First for a few weeks. He or she is told things should be moving shortly but the Senate sometimes takes a while to get moving. Then the months start to go by, and maybe friends or associates make some inquiries as to what could be wrong. They don't hear anything, so the nominee is told just to wait a little longer; things will work themselves out.

I have had nominees call me and say: I have children in school. We need to move. Shall we do it? I don't know what to do. Do I continue my law practice?

A year passes with still no hearing or explanation; finally, the second year, and maybe the third, or even the fourth, if one is ''lucky'' enough to be renominated in the next session. The time goes by without so much as a word as to why the nomination has not moved forward.

Simply put, the nominee has been blackballed by a blue slip, and there is nothing that can be done about it—no one to hold accountable.

I believe that if a Member wants to use a blue slip to stop a nominee from moving forward, that blue slip should be public. And I also believe that the Member should be prepared to appear before the Judiciary Committee and explain why the Senate should not consider the nominee and hold a hearing.

Making the blue slip public is no guarantee that a nominee will receive a hearing. It is no guarantee that an up or down vote will ever be held. But at least the nominee will have the chance to see who has the problem, and what that problem is. In many cases, a nominee may choose to withdraw. In others, perhaps a misunderstanding can be cleared up. Either way, the process will be in the open, and we will know the reasons.

I believe that many members of this Senate did not even realize they held the power of the blue slip until just recently.

In my view, the rationale behind the blue slip process is faulty. The process was designed to allow home state Senators—who may in some instances know the nominee better than the rest of the Senate—to have a larger say in whether the nominee moves forward. More often than not, however, this power is and will be used to stop nominees for political or other reasons having nothing to do with qualifications.

As a matter of fact, the Member who uses the blue slip, who doesn't send it in, or sends it in negatively, may never have even met the nominee.

If legitimate reasons to defeat a nominee do exist, those reasons can be shared with the Judiciary Committee in confidence, and decisions can be made based on that information—by the entire Committee.

The blue slip process as it now stands is open to abuse.

I would join with those—I am hopeful there are now those—on the Judiciary Committee who would move to abolish the blue slip.

Before I conclude, I want to read from a recent opinion piece by G. Calvin Mackenzie, a professor at Colby College and an expert on the appointment process. In the April 1, 2001 edition of the Washington Post, Mackenzie wrote:

> The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency.

I find myself in agreement with every word in that quote. It is quite an indictment of our nominations process. On both sides of the aisle, we hear: Well, they did it, so we are going to do it. Well, they blocked our nominee, so now we will block their nominee.

I don't believe that has any merit whatsoever. I believe at some point we have to stop this cycle. At some point, nominees have to come to the Senate Judiciary Committee, go promptly or as promptly as they can go to a hearing, have the questions asked, and we do our duty which we took our oath to do, which is to make the judgment whether that nominee qualifies to be a Federal court judge or district court judge.

I make these remarks to say that this is one Member of the Judiciary Committee who will happily vote to do away with the blue slip.

Thank you very much. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. DASCHLE. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak for up to 5 minutes each.

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

EXPLANATION OF ABSENCE

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Pursuant to rule 6, paragraph 2, I ask unanimous consent the Senator from Alaska, Mr. MURKOWSKI, be granted official leave of the Senate until July 9.

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

FORMAL OPENING OF THE NATIONAL JAPANESE AMERICAN MEMORIAL

Mr. AKAKA. Mr. President, earlier this afternoon, a few short blocks from this Chamber and in the shadow of the Capitol, hundreds of people gathered to celebrate the formal opening of the National Japanese American Memorial honoring the loyalty and courage of Japanese Americans during the Second World War.

As a World War II veteran and a native of Hawaii, I am well-acquainted with the exceptional contributions of Japanese Americans to the war effort, both at home and abroad. The battlefield exploits of the 442nd, 100th, and the MIS immediately come to mind. Less known but equally deserving of

recognition are the sacrifices of the civilian nisei on the homefront, who continued to support the war effort while enduring the prejudice of fellow citizens as well as the wholesale violation of their civil rights by the U.S. Government.

This new memorial honors the valor and sacrifice of the hundreds of brave men who fought and died for their country, and it also speaks to the faith and perseverance of 120,000 Japanese Americans and nationals, who solely on the basis of race, regardless of citizenship or loyalty, without proof or justification, were denied their civil rights in what history will record as one of our Nation's most shameful acts. This memorial commemorates these events in our Nation's history. It will remind us of the consequences of allowing hysteria and racial prejudice to override constitutional rights, and, I hope, that we teach this lesson to our children to avoid a repetition of our mistakes.

I congratulate the National Japanese American Memorial Foundation for the tremendous effort that went into organizing and building the Memorial to Patriotism. Thousands of Americans from around the country donated funds to build the memorial. Over 2,000 Hawaii residents contributed approximately $1 million to this worthy project. The completed memorial is both inspiration and educational. First and foremost, the memorial honors the memory of those who gave their lives in defense of our freedom and liberty and remembers all those who were dislocated or interned from 1942 to 1945. In addition, the memorial draws on a few striking elements to cause one to meditate on the wartime experiences of Japanese Americans. The crane sculpture by Nina Akamu, a Hawaii-born artist, speaks to the prejudice and injustice confronted by Japanese Americans, and in a larger context speaks to the resiliency of the human spirit over adversity. The bell created by Paul Matisse encourages reflection, its toll marking the struggle and sacrifice of Japanese Americans in our Nation's history and reminding us of our shared responsibility to defend the civil rights and liberties of all Americans.

I would also like to congratulate our friend and colleague, the senior Senator from Hawaii [Mr. INOUYE] and my friend, Secretary of Transportation Norm Mineta, a former Member of Congress, for their leadership in gaining Congressional authorization for the memorial and their support for the work of the National Japanese American Memorial Foundation.

Today's formal opening of this Memorial to Patriotism by the National Japanese American Memorial Foundation in the Nation's capital is a timely and necessary endeavor, for it reminds us and future generations of Americans that courage, honor, and loyalty transcend race, culture, and ethnicity.

JUSTICE FOR U.S. PRISONERS OF WAR

Mr. HATCH. Mr. President, as we move into recess for our annual Independence Day celebration, I wish to offer my deepest gratitude for all veterans of this country who took the call for arms in silent and noble duty and sacrificed more than we can ever repay. From the Revolutionary War to the Persian Gulf War, American men and women have always answered the call to secure and preserve independence and freedom both here and abroad. We are forever in their debt.

I also want to take this occasion to recognize and honor a special group of brave, indeed extraordinary, soldiers who served this country so gallantly in WWII. I want to pay special tribute to those who served in the Pacific, were taken prisoner, and then enslaved, and forced into labor without pay, under horrific conditions by Japanese companies.

While I in no way wish to suggest that other American troops did not suffer equally horrific hardships or served with any less courage, the situation faced by this particular group of veterans was unique. As recognized in a unanimous joint resolution last year, all members of Congress stated their strong support for these brave Americans. As with many of our colleagues here today, I am committed to supporting these veterans in every way possible in their fight for justice.

This weekend the Prime Minister of Japan will be meeting with the President of the United States. I cannot praise this President enough for his thoughtfulness in hosting this event for the leader of Japan.

On this Independence Day, as we honor and appreciate America's freedom, we cannot help but think of those who served our country. Freedom, indeed, is not free. The price is immeasurable. I hope the Prime Minister will understand, as I know he does, the value we place upon our veterans—the very people who fought and paid the price.

Our country appreciates the decades of friendship the United States and Japan have shared. Often, we probably do not recognize as we should the value of our bilateral relationship with Japan. On many occasions, we get bogged down in trade disputes. But ultimately we have found ways to resolve past trade differences, and I am confident we can address all current and future trade issues.

It is with this sincere hope and appreciation that I raise the memory of injustices perpetrated by private companies in Japan against American servicemen, and I hope that we can find a resolution to this problem. There is no more appropriate time to open the door to this long overdue dialogue between the United States and Japan. This is a moral issue that will not go away. We can work with Japan to close this sad chapter in history. In so doing, we will fortify and continue our bilateral relationship with Japan.

In closing, I urge all Americans, during this next week as we celebrate our freedom and our great history, to thank our soldiers who gave their lives and their freedom to fight for our nation. I thank them and express my support that they will be helped and protected. I will fight for them as they fought for me, my children, and all other Americans.

RETIREMENT OF VICE ADMIRAL JAMES F. AMERAULT

Mr. LOTT. Mr. President, it is with great pleasure that I rise to take this opportunity to recognize the exemplary service and career of an outstanding naval officer, Vice Admiral James F. Amerault, upon his retirement from the United States Navy at the conclusion of more than 36 years of honorable and distinguished service. It is my privilege to commend him for outstanding service to the Navy and our great nation.

Vice Admiral Amerault embarked on his naval career thirty-six years ago, on the 29th of June 1965. In the years since that day, he has devoted great energy and talent to the Navy and protecting our national security interests. It would be hard to calculate the innumerable hours this man has stood watch to keep our nation safe. He has been steadfast in his commitment to the ideals and values that our country embodies and holds dear.

Following his commissioning at the United States Naval Academy, he embarked on the first of many ships that would benefit from his leadership and expertise. Vice Admiral Amerault served at-sea as Gunnery Officer and First Lieutenant on board USS *Massey* (DD 778). He then served as Officer in Charge, Patrol Craft Fast 52 in Vietnam, a challenging and dangerous assignment that kept him in harm's way. His courage and commitment to our nation was more than evident during these tumultuous years as he conducted more than 90 combat patrols in hostile waters off the coast of South Vietnam. One example of his valor and heroism is quoted from Commander Coastal Division Fourteen on 21 December 1967, ''On the night of 4 August 1967 the patrol craft in the area adjacent to the one you were patrolling came under enemy fire. Disregarding your own safety, you directed your patrol craft to within 300 yards of the beach and bombarded the enemy position with intense .50 caliber and 81mm mortar fire. During this exchange your patrol craft was narrowly missed by a barrage of recoilless rifle fire.'' Again, his valor and heroism was established early in his career. He was awarded a Bronze Star Medal with Combat V and the Navy Combat Action Ribbon for his service.

Vice Admiral Amerault's follow-on sea tours demonstrated the tactical brilliance that would become his trademark. His next tour was on board USS *Taylor* (DD 468) as Engineer Officer.

During this tour he earned a coveted Shellback certificate for crossing the equator. He then reported as Chief Engineer on board USS *Benner* (DD 801) where he earned his first of three Navy Commendation Medals.

Several sea tours followed in steady progression. He was Executive Officer in USS *Dupont* (DD 941). He also was Executive Officer in USS *Sierra* (AD 18). He served as commissioning Commanding Officer of USS *Nicholas* (FFG 47) and Commanding Officer of USS *Samuel Gompers* (AD 37). It is difficult to convey the challenges and hardships that were faced by this officer and his family during these many and arduous sea tours.

As Vice Admiral Amerault progressed in the Navy he served as Staff Combat Information Center Officer for Commander, Cruiser Destroyer Group TWO; and commanded Destroyer Squadron SIX, Amphibious Group FOUR, and the Western Hemisphere Group. Again, these were all difficult tours of tremendous responsibility that required an incredible commitment to duty and country.

Vice Admiral Amerault's shore assignments have included Director, Navy Program Resource Appraisal Division and Executive Assistant to the Director, Surface Warfare Division on the staff of the Chief of Naval Operations.

His flag assignments have included Director, Operations Division, Office of Budget and Reports, Navy Comptroller; Director, Office of Navy Budget; and Director, Fiscal Management Division in the office of the Chief of Naval Operations.

His final tour in the Navy as Deputy Chief of Naval Operations (Fleet Readiness and Logistics) has demonstrated his brilliant logistics acumen. With dynamic leadership he has refocused the Navy's logistics systems to more accurately meet the needs of the war fighter and the Navy of the future.

A scholar as well, VADM Amerault is a graduate of the Naval Postgraduate School (MS Operations Research) and the University of Utah (MA Middle East Affairs and Arabic), and was the Navy's 1986–87 Federal Executive Fellow at the RAND Corporation, Santa Monica, California.

As he ascended to the highest echelons of leadership in the Navy, Vice Admiral Amerault garnered many commendations that further highlight his stellar career. They include the Distinguished Service Medal; Legion of Merit (seven awards); the Bronze Star with V; the Meritorious Service Medal (two awards); the Joint Service Commendation Medal; the Navy Commendation Medal (three awards); and Vietnam, Desert Storm, and numerous other campaign medals.

Vice Admiral Amerault also has the distinction of being the Navy's ''Old Salt''—the active duty officer who has been qualified as an officer of the deck underway the longest.

Standing beside this officer throughout his superb career has been his wife Cathy, a lady to whom he owes much. She has been his key supporter, devoting her life to her husband, to her family, and to the men and women of the Navy family. She has traveled by his side for these many years. They are the epitome of the Navy family team.

From the start of his career at the Naval Academy, through Vietnam, the Gulf War, Kosovo and beyond—thirty-six years—Vice Admiral Amerault has served with uncommon valor. He is indeed an individual of rare character and professionalism—a true Sailor's Sailor! I am proud, Mr. President, to thank him on behalf of the United States of America for his honorable and most distinguished career in the United States Navy, and to wish him ''fair winds and following seas''.

RECOGNIZING VOLUNTEER REFEREES FOR THE 2001 SIGMA NU CHARITY BOWL

Mr. LOTT. Mr. President, recently the Epsilon Xi Chapter of Sigma Nu at the University of Mississippi celebrated the eleventh anniversary of the Charity Bowl in Oxford, Mississippi. Founded in 1989, the Sigma Nu Charity Bowl has helped many unfortunate men and women, who from accidents or injuries have been permanently paralyzed. Since 1990, over $500,000 has been raised to help these individuals.

Throughout the years, the Epsilon Xi Sigma Nu Charity Bowl has become one of the largest college philanthropy events in the nation. Every year, Sigma Nu competes in a football game against another fraternity from Ole Miss or another university. It has become an annual event that the citizens of Oxford, the parents of the players, and the Ole Miss community enjoy each year. This year's recipient was a very deserving young man named James Havard, who enjoyed watching Sigma Nu defeat Phi Delta Theta 18–13.

I would like to recognize some very special men who generously gave their time and talents in order to make the Charity Bowl a great success. Steve Freeman, Michael Miles, Kevin Roberts, Scott Steenson, and Michael Woodard are to be commended and honored for their efforts in serving as volunteer referees for the charity bowl football game. They graciously took time out of their busy schedules in order to make the game more enjoyable for the players and the fans, but more importantly they gave James Havard an opportunity to enjoy a better life.

These men belong to the Professional Football Referees Association Charities, PFRA. The PFRA is also very involved in helping out other charitable organizations such as the Make-A-Wish Foundation. This distinguished organization has been very helpful in getting aid to individuals like James, and they have given many people a chance to have a better life.

These men and the PFRA are to be commended for a job well done, and for their continued efforts in improving the lives of others.

THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Mr. LEAHY. Mr. President, one of the most significant accomplishments of the 106th Congress was the Electronic Signatures in Global and National Commerce Act, commonly known as ''ESIGN.'' This landmark legislation establishes a Federal framework for the use of electronic signatures, contracts, and records, while preserving essential safeguards protecting the Nation's consumers. It passed both houses of Congress by an overwhelming majority, and went into effect in October 2000.

I helped to craft the Senate version of the bill, which passed unanimously in November 1999, and I was honored to serve as a conferee and help develop the conference report. I am proud of what we achieved and the bipartisan manner in which we achieved it. It was an example of legislators legislating rather than politicians posturing and unnecessarily politicizing important matters of public policy.

Much of the negotiations over ESIGN concerned the consumer protection language in section 101(c), which was designed to ensure effective consumer consent to the replacement of paper notices with electronic notices. We managed in the end to strike a constructive balance that advanced electronic commerce without terminating or mangling the basic rights of consumers.

In particular, ESIGN requires use of a ''technological check'' in obtaining consumer consent. The critical language, which Senator WYDEN and I developed and proposed, provides that a consumer's consent to the provision of information in electronic form must involve a demonstration that the consumer can actually receive and read the information. Companies are left with ample flexibility to develop their own procedures for this demonstration.

When the Senate passed ESIGN in June 2000, I expressed confidence that the benefits of a one-time technological check would far outweigh any possible burden on e-commerce. I also predicted that this provision would increase consumer confidence in the electronic marketplace.

One year later, the Federal Trade Commission and the Department of Commerce have issued a report on the impact of ESIGN's consumer consent provision. In preparing the report, these agencies conducted extensive outreach to the on-line business community, technology developers, consumer groups, law enforcement, and academia. The report concludes:

[T]hus far, the benefits of the consumer consent provision of ESIGN outweigh the burdens of its implementation on electronic commerce. The provision facilitates e-commerce and the use of electronic records and

signatures while enhancing consumer confidence. It preserves the right of consumers to receive written information required by state and federal law. The provision also discourages deception and fraud by those who might fail to provide consumers with information the law requires that they receive.''

Significantly, the consumer consent provision is benefitting businesses as well as consumers. The report states that businesses that have implemented this provision are reporting several benefits, including ''protection from liability, increased revenues resulting from increased consumer confidence, and the opportunity to engage in additional dialogue with consumers about the transactions.'' The technological check has not been significantly burdensome, and ''[t]he technology-neutral language of the provision encourages creativity in the structure of business systems that interface with consumers, and provides an opportunity for the business and the consumer to choose the form of communication for the transaction.''

The report also finds that ESIGN's consumer safeguards are helping to prevent deception and fraud, which is critical to maintaining consumer confidence in the electronic marketplace.

ESIGN is a product of bipartisan cooperation, and it is working well for the country. We should learn from experience as we take up new legislative challenges.

IN MEMORY OF OLIVER POWERS

Mr. NICKLES. Mr. President, I rise today to inform my colleagues of the passing of Oliver Bennett Powers a Senior Broadcast Engineering Technician for the Senate, and native of Chickasha, Oklahoma.

Oliver passed away suddenly while vacationing with friends and family near Norfolk, Virginia on June 23, 2001. He was a respected, well-liked, and dedicated member of the Senate Recording Studio staff. He is survived by his wife of 28 years, Anita; two sons, Isaiah and Lucas; his mother, Ella Belle Powers of Chickasha, Oklahoma, and brother, Roy Powers, of Norman. Our hearts go out to them.

Oliver was a native of Chickasha, Oklahoma, where he graduated from high school in 1971. He was also a graduate of the University of Science and Arts of Oklahoma, also located in Chickasha, and went on to earn a Master's Degree in Journalism from the University of Oklahoma. Oliver began his service to the U.S. Senate in 1986, when he became director of audio and lighting for the Senate.

Oliver will be missed by all of those who knew him through his community, his church, and his work here in the Senate. Oliver embodied the best of what we've come to expect from Oklahomans. He was hard working, yet soft-spoken and gentle; highly professional, yet humble, and always kind and respectful to others. He was representative of so many staff here that work tirelessly and anonymously on behalf of the Senate.

On behalf of the United States Senate, let me say thank you to Anita, Isaiah, Lucas and the other members of the Powers family for sharing him with us these many years. He will be missed.

EXTRADICTION OF SLOBODAN MILOSEVIC TO THE U.N. ICTY

Mr. LIEBERMAN. Mr. President, I rise today to commend the authorities of Serbia for, at long last, handing over Slobodan Milosevic to the International Criminal Tribunal. It is ironic, and perhaps fitting, that his arrest and transfer to the international court took place on June 28—one of the most noted dates in Serb history, when in 1389 the Serbs were defeated at the battle of Kosovo Polje, ushering in a period of Ottoman Turkish rule. It is my hope that future generations of Serbs will remember June 28, 2001 with the same sense of historic importance and as the beginning of true and long-lasting democracy and respect for the rule of law.

Mr. Milosevic has been charged by an independent, impartial, international criminal tribunal with crimes against humanity and violations of the laws or customs of war against the ethnic Albanian population of Kosovo. And according to the Prosecutor of the Tribunal, we can expect more indictments against him for earlier crimes in Croatia and Bosnia.

His extradition to the Hague is historic, if long overdue. As a former head of state, there were many who believed that he would never be made to answer for the charges against him. That this day finally came underscores the commitment of the international community to investigating and prosecuting individuals for war crimes. And it sets an important precedent in international law; namely, that the Geneva Conventions and their Protocols will be upheld and enforced regardless of one's position or influence. The message in all of this is clear and inspiring: with patience and perseverance, democracy and the rule of law will prevail.

Serbian Prime Minister Djindjic deserves praise for his leadership on this issue and for recognizing that if Serbia wants to join the democratic family of nations, then it must uphold and respect the rule of law. Many others have contributed their efforts over the years leading up to this historic day and deserve mention: former Secretary of State Madeleine Albright, U.S. Ambassador-at-large for War Crimes, David Scheffer, and ICTY Prosecutors Justice Louise Arbour and Carla Del Ponte, to name just a few.

The wars that tore apart the former Yugoslavia—and which threaten Macedonia today—were largely, although not exclusively, of Mr. Milosevic's doing. He fomented extreme ethnic nationalism and unleashed his army and special police forces on the civilian populations of Croatia, Bosnia and Kosovo. Millions of people were driven from their homes and more than a quarter of a million are believed to have died. For his policies he earned himself the name, ''the Butcher of Belgrade.'' His victims deserve accountability and his former citizens deserve to know what was done in their name.

It must be stressed that the Serb people are not on trial; only Mr. Milosevic. The United States seeks friendship and partnership with all of the people of the former Yugoslavia. Our presence and contributions at the donor's conference are evidence of our intentions.

Yet while we welcome yesterday's developments, we must also not forget that 26 accused remain on the run, most of them in Bosnia and Serbia. I call on the accused to turn themselves over to the jurisdiction of the Tribunal to answer the charges against them without further delay. It is the honorable thing to do. But failing this, the local authorities must take swift and decisive action, if necessary with the support of international peacekeeping troops, to deliver these fugitives from justice to the court in the Hague. There will never be long-lasting peace and stability in the region so long as these individuals remain on the run. The fact that they have evaded justice for so long—in the case of Radovan Karadzic and Ratko Mladic it's already six year—makes a mockery of justice and it must end.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred November 6, 1998 in Seattle, Washington. A gay man was severely beaten with rocks and broken bottles in his neighborhood by a gang of youths shouting ''faggot.'' The victim sustained a broken nose and swollen jaw. When he reported the incident to police two days later, the officer refused to take the report.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

CELEBRATION OF CAPE VERDE INDEPENDENCE DAY

Mr. REED. Mr. President, I rise today to join Cape Verdeans in the July 5th celebration of Cape Verde Independence Day.

Every country is rich with its own history and unique story of how it achieved democracy, and Cape Verde is no exception. In 1462, Portuguese settlers arrived at Santiago and founded

Ribeira Grande, now Cidade Velha, the first permanent European settlement city in the tropics. After almost three centuries as a colony, in 1951 Portugal changed Cape Verde's status to an overseas province. Then in December 1974, an agreement was signed which provided for a transitional government composed of Portuguese and Cape Verdeans. In 1975, Cape Verdeans elected a National Assembly, which received the instruments of independence from Portugal.

For the first fifteen years of independence, Cape Verde was ruled by one party. Then in 1990 opposition groups came together to form the Movement for Democracy. Working together they ended the one party state and the first multi-party elections were held in January 1991.

Cape Verde now enjoys a stable democratic government. It is an example to other States as to what can be accomplished. These democratic changes have meant better global integration as the government has pursued market-oriented economic policies and welcomed foreign investors. Tourism, light manufacturing and fisheries have flourished. Cape Verde has made the difficult transition from a colony to a successful independent and democratic State.

Today, there are close to 350,000 Cape Verdean-Americans living in the United States, almost equal to the population of Cape Verde itself. These Americans hold a special right since the Cape Verdean Constitution formally considers all Cape Verdeans at home and abroad as citizens and voters. Thus, July 5th is a day of independence for all Cape Verdean-Americans as well as those in Cape Verde.

As we approach the independence day of our own country and reflect on freedom and democracy, it is especially fitting that we remember and celebrate those special independence days of other peaceful democracies, such as Cape Verde. Join with me in wishing all those with direct and ancestral ties to Cape Verde a happy independence day.

HEALTH CARE FOR THE GUARD AND RESERVE

Mr. JOHNSON. Mr. President, I rise today in support of S. 1119, a bill that would require the Secretary of Defense to conduct a study of the health care coverage of the military's Selected Reserve.

Most South Dakotans know at least one of the 4,500 current members of the South Dakota Guard and Reserves—the so-called Selected Reserve—or the thousands of former Guardsmen and Reservists. Sometimes, the connection is even more direct. Before joining the Army, my oldest son was a member of the South Dakota Army Guard in Yankton. South Dakota's Guard and Reserve members have supported overseas operations, including those in Central America, the Middle East, Europe and Asia. Members of the South Dakota Air Guard are currently preparing for its mission later this year, where it will patrol the ''No-Fly Zone'' in Iraq.

South Dakota's Guard and Reserve units consistently rank in the highest percentile of readiness and quality of its recruits. But keeping and recruiting the best of the best in the South Dakota National Guard and Reserves is becoming more of a challenge as our military's operations tempo has remained high while the number of active duty military forces has decreased. This tempo places significant pressure on the members of the reserve component, and has exposed possible health care deficiencies.

Many deploying members and their families have experienced tremendous turbulence moving back-and-forth between their civilian health insurance plans and TRICARE Prime, the military's health care system. Some junior reservists have no health insurance at all. Some figures, for example, have shown that upward of 200,000 Selected Reservists nationwide do not possess adequate insurance. The exact nature of these disturbances and the broader shortfalls of this system are unclear because examinations have not completed.

I am pleased to join with my colleagues in introducing this legislation, which will take a step towards understanding this problem and giving Congress direction on how to solve it. I know how poor health care and broken promises can reduce morale within our military and their families. A poor ''quality of life'' among our reserve component and active duty personnel has a direct impact on recruitment and retention of the best and brightest in our Armed Services. I will continue to do all I can to ensure our men and women in the military, veterans, and military retirees have the health care they deserve.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, June 28, 2001, the Federal debt stood at $5,663,970,068,775.88, Five trillion, six hundred sixty-three billion, nine hundred seventy million, sixty-eight thousand, seven hundred seventy-five dollars and eighty-eight cents.

One year ago, June 28, 2000, the Federal debt stood at $5,649,147,000,000, Five trillion, six hundred forty-nine billion, one hundred forty-seven million.

Five years ago, June 28, 1996, the Federal debt stood at $5,118,683,000,000, Five trillion, one hundred eighteen billion, six hundred eighty-three million.

Ten years ago, June 28, 1991, the Federal debt stood at $3,537,988,000,000, Three trillion, five hundred thirty-seven billion, nine hundred eighty-eight million.

Twenty-five years ago, June 28, 1976, the Federal debt stood at $610,417,000,000, Six hundred ten billion, four hundred seventeen million, which reflects a debt increase of more than $5 trillion, $5,053,553,068,775.88, Five trillion, fifty-three billion, five hundred fifty-three million, sixty-eight thousand, seven hundred seventy-five dollars and eighty-eight cents during the past 25 years.

ADDITIONAL STATEMENTS

TRIBUTE TO ABE SILVERSTEIN

● Mr. DEWINE. Mr. President, I rise today to recognize a man who employed his knowledge and vision to take America into Space. I am speaking of Cleveland resident, Abe Silverstein, who just passed away this month at 92 years of age, leaving a legacy of invention and innovation in the field of Space Flight.

Abe Silverstein played a part in a number of ''space firsts,'' and received many prestigious honors for his work. In the company of Orville Wright, William Boeing, and Charles Lindbergh, Abe won the Guggenheim Award for the advancement of flight.

Abe Silverstein designed, tested, and operated the world's first supersonic wind tunnel. It was the largest, fastest, and most powerful in the world. The research that was conducted with the tunnel allowed Abe to produce faster combat planes in World War II. This tunnel now resides in the NASA Glenn Space Research Facility in Cleveland, which Abe directed from 1961–1969.

He was also the first director of NASA Space Flight Operations and worked on the Mercury, Gemini, Apollo, and Centaur projects. The Centaur project involved the launching vehicles that propelled spacecraft to Mars, Jupiter, Saturn, Uranus, and Neptune.

Serving his country in World War II by producing new technology and helping his country achieve its goals in Space was not enough for Abe Silverstein. After retiring from NASA, Abe went on to work for Republic Steel Corporation, where he developed pollution controls to help keep our air cleaner for future generations.

Abe Silverstein always was contributing to his country, whether it be through wind-tunnel research or in serving as a Trustee at Cleveland State University. He was a man of great personal virtue and strength of character. I am proud, Mr. President, to honor this man today, who his NASA colleagues once described as ''a man of vision and conviction, [a man who] contributed to the ultimate success of America's unmanned and human space programs . . . his innovative, pioneering spirit lives on in the work we do today.''

I thank Mr. Silverstein for all his hard work and sacrifice, and I hope that my colleagues will join me in my gratitude.●

TRIBUTE TO LES AND MARILYN GORDON

● Mr. SMITH of New Hampshire. Mr. President, I rise today to pay tribute

to Les and Marilyn Gordon, owners of The Candlelite Inn in Bradford, NH, on being named as Inn of the Year by the Complete Guide to Bed & Breakfast Inns and Guesthouses in the United States, Canada and Worldwide.

Built in 1897, The Candlelite Inn has provided a relaxing atmosphere for visiting guests for over 100 years. The Gordons purchased the Inn in 1993, and have successfully continued the tradition of accommodating the needs of discriminating travelers touring the Lake Sunapee Region.

Throughout the year The Candlelite Inn hosts special weeks for their guests to enjoy including: Currier & Ives Maple Sugar Weekend in March, Old Glory Heritage Tours in July, August and September, Foliage Midweek Getaways in September and October, and Murder Mystery Parties throughout the year.

I commend Les and Marilyn for the economic contributions they have made to the hospitality and tourism industries in our state. The citizens of Bradford, and New Hampshire, have benefitted from their dedication to quality and service at The Candlelite Inn. It is truly an honor and a privilege to represent them in the United States Senate.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2605. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bifenazate; Pesticide Tolerances for Emergency Exemptions'' (FRL6788–5) received on June 21, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2606. A communication from the Director of the Office of Personnel Policy, Department of the Interior, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, Reclamation, Bureau of Reclamation, received on June 28, 2001; to the Committee on Energy and Natural Resources.

EC–2607. A communication from the Director of the Office of Personnel Policy, Department of the Interior, transmitting, pursuant to law, the report of a nomination for the position of Director of the National Park Service, received on June 28, 2001; to the Committee on Energy and Natural Resources.

EC–2608. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Inspector General, received on June 28, 2001; to the Committee on Armed Services.

EC–2609. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, Civil Works, received on June 28, 2001; to the Committee on Armed Services.

EC–2610. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Army, Civil Works, received on June 28, 2001; to the Committee on Armed Services.

EC–2611. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the discontinuation of service in acting role for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2612. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the designation of acting officer for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2613. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the discontinuation of service in acting role for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2614. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of the designation of acting officer for the position of Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2615. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Air Force, Financial Management and Comptroller, received on June 28, 2001; to the Committee on Armed Services.

EC–2616. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, Manpower and Reserve Affairs, received on June 28, 2001; to the Committee on Armed Services.

EC–2617. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, received on June 28, 2001; to the Committee on Armed Services.

EC–2618. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, Research, Development and Acquisition, received on June 28, 2001; to the Committee on Armed Services.

EC–2619. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant of the Navy, Financial Management and Comptroller, received on June 28, 2001; to the Committee on Armed Services.

EC–2620. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Deputy Under Secretary of Defense, Acquisition and Technology, received on June 28, 2001; to the Committee on Armed Services.

EC–2621. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Deputy Under Secretary of Defense, Policy, received on June 28, 2001; to the Committee on Armed Services.

EC–2622. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Assistant Secretary of the Navy, Installations and Environment, received on June 28, 2001; to the Committee on Armed Services.

EC–2623. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a vacancy in the position of Under Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2624. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Administrator, Drug Enforcement Administration, received on June 28, 2001; to the Committee on the Judiciary.

EC–2625. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Commissioner, Immigration and Naturalization Service, received on June 28, 2001; to the Committee on the Judiciary.

EC–2626. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Director, Community Relations Service, received on June 28, 2001; to the Committee on the Judiciary.

EC–2627. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, a report relative to Merger Review Procedures dated June 2001; to the Committee on the Judiciary.

EC–2628. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Withdrawal of Notice of Federal Tax Lien Certain Circumstances'' (RIN1545–AV00) received on June 21, 2001; to the Committee on Finance.

EC–2629. A communication from the Chief of the Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Time Limitation for Requesting Refunds of Harbor Maintenance Fees'' (RIN1515–AC64) received on June 26, 2001; to the Committee on Finance.

EC–2630. A communication from the Regulations Coordinator of the Health Care Finance Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicaid Managed Care'' (RIN0938–AI70) received

on June 28, 2001; to the Committee on Finance.

EC–2631. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Nondiscrimination Requirements for Certain Defined Contribution Plans'' (RIN1545–AY36) received on June 28, 2001; to the Committee on Finance.

EC–2632. A communication from the Director of the Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Veterans Education: Increased Allowance for the Educational Assistance Test Program'' (RIN2900–AK41) received on June 27, 2001; to the Committee on Veterans' Affairs.

EC–2633. A communication from the Director of the Office of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Increase in Rates Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance'' (RIN2900–AK44) received on June 27, 2001; to the Committee on Veterans' Affairs.

EC–2634. A communication from the Director of the Office of Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Grants to States for Construction and Acquisition of State Home Facilities'' (RIN2900–AJ43) received on June 28, 2001; to the Committee on Veterans' Affairs.

EC–2635. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determination'' (44 CFR 31183) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2636. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility'' (Doc. No. FEMA–P–7763) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2637. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (Doc. No. FEMA–P–7602) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2638. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled ''Investment Securities; Bank Activities and Operations; Leasing'' (12 CFR Parts 1, 7, 23) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2639. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled ''Fiduciary Activities of National Banks'' (RIN1557–AB79) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2640. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998 dated July 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2641. A communication from the Acting Executive Secretary of the Agency for International Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Administrator, Bureau for Asia and the Near East, received on June 27, 2001; to the Committee on Foreign Relations.

EC–2642. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under contract in the amount of $50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–2643. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, Presidential Determination Number 2001–19, relative to the Jerusalem Embassy Act of 1995; to the Committee on Foreign Relations.

EC–2644. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Sweden; to the Committee on Foreign Relations.

EC–2645. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–2646. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–2647. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more to France; to the Committee on Foreign Relations.

EC–2648. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2649. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification regarding the proposed transfer of U.S. origin defense articles valued (in terms of its original acquisition cost) at approximately $1,000,000,000 to the Government of Israel; to the Committee on Foreign Relations.

EC–2650. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the annual report required by Section 655 of the Foreign Assistance Act of 1961; to the Committee on Foreign Relations.

EC–2651. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area'' received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2652. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period'' received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2653. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Amendments to an emergency interim rule implementing 2001 Steller sea lion protection measures (would delay season for Pacific Cod fisheries in the GOA and BSAI'' (RIN0648–AO82) received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2654. A communication from the Attorney/Advisor of the Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, Office of the Secretary, received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2655. A communication from the Attorney/Advisor of the Department of Defense, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Governmental Affairs, Office of the Secretary, received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2656. A communication from the Attorney/Advisor of the Department of Transportation, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Budget and Programs, Office of the Secretary, received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2657. A communication from the Division Chief of the Office of Protected Resources, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea'' (RIN0648-AM09) received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2658. A communication from the Secretary of Commerce and the Chairman of the Federal Trade Commission, transmitting jointly, pursuant to law, a report entitled ''Electronic Signatures in Global and National Commerce Act: The Consumer Consent Provision in Section 101(c)(1)(C)(ii)''; to the Committee on Commerce, Science, and Transportation.

EC–2659. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area'' received on June 28, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2660. A communication from the Acting Director of the Statutory Import Programs Staff, International Trade Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Changes in Procedures for Florence Agreement Program'' (RIN00625–AA47) received on

June 28, 2001; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 2217: A bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2002, and for other purposes (Rept. No. 107–36).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ALLEN:

S. 1138. A bill to allow credit under the Federal Employees' Retirement System for certain Government service which has performed abroad after December 31, 1988, and before May 24, 1998; to the Committee on Governmental Affairs.

By Mr. REID:

S. 1139. A bill to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. FEINGOLD, Mr. GRASSLEY, Mr. LEAHY, Mr. WARNER, Mr. BREAUX, Mr. BURNS, Mr. REID, Mr. CRAIG, Mr. TORRICELLI, Mr. BENNETT, Ms. SNOWE, Mr. DEWINE, Mr. THOMAS, and Mr. HUTCHINSON):

S. 1140. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

By Mr. GRAMM (for himself, Mr. NICKLES, Mrs. HUTCHISON, Mr. MURKOWSKI, and Mr. GRASSLEY):

S. 1141. A bill to amend the Internal Revenue Code of 1986 to treat distributions from publicly traded partnerships as qualifying income of regulated investment companies, and for other purposes; to the Committee on Finance.

By Mr. LIEBERMAN:

S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

By Mr. CAMPBELL:

S. 1143. A bill to require the Secretary of the Treasury to mint coins in commemoration of former President Ronald Reagan; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, and Mr. AKAKA):

S. 1144. A bill to amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. BOXER:

S. 1145. A bill to amend the Internal Revenue Code of 1986 to extend the work opportunity credit to encourage the hiring of certain veterans, and for other purposes; to the Committee on Finance.

By Mr. ALLARD:

S. 1146. A bill to amend the Act of March 3, 1875, to permit the State of Colorado to use land held in trust by the State as open space; to the Committee on Energy and Natural Resources.

By Mr. NICKLES:

S. 1147. A bill to amend title X and title XI of the Energy Policy Act of 1992; to the Committee on Energy and Natural Resources.

By Mr. BURNS:

S. 1148. A bill to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant irrigation districts; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1149. A bill to amend the Immigration and Nationality Act to establish a new nonimmigrant category for chefs and individuals in related occupations; to the Committee on the Judiciary.

By Mr. SMITH of New Hampshire:

S. 1150. A bill to waive tolls on the Interstate System during peak holiday travel periods; to the Committee on Environment and Public Works.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1151. A bill to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN (for himself, Mr. DASCHLE, Mrs. MURRAY, Mr. CORZINE, Ms. LANDRIEU, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. KENNEDY, Mr. SARBANES, Ms. MIKULSKI, Mr. TORRICELLI, Mr. REID, Mr. SCHUMER, Ms. STABENOW, and Mr. JOHNSON):

S. 1152. A bill to ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes; to the Committee on Governmental Affairs.

By Mr. CRAIG (for himself and Mrs. FEINSTEIN):

S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of New Hampshire (for himself and Mr. WARNER):

S. 1154. A bill to preserve certain actions brought in Federal court against Japanese defendants by members of the United states Armed Forces held by Japan as prisoners of war during World War II; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. WARNER) (by request):

S. 1155. A bill to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2002, and for other purposes; to the Committee on Armed Services.

By Mr. SMITH of Oregon:

S. 1156. A bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (for himself, Ms. LANDRIEU, Ms. COLLINS, Mr. SCHUMER, Ms. SNOWE, Mr. LEAHY, Mr. COCHRAN, Mr. BREAUX, Mr. ALLEN, Mr. BIDEN, Mr. BOND, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. DODD, Mr. EDWARDS, Mr. FRIST, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LIEBERMAN, Mrs. LINCOLN, Ms. MIKULSKI, Mr. MILLER, Mr. REED, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, and Mr. WARNER):

S. 1157. A bill to reauthorize the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact, a Pacific Northwest Dairy Compact, and an Intermountain Dairy Compact; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. AKAKA, Mr. STEVENS, Mr. CORZINE, Mr. BROWNBACK, Mr. MCCAIN, Mr. DASCHLE, Mr. JOHNSON, Mr. COCHRAN, Mr. BAUCUS, Mr. CONRAD, Mr. DOMENICI, Ms. STABENOW, Mr. BINGAMAN, Mr. CRAPO, Mrs. MURRAY, Ms. CANTWELL, Mr. WELLSTONE, Mr. THOMAS, Mrs. BOXER, Mr. KENNEDY, Mr. DAYTON, Mr. CRAIG, Mr. REID, Mr. SMITH of Oregon, Mr. KERRY, Mr. ALLARD, Mr. DORGAN, Mr. SCHUMER, and Mr. BREAUX):

S. Res. 118. A resolution to designate the month of November 2001 as ''National American Indian Heritage Month''; to the Committee on the Judiciary.

By Mr. BAYH (for himself, Mr. SMITH of Oregon, Mr. DASCHLE, Mr. LEAHY, Mr. BINGAMAN, Mr. LUGAR, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KERRY, Mr. KENNEDY, Mr. LIEBERMAN, Mrs. CLINTON, Mr. WELLSTONE, Mr. DEWINE, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LEVIN, Mr. CORZINE, Mr. SPECTER, Mr. TORRICELLI, Mr. GRAHAM, and Ms. SNOWE):

S. Res. 119. A resolution combating the Global AIDS pandemic; to the Committee on Foreign Relations.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 120. A resolution relative to the organization of the Senate; considered and agreed to.

By Mr. KERRY (for himself, Ms. SNOWE, Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mr. SARBANES, Mrs. BOXER, Mr. KENNEDY, and Mr. FEINGOLD):

S. Res. 121. A resolution expressing the sense of the Senate regarding the policy of the United States at the 53rd Annual Meeting of the International Whaling Commission; to the Committee on Foreign Relations.

By Mr. MCCONNELL (for himself and Mr. LEAHY):

S. Res. 122. A resolution relating to the transfer of Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia, and for other purposes; to the Committee on Foreign Relations.

By Mr. KERRY (for himself and Mr. BOND):

S. Res. 123. A resolution amending the Standing Rules of the Senate to change the name of the Committee on Small Business to the ''Committee on Small Business and Entrepreneurship''; considered and agreed to.

By Mr. KENNEDY (for himself and Mr. BROWNBACK):

S. Con. Res. 57. A concurrent resolution recognizing the Hebrew Immigrant Aid Society; to the Committee on the Judiciary.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. Con. Res. 58. A concurrent resolution expressing support for the tenth annual meeting of the Asia Pacific Parliamentary Forum; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 170

At the request of Mr. REID, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 170, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 351

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 351, a bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, and for other purposes.

S. 486

At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 489

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 489, a bill to amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

S. 497

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 497, a bill to express the sense of Congress that the Department of Defense should field currently available weapons, other technologies, tactics and operational concepts that provide suitable alternatives to anti-personnel mines and mixed anti-tank mine systems and that the United States should end its use of such mines and join the Convention on the Prohibition of Anti-Personnel Mines as soon as possible, to expand support for mine action programs including mine victim assistance, and for other purposes.

S. 530

At the request of Mr. GRASSLEY, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 530, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind.

S. 532

At the request of Mr. DORGAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 532, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

S. 562

At the request of Mr. REID, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 562, a bill to amend the Immigration and Nationality Act with respect to the record of admission for permanent residence in the case of certain aliens.

S. 611

At the request of Ms. MIKULSKI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 611, a bill to amend title II of the Social Security Act to provide that the reduction in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 624

At the request of Mr. GREGG, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 624, a bill to amend the Fair Labor standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off and biweekly work programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

S. 756

At the request of Mr. GRASSLEY, the names of the Senator from North Carolina (Mr. HELMS) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 756, a bill to amend the Internal Revenue Code of 1986 to extend and modify the credit for electricity produced from biomass, and for other purposes.

S. 799

At the request of Mr. DODD, his name was added as a cosponsor of S. 799, a bill to prohibit the use of racial and other discriminatory profiling in connection with searches and detentions of individuals by the United States Customs Service personnel, and for other purposes.

S. 847

At the request of Mr. DAYTON, the names of the Senator from Georgia (Mr. CLELAND) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 860

At the request of Mr. GRASSLEY, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 860, a bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers.

S. 866

At the request of Mr. REID, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 866, a bill to amend the Public Health Service Act to provide for a national media campaign to reduce and prevent underage drinking in the United States.

S. 952

At the request of Mr. GREGG, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 952, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 989

At the request of Mr. FEINGOLD, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 989, a bill to prohibit racial profiling. At the request of Mr. DODD, his name was added as a cosponsor of S. 989, supra.

At the request of Mr. DODD, his name was added as a cosponsor of S. 989, supra.

S. 999

At the request of Mr. BINGAMAN, the names of the Senator from New Hampshire (Mr. SMITH) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 999, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1017

At the request of Mr. DODD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1017, a bill to provide the people of Cuba with access to food and medicines from the United States, to ease restrictions on travel to Cuba, to provide scholarships for certain Cuban nationals, and for other purposes.

S. 1030

At the request of Mr. CONRAD, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1030, a bill to improve health care in rural areas by amending title XVIII of the Social Security Act and the Public Health Service Act, and for other purposes.

S. 1037

At the request of Mrs. HUTCHISON, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1037, a bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes.

S. 1058

At the request of Mr. DAYTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1058, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and the producers of biodiesel, and for other purposes.

S. 1083

At the request of Ms. MIKULSKI, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1083, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system.

S. 1104

At the request of Mr. GRAHAM, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1104, a bill to establish objectives for negotiating, and procedures for, implementing certain trade agreements.

S. 1134

At the request of Mr. LIEBERMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1134, a bill to amend the Internal Revenue Code of 1986 to modify the rules applicable to qualified small business stock.

S.J. RES. 7

At the request of Mr. HATCH, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S.J.Res. 7, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. RES. 71

At the request of Mr. HARKIN, the names of the Senator from Connecticut (Mr. DODD) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

S. RES. 109

At the request of Mr. REID, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Res. 109, a resolution designating the second Sunday in the month of December as ''National Children's Memorial Day'' and the last Friday in the month of April as ''Children's Memorial Flag Day.''

S. CON. RES. 45

At the request of Mr. FITZGERALD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing the sense of Congress that the Humane Methods of Slaughter Act of 1958 should be fully enforced so as to prevent needless suffering of animals.

S. CON. RES. 53

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. Con. Res. 53, concurrent resolution encouraging the development of strategies to reduce hunger and poverty, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

At the request of Mr. HAGEL, the names of the Senator from Minnesota (Mr. WELLSTONE), the Senator from Michigan (Ms. STABENOW), the Senator from Maryland (Mr. SARBANES) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. Con. Res. 53, supra.

At the request of Mr. HAGEL, the names of the Senator from Minnesota (Mr. WELLSTONE), the Senator from Michigan (Ms. STABENOW), the Senator from Maryland (Mr. SARBANES) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. Con. Res. 53, supra.

AMENDMENT NO. 821

At the request of Mr. ALLARD, the names of the Senator from New Hampshire (Mr. GREGG), the Senator from Idaho (Mr. CRAIG) , the Senator from Oklahoma (Mr. NICKLES) , the Senator from Virginia (Mr. ALLEN), the Senator from Oklahoma (Mr. INHOFE), the Senator from New Hampshire (Mr. SMITH), the Senator from Texas (Mr. GRAMM), the Senator from Maine (Ms. COLLINS), the Senator from Alabama (Mr. SESSIONS), the Senator from Wyoming (Mr. ENZI) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of amendment No. 821 proposed to S. 1052, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. FEINGOLD, Mr. GRASSLEY, Mr. LEAHY, Mr. WARNER, Mr. BREAUX, Mr. BURNS, Mr. REID, Mr. CRAIG, Mr. TORRICELLI, Mr. BENNETT, Ms. Snowe, Mr. DEWINE, Mr. THOMAS, and Mr. HUTCHINSON):

S. 1140. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce S. 1140, ''The Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001.'' I am pleased to be joined in cosponsorship of this legislation by Senators FEINGOLD, GRASSLEY, LEAHY, WARNER, BREAUX, BURNS, REID, CRAIG, TORRICELLI, BENNETT, SNOWE, DEWINE, THOMAS, and HUTCHINSON. Our bill is intended to allow automobile dealers their day in court when they have disputes with the manufacturers.

As automobile dealers throughout Utah have pointed out to me, the motor vehicle dealer contract often includes mandatory arbitration clauses, and they also point out their unequal bargaining power. This is usually the result of various factors, including the manufacturers' discretion to allocate vehicle inventory and control on the timing of delivery. Manufacturers can, thus, determine the dealer's financial future with the allocation of the best-selling models. Manufacturers can also exercise leverage over the flow of revenue to dealers, such as warranty payments. Manufacturers can limit dealers' rights to transfer ownership or control of the business, even to family members. And manufacturers have tried, arbitrarily, to take businesses away from dealers without cause.

I recognize the efficiencies of mandatory arbitration clauses in general, but the specific circumstances in the manufacturer-dealer relationship justifies this widely-supported bipartisan proposal. It is worthy to note that Congress in 1956 enacted the Automobile Dealer Day in Court Act, which provided a small business dealer in limited circumstances the right to proceed in Federal court when faced with abuses by manufacturers. And State legislatures have enacted significant protections for auto dealers.

S. 1140 amends Title 9 of the U.S. Code and make arbitration of disputes in motor vehicle franchise contracts optional. This would allow dealers to opt voluntarily for arbitration or use procedures and remedies available under State law, such as state-established administrative boards specifically established to resolve dealer/manufacturer disputes.

I must note that this legislation is extremely narrow and affects only the unique relationship between small business auto dealers and motor vehicle manufacturers, which is strictly governed by State law. This legislation is necessary to protect the States' interest in regulating the motor vehicle dealer/manufacturer relationship.

All States, except for Alaska, have enacted laws specifically designed to regulate the economic relationship between motor vehicle dealers and manufacturers to prevent unfair manufacturer contract terms and practices. In most States, including my home State of Utah, effective State administrative forums already exist to handle dealer/manufacturer disputes outside of the court system. Indeed, in the majority of States, a special State agency or forum is charged with administering and enforcing motor vehicle franchise law. These State forums provide an inexpensive, speedy, and non-judicial resolution of disputes.

I urge my colleagues to support this worthwhile legislation.

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

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

S. 1140

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 ''Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001''.

SEC. 2. ELECTION OF ARBITRATION.

(a) MOTOR VEHICLE FRANCHISE CONTRACTS.—Chapter 1 of title 9, United States Code, is amended by adding at the end the following:

''§ 17. Motor vehicle franchise contracts

''(a) For purposes of this section, the term—

''(1) 'motor vehicle' has the meaning given such term under section 30102(6) of title 49; and

''(2) 'motor vehicle franchise contract' means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles.

''(b) Whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to the contract, arbitration may be used to settle such controversy only if after such controversy arises both parties consent in writing to use arbitration to settle such controversy.

''(c) Whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to the contract with a written explanation of the factual and legal basis for the award.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 9, United States Code, is amended by adding at the end the following:

''17. Motor vehicle franchise contracts.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 shall apply to contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this Act.

Mr. GRASSLEY. Mr. President, over the years, I have been in the forefront of promoting alternative dispute resolution, (ADR), mechanisms to encourage alternatives to litigation when disputes arise. Such legislation includes the permanent use of ADR by Federal agencies. Last Congress, we also passed legislation to authorize Federal court-annexed arbitration. These statutes are based, in part, on the premise that arbitration should be voluntary rather than mandatory.

While arbitration often serves an important function as an efficient alternative to court, some trade offs must be considered by both parties, such a limited judicial review and less formal procedures regarding discovery and rules of evidence. When mandatory binding arbitration is forced upon a party, for example when it is placed in a boiler-plate agreement, it deprives the weaker party the opportunity to elect any other forum. As a proponent of arbitration I believe it is critical to ensure that the selection of arbitration is voluntary and fair.

Unequal bargaining power exists in contracts between automobile and truck dealers and their manufacturers. The manufacturer drafts the contract and presents it to dealers with no opportunist to negotiate. Increasingly, these manufacturers are including compulsory binding arbitration in their agreements, and dealers are finding themselves with no choice but to accept it. If they refuse to sign the contract they have no franchise. This clause then binds the dealer to arbitration as the exclusive procedure for resolving any dispute. The purpose of arbitration is to reduce costly, time-consuming litigation, not to force a party to an adhesion contract to waive access to judicial or administrative forums for the pursuit of rights under State law.

I am extremely concerned with this industry practice that conditions the granting or keeping of motor vehicle franchises on the acceptance of mandatory and binding arbitration. While several States have enacted statutes to protect weaker parties in ''take it or leave it'' contracts and attempted to prevent hits type of inequitable practice, these State laws have been held to conflict with the federal Arbitration Act (FAA).

In 1925, when the FAA was enacted to make arbitration agreements enforceable in Federal courts, it did not expressly provide for preemption of State law. Nor is there any legislative history to indicate Congress intended to occupy the entire field of arbitration. However, in 1984 the Supreme Court interpreted the FAA to preempt state law in Southland Corporation v. Keating. This, State laws that protect weaker parties from being forced to accept arbitration and to waive State rights, such as Iowa's law prohibiting manufacturers from requiring dealers to submit to mandatory binding arbitration, are preempted by the FAA.

With mandatory binding arbitration agreements becoming increasingly common in motor vehicle franchise agreements, now is the time to eliminate the ambiguity in the FAA statute. The purpose of the legislation we are introducing is to ensure that in disputes between manufacturers and dealers, both parties must voluntarily elect binding arbitration. This approach would continue to recognize arbitration as a valuable alternative to court, but would provide an option to pursue other forums such as administrative bodies that have been established in a majority of States, including Iowa, to handle dealer/manufacturer disputes.

This legislation will go a long way toward ensuring that parties will not be forced into binding arbitration and thereby lose important statutory rights. I am confident that given its many advantages arbitration will often be elected. But it is essential for public policy reasons and basic fairness that both parties to this type of contract have the freedom to make their own decisions based on the circumstances of the case.

I urge my colleagues to join me in supporting this legislation to address this unfair franchise practice.

Mr. FEINGOLD. Mr. President, I rise today to introduce, with my distinguished colleague from Utah, Senator HATCH, the Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001. I want to recognize the efforts of the Senator from Iowa, Senator GRASSLEY, in advancing this legislation in the last Congress, and note how pleased I am that the distinguished ranking member and former chairman of the Judiciary Committee has decided to take the lead on this bill this year. By the time the 106th Congress concluded, we had the support of 56 Senators for this bill. So I believe we have an excellent opportunity to pass this bill this year, and I look forward to working with the Senator from Utah to make that happen.

While alternative methods of dispute resolution such as arbitration can serve a useful purpose in resolving disputes between parties, I am extremely concerned about the increasing trend of stronger parties to a contract forcing weaker parties to waive their rights and agree to arbitrate any future disputes that may arise. In every Congress since 1994, I have introduced the Civil Rights Procedures Protection Act, which amends certain civil rights statutes to prevent the involuntary imposition of arbitration to claims that arise from unlawful employment discrimination and sexual harassment.

A few years ago, it came to my attention that the automobile and truck manufacturers, which often present dealers with ''take it or leave it'' contracts, are increasingly including mandatory and binding arbitration clauses as a condition of entering into or maintaining an auto or truck franchise. This practice forces dealers to submit their disputes with manufacturers to arbitration. As a result, dealers are required to waive access to judicial or administrative forums, substantive contract rights, and statutorily provided protection. In short, this practice clearly violates the dealers' fundamental due process rights and runs directly counter to basic principles of fairness.

Franchise agreements for auto and truck dealerships are typically not negotiable between the manufacturer and the dealer. The dealer accepts the terms offered by the manufacturer, or it loses the dealership, plain and simple. Dealers, therefore, have been forced to rely on the States to pass laws designed to balance the manufacturers' far greater bargaining power and to safeguard the rights of dealers. The first State automobile statute was enacted in my home State of Wisconsin in 1937 to protect citizens from injury caused when a manufacturer or distributor induced a Wisconsin citizen to invest considerable sums of money in dealership facilities, and then canceled the dealership without cause. Since then, all States except Alaska have enacted substantive law to balance the enormous bargaining power enjoyed by manufacturers over dealers and to safeguard small business dealers from unfair automobile and truck manufacturer practices.

A little known fact is that under the Federal Arbitration Act, FAA, arbitrators are not required to apply the particular Federal or State law that would be applied by a court. That enables the stronger party, in this case the auto or truck manufacturer, to use arbitration to circumvent laws specifically enacted to regulate the dealer/manufacturer relationship. Not only is the circumvention of these laws inequitable, it also eliminates the deterrent to prohibited acts that State law provides.

The majority of States have created their own alternative dispute resolution mechanisms and forums with access to auto industry expertise that provide inexpensive, efficient, and nonjudicial resolution of disputes. For example, in Wisconsin, mandatory mediation is required before the start of an administrative hearing or court action. Arbitration is also an option if both parties agree. These State dispute resolution forums, with years of experience and precedent, are greatly responsible for the small number of manufacturer-dealer lawsuits. When mandatory binding arbitration is included in dealer agreements, these specific State laws and forums established to resolve auto dealer and manufacturer disputes are effectively rendered null and void with respect to dealer agreements.

Besides losing the protection of Federal and State law and the ability to use State forums, there are numerous reasons why a dealer may not want to agree to binding arbitration. Arbitration lacks some of the important safeguards and due process offered by administrative procedures and the judicial system: 1. arbitration lacks the formal court supervised discovery process often necessary to learn facts and gain documents; 2. an arbitrator need not follow the rules of evidence; 3. arbitrators generally have no obligation to provide factual or legal discussion of the decision in a written opinion; and 4. arbitration often does not allow for judicial review.

The most troubling problem with this sort of mandatory binding arbitration is the absence of judicial review. Take for instance a dispute over a dealership termination. To that dealer, that small business person, this decision is of commercial life or death importance. Even under this scenario, the dealer would not have recourse to substantive judicial review of the arbitrators' ruling. Let me be very clear on this point; in most circumstances an arbitration award cannot be vacated, even if the arbitration panel disregarded state law that likely would have produced a different result.

The use of mandatory binding arbitration is increasing in many industries, but nowhere is it growing more steadily than the auto/truck industry. Currently, at least 11 auto and truck manufacturers require some form of such arbitration in their dealer contracts.

In recognition of this problem, many States have enacted laws to prohibit the inclusion of mandatory binding arbitration clauses in certain agreements. The Supreme Court, however, held in Southland Corp. v. Keating, 104 S. Ct. 852 (1984), that the FAA by implication preempts these State laws. This has the effect of nullifying many State arbitration laws that were designed to protect weaker parties in unequal bargaining positions from involuntarily signing away their rights.

The legislative history of the FAA indicates that Congress never intended to have the Act used by a stronger party to force a weaker party into binding arbitration. Congress certainly did not intend the FAA to be used as a tool to coerce parties to relinquish important protections and rights that would have been afforded them by the judicial system. Unfortunately, this is precisely the current situation.

Although contract law is generally the province of the States, the Supreme Court's decision in Southland Corp. has in effect made any State action on this issue moot. Therefore, along with Senator HATCH, I am introducing this bill today to ensure that dealers are not coerced into waiving their rights. Our bill, the Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001, would simply provide that each party to an auto or truck franchise contract has the option of selecting arbitration, but cannot be forced to do so.

The bill would not prohibit arbitration. On the contrary, the bill would encourage arbitration by making it a fair choice that both parties to a franchise contract may willingly and knowingly select. In short, this bill would ensure that the decision to arbitrate is truly voluntary and that the rights and remedies provided for by our judicial system are not waived under coercion.

In effect, if small business owners today want to obtain or keep their auto or truck franchise, they may be able to do so only by relinquishing their legal rights and foregoing the opportunity to use the courts or administrative forums. I cannot say this more strongly, this is unacceptable; this is wrong. It is at great odds with our tradition of fair play and elementary notions of justice. I therefore urge my colleagues to join in this bipartisan effort to put an end to this invidious practice.

By Mr. LIEBERMAN:

S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, today I am reintroducing a proposal with regard to the perverse impact of the Alternative Minimum Tax, AMT, on Incentive Stock Options, ISOs. I previously introduced this proposal on April 30, 2001, as Section 5 of S. 798, the Productivity, Opportunity, and Prosperity Act of 2001. I am reintroducing this proposal as a separate bill to highlight the importance of this issue.

Incentive stock options and the AMT did not exist when Franz Kafka's ''The Castle'' was published in 1926. The book describes the relentless but futile efforts of the protagonist, K., to gain recognition from the mysterious authorities ruling from their castle a village where K. wants to establish himself. The world he inhabits is both absurd and real. Kafka's characters are trapped, and punished or threatened with punishment before they even have offended the authorities.

The AMT/ISO interaction would be one that Kafka would appreciate. In the case of ISOs an employee who receives ISOs as an incentive can be taxed on the phantom paper gains the tax code deems to exist when he or she exercises an option, and be required to pay the AMT tax on these ''gains'' even if the ''gains'' do not, in fact, exist when the tax is paid. This means the taxpayer may have no gains, no profits or assets, with which to pay the AMT and might even have to borrow funds to pay the tax or even go into default on his or her AMT liability.

This Kafkaesque situation is unfair. It is not fair to impose tax on ''income'' or ''gains'' unless the income or gains exist. With the AMT tax on ISOs, it is not relevant if the ''gains'' exist in a financial sense. That they exist on paper is sufficient to trigger the tax.

This situation is also inconsistent with many well-established Federal Government policies. For example, our country favors stock options as an incentive for hard-working and productive employees of entrepreneurial companies. In most cases, entrepreneurs take enormous risks, receive less compensation than employees working for established companies, and have no company-sponsored pension plan. In addition, our country favors employee-ownership of firms. This ownership gives these employees a huge stake in the success of the company and motivates them to dedicate themselves to the firm's success. Finally, our country also favors long-term investments that generate growth. We know that growth is most likely to arise when entrepreneurs take risks over the long-term and build fundamental value for their companies and shareholders and owners. The policy favoring long-term investments is reflected in the fact that capital gains incentives are available only if an investment is held for at least one year. An investment sold before the end of this ''holding period'' receives no capital gains benefit. The application of the AMT to ISOs is inconsistent with all three of these public policies.

Let me explain the difference between ISOs and NSOs. Incentive stock options are sanctioned by the Internal Revenue code. Under current law the employee pays no tax when he or she exercises the option and buys the company's shares at the stock option price. The company receives no tax deduction

on the spread, the difference between the option price and the market price of the stock. If the employee holds the stock for two years after the grant of the option and one year after the exercise of the option, he or she pays the capital gains tax on the difference between the exercise and sale price on the sale of the stock. The tax payment is deferred until the stock is sold and the tax is paid on the real gains that are realized from the sale.

NSOs are stock options that do not satisfy the tax code requirements for ISOs. They are ''non-qualifying stock options'' or NSOs. With NSOs the employee is taxed immediately when the option is exercised on the spread between the grant and exercised price. This forces an employee to sell stock as soon as he or she exercise their options so that they can pay the tax on the spread. This is a zero sum game for the employee, selling the stock he or she has just bought to pay a tax on the spread. Even worse, because the stock is not ''held'' for one year, this tax is paid at the ordinary income tax rates, not the preferential capital gains tax rates. The company receives a business expense deduction on the spread.

If this were the whole story, it is clear that companies would tend to offer ISOs rather than NSOs to their employees. Employees would be encouraged to hold their shares for at least a year after the option is exercised, which helps to bind them to the company. They would then qualify for capital gains tax rates on the realized gains.

The problem is that ISOs come with a major liability, the application of the Alternative Minimum Tax, AMT, to the spread at the time of exercise. This tax is due to be paid even if the stock is held for the required period and even if the stock is eventually sold at a fraction of its value at the time the option is exercised. This tax at the time of exercise is inconsistent with the rule that applies to all other capital gains transactions, where the tax is paid when the gains are ''realized,'' when the investment is sold with gains or losses. This tax at the time of exercise defeats the purpose of ISOs, forces employees to sell their stock, to pay the AMT tax, before the end of the holding period, and pay ordinary income tax rates. The difference between ordinary income tax rates and capital gains tax rates can be 15 percent or more.

The AMT tax is imposed on the spread at the time the option is exercised and it is irrelevant if the stock price at the time when the AMT tax is paid or when the stock is sold is a fraction of this price. The ''gains'' at the time of exercise are what count, not real gains in a financial sense when the investment is finally sold.

The application of the AMT at the time of exercise to ISOs is a major disincentive for companies to offer ISOs to their employees. The purpose of the ISO law when it was enacted by Congress back in 1981 was to encourage long-term holdings of the stock. This purpose is defeated by the AMT application at the time of exercise. Even if firms could educate their employees about the AMT liability, the fact that this tax is imposed at the time of exercise on phantom gains would remain a major disincentive for them to offer ISOs. The risks are too great that the employee will have no real gains with which to pay the tax, that employee will have to sell stock immediately at ordinary income tax rates to make sure that funds are available to pay the tax when it is due, or take the risk of holding the stock.

My understanding is that the firms that are most likely to grant ISOs are those firms that have no ability to use the corporate deduction that is available for NSOs. These are small firms with no tax liability for which the deduction is simply a tax loss carryforward with no current year value. With these firms the ISO held out the possibility of the employees receiving capital gains tax treatment of their gains. It is particularly sad that it is these firms and these employees which are feeling the brunt of the AMT/ISO problem.

The application of the AMT to ISOs is strange because long-term holdings of stock, as required by the ISO law, are classic capital gains transactions and we do not apply the AMT to the tax benefit conferred by the capital gains tax. Under the AMT only ''tax preference items'' enumerated in the AMT are included when the AMT calculation is made. The capital gains differential, the difference between the ordinary tax rate on income and the lower capital gains rate, is a tax benefit but that differential is not included in the AMT. Given all the problems we are now seeing with the AMT the capital gains differential should not be included as a preference item. But, by an accident of history, the AMT is still applied to ISOs. This makes no sense and it is an anomaly in the tax code. When the Congress restored the capital gains differential, and did not include it as an AMT tax preference item, we should have enacted a conforming amendment regarding the AMT and ISOs. We didn't, and we should do so now.

With the AMT applied to ISOs, taxpayers are caught in a Catch-22 situation. If they hold the stock for the required year, they can qualify for capital gains treatment on the eventual sale of the stock. But, in doing so they are taking a huge risk that the AMT tax bill will exceed the value of the stock when the AMT is paid. If the tax is too large, they may have to sell their stock before the capital gains holding period has run and pay ordinary income tax rates on any gains. This is a form of lottery that serves no public policy.

The AMT was created to ensure the rich cannot use tax shelters to avoid paying their ''fair share.'' Taxpayers are supposed to calculate both their regular tax and the AMT bill, then pay whichever is higher. The AMT is likely to snare 1.5 million taxpayers this year and nearly 36 million by 2010. But the case with ISOs is one where the taxpayers may never see the ''gains,'' and noneless owe a tax on them. Whatever the merits might be for the AMT for taxpayers with real gains, they have no bearing on taxpayers who may never see the gains. It is simply unfair to impose a tax on gains that exist only on paper. If the employee does realize gains, they should and will pay tax on them, but only if and when the gains are realized.

Of course, with the recent huge drop in values for some stocks, many entrepreneurs are now being hit with immense AMT tax bills on the paper gains on stocks that are now worth a fraction of the price at the time of exercise. At a townhall meeting held in California by Representative LOFGREN and Representative BOB MATSUI, Kathy Swartz, a Mountain View woman, six months pregnant and soon to sell her ''dream house'' because she and her husband Karl owe $2.4 million in AMT, asked, ''How many victims do you need before you say it's horrible?'' We are talking about taxpayers who in fact owe five- to seven-figure tax bills on gains they never realized.

My bill would change those tax rules so that the AMT no longer applies to ISOs and no tax is owed at the time when the entrepreneur exercises the option. This change would eliminate the unfair taxation of paper gains on ISOs. This would encourage long-term holdings of stock, not immediate sale of the stock as a hedge against AMT tax liability. It would do nothing to exempt entrepreneurs from paying tax on their real gains when they eventually sell the stock.

My bill would solve this problem going forward. It would not, as drafted, provide relief to the taxpayers who already have been hit with AMT taxes on phantom gains. There is a bipartisan group in the House and Senate focusing on this group of taxpayers. This group has a strong claim for relief based on the inherent unfairness of the AMT as applied to ISOs. The unfairness of this law leads me to call for reform going forward should be remedied for current, as well as future taxpayers.

Let me be clear about the cost and budget implications of my bill. The Joint Tax Committee on Taxation has found that my proposal would reduce government tax revenues by $12.412 billion over ten years. I am puzzled by this estimate, but there is no way for me to appeal it. The JTC does not provide explanations for its estimates, but I would assume that this estimate is based on the likelihood that there would be fewer tax payments at the time options are exercised as firms move from NSOs to ISOs, those employees with ISOs would not be paying the AMT, and there will be more employees who hold the stock and pay capital gains tax rates. Offsetting this,

there will be fewer companies taking the deduction for NSOs. The revenue loss year-by-year is as follows: —$1.821 billion (2002), —$1.126 (2003), —$858 (2004), —$825 (2005), —$941 (2006), —$1.106 (2007), —$1.341 (2009), —$1.620 (2010), and $1.910 (2011). The loss during the 2002–2006 period is —$5.494 billion. I will not propose to enact my bill unless this sum is financed and will have no impact on the Federal budget.

I am pleased that Rep. ZOE LOFGREN (D–CA) has introduced legislation on AMT/ISO in the other body (H.R. 1487). Her bill has attracted a bipartisan group of cosponsors. I look forward to working with her and other Members to remedy this inequity in the tax code and to do so with regard to current as well as future taxpayers.

Let me note that I have proposed in S. 798 to provide a special capital gains tax rate, in fact to set a zero tax rate, for stock purchased by employees in stock option plans, by investors in Initial Public Offerings, and similar purchases of company treasury stock. This zero rate would be effective, however, only if the shares are held for at least three years, so the AMT gamble would be even more dramatic. During the first year of that holding period, the AMT would have to be paid and during the remaining period the value of the stock could well dive from the exercise price creating an even more invidious trap.

Kafka ''The Castle'' should remain as magnificent fiction. We have no place for taxes on phantom income and paper gains. Our taxpayers should be able to communicate effectively with the castle, not be caught in a bureaucratic nightmare that makes no sense and serves no policy.

By Mr. CAMPBELL:

S. 1143. A bill to require the Secretary of the Treasury to mint coins in commemoration of former President Ronald Reagan; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CAMPBELL. Mr. President, today I introduce the ''Ronald Reagan Commemorative Coin Act of 2001.''

The bill I am introducing today would accomplish two worthy goals. First, it would help honor Ronald Reagan, the 40th President of the United States. Second, it would also help raise much needed resources to help families across the United States provide care for their loved ones who have been stricken by Alzheimer's disease.

I believe that a commemorative coin program would honor Ronald Reagan's life and contributions to our Nation, while also raising funds to help American families in their day to day struggle against this terrible disease.

This legislation's worthiness and timeliness were underscored just last night when ABC televised a powerful program in which Diane Sawyer interviewed Nancy Reagan. Watching Mrs. Reagan as she so openly and eloquently shared touching insights about their ongoing struggle with Alzheimer's disease was moving. There is no doubt about the truly deep bonds that unite Ronald and Nancy Reagan and that we need to do what we can to fight the disease that has slowly taken its terrible toll on the Reagans and so many other American families.

Ronald Reagan has worn many hats in his life, including endeavors as a sports announcer, actor, governor and President of the United States. He was first elected president in 1980 and served two terms, becoming the first president to serve two full terms since Dwight Eisenhower.

Ronald Reagan's boundless optimism and deep-seated belief in the people of the United States and the American Dream helped restore our Nation's pride in itself and brought about a new ''Morning in America.'' His challenge to Gorbachev to ''tear down this wall,'' his successful revival of our economic power, his determination to rebuild our armed forces in order to contain the spread of communism, and his international summitry skills as seen at Reykjavik, Iceland, combined to help bring an end to the Cold War. Ronald Reagan left our Nation in much better shape than it was when he took office.

As Alzheimer's sets in, brain cells gradually deteriorate and die. People afflicted by the disease gradually lose their cognitive ability. Patients eventually become completely helpless and dependent on those around them for even the most basic daily needs. Each of the millions of Americans who is now affected will eventually, barring new discoveries in treatment, lose their ability to remember recent and past events, family and friends, even simple things like how to take a bath or turn on lights. Ronald Reagan, one of the most courageous and optimistic Presidents in American history, is no exception.

Shortly after being shot in an assassination attempt, Ronald Reagan's courage and good humor in the face of a life threatening situation were evident when he famously apologized to his wife Nancy saying ''Sorry honey. I forgot to duck.'' Unfortunately, once Alzheimer's disease takes hold, it delivers a slow mind destroying bullet that none of us can duck to avoid. As Ronald Reagan wrote shortly after learning of his diagnosis ''I only wish there was some way I could spare Nancy from this painful experience.'' From the moment of diagnosis, it's ''a truly long, long, goodbye,'' Nancy Reagan said.

Fortunately for all of us, when Ronald Reagan courageously announced in such an honest and public manner that he had Alzheimer's, rather than covering it up, he did a great deal to help alleviate the negative stigma that has long faced those suffering from this terrible disease. Much of the shame and pity traditionally associated with Alzheimer's was transformed almost overnight into sympathy and understanding as public awareness suddenly shot up and those suffering from Alzheimer's, and their families, knew that they were not alone.

While Ronald Reagan's health didn't deteriorate right away, according to Mrs. Reagan, he had his good days and bad days, ''just like everybody else.'' In recent years, however, Reagan's condition has completely deteriorated. ''It's frightening and it's cruel,'' Nancy said, speaking of the disease and what it has done to her husband and family. ''It's sad to see somebody you love and have been married to for so long, with Alzheimer's, and you can't share memories,'' Mrs. Reagan said.

In the introduction to a recently released book based on the touching love letters exchanged between herself and Reagan, Nancy elaborated on her sense of loss when she wrote, ''You know that it's a progressive disease and that there's no place to go but down, no light at the end of the tunnel. You get tired and frustrated, because you have no control and you feel helpless.'' She also said, ''There are so many memories that I can no longer share, which makes it very difficult.''

Nancy Reagan has earned our Nation's admiration for her steadfast and loving dedication to her husband as she has watched her beloved husband slowly fade away. Likewise, families all across our Nation, day in and day out, choose to personally provide care for their loved ones suffering from Alzheimer's, rather than putting them in institutions. They deserve our respect and support.

Fortunately, Nancy Reagan has had access to vital resources that help her care for her husband. This is how it should be. Unfortunately, there are many American families out there who do not have access to these resources. This bill will help alleviate that by raising money to help American families who are struggling while providing care for their loved ones.

Fortunately, funding for Alzheimer's research has increased significantly over the past several years. Ronald Reagan's courage in coming forward and publically announcing his condition played an important role in raising public awareness of Alzheimer's and paved the way for the recent increases in research funding. This bill would complement these efforts.

Once again, the legislation I am introducing today authorizes the U.S. Mint to produce commemorative coins honoring Ronald Reagan while raising funds to help families care for their family members suffering from Alzheimer's disease. I urge my colleagues to support passage of this legislation.

Ronald Reagan's eternal optimism and deep seated belief in an even better future for our Nation was underscored when he said, ''I know that for America, there will always be a bright future ahead.'' This bill, in keeping with this quote's spirit, will help provide for a better future for many American families.

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

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

S. 1143

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 ''Ronald Reagan Commemorative Coin Act of 2001''.

SEC. 2. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—The Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall mint and issue the following coins:

(1) $5 GOLD COINS.—Not more than 100,000 $5 coins, which shall—

(A) weigh 8.359 grams;

(B) have a diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) $1 SILVER COINS.—Not more than 500,000 $1 coins, which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) BIMETALLIC COINS.—The Secretary may mint and issue not more than 200,000 $10 bimetallic coins of gold and platinum instead of the gold coins required under subsection (a)(1), in accordance with such specifications as the Secretary determines to be appropriate.

(c) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

SEC. 3. SOURCES OF BULLION.

(a) PLATINUM AND GOLD.—The Secretary shall obtain platinum and gold for minting coins under this Act from available sources.

(b) SILVER.—The Secretary may obtain silver for minting coins under this Act from stockpiles established under the Strategic and Critical Materials Stock Piling Act and from other available sources.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall—

(A) be emblematic of the presidency and life of former President Ronald Reagan;

(B) bear the likeness of former President Ronald Reagan on the obverse side; and

(C) bear a design on the reverse side that is similar to the depiction of an American eagle carrying an olive branch, flying above a nest containing another eagle and hatchlings, as depicted on the 2001 American Eagle Gold Proof coins.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2005''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) DESIGN SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Commission of Fine Arts; and

(2) reviewed by the Citizens Commemorative Coin Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular combination of denomination and quality of the coins minted under this Act.

(c) PERIOD FOR ISSUANCE.—The Secretary may issue coins minted under this Act only during the period beginning on January 1, 2005 and ending on December 31, 2005.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in subsection (d) with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins issued under this Act shall include a surcharge established by the Secretary, in an amount equal to not more than—

(1) $50 per coin for the $10 coin or $35 per coin for the $5 coin; and

(2) $10 per coin for the $1 coin.

SEC. 7. DISTRIBUTION OF SURCHARGES.

(a) IN GENERAL.—Subject to section 5134(f) of title 31, United States Code, the proceeds from the surcharges received by the Secretary from the sale of coins issued under this Act shall be paid promptly by the Secretary to the Department of Health and Human Services to be used by the Secretary of Health and Human Services for the purposes of—

(1) providing grants to charitable organizations that assist families in their efforts to provide care at home to a family member with Alzheimer's disease; and

(2) increasing awareness and educational outreach regarding Alzheimer's disease.

(b) AUDITS.—Any organization or entity that receives funds from the Secretary of Health and Human Services under subsection (a) shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to such funds.

SEC. 8. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, and Mr. AKAKA):

S. 1144. A bill to amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 ed seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I rise to introduce a bill that will re-authorize a small but highly effective program, the Emergency Food and Shelter Program, or EFS for short. The EFS program, which is administered by the Federal Emergency Management Agency, supplements community efforts to meet the needs of the homeless and hungry in all fifty States. I am very pleased that my colleagues on the Committee on Governmental Affairs, Senators COLLINS, LEVIN, DURBIN, and AKAKA, are joining me as original cosponsors of this legislation. Our committee has jurisdiction over the EFS program, and it is my hope that together we can generate even more bipartisan support for a program that makes a real difference with its tiny budget. The EFS program is a great help not only to the Nation's homeless population but also to working people who are trying to feed and shelter their families at entry-level wages. Services supplemented by the EFS funding, such as food banks and emergency rent/utility assistance programs, are especially helpful to families with big responsibilities but small paychecks.

One of the things that distinguishes the EFS program is the extent to which it relies on non-profit organizations. Local boards in counties, parishes, and municipalities across the country advertise the availability of funds, decide on non-profit and local government agencies to be funded, and monitor the recipient agencies. The local boards, like the program's National Board, are made up of charitable organizations including the National Council of Churches, the United Jewish Communities, Catholic Charities, USA, the Salvation Army, and the American Red Cross. By relying on community participation, the program keeps administrative overhead to an unusually low amount, less than 3 percent.

The EFS program has operated without authorization since 1994 but has been sustained by annual appropriations. The proposed bill will re-authorize the program for the next three years. It will also authorize modest funding increases over the amounts appropriated in recent years. A similar bill introduced by Senator THOMPSON and me in the last Congress, S. 1516, passed the Senate by Unanimous Consent.

In summary, FEMA's Emergency Food and Shelter Program is a highly efficient example of the government relying on the country's non-profit organizations to help people in innovative ways. The EFS program aids the homeless and the hungry in a majority of the Nation's counties and in all fifty States, and I ask my colleagues to support this program and our re-authorizing legislation.

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

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

S. 1144

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

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended to read as follows:

''SEC. 322. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this title $150,000,000 for fiscal year 2002, $160,000,000 for fiscal year 2003, and $170,000,000 for fiscal year 2004.''.

SEC. 2. NAME CHANGE TO NOMINATING ORGANIZATION.

Section 301(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331(b)) is amended by striking paragraph (5) and inserting the following:

''(5) United Jewish Communities.''.

SEC. 3. PARTICIPATION OF HOMELESS INDIVIDUALS ON LOCAL BOARDS.

Section 316(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11346(a)) is amended by striking paragraph (6) and inserting the following:

''(6) guidelines requiring each local board to include in their membership not less than 1 homeless individual, former homeless individual, homeless advocate, or recipient of food or shelter services, except that such guidelines may waive such requirement for any board unable to meet such requirement if the board otherwise consults with homeless individuals, former homeless individuals, homeless advocates, or recipients of food or shelter services.''.

By Mrs. BOXER:

S. 1145. A bill to amend the Internal Revenue Code of 1986 to extend the work opportunity credit to encourage the hiring of certain veterans, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Mr. President, I am introducing legislation to help the estimated 1.5 million veterans who are now living in poverty by giving a tax credit to those employers who hire them and put them on the road to financial independence. This idea was proposed and is supported by the National Coalition for Homeless Veterans and the Non-Commissioned Officers Association.

This legislation is based upon the current tax credit offered for employers who hire those coming off welfare. Veterans groups tell me that the current tax credit is underutilized by veterans because many are not receiving food stamps or are not on welfare. Because the bill I am introducing today bases eligibility on the poverty level, more veterans will be able to benefit from this credit.

My bill would allow employers to receive a hiring tax credit of 50 percent of the veteran's first year wages and a retention credit of 25 percent of the veteran's second year wages. Only the first $20,000 of wages per year will count toward the credit.

I offered this legislation as an amendment to the tax bill. While my amendment failed on a procedural vote, 49–50, opponents indicated that enacting this legislation would be a good thing to do. This being the case, I am hopeful that the Senate will take up and pass the bill I am introducing today in a bipartisan manner. It is the least we can do for our veterans who so bravely served our Nation and deserve our help.

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

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

S. 1145

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Veterans Opportunity to Work Act.''

SEC. 2. EXPANSION OF WORK OPPORTUNITY TAX CREDIT.

(a) IN GENERAL.—Section 51(d)(1) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'', and by adding at the end the following:

''(I) a qualified low-income veteran.''

(b) QUALIFIED LOW-INCOME VETERAN.—Section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following:

''(10) QUALIFIED LOW-INCOME VETERAN.—

''(A) IN GENERAL.—The term 'qualified low-income veteran' means any veteran whose gross income for the taxable year preceding the taxable year including the hiring date, was below the poverty line (as defined by the Office of Management and Budget) for such preceding taxable year.

''(B) VETERAN.—The term 'veteran' has the meaning given such term by paragraph (3)(B).

''(C) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified low-income veteran—

''(i) subsection (a) shall be applied by substituting '50 percent of the qualified first-year wages and 25 percent of the qualified second-year wages' for '40 percent of the qualified first year wages', and

''(ii) in lieu of paragraphs (2) and (3) of subsection (b), the following definitions and special rule shall apply:

''(I) QUALIFIED FIRST-YEAR WAGES.—The term 'qualified first-year wages' means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

''(II) QUALIFIED SECOND-YEAR WAGES.—The term 'qualified second-year wages' means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such individual determined under subclause (I).

''(III) ONLY FIRST $20,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—The amount of the qualified first and second year wages which may be taken into account with respect to any individual shall not exceed $20,000 per year.''.

(c) PERMANENCE OF CREDIT.—Section 51(c)(4) of the Internal Revenue Code of 1986 (relating to termination) is amended by inserting ''(except for wages paid to a qualified low-income veteran)'' after ''individual''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

By Mr. ALLARD:

S. 1146. A bill to amend the Act of March 3, 1875, to permit the State of Colorado to use land held in trust by the State as open space; to the Committee on Energy and Natural Resources.

Mr. ALLARD. Mr. President, today I am introducing legislation to fulfill the wishes of my fellow Coloradans to allow the State to protect 300,000 acres of State land as open space.

The origins of this issue date back to 1875 when Congress passed the legislation which authorized the Territory of Colorado to form a constitution, State government and be admitted into the Union. The 1875 Enabling Act established that Sections 16 and 36 of each township in the new State would be ''granted to said State for the support of common schools.'' The Federal directive to the State was clear: provide a sound financial basis for the long-term benefit of public schools. The Colorado State Constitution further strengthened this position and required that the new State Board of Land Commissioners manage its land holdings ''in such a matter as will secure the maximum possible amount'' for the public school fund.

Today, there are some three million surface acres of State trust lands which are leased for ranching, farming, oil and gas production and other uses. Some of these lands are the most beautiful parcels in the state and offer a tremendous natural resource.

Through the years, the lands have been a reliable, but a dwindling source of funds to the overall education budget. Currently, the State of Colorado spends approximately $3.5 billion annually on public schools, of this amount revenues from State trust lands account for about $22 million.

Now, however, Coloradans priorities have changed, including a strong desire to protect open space and the environment. These changes became evident in a 1996 voter approved State Constitutional Amendment which gave more flexibility in the management of the trust lands. Among other things, the Amendment established a 300,000 acre Stewardship Trust. The voters recognized that certain State trust lands may be more valuable in the future if they are kept in the trust land portfolio rather than disposed of for a short term financial gains. The lands in the new Stewardship Trust will be managed ''to maximize options for continued stewardship, public use or future disposition'' by protecting and enhancing the ''beauty, natural values, open space and wildlife habitat'' on these parcels. Further, it struck the provision requiring ''maximizing revenue'' and replaced it with a requirement that the land board to manage its land holdings ''in order to produce reasonable and consistent income over time.''

While the Amendment has withstood court challenges, it still remains that the Stewardship Trust could, in the future, cause a breach of the Enabling Act. In order to correct this potential breach, I am introducing this legislation with the full support of the State of Colorado to ensure that the wishes of the voters are upheld and the Stewardship Trust is fully implemented. There are two key points of the legislation. First, the bill allows 300,000 acres of state trust lands to be used for open space, wildlife habitat, scenic value or other natural value. Second, it exempts these lands from the requirement that they generate income for the common schools.

The Colorado State Land Board has a clear mission for implementing the Stewardship Trust: to protect the crown jewels of the state trust lands and ensure that these lands receive special protection from sale or development.

It is also clear that Colorado voters wanted to set aside 300,000 acres from potential development. I want to help the State fulfill these goals.

This is a unique bill and ensures the state's flexibility in managing the trust lands. It does not change the intent of the Stewardship Trust, just ensures that the Enabling Act and the State Constitution are consistent.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1146

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

SECTION 1. COLORADO TRUST LAND.

Section 7 of the Act of March 3, 1875 (18 Stat. 475, chapter 139) (commonly known as the ''Colorado Enabling Act''), is amended by inserting before the period at the end the following: ''and for use for open space, wildlife habitat, scenic value, or other natural value, regardless of whether the land generates income for the common schools as described under section 14, except that the amount of land used for natural value shall not exceed 300,000 acres''.

By Mr. NICKLES:

S. 1147. A bill to amend title X and title XI of the Energy Policy Act of 1992; to the Committee on Energy and Natural Resources.

Mr. NICKLES. Mr. President, I rise today to introduce legislation, the Thorium Remediation Reauthorization Act of 2001. This bill will provide authorization for the Federal Government to pay its share of decommissioning and remediation costs for a thorium facility in West Chicago, Illinois. In a DOE proceeding, it was determined that the government is responsible for 55.2 percent of all West Chicago cleanup costs because 55.2 percent of West Chicago tailings resulted from Federal contracts. Under Title X of the Energy Policy Act of 1992 (''EPACT''), the thorium licensee pays for all West Chicago cleanup costs, and is then reimbursed, though annual appropriations, the government's share of those costs.

There is already more than a $60 million shortage in authorized funding for the Federal share of West Chicago cleanup costs. Despite that, the thorium licensee has continued to pay all decommissioning costs at the West Chicago factory site, as well as remediation costs at vicinity properties known as Reed-Keppler Park, Residential Properties, and Kress Creek. Remediation of Reed-Keppler Park was finished late last year and remediation of more than 600 Residential Properties is expected to be substantially complete by the end of this year. Decommissioning of the factory site, with the exception of groundwater, is expected to conclude in 2004. Cleanup requirements at Kress Creek have not been determined, and until those are established, the costs associated with the cleanup of that vicinity property cannot be accurately projected.

The significant costs associated with the West Chicago cleanup are a result, in large part, of extensive government use of the facility during the development of our country's nuclear defense program, including the Manhattan project. With the exception of Kress Creek and groundwater, total cleanup costs at the factory site and all vicinity properties can now be estimated with reasonable certainty. The $123 million authorized by this bill will permit the government to begin reimbursing the amount it is already in arrears to the thorium licensee. It also will provide the authorization necessary for the government to pay its share of costs, excluding costs for Kress Creek and for groundwater, that will be incurred by the licensee through completion of West Chicago cleanup.

Funding for this reauthorization would come from the General Treasury. Thus, this legislation will not diminish the availability of funds in the DOE's Decontamination and Decommissioning Fund, from which both Title X uranium licensees and the DOE's gaseous diffusion plants receive funding.

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

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

S. 1147

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

SECTION 1. REAUTHORIZATION OF THORIUM REIMBURSEMENT.

(a) Section 1001(b)(2)(C) of the Energy Policy Act of 1992 (42 U.S.C. 2296a) is amended by striking ''$140,000,000'' and inserting ''$263,000,000''.

(b) Section 1003(a) of such Act (42 U.S.C. 2296a–2) is amended by striking ''$490,000,000'' and inserting ''$613,000,000''.

(c) Section 1802(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2297g–1) is amended by striking ''$488,333,333'' and inserting ''$508,833,333''.

By Mr. BURNS:

S. 1148. A bill to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant irrigation districts; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, I rise today to introduce a piece of legislation that helps a large number of family farmers on the border of Montana and North Dakota. The Lower Yellowstone Irrigation Projects Title Transfer moves ownership of these irrigation projects from Federal control to local control. Both the Bureau of Reclamation and those relying on the projects for their livelihood agree there is little value in having the Federal Government retain ownership.

I introduced this legislation in the last Congress, and continue to believe it helps us to achieve the long term goals of Montana irrigators, and the mission of the Bureau of Reclamation. Just this week I attended the confirmation hearing of John W. Keys, III, who is the designate for Commissioner of the Bureau of Reclamation. I asked his position on title transfers of irrigation projects like the Lower Yellowstone, where local irrigation districts have successfully managed the Federal properties, and where the Bureau has encouraged the transfer of title to the Districts. His response to me was very encouraging. He stated this type of title transfer ''makes sense and is an opportunity to move facilities from Federal ownership to more appropriate control.'' He has promised to work with me and the Irrigation District to make this a reality, and I look forward to it.

The history of these projects dates to the early 1900's with the original Lower Yellowstone project being built by the Bureau of Reclamation between 1906 and 1910. The Savage Unit was added in 1947–48. The end result was the creation of fertile, irrigated land to help spur economic development in the area. To this day, agriculture is the number one industry in the area.

The local impact of the projects is measurable in numbers, but the greatest impacts can only be seen by visiting the area. About 500 family farms rely on these projects for economic substance, and the entire area relies on them to create stability in the local economy. In an area that has seen booms and busts in oil, gas, and other commodities, these irrigated lands continued producing and offering a foundation for the businesses in the area.

As we all know, the agricultural economy is not as strong as we'd like it to be, but these irrigated lands offer a reasonable return over time and are the foundation for strong communities based upon the ideals that have made this country successful. The 500 families impacted are hard working, honest producers, and I can think of no better people to manage their own irrigation projects.

Every day, we see an example of where the Federal Government is taking on a new task. We can debate the merits of these efforts on an individual basis, but I think we can all agree that while the government gets involved in new projects there are many that we can safely pass on to state or local control. The Lower Yellowstone Projects are a prime example of such an opportunity, and I ask my colleagues to join me in seeing this legislation passed as quickly as possible.

By Mr. SMITH of New Hampshire:

S. 1150. A bill to waive tolls on the Interstate System during peak holiday travel periods; to the Committee on Environment and Public Works.

Mr. SMITH of New Hampshire. Mr. President, I rise to introduce the Interstate Highway System Toll-Free Holiday Act.

As we move into this Fourth of July holiday to celebrate our nation's 225th birthday, many will do so in true American fashion by loading up the kids and the dog in the family car and heading out for a fun holiday vacation. Unfortunately, many of those family trips will quickly turn into frustration. Just as you get on the road and begin that family outing, you are greeted by a screeching halt, faced with what seems to be an endless line that is not moving. Soon, the kids will grow restless and angry. You've just reached the end of the line of the first toll booth and the delay and frustration begins. Of course, when you do finally make it to the booth, they take your money. Every holiday, no exception. I want to help make those holiday driving vacations more enjoyable by removing that toll booth frustration. My legislation will provide the much deserved relief from all of that holiday grief.

The Interstate Highway System Toll-Free Holiday Act provides that no tolls will be collected and no vehicles will be stopped at toll booths on the Interstate System during peak holiday travel periods. The exact duration of the toll waivers will be left to the States to determine, but will include, at a minimum, the entire 24 hour period of each legal Federal holiday. The bill will also authorize the Secretary of Transportation to reimburse the State, at the State's request, for lost toll revenues out of the Highway Trust Fund, which is funded by the tax that we all pay when we purchase gas for our cars. I want to keep the State highway funds whole, and, at the same time, provide relief to all those who simply want a hassle-free holiday trip.

There are currently some 2,200 miles of toll facilities on the 42,800 mile Interstate System. On peak holiday travel days, traffic increases up to 50 percent over a typical weekday. In New Hampshire last year, the I–95 Hampton toll booth had a 10 percent average increase in traffic over the four-day Fourth of July weekend compared to the previous weekend. That is equivalent to an additional 8,000 vehicles passing through this one toll booth every day. That increase in volume at the toll sites is not only an inconvenience in time and money, but also adds to safety concerns and, because vehicle emissions are higher when idling, air quality suffers. I am pleased that this bill will alleviate the headaches and problems associated with increased toll booth traffic on holidays.

This is just one of what will be a series of bills that I will be introducing, as the Ranking Member of the Environment and Public Works Committee, to address transportation needs in New Hampshire and across the Nation, as we prepare for the reauthorization of the next major comprehensive highway bill in 2003.

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

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

S. 1150

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 ''Interstate Highway System Toll-Free Holiday Act''.

SEC. 2. WAIVER OF TOLLS ON THE INTERSTATE SYSTEM DURING PEAK HOLIDAY TRAVEL PERIODS.

(a) DEFINITIONS.—In this section, the terms ''Interstate System'', ''public authority'', ''Secretary'', ''State'', and ''State transportation department'' have the meanings given the terms in section 101(a) of title 23, United States Code.

(b) WAIVER.—

(1) IN GENERAL.—No tolls shall be collected, and no vehicle shall be required to stop at a toll booth, for any toll highway, bridge, or tunnel on the Interstate System during any peak holiday travel period determined under paragraph (2).

(2) PEAK HOLIDAY TRAVEL PERIODS.—For the purposes of paragraph (1), the State transportation department or the public authority having jurisdiction over the toll highway, bridge, or tunnel shall determine the number and duration of peak holiday travel periods, which shall include, at a minimum, the 24-hour period of each legal public holiday specified in section 6103(a) of title 5, United States Code.

(c) FEDERAL REIMBURSEMENT.—

(1) IN GENERAL.—For each fiscal year, upon request by a State or public authority and approval by the Secretary, the Secretary shall reimburse the State or public authority for the amount of toll revenue not collected by reason of subsection (b).

(2) REQUESTS FOR REIMBURSEMENT.—On or before September 30 of a fiscal year, each State or public authority that desires a refund described in paragraph (1) shall submit to the Secretary a request for reimbursement, based on actual traffic data, for the amount of toll revenue not collected by reason of subsection (b) during the fiscal year.

(3) USE OF REIMBURSED FUNDS.—A request for reimbursement under paragraph (2) shall include a certification by the State or public authority that the amount of the reimbursement will be used only for debt service or for operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this subsection.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1151. A bill to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.

Mr. REID. Mr. President, I rise today along with my good friend and colleague from Nevada, Senator ENSIGN because I am deeply concerned that the Federal Aviation Administration has failed to develop the incentives for quiet technology aircraft.

The bill we are introducing today, the ''Grand Canyon Quiet Technology Implementation Act,'' completes the Congressional mandates contained in the National Park Air Tour Management Act of 2000 which called for the implementation of ''reasonably achievable'' quiet technology standards for the Grand Canyon air tour operators.

Key provisions of the Act called for the Federal Aviation Administration, by April 5th of this year, to: 1. Designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology; and 2. establish corridors for commercial air tour operations by fixed-wing and helicopter aircraft that employ quiet aircraft technology, or explain to Congress why they can't. The agency has failed to comply with any of these provisions.

The Act also provides that operators employing quiet technology shall be exempted from operational flight caps. This relief is essential to the very survival of many of these air tour companies. By not complying with these Congressional mandates, the Federal Aviation Administration places the viability of the Grand Canyon air tour industry in jeopardy.

While Senator ENSIGN and I along with the air tour community have sought to work with the Federal agencies in a cooperative manner, our repeated overtures have been summarily ignored, which forces us to take further legislative action.

Our bill simply requires the Federal Aviation Administration to do its job. It identifies ''reasonably achievable'' quiet technology standards and provides relief for air tour operators who have spent many years and millions of dollars of their money voluntarily transitioning to quieter aircraft to help restore natural quiet to the Grand Canyon.

I would like to compliment my good friend from Arizona, Senator JOHN MCCAIN for his vision and leadership in the Senate in recognizing that quieter aircraft was the key to restoring natural quiet to the Grand Canyon. During his tenure as chairman of the Senate Commerce Committee, it was Senator MCCAIN who insisted on the quiet technology provisions contained in the National Park Air Tour Management Act

of 2000. It was Senator MCCAIN who wanted to ensure that those air tour companies which already have made huge investments in current technology quiet aircraft modifications were rewarded for their initiative. It was Senator MCCAIN, an advocate for restoring natural quiet to the Grand Canyon, who took the lead in seeking to ensure that the elderly, disabled and time-constrained visitor still would be able to enjoy the magnificence of the Grand Canyon by air. The legislation we are introducing today, supports Senator MCCAIN's vision.

The National Park Air Tour Management Act of 2000 is clear. It calls for the implementation of ''reasonably achievable'' quiet technology incentives. Our Grand Canyon Quiet Technology Implementation legislation is based on today's best aircraft technology.

Some may ask what is ''reasonably achievable?'' It constitutes the following: replacing smaller aircraft with larger and quieter aircraft with more seating capacity reducing the number of flights needed to carry the same number of passengers; adding propellers on turbine-powered airplanes or main rotor blades on helicopters which reduces prop tip speeds by reducing engine RPMs; modifying engine exhaust systems with high-tech mufflers to absorb engine noise; modifying helicopter tail rotors with high-tech components for quieter operation.

These modifications typically reduce the sound generated by these aircraft by more than 50 percent.

This is what is ''reasonably achievable'' in aviation technology. In the year 2001, this is essentially all that can be done to make aircraft quieter. Operators which have spent millions of dollars to make these modifications, in our view, have complied with the intent of the law and deserve relief.

Let us not forget the original intent of this legislation to help restore natural quiet to the Grand Canyon and, as the 1916 Organic Act directs, to provide for the enjoyment of our national parks ''in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

Air touring is consistent with the Park Service mission.

Based on current air tour restrictions, more than 1.7 million tourists will be denied access to the Grand Canyon during the next decade at a cost to air tour operators conservatively estimated at $250 million.

Senator ENSIGN and I agree that, to the extent possible and practical, that the quieter these air tour aircraft can be made to be, the better for everyone. That's why it is so important that the Grand Canyon Quiet Technology Implementation Act become the law.

I ask unanimous consent that the text of the Grand Canyon Quiet Technology Implementation Act be printed in the RECORD.

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

S. 1151

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 referred to as the ''Grand Canyon Quiet Technology Implementation Act''.

SEC. 2. AMENDMENTS TO QUIET AIRCRAFT TECHNOLOGY.

(a) IN GENERAL.—Section 804 of the National Parks Air Tour Management Act of 2000 (49 U.S.C. 40128 note) is amended by adding at the end the following new subsection:

''(f) ALTERNATIVE QUIET AIRCRAFT TECHNOLOGY.—

''(1) GENERAL RULE.—Notwithstanding any other provision of law, an air tour operator based in Clark County, Nevada or at the Grand Canyon National Park Airport shall be treated as having met the requirements for quiet aircraft technology that apply with respect to commercial air tour operations for tours described in subsection (b), if the air tour operator has met the following requirements:

''(A) The aircraft used by the air tour operator for such tours—

''(i) meet the requirements designated under subsection (a); or

''(ii) if not previously powered by turbine engines, have been modified to be powered by turbine engines and, after the conversion—

''(I) have a higher number of propellers (in the case of fixed-wing aircraft) or main rotor blades (in the case of helicopters) than the aircraft had before the conversion, thereby resulting in a reduction in prop or blade tip speeds and engine revolutions per minute;

''(II) have current technology engine exhaust mufflers;

''(III) in the case of helicopters, have current technology quieter tail rotors; or

''(IV) have any other modifications, approved by the Federal Aviation Administration, that significantly reduce the aircraft's sound.

''(B) The air tour operator has replaced, for use for the tours, smaller aircraft with larger aircraft that have more seating capacity, thereby reducing the number of flights needed to transport the same number of passengers.

''(C) The air tour operator can safely demonstrate, through flight testing administered by the Federal Aviation Administration that applies a sound measurement methodology accepted as standard, that the tour operator can fly existing aircraft in a manner that achieves a sound signature in the same noise range or having the same or similar sound effect as the aircraft that satisfy the requirements of subparagraph (A) or (B).

''(2) EXEMPTION FROM FLIGHT CAPS.—Any air tour operator that meets the requirements described in paragraph (1), shall be—

''(A) exempt from the operational flight allocations referred to in subsection (c) and from flight curfews and any other requirement not imposed solely for reasons of aviation safety; and

''(B) granted air tour routes that are preferred for the quality of the scenic views for—

''(i) tours from Clark County, Nevada to the Grand Canyon National Park Airport; and

''(ii) 'local loop' tours referred to in subsection (b)(2).''.

(b) REINSTATEMENT OF CERTAIN AIR TOUR ROUTES.—Any air tour route from Clark County, Nevada, to the Grand Canyon National Park Airport, Tusayan, Arizona, that was eliminated, or altered in any way, by regulation or by action by the Federal Aviation Administration, on or after January 1, 2001, and before the date of enactment of this Act shall be reinstated effective as of such date of enactment and no further changes, modifications, or elimination of any other air tour route flown by an air tour company based in Clark County, Nevada or at the Grand Canyon National Park Airport, Tusayan, Arizona may be made after such date of enactment without the approval of Congress.

By Mr. CRAIG (for himself and Mrs. FEINSTEIN):

S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CRAIG. Mr. President, I rise today to introduce the ''Grassland Reserve Act'', a bill to authorize a voluntary program to purchase permanent or 30 year easement from willing producers in exchange for protection of ranches, grasslands, and lands of high resource value. I am pleased that Senators FEINGOLD, and THOMAS, have joined as original cosponsors.

Grasslands provided critical habitat for complex plant and animal communities throughout much of North America. However, many of these lands have been, and are under pressure to be, converted to other uses, threatening and eliminating plant and animal communities unique to this continent. A significant portion of the remaining grasslands occur on working ranches. Ranchland provides important open-space buffers for animal and plant habitat. Moreover, ranching forms the economic backbone for much of rural western United States. Loss of this economic activity will invariably lead to the loss of the open space that is indispensable for plant and animal communities and for citizens who love the western style of life.

As a rancher from a rural community in Idaho, I have noticed the changes taking place in some parts of my State where, for a number of reasons, working ranchers have been sold into ranchetts leaving the landscape divided by fences and homes where cattle and wildlife once roamed. Currently, no Federal programs exist to conserve grasslands, ranches, and other lands of high resource values, other than wetlands, on a national scale. I believe the United States needs a voluntary program to conserve these lands, and the Grasslands Reserve Act does just that.

Specifically, this bill establishes the Grasslands Reserve program through the Natural Resources Conservation Service to assist owners in restoring and conserving eligible land. To be eligible to participate in the program an owner must enroll 100 contiguous acres of land west of the 90th meridian or 50 contiguous acres of land east of the 90th meridian. A maximum of 1,000,000 acres may be enrolled in the program in the form of a permanent or a 30-year easement. Land eligible for the program includes: native grasslands,

working ranches, other areas that contain animal or plant populations of significant ecological value, and land that is necessary for the efficient administration of the easement.

The terms of the easements allow for grazing in a manner consistent with maintaining the viability of native grass species. All uses other than grazing, such as hay production, may be implemented according to the terms of a written agreement between the landowner and easement holder. Easements prohibit the production of row crops, and other activities that disturb the surface of the land covered by the easement. The Secretary will work with the State technical committees to establish criteria to evaluate and rank applications for easements which will emphasize support for grazing operations, plant and animal biodiversity, and native grass and shrubland under the greatest threat of conversion. The Secretary may prescribe terms to the easement outlining how the land shall be restored including duties of the land owner and the Secretary. If the easement is violated, the Secretary may require the owner to refund all or part of the payments including interest. The Secretary may also conduct periodic inspections, after providing notice to the owner, to determine that the landowner is in compliance with the terms of the easement. The easement may be held and enforced by a private conservation, land trust organization, or a State agency in lieu of the Secretary, if the Secretary determines that granting such permission will promote grassland protection and the landowner agrees.

This legislation requires the Secretary to make payments for permanent easements based on the fair market value of the land less the grazing value of the land encumbered by the easement, and for 30 year easements the payment will be 30 percent of the fair market value of the land less the grazing value of the land encumbered by the easement. Payments may be made in one lump sum or over a 10 year period. Landowners may also choose to enroll their land in a 30-year rental agreement instead of a 30-year easement where the Secretary would make thirty annual payments which approximate the value of a lump sum payment the owner would receive under a 30-year easement. The Secretary is required to assess the payment schedule every five years to make sure that the payments do approximate the value of a 30-year easement. USDA is also required to cover up to 75 percent of the cost of restoration and provide owners with technical assistance to execute the easement and restore the land.

I believe this legislation fills a need we have in our agriculture policy and I look forward to working with other members to include the Grasslands Reserve program in a responsible and balanced farm bill.

Mrs. FEINSTEIN. Mr. President, today I am pleased to join my colleague from Idaho to introduce legislation that provides fair compensation to producers and other landowners who maintain open spaces for plants and animals to thrive.

This bill creates a voluntary program authorizing the United States Department of Agriculture, USDA, to obtain either 30-year or permanent easements from landowners in exchange for a cash payment. Easements allow for grazing while maintaining the viability of native grass species. Moreover, these uses must only occur upon the conclusion of the local bird nesting season.

Vast amounts of grassland are being lost to urban development every year in large part because of economic pressures faced by ranchers, livestock producers, and other grassland owners.

Currently, there are no long-term programs to protect grasslands on a national scale. The Grassland Reserve Act provides real options to financially-strapped land owners of grasslands who wish to keep their lands in a natural state. There is a need for this bill because existing programs to protect lands, such as the Forest Legacy program, target forested lands only.

This legislation represents a win-win situation for both the environment and people who make their livelihood on grasslands. The loss of grassland is a serious problem for preserving wildlife habitat and a rural way of life. This bill is a step in the right direction to protect these lands from future development.

I have always felt that protecting our Nation's unique natural areas, including grasslands, should be one of our highest priorities. I invite my colleagues to join Senator CRAIG and me in supporting this legislation.

By Mr. LEVIN (for himself and Mr. WARNER) (by request):

S. 1155. A bill to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2002, and for other purposes; to the Committee on Armed Services.

Mr. LEVIN. Mr. President, I ask unanimous consent that the text of the President's request for Defense and the text of the bill be printed in the RECORD, including the section-by-section analysis.

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

S. 1155

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 ''National Defense Authorization Act for Fiscal Year 2002''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Army as follows:

(1) For aircraft, $1,925,491,000.

(2) For missiles, $1,859,634,000.

(3) For weapons and tracked combat vehicles, $2,276,746,000.

(4) For ammunition, $1,193,365,000.

(5) For other procurement, $3,961,737,000.

(6) For chemical agents and munitions destruction, $1,153,557,000 for—

(A) the destruction of lethal chemical weapons in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521) and

(B) the destruction of chemical warfare material of the United States that is not covered by section 1412 of such Act.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds axe hereby authorized to be appropriated for fiscal year 2002 for procurement for the Navy as follows:

(1) For aircraft, $8,252,543,000.

(2) For weapons, including missiles and torpedoes, $1,433,475,000.

(3) For shipbuilding and conversion, $9,344,121,000.

(4) For other procurement, $4,097,576,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Marine Corps in the amount of $981,724,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement of ammunition for the Navy and Marine Corps in the amount of $457,099,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Air Force as follows:

(1) For aircraft, $10,744,458,000.

(2) For missiles, $3,233,536,000.

(3) For procurement of ammunition, $865,344,000.

(4) For other procurement, $8,158,521,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2002 for defense-wide procurement in the amount of $1,603,927,000.

SEC. 105. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Defense Inspector General in the amount of $1,800,000.

SEC. 106. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the Department of Defense for procurement for carrying out health care programs, projects, and activities of the Department of Defense in the total amount of $267,915,000.

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces for research, development, test, and evaluation, as follows:

(1) For the Army, $6,693,920,000.

(2) For the Navy, $11,123,389,000.

(3) For the Air Force, $14,343,982,000.

(4) For Defense-wide research, development, test, and evaluation, $15,268,142,000, of which $217,355,000 is authorized for the Director of Operational Test and Evaluation.

(5) For the Defense Health Program, $65,304,000.

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense, for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $21,191,680,000.

(2) For the Navy, $26,961,382,000.

(3) For the Marine Corps, $2,892,314,000.

(4) For the Air Force, $26,146,770,000.

(5) For the Defense-wide activities, $12,518,631,000.

(6) For the Army Reserve, $1,787,246,000.

(7) For the Naval Reserve, $1,003,690,000.

(8) For the Marine Corps Reserve, $144,023,000.

(9) For the Air Force Reserve, $2,029,866,000.

(10) For the Army National Guard, $3,677,359,000.

(11) For the Air National Guard, $3,867,361,000.

(12) For the Defense Inspector General, $150,221,000.

(13) For the United States Court of Appeals for the Armed Forces, $9,096,000.

(14) For Environmental Restoration, Army, $389,800,000.

(15) For Environmental Restoration, Navy, $257,517,000.

(16) For Environmental Restoration, Air Force, $385,437,000.

(17) For Environmental Restoration, Defense-wide, $23,492,000.

(18) For Environmental Restoration, Formerly Used Defense Sites, $190,255,000.

(19) For Overseas Humanitarian, Disaster, and Civic Aid programs, $49,700,000.

(20) For Drug Interdiction and Counterdrug Activities, Defense-wide, $820,381,000.

(21) For the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, $25,000,000.

(22) For the Defense Health Program, $17,565,750,000.

(23) For Cooperative Threat Reduction programs, $403,000,000.

(24) For Overseas Contingency Operations Transfer Fund, $2,844,226,000.

(25) For Support for International Sporting Competitions, Defense, $15,800,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $1,951,986,000.

(2) For the National Defense Sealift Fund, $506,408,000.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2002 from the Armed Forces Retirement Home Trust Fund the sum of $71,440,000 for the operation of the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the Naval Home.

SEC. 304. ACQUISITION OF LOGISTICAL SUPPORT FOR SECURITY FORCES.

Section 5 of the Multinational Force and Observers Participation Resolution (Public Law 97–132; 95 Stat. 1695; 22 U.S.C. 3424) is amended by adding at the end the following new subsection:

''(d) The United States may use contractors or other means to provide logistical support to the Multinational Force and Observers under this section in lieu of providing such support through a logistical support unit comprised of members of the armed forces. Notwithstanding subsections (a) and (b) and section 7(b), support by a contractor or other means under this subsection may be provided without reimbursement, whenever the President determines that such action enhances or supports the national security interests of the United States.''.

SEC. 305. CONTRACT AUTHORITY FOR DEFENSE WORKING CAPITAL FUNDS.

Contract authority in the amount of $427,100,000, to remain available until September 30, 2002, is hereby authorized and appropriated to the Defense Working Capital Fund for the procurement, lease-purchase with substantial private sector risk, capital or operating multiple-year lease, of a capital asset, multiple-year time charter of a commercial craft or vessel and associated services.

SEC. 310. REIMBURSE EPA FOR CERTAIN COSTS IN CONNECTION WITH HOOPER SANDS SITE, IN SOUTH BERWICK, MAINE.

(a) AUTHORITY TO REIMBURSE EPA.—Using funds described in subsection (b), the Secretary of the Navy may pay $1,005,478.00 to the Hooper Sands Special Account within the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 (26 U.S.C. 9507) to reimburse the Environmental Protection Agency in full for the Remaining Past Response Costs incurred by the agency for actions taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.) at the Hooper Sands site in South Berwick, Maine, pursuant to an Interagency Agreement entered into by the Department of the Navy and the Enviromental Protection Agency in January 2001.

(b) SOURCE OF FUNDS.—Any payment under subsection (a) shall be made using the amounts authorized to be appropriated by paragraph (15) of section 301 to the Enviromental Restoration, Navy account, established by section 2703(a)(3) of title 10, United States Code.

SEC. 311. EXTENSION OF PILOT PROGRAM FOR THE SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES

Section 351(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law. 105–85; 111 Stat. 1629, 1692) is amended to read as follows:

''(2) The Secretary may carry out the pilot program during the period beginning on the date of enactment of this Act through September 30, 2003.''.

SEC. 312. ELIMINATION OF REPORT ON CONTRACTOR REIMBURSEMENT COSTS.

Section 2706 of title 10, United States Code, is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

Subtitle C—Commissaries and Nonappropriated Fund Instrumentalities

SEC. 315. COSTS PAYABLE TO THE DEPARTMENT OF DEFENSE AND OTHER FEDERAL AGENCIES FOR SERVICES PROVIDED TO THE DEFENSE COMMISSARY AGENCY.

Section 2482(b)(1) of title 10, United States Code, is amended by striking ''However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).'' and inserting ''The Defense Commissary Agency may not pay for any service provided by a Defense working capital fund activity which exceeds the price at which the service could be procured through full and open competition by the Defense Commissary Agency, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)). In determining the cost for providing such service the Defense Commissary Agency may pay a Defense working capital fund activity those administrative and handling costs it would be required to pay for the provision of such services had the Defense Commissary Agency acquired them under full and open competition. Under no circumstances will any costs associated with mobilization requirements, maintenance of readiness, or establishment or maintenance of infrastructure to support such mobilization or readiness requirements, be included in rates charged the Defense Commissary Agency.''.

SEC. 316. REIMBURSEMENT FOR NON-COMMISSARY USE OF COMMISSARY FACILITIES.

(a) IN GENERAL.—Chapter 147 of title 10, United States Code, is amended by inserting at the beginning of the chapter the following new section:

''§ 2481. Reimbursement for non-commissary use of commissary facilities

''If a commissary facility acquired, constructed or improved (in whole or in part) with commissary surcharge revenues is used for non-commissary purposes, the Secretary of the military department concerned shall reimburse the commissary surcharge revenues for the commissary's share of the depreciated value of the facility.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 147 is amended by inserting before the item relating to section 2482 the following new item:

''2481. Reimbursement for non-commissary use of commissary facilities.''.

SEC. 317. COMMISSARY CONTRACTS AND OTHER AGENCIES AND INSTRUMENTALITIES.

Section 2482(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

''(2) Where the Secretary of Defense authorizes the Defense Commissary Agency to sell limited exchange merchandise as commissary store inventory under section 2486(b)(11) of this title, the Defense Commissary Agency shall enter into a contract or other agreement to obtain such merchandise available from the Armed Service Exchanges, provided that such merchandise shall be obtained at a cost of no more than the exchange retail price less the amount of commissary surcharge authorized to be collected by section 2486 of this title. If such merchandise is procured by the Defense Commissary Agency from other than the Armed Service Exchanges, the limitations provided in section 2486(e) of this title apply.''.

SEC. 318. OPERATION OF COMMISSARY STORES.

Section 2482(a) of title 10, United States Code, is amended by striking ''A contract with a private person'' and all that remains to the end of the subsection.

Subtitle D—Other Matters

SEC. 320. REIMBURSEMENT FOR RESERVE INTELLIGENCE SUPPORT.

(a) Appropriations available to the Department of Defense for operations and maintenance may be used to reimburse National Guard and Reserve units or organizations for the pay, allowances and other expenses which are incurred by such National Guard and Reserve units or organizations when members of the National Guard or Reserve provide intelligence, including counterintelligence, support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program, the Joint Military Intelligence Program, and the Tactical Intelligence and Related Activities aggregate.

(b) Nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

SEC. 321. DISPOSAL OF OBSOLETE AND EXCESS MATERIALS CONTAINED IN THE NATIONAL DEFENSE STOCKPILE.

Subject to the conditions specified in section 10(c) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. §98h-1(c)), the President may dispose of the following obsolete and excess materials contained in the National Defense Stockpile in the following quantities:

Bauxite, Refractory, 40,000 short tons.
Chromium Metal, 3,512 short tons.
Iridium, 25,140 troy ounces.
Jewel Bearings, 30,273,221 pieces.
Manganese, Ferro HC, 209,074 short tons.
Palladium, 11 troy ounces.
Quartz Crystal, 216,648 pounds.
Tantalum Metal Ingot, 120,228 pounds contained tantalum.
Tantalum Metal Powder, 36,020 pounds contained tantalum.
Thorium Nitrate, 600,000 pounds.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2002, as follows:

(1) The Army, 480,000.
(2) The Navy, 376,000.
(3) The Marine Corps, 172,600.
(4) The Air Force, 358,800.

Subtitle B—Reserve Forces

SEC. 405. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2002, as follows:

(1) The Army National Guard of the United States, 350,000.
(2) The Army Reserve, 205,000.
(3) The Naval Reserve, 87,000.
(4) The Marine Corps Reserve, 39,558.
(5) The Air National Guard of the United States, 108,400.
(6) The Air Force Reserve, 74,700.
(7) The Coast Guard Reserve, 8,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year, and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

SEC. 406. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2002, the following number of Reserves to be serving on full-time active duty or, in the case of members of the National Guard, full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 22,974.

(2) The Army Reserve, 13,108.

(3) The Naval Reserve, 14,811.

(4) The Marine Corps Reserve, 2,261.

(5) The Air National Guard of the United States, 11,591.

(6) The Air Force Reserve, 1,437.

SEC. 407. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The Reserve Components of the Army and the Air Force are authorized strengths for military technicians (dual status) as of September 30, 2002, as follows:

(1) For the Army Reserve, 5,999.

(2) For the Army National Guard of the United States, 23,128.

(3) For the Air Force Reserve, 9,818.

(4) For the Air National Guard of the United States, 22,422.

SEC. 408. FISCAL YEAR 2002 LIMITATION ON NUMBER OF NON-DUAL STATUS TECHNICIANS.

The number of civilian employees who are non-dual status technicians of a reserve component of the Army or Air Force as of September 30, 2002, may not exceed the following:

(1) For the Army Reserve, 1,095.

(2) For the Army National Guard of the United States, 1,600.

(3) For the Air Force Reserve, 0.

(4) For the Air National Guard of the United States, 350.

SEC. 409. AUTHORIZED STRENGTHS: RESERVE OFFICERS AND SENIOR ENLISTED MEMBERS ON ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY FOR ADMINISTRATION OF THE RESERVES OR NATIONAL GUARD.

(a) IN GENERAL.—Section 12011 of title 10, United States Code, is amended by amending the body of the section to read as follows:

''(a) CEILINGS FOR FULL-TIME RESERVE COMPONENT FIELD GRADE OFFICERS.—The number of reserve officers of the reserve components of the Army, Navy, Air Force, and Marine Corps who may be on active duty in the pay grades of O–4, O–5, O–6 for duty described in sections 10211, 10302 through 10305, 123 10, or 12402 of this title, or full-time National Guard duty (other than for training) under section 502(f) of title 32, or section 708 of title 32, may not, at the end of any fiscal year, exceed a number for that grade and reserve component in accordance with the following tables:

''Army National Guard

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	370
26,000	1,930	1,085	385
28,000	2,070	1,160	400
30,000	2,200	1,235	405
32,000	2,330	1,305	408
34,000	2,450	1,375	411
36,000	2,570	1,445	411
38,000	2,670	1,515	411
40,000	2,770	1,580	411
42,000	2,837	1,644	411

''U.S. Army Reserve

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
10,000	1,390	740	230
11,000	1,529	803	242
12,000	1,668	864	252
13,000	1,804	924	262
14,000	1,940	984	272
15,000	2,075	1,044	282
16,000	2,210	1,104	291
17,000	2,345	1,164	300
18,000	2,479	1,223	309
19,000	2,613	1,282	318
20,000	2,747	1,341	327
21,000	2,877	1,400	336

''U.S. Naval Reserve

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
10,000	807	447	141
11,000	867	467	153
12,000	924	485	163
13,000	980	503	173
14,000	1,035	521	183
15,000	1,088	538	193
16,000	1,142	555	203
17,000	1,195	565	213
18,000	1,246	575	223
19,000	1,291	585	233
20,000	1,334	595	242
21,000	1,364	603	250
22,000	1,384	610	258
23,000	1,400	615	265
24,000	1,410	620	270

''U.S. Marine Corps Reserve

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
1,100	106	56	20
1,200	110	60	21
1,300	114	63	22
1,400	118	66	23
1,500	121	69	24
1,600	124	72	25
1,700	127	75	26
1,800	130	78	27
1,900	133	81	28
2,000	136	84	29
2,100	139	87	30
2,200	141	90	31
2,300	143	92	32
2,400	145	94	33
2,500	147	96	34
2,600	149	98	35

''Air National Guard

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
5,000	333	335	251
6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	630	296
11,000	740	688	305
12,000	807	742	314
13,000	873	795	323
14,000	939	848	332
15,000	1,005	898	341
16,000	1,067	948	350
17,000	1,126	998	359
18,000	1,185	1,048	368
19,000	1,235	1,098	377
20,000	1,283	1,148	380

''U.S. Air Force Reserve

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
500	83	85	50
1,000	155	165	95
1,500	220	240	135
2,000	285	310	170
2,500	350	369	203
3,000	413	420	220
3,500	473	464	230

''U.S. Air Force Reserve—Continued

AGR Population	O–4 (MAJ)	O–5 (LTC)	O–6 (COL)
4,000	530	500	240
4,500	585	529	247
5,000	638	550	254
5,500	688	565	261
6,000	735	575	268
7,000	770	595	280
8,000	805	615	290
10,000	835	635	300

''(b) GRADE SUBSTITUTIONS FOR LOWER GRADE CEILINGS.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

''(c) DETERMINATION OF AUTHORIZED CEILINGS.—If the total number of members serving in the grades prescribed in the above tables is between any two consecutive numbers in the first column of the appropriate table, the corresponding authorized strengths for each of the grades shown in that table, for that component, are determined by mathematical interpolation between the respective numbers of the two strengths. If the total numbers of members serving on AGR duty in the first column are greater or less than the figures listed in the first column of the appropriate table, the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as reflected in the nearest limit shown in the table.

''(d) SECRETARIAL WAIVER.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the number of reserve officers that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strength in that controlled grade.''.

(b) IN GENERAL.—Section 12012 of title 10, United States Code, is amended by amending the body of the section to read as follows:

C4 (a) CEILINGS FOR FULL-TIME RESERVE COMPONENT SENIOR ENLISTED MEMBERS.—The number of enlisted members in pay grades of E–8 and E–9 for who may be on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not, at the end of any fiscal year, exceed a number determined in accordance with the following tables:

''Army National Guard

AGR Population	E–8 (MSG)	E–9 (SGM)
20,000	1,650	550
22,000	1,775	615
24,000	1,900	645
26,000	1,945	675
28,000	1,945	705
30,000	1,945	725
32,000	1,945	730
34,000	1,945	735
36,000	1,945	738
38,000	1,945	741
40,000	1,945	743
42,000	1,945	743

''U.S. Army Reserve

AGR Population	E–8 (MSG)	E–9 (SGM)
10,000	1,052	154
11,000	1,126	168
12,000	1,195	180

"U.S. Army Reserve—Continued

AGR Population	E–8 (MSG)	E–9 (SGM)
13,000	1,261	191
14,000	1,327	202
15,000	1,391	213
16,000	1,455	224
17,000	1,519	235
18,000	1,583	246
19,000	1,647	257
20,000	1,711	268
21,000	1,775	278

"U.S. Naval Reserve

AGR Population	E–8 (SCPO)	E–9 (MCPO)
10,000	340	143
11,000	364	156
12,000	386	169
13,000	407	182
14,000	423	195
15,000	435	208
16,000	447	221
17,000	459	234
18,000	471	247
19,000	483	260
20,000	495	273
21,000	507	286
22,000	519	299
23,000	531	312
24,000	540	325

"U.S. Marine Corps Reserve

AGR Population	E–8 (IST SGT)	E–9 (SGTMAJ)
1,100	50	11
1,200	55	12
1,300	60	13
1,400	65	14
1,500	70	15
1,600	75	16
1,700	80	17
1,800	85	18
1,900	89	19
2,000	93	20
2,100	96	21
2,200	99	22
2,300	101	23
2,400	103	24
2,500	105	25
2,600	107	26

"Air National Guard

AGR Population	E–8 (SMSGT)	E–9 (CMSGT)
5,000	1,020	405
6,000	1,070	435
7,000	1,120	465
8,000	1,170	490,
9,000	1,220	510
10,000	1,270	530
11,000	1,320	550
12,000	1,370	570
13,000	1,420	589
14,000	1,470	608
15,000	1,520	626
16,000	1,570	644
17,000	1,620	661
18,000	1,670	678
19,000	1,720	695
20,000	1,770	712

"U.S. Air Force Reserve

AGR Population	E–8 (SMSGT)	F–9 (CMSGT)
500	75	40
1,000	145	75
1,500	105	
2,000	270	130
2,500	325	150
3,000	375	170
3,500	420	190
4,000	460	210
4,500	495	230
5,000	530	250
05,500	565	270
6,000	600	290
7,000	670	330
8,000	740	370
10,000	800	400

''(b) GRADE SUBSTITUTION FOR LOWER GRADE CEILINGS.—Whenever the number of members serving in pay grade E–9 for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E–8.

''(c) DETERMINATION OF AUTHORIZED CEILINGS.—If the total number of members serving in the grades prescribed in the above tables is between, any two consecutive numbers in the first column of the appropriate table, the corresponding authorized strengths for each of the grades shown in that table, for that component, are determined by mathematical interpolation between the respective numbers of the two strengths. If the total numbers of members serving on AGR duty in the first column are greater or less than the figures listed in the first column of the appropriate table, the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as reflected in the nearest limit shown in the table.

''(d) SECRETARIAL WAIVER.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the number of senior reserve enlisted members that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strength in that controlled grade.''.

SEC. 410. INCREASE IN AUTHORIZED STRENGTHS FOR AIR FORCE OFFICERS ON ACTIVE DUTY IN THE GRADE OF MAJOR.

The table in section 523(a)(1) of title 10, United States Code, is amended by striking the figures under the heading ''Major'' relating to the Air Force and inserting the following:

''9,861
''10,727
''11,593
''12,460
''13,326
''14,192
''15,058
''15,925
''16,792
''17,657
''18,524
''19,389
''20,256
''21,123
''21,989
''22,855
''23,721
''24,588
''25,454.''.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

SEC. 501. ELIMINATION OF CERTAIN MEDICAL AND DENTAL REQUIREMENTS FOR ARMY EARLY-DEPLOYERS.

Section 1074a of title 10, United States Code, is amended—

(1) by striking subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

SEC. 502. MEDICAL DEFERMENT OF MANDATORY RETIREMENT OR SEPARATION.

Section 640 of title 10, United States Code, is amended——

(1) by inserting ''(a)'' at the beginning of the paragraph;

(2) by striking ''cannot'' and inserting ''may not''; and

(3) by adding at the end the following new subparagraph (b):

''(b) An officer whose mandatory retirement or separation under this chapter or chapter 63 of this title is subject to deferral under this section, may be extended for a period not to exceed 30 days following completion of the evaluation requiring hospitalization or medical observation.''.

SEC. 503. OFFICER IN CHARGE; UNITED STATES NAVY BAND.

(a) DETAIL AND GRADE.—Chapter 565 of title 10, United States Code, is amended by inserting after section 6221 the following new section:

§ 6221a. United States Navy Band: officer in charge

''An officer serving in a grade not below lieutenant commander may be detailed as Officer in Charge of the United States Navy Band. While so serving, an officer who holds a grade lower than captain shall hold the grade of captain if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Such appointment may occur notwithstanding the limitation of subsection 5596(d) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 565 is amended by inserting after the item referring to section 6221 the following new item:

''6221a. United States Navy Band: officer in charge.''.

SEC. 504. REMOVAL OF REQUIREMENT FOR CERTIFICATION FOR CERTAIN FLAG OFFICERS TO RETIRE IN THEIR HIGHEST GRADE.

Section 1370(c)(1) of title 10, United States Code, is amended——

(1) by striking ''certifies in writing to the President and Congress'' and inserting ''determines in writing''; and

(2) by adding at the end of the paragraph the following new sentence:

''The Secretary of Defense shall issue regulations to implement this paragraph.''.

SEC. 505. THREE-YEAR EXTENSION OF CERTAIN FORCE DRAWDOWN TRANSITION AUTHORITIES RELATING TO PERSONNEL MANAGEMENT AND BENEFITS.

(a) EXTENSION OF EARLY RETIREMENT AUTHORITY FOR ACTIVE DUTY MEMBERS.—Section 4403(i) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1293 note) is amended by striking ''October 1, 2001 ''and inserting ''October 1, 2004''.

(b) EXTENSION OF AUTHORITY FOR SPECIAL SEPARATION BENEFIT AND VOLUNTARY EARLY SEPARATION INCENTIVE.—(I) Section 1174a(h)(1) of title 10, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) Section 1175(d)(3) of such title is amended by striking ''December 31, 2001 and inserting ''September 30, 2004''.

(c) EXTENSION OF AUTHORITY FOR SELECTIVE EARLY RETIREMENT BOARDS.—Section 63 8a(a) of such title is amended by striking ''December 31, 2001 '' and inserting ''September 30, 2004''.

(d) TIME-IN-GRADE REQUIREMENT FOR RETENTION OF GRADE UPON VOLUNTARY RETIREMENT.—(I) Section 1370(a)(2)(A) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) Section 1370(d)(5) of such title is amended by striking ''December 31, 2001 and inserting ''September 30, 2004''.

(e) MINIMUM COMMISSIONED SERVICE FOR VOLUNTARY RETIREMENT AS AN OFFICER.—

(1) ARMY.—Section 3911(b) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) NAVY.—Section 6323(a)(2) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(3) AIR FORCE.—Section 8911(b) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(f) TRAVEL, TRANSPORTATION, AND STORAGE BENEFITS.—(1) Section 404(c)(1)(C) of title 37, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) Section 404(f)(2)(B)(v) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(3) Section 406(a)(2)(B)(v) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(4) Section 406(g)(1)(C) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(5) Section 503(c)(1) of the National Defense Authorization Act for Fiscal Year 1991 (37 U.S.C. 406 note) is amended by striking ''December 31, 2001 ''and inserting ''September 30, 2004''.

(g) EDUCATIONAL LEAVE FOR PUBLIC AND COMMUNITY SERVICE.—Section 4463(f) of the National Defense Authorization Art for Fiscal Year 1993 (10 U.S.C. 1143a note) is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(h) TRANSITIONAL HEALTH BENEFITS.—Section 1145 of title 10, United States Code, is amended—

(1) in subsection (a)(i), by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) in subsection (c)(1), by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(3) in subsection (e), by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(i) TRANSITIONAL COMMISSARY AND EXCHANGE BENEFITS.—Section 1146 of such title is amended by striking ''December 31, 2001'' both places it appears and inserting ''September 30, 2004''.

(j) TRANSITIONAL USE OF MILITARY HOUSING.—Section 1147(a) of such title is amended—

(1) in paragraph (1), by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) in paragraph (2), by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(k) CONTINUED ENROLLMENT OF DEPENDENTS IN DEFENSE DEPENDENTS EDUCATION SYSTEM.—Section 1407(c)(1) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(c)(1)) is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(l) FORCE REDUCTION TRANSITION PERIOD DEFINITION.—Section 4411 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 12681 note) is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(m) TEMPORARY SPECIAL AUTHORITY FOR FORCE REDUCTION PERIOD RETIREMENTS.—Section 4416(b)(1) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 12681 note) is amended by striking ''October 1, 2001'' and inserting ''October 1, 2004''.

(n) RETIRED PAY FOR NON-REGULAR SERVICE.—(1) Section 12731(f) of title 10, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

(2) Section 12731a of such title is amended—

(A) in subsection (a)(1)(B), by striking ''the end of the period described in subsection (b)'' and inserting ''October 1, 2004''.

(B) in subsection (b), by striking ''December 31, 2001'' and inserting ''October 1, 2004''.

(o) AFFILIATION WITH GUARD AND RESERVE UNITS; WAIVER OF CERTAIN LIMITATIONS.—Section 1150(a) of such title is amended by striking ''December 31, 2001'' and inserting '''September 30, 2004''.

(p) RESERVE MONTGOMERY GI BILL.—Section 16133(b)(1)(B) of such title is amended by striking ''December 31, 2001'' and inserting ''September 30, 2004''.

SEC. 506. REVIEW OF ACTIONS OF SELECTION BOARDS.

(a) IN GENERAL.—Chapter 79 of title 10, United States Code, is amended by adding at the end the following:

''§ 1558. Exclusive remedies in cases involving selection boards

''(a) CORRECTION OF MILITARY RECORDS.—The Secretary concerned may correct a person's military records in accordance with a recommendation made by a special board. Any such correction shall be effective, retroactively, as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

''(b) RELIEF ASSOCIATED WITH CORRECTIONS OF CERTAIN ACTIONS.—(1) The Secretary concerned shall ensure that a person receives relief under paragraph (2) or (3), as the person may elect, if the person—

''(A) was separated or retired from an armed force, or transferred to the retired reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board; and

''(B) becomes entitled to retention on or restoration to active duty or active status in a reserve component as a result of a correction of the person's military records under subsection (a).

''(2)(A) With the consent of a person referred to in paragraph (1), the person shall be retroactively and prospectively restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in the person's armed force as the person would have had if the person had not been selected to be separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, as a result of an action corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

''(B) Nothing in subparagraph (A) shall be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component if the person had not been selected to be separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, in an action of a selection board that is corrected under subsection (a).

''(3) If the person does not consent to a restoration of status, rights, and entitlements under paragraph (2), the person shall receive back pay and allowances (less appropriate offsets) and service credit for the period beginning on the date of the person's separation, retirement, or transfer to the retired reserve or to inactive status in a reserve component, as the case may be, and ending on the earlier of—

''(A) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

''(B) the date on which the person would otherwise have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be.

''(c) FINALITY OF UNFAVORABLE ACTION.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

''(d) REGULATIONS.—(1) The Secretary concerned may prescribe regulations to carry out this section (other than subsection (e)) with respect to the armed force or armed forces under the jurisdiction of the Secretary.

''(2) The Secretary may prescribe in the regulations the circumstances under which consideration by a special board may be provided for under this section, including the following:

''(A) The circumstances under which consideration of a person's case by a special board is contingent upon application by or for that person.

''(B) Any time limits applicable to the filing of an application for consideration.

''(3) Regulations prescribed by the Secretary of a military department under this subsection shall be subject to the approval of the Secretary of Defense.

''(e) JUDICIAL REVIEW.—(1) A person challenging for any reason the action or recommendation of a selection board, or the action taken by the Secretary concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the person has first been considered by a special board under this section or the Secretary concerned has denied such consideration.

''(2) A court of the United States may review a determination by the Secretary concerned under this section not to convene a special board. A court may set aside such determination only if it finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law. If a court sets aside a determination not to convene a special board, it shall remand the case to the Secretary concerned, who shall provide for consideration of the person by a special board under this section.

''(3) A court of the United States may review the recommendation of a special board convened under this section and any action taken by the Secretary concerned on the report of such special board. A court may set aside such recommendation or action, as the case may be, only if it finds that the recommendation or action was contrary to law or involved a material error of fact or a material administrative error. If a court sets aside the recommendation of a special board, it shall remand the case to the Secretary concerned, who shall provide for reconsideration of the person by another special board. If a court sets aside the action of the Secretary concerned on the report of a special board, it shall remand the case to the Secretary concerned for a new action on the report of the special board.

''(f) EXCLUSIVITY OF REMEDIES.—Notwithstanding any other provision of law, but subject to subsection (g), the remedies provided under this section are the only remedies available to a person for correcting an action or recommendation of a selection board regarding that person or an action taken on the report of a selection board regarding that person.

''(g) EXISTING JURISDICTION.—(1) Nothing in this section limits the jurisdiction of any court of the United States under any provision of law to determine the validity of any statute, regulation, or policy relating to selection boards, except that, in the event that any such statute, regulation, or policy is held invalid, the remedies prescribed in this section shall be the sole and exclusive remedies available to any person challenging the recommendation of a special board on the basis of the invalidity.

''(2) Nothing in this section limits authority to correct a military record under section 1552 of this title.

''(h) TIMELINESS OF ACTION.—(1) For the purposes of subsection (e)—

''(A) If, not later than six months after receipt of a complete application for consideration by a special board, the Secretary concerned shall have neither convened a special board nor denied consideration by a special board, the Secretary shall be deemed to have been denied such consideration.

''(B) If, not later than one year after the convening of a special board, the Secretary concerned shall not have taken final action on the report of such board, the Secretary shall be deemed to have denied relief to the person applying for consideration by the board.

''(2) Under regulations prescribed in accordance with subsection (d), the Secretary concerned may exclude an individual application from the time limits prescribed in this subsection if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this paragraph may not be delegated.

''(i) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard when it is not operating as a service in the Navy.

''(j) DEFINITIONS.—In this section:

''(1) The term 'special board'—

''(A) means a board that the Secretary concerned convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person;

''(B) includes a board for the correction of military or naval records convened under section 1552 of this title, if designated as a special board by the Secretary concerned; and

''(C) does not include a promotion special selection board convened under section 628 or 14502 of this title.

''(2) The term 'selection board'—

''(A) means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary concerned under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces; and

''(B) does not include—

''(i) a promotion board convened under section 573(a), 611(a), or 14101(a) of this title;

''(ii) a special board;

''(iii) a special selection board convened under section 628 of this title; or

''(iv) a board for the correction of military records convened under section 1552 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter 79 is amended by adding at the end the following:

''1558. Exclusive remedies in cases involving selection boards.''.

(c) SPECIAL SELECTION BOARDS.—Section 628 of such title is amended—

(1) by redesignating subsection (g) as subsection (j); and

(2) by inserting after subsection (f) the following new subsections:

''(g) LIMITATIONS OF OTHER JURISDICTION.—No official or court of the United States may—

''(1) consider any claim based to any extent on the failure of an officer or former officer of the armed forces to be selected for promotion by a promotion board until—

''(A) the claim has been referred by the Secretary concerned to a special selection board convened under this section and acted upon by that board and the report of the board has been approved by the President; or

''(B) the claim has been rejected by the Secretary concerned without consideration by a special selection board; or

''(2) except as provided in subsection (h), grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim and the report of the board has been approved by the President.

''(h) JUDICIAL REVIEW.—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1) or (b)(1) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

''(2) A court of the United States may review the action of a special selection board convened under this section on a claim of an officer or former officer and any action taken by the President on the report of the board. If a court finds that the action was contrary to law or involved a material error of fact or a material administrative error, it shall remand the case to the Secretary concerned, who shall provide for reconsideration of the officer or former officer by another special selection board.

''(i) EXISTING JURISDICTION.—(1) Nothing in this section limits the jurisdiction of any court of the United States under any provision of law to determine the validity of any statute, regulation, or policy relating to selection boards, except that, in the event that any such statute, regulation, or policy is held invalid, the remedies prescribed in this section shall be the sole and exclusive remedies available to any person challenging the recommendation of a selection board on the basis of the invalidity.

''(2) Nothing in this section limits the authority of the Secretary of a military department to correct a military record under section 1552 of this title.''.

(c) EFFECTIVE DATE AND APPLICABILITY.—(1) The amendments made by this section shall take effect on the date of the enactment of this Act and, except as provided in paragraph (2), shall apply with respect to any proceeding pending on or after that date without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in such proceeding was initiated before, on, or after that date.

(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.

Subtitle B—Reserve Component Personnel Policy

SEC. 511. RETIREMENT OF RESERVE PERSONNEL.

(a) RETIRED RESERVE.—Section 10154(2) of title 10, United States Code, is amended by striking ''upon their request''.

(b) RETIREMENT FOR FAILURE OF SELECTION OF PROMOTION.—(1) Section 14513 of such title 10 is amended—

(A) in the heading, by inserting ''or retirement'' after ''Separation''; and

(B) in paragraph (2), by striking '''and applies'' and inserting ''unless the officer requests not to be transferred to the Retired Reserve'' before the semicolon.

(2) The table of sections at the beginning of chapter 1407 of such title 10 is amended by striking the item relating to section 14513 and inserting the following new item:

''14513. Separation or retirement for failure of selection for promotion.''.

(c) RETIREMENT FOR YEARS OF SERVICE OR AFTER SELECTION FOR EARLY REMOVAL.—Section 14514 of such title 10 is amended—

(1) in paragraph (1), by striking ''and applies'' and inserting '' unless the officer requests not to be transferred to the Retired Reserve'' before the semicolon; and

(2) in paragraph (2), by striking ''does not apply for such transfer'' and inserting ''has requested not to be transferred to the Retired Reserve'' after ''is not qualified or''.

(d) RETIREMENT FOR AGE.—Section 14515 of such title 10 is amended—

(1) in paragraph (1), by striking ''and applies'' and inserting ''unless the officer requests not to be transferred to the Retired Reserve'' before the semicolon; and

(2) in paragraph (2), by striking ''does not apply for transfer'' and inserting ''has requested not to be transferred'' following ''is riot qualified or''.

(e) DISCHARGE OR RETIREMENT OF WARRANT OFFICERS FOR YEARS OF SERVICE OR AGE.—(1) Chapter 1207 of such title 10 is amended by adding at the end the following new section:

''12244. Warrant officers: discharge or retirement for years of service or for age

''Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

''(1) be transferred to the Retired Reserve, if the warrant officer is so qualified for such transfer, unless the warrant officer requests not to be transferred to the Retired Reserve; or

''(2) if the warrant officer is not qualified for such transfer or requests not to be 42 transferred to the Retired Reserve, be discharged.''.

(2) The table of sections at the beginning of such chapter 1207 of title 10 is amended by adding at the end the following new item:

''12244. Warrant officers: discharge or retirement for years of service or for age.''.

(f) DISCHARGE, OR RETIREMENT OF ENLISTED MEMBERS FOR YEARS OF SERVICE OR AGE.—(1) Chapter 1203 of such title 10 is amended by addinc, at the end the following new section:

''12108. Enlisted members: discharge or retirement for years of service or for age

''Each reserve enlisted member of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretarv concerned shall—

''(1) be transferred to the Retired Reserve, if the member is so qualified for such transfer, unless the member requests not to be transferred to the Retired Reserve; or

''(2) if the member is not qualified for such transfer or requests not to be transferred to the Retired Reserve, be discharged.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''12108. Enlisted members: discharge or retirement for years of service or for age.''.

SEC. 512. AMENDMENT TO RESERVE PERSTEMPO DEFINITION.

Section 991(b) of title 10, United States Code, is amended—

(1) in paragraph (1), by inserting ''active'' before ''service'' and adding at the end the following new sentence:

''For the purpose of this definition, the housing in which a member of a reserve component resides is either the housing the member normally occupies when on garrison duty or the member's permanent civilian residence.'';

(2) by striking paragraph (2);

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

(4) in paragraph (3) (as redesignated), by striking ''in paragraphs (1) and (2).'' and inserting ''in paragraph (1).''.

SEC. 513. INDIVIDUAL READY RESERVE PHYSICAL EXAMINATION REQUIREMENT.

Section 10206 of title 10, United States Code, is amended—

(1) in subsection (a), by striking ''Ready Reserve'' and inserting ''Selected Reserve'';

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

(3) by inserting after subsection (a) the following new subsection:

''(b) As determined by the Secretary concerned, each member of the Individual Ready Reserve or Inactive National Guard shall be provided a physical examination, if required—

''(1) to determine the member's fitness for military duty; or

''(2) for promotion, attendance at a military school or other career progression requirements.''.

SEC. 514. BENEFITS AND PROTECTIONS FOR MEMBERS IN A FUNERAL HONORS DUTY STATUS.

(a) PERSONS SUBJECT TO THE UNIFORMED CODE OF MILITARY JUSTICE.—Section 802 of title 10, United States Code, is amended—

(1) in subsection (a)(3), by inserting ''or in a funeral honors duty status'' after ''on inactive-duty training''; and

(2) in subsection (d)(2)(B), by inserting ''or in a funeral honors duty status'' after ''on inactive-duty training''.

(b) BENEFITS FOR DEPENDENTS OF A DECEASED RESERVE COMPONENT MEMBER.—Section 1061 of such title 10 is amended—

(1) in subsection (b)(1), by striking ''or'' the first time it appears and inserting '', or funeral honors duty'' before the semicolon; and

(2) in subsection (b)(2), by striking ''or'' the first time it appears and inserting '', or funeral honors duty'' before the period.

(c) PAYMENT OF A DEATH GRATUITY.—(1) Section 1475(a) of such title 10 is amended—

(A) by redesignating paragraphs (3), (4) and (5) as paragraphs (4), (5) and (6), respectively;

(B) by inserting after paragraph (2) the following new paragraph:

''(3) a Reserve of an armed force who dies while performing funeral honors duty;''; and

(C) in paragraph (4) (as redesignated in subsection (c)(1)) by—

(i) striking ''or'' both time it appears;

(ii) inserting ''or funeral honors duty'' after ''Public Health Service),'';

(iii) inserting a comma before and after ''inactive duty training'' the second time it appears in the sentence; and

(iv) inserting ''or funeral honors duty'' before the semicolon.

(2) Section 1476(a) of such title 10 is amended—

(A) in paragraph (1)(A), by striking ''or'';

(B) in paragraph (1)(B), by striking the period and inserting ''; or'';

(C) by adding at the end of paragraph (1) the following new subparagraph:

''(C) funeral honors duty.''; and

(D) in paragraph (2)(A), by striking ''or'' the first time it appears and inserting '', or funeral honors duty'' after ''inactive-duty training''.

(d) MILITARY AUTHORITY FOR MEMBERS OF THE COAST GUARD RESERVE.—Section 704 of title 14, United States Code, is amended by—

(1) striking ''or'' the first time it appears in the second sentence; and

(2) inserting '', or funeral honors duty'' after ''inactive-duty training''.

(E) BENEFITS FOR MEMBERS OF THE COAST GUARD RESERVE.—Section 705(a) of such title 14 is amended by inserting ''on funeral honors duty,'' after ''on inactive-duty training,''.

(f) DEFINITIONS.—Section 101 of title 38, United States Code, is amended—(1) in paragraph (24), by striking ''and'' following ''aggravated in the line of duty,'' and inserting '', and any period of funeral honors duty during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty'' before the period; and

(2) by adding at the end the following new paragraph:

''(34) The term ''Funeral Honors Duty'' means—

''(A) duty prescribed for Reserves by the Secretary concerned under section 12503 of title 10 to prepare for or perform funeral honors functions at the funeral of a veteran;

'' (B) in the case of members of the Army National Guard or Air National Guard of any State, duty under section 115 of title 32 to prepare for or perform funeral honors functions at the funeral of a veteran; and

''(C) Authorized travel to and from such duty.''.

SEC. 515. FUNERAL HONORS DUTY PERFORMED BY MEMBERS OF THE NATIONAL GUARD.

Section 1491 (b) of title 10, United States Code, is amended by inserting after paragraph (2) the following new paragraph:

''(3) A member of the Army National Guard of the United States or Air National Guard of the United States who serves as a member of a funeral honors detail while serving in a duty status authorized under state law shall be considered to be a member of the armed forces for the purpose of fulfilling the two member funeral honors detail requirement in paragraph (2).''.

SEC. 516. STRENGTH AND GRADE CEILING ACCOUNTING FOR RESERVE COMPONENT MEMBERS ON ACTIVE DUTY IN SUPPORT OF A CONTINGENCY OPERATION.

(a) ACTIVE DUTY STRENGTH ACCOUNTING—Section 11 5(c) of title 10, United States Code is amended—

(1) in subparagraph (1), by striking ''and'' at the end of the subparagraph;

(2) in subparagraph (2), by striking the period and adding ''; and'' at the end of the subparagraph; and

(3) by adding the following new subparagraph:

''(3) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to the number of members of the reserve components on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 101(a)(13) of this title.''.

(b) INCREASE IN AUTHORIZED DAILY AVERAGE FOR MEMBERS IN PAY GRADES E–8 AND E–9 ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 517 of such title 10 is amended at the end by adding the following new paragraph:

''(d) The Secretary of Defense may increase the authorized daily average number of enlisted members on active duty in an armed force in pay grades E–8 and E–9 in a fiscal year pursuant to subsection (a) by the number of enlisted members of a reserve component in that armed force in the pay grades of E–8 and E–9 on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 101(a)(13) of this title,''.

(c) INCREASE IN AUTHORIZED STRENGTHS FOR COMMISSIONED OFFICERS IN PAY GRADES O–4, O–5 AND O–6 ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 523 of such title 10 is amended——

(1) in paragraphs (a)(1) and (a)(2), by striking ''subsection (c)'' and inserting subsections (c) and (e)''; and

(2) by adding at the end the following new subsection:

''(e) The Secretary of Defense may increase the authorized total number of commissioned officers serving on active duty at the end of any fiscal year pursuant to subsection (a) by the number of commissioned officers of a reserve component of the Army, Navy, Air Force, or Marine Corps on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 101(a)(13) of this title.''.

(d) INCREASE, IN AUTHORIZED STRENGTHS FOR GENERAL AND FLAG OFFICERS ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 526(a) of such title 10 is amended by——

(1) striking ''the'' the first time it appears;

(2) inserting ''(1) Except as provided in paragraph (2), the'' following ''Limitations.——'';

(3) redesignating paragraphs (1), (2), (3) and (4) as subparagraphs (A), (B), (C) and (D), respectively; and

(4) inserting after subparagraph (D) (as redesignated by section (d)(3)) the following new paragraph:

''(2) The Secretary of Defense may increase the number of general and flag officers on active duty pursuant to paragraph (1) by the number of reserve component general and flag officers on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 101(a)(13) of this title.''.

SEC. 517. RESERVE HEALTH PROFESSIONALS STIPEND PROGRAM EXPANSION.

(a) PURPOSE OF PROGRAM.—Section 16201(a) of title 10, United States Code, is amended to read as follows:

''(a) ESTABLISHMENT OF PROGRAM.—For the purposes of obtaining adequate numbers of

commissioned officers in the reserve components who are qualified in health professions, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training that leads to a degree in medicine or dentistry, and to a health professions specialty critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health care education and training in return for a commitment to subsequent service in the Ready Reserve.''

(b) MEDICAL AND DENTAL STUDENT STIPEND.—Section 16201 of such title 10 is amended by——

(1) redesignating subsections (b), (c), (d) and (e) as subsections (c), (d), (e) and (f);

(2) inserting the following new subsection:

''(b) MEDICAL AND DENTAL SCHOOL STUDENTS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who——

''(A) is eligible to be appointed as an officer in a Reserve component;

''(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry;

''(C) signs an agreement that, unless sooner separated, the person will——

''(i) complete the educational phase of the program;

''(ii) accept a reappointment or redesignation within his reserve component, if tendered, based upon his health profession, following satisfactory completion of the educational and intern programs; and

''(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of Defense as a critically needed wartime skill.

''(2) Under the agreement——

''(A) the Secretary of the military department concerned shall agree to pay the participant a stipend, in the amount determined under subsection (f), for the period or the remainder of the period the student is satisfactorily progressing toward a degree in medicine or dentistry while enrolled in an accredited medical or dental school;

''(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as an officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

''(D) the participant shall agree to serve, upon successful completion of the program, one year in the Selected Reserve for each six months, or part thereof, for which the stipend is provided. In the case of a participant who enters into a subsequent agreement under subsection (c) and successfully completes residency training in a specialty designated by the Secretary of Defense as a specialty critically needed by the military department in wartime, the requirement to serve in the Selected Reserve may be reduced to one year for each year, or part thereof, for which the stipend was provided while enrolled in medical or dental school.''

(c) WARTIME CRITICAL SKILLS.—Section 16201(c), (as redesignated by section (b)), is amended——

(1) by inserting ''WARTIME'' following ''CRITICAL'' in the heading; and

(2) in paragraph (1)(B) by inserting ''or has been appointed as a medical or dental officer in the Reserve of the armed force concerned'' before the semicolon at the end of the paragraph.

(d) SERVICE OBLIGATION REQUIREMENT.—Subparagraph (2)(D) of subsection (c), (as redesignated by section (b)), and subparagraph (2)(D) of subsection (d), (as redesignated by section (b)), are amended by striking ''two years in the Ready Reserve for each year,'' and inserting ''one year in the Ready Reserve for each six months,''.

(e) CLERICAL AMENDMENTS.—Subparagraphs (2)(A) of subsection (c), (as redesignated by section (b)), and subparagraph (2)(A) of subsection (d), (as redesignated by section (b)), are amended by striking ''subsection (e)'' and inserting ''subsection (f)''.

SEC. 518. RESERVE OFFICERS ON ACTIVE DUTY FOR A PERIOD OF THREE YEARS OR LESS.

(a) CLARIFICATION OF EXEMPTION.—Section 641(l)(D) of title 10, United States Code, is amended to read as follows:

''(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), provided the call or order to active duty, as prescribed in regulations of the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;''.

(b) RETROACTIVE APPLICATION.—(1) Officers who were placed on the reserve active status list under section 641(1)(D), as amended by section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654A–108), may be considered, as determined by the Secretary concerned, to have been on the active-duty list during the period beginning on the date of enactment of Public Law 106–398 through the date of enactment of this Act.

(2) Officers who were placed on the active duty list on or after October 30, 1997, may, at the discretion of the Secretary concerned, be placed on the reserve active-status list upon enactment of this Act, provided they otherwise meet the conditions specified in section 641(1)(D) as amended by this Act.

SEC. 519. ACTIVE DUTY END STRENGTH EXEMPTION FOR NATIONAL GUARD AND RESERVE PERSONNEL PERFORMING FUNERAL HONORS FUNCTIONS.

Section 115(d) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(10) Members of reserve components on active duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.

''(11) Members on full-time National Guard duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.''.

SEC. 520. CLARIFICATION OF FUNCTIONS THAT MAY BE ASSIGNED TO ACTIVE GUARD AND RESERVE PERSONNEL ON FULL-TIME NATIONAL GUARD DUTY.

Section 12310(b) of title 10, United States Code, is amended by inserting '', or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a),'' after ''on active duty as described in subsection (a)''.

SEC. 521. AUTHORITY FOR TEMPORARY WAIVER OF THE REQUIREMENT FOR A BACCALAUREATE DEGREE FOR PROMOTION OF CERTAIN RESERVE OFFICERS OF THE ARMY.

Section 516 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1920, 2008) is amended——

(1) in subsection (a), by striking ''(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—'' and ''before the date of the enactment of this Act''; and

(2) in subsection (b), by striking ''2000'' and inserting ''2003''.

SEC. 522. AUTHORITY OF THE PRESIDENT TO SUSPEND CERTAIN LAWS RELATING TO PROMOTION, RETIREMENT AND SEPARATION; DUTIES.

Section 12305 of title 10, United States Code, is amended by adding at the end the following new subsection (c):

''(c) Active duty members whose mandatory separations or retirements incident to section 1251 or sections 632–637 of this title are delayed pursuant to invocation of this section, will be afforded up to 90 days following termination of the suspension before being separated of retired.''.

Subtitle C—Education and Training

SEC.531. AUTHORITY FOR THE MARINE CORPS UNIVERSITY TO AWARD THE DEGREE OF MASTER OF STRATEGIC STUDIES.

(a) AUTHORITY TO CONFER DEGREE.—Upon the recommendation of the Director and faculty of the Marine Corps War College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of strategic studies upon graduates of the college who fulfill the requirements for the degree.

(b) REGULATION.—The Secretary of the Navy shall promulgate regulations under which the Director of the faculty of the Marine Corps War College of the Marine Corps University shall administer the authority in subsection (a).

(e) EFFECTIVE DATE.—The authority to award degrees provided by subsection (a) shall become effective on the date on which the Secretary of Education determines that the requirements established by the Marine Corps War College of the Marine Corps University for the degree of master of strategic studies are in accordance with generally applicable requirements for a degree of master of arts.

SEC. 532. RESERVE COMPONENT DISTRIBUTED LEARNING.

(a) COMPENSATION FOR DISTRIBUTED LEARNING.—Section 206(d) of title 37, United States Code, is amended to read as follows:

''(d) A member of a Reserve Component may be paid compensation under this section for the successful completion of courses of instruction undertaken by electronic, paper-based, or other distributed learning. Distributed Leaming is structured leaming that takes place without 55 requiring the physical presence of an instructor. To be compensable, the instruction must be required by law, Department of Defense policy, or service regulation and may be accomplished either independently or as part of a group.''.

(b) DEFINITION OF INACTIVE-DUTY TRAINING.—Section 101(22) of title 37, United States Code, is amended by striking '', but does not include work or study in connection with a correspondence course of a uniformed service''.

SEC. 533. REPEAL OF LIMITATION ON NUMBER OF JUNIOR RESERVE OFFICERS' TRAINING CORPS (JROTC) UNITS.

Section 2031(a)(1) of title 10, United States Code, is amended by striking the second sentence.

SEC. 534. MODIFICATION OF THE NURSE OFFICER CANDIDATE ACCESSION PROGRAM RESTRICTION ON STUDENTS ATTENDING CIVILIAN EDUCATIONAL INSTITUTIONS WITH SENIOR RESERVE OFFICERS' TRAINING PROGRAMS.

Section 2130a of title 10, United States Code, is amended—

(1) in paragraph (a)(2), by striking ''that does not have a Senior Reserve Officers'' Training Program established under section 2102 of this title;'' and

(2) in paragraph (b)(1), by adding at the end ''or that has a Senior Reserve Officers'' Training Program for which the student is ineligible.''.

SEC. 535. DEFENSE LANGUAGE INSTITUTE FOREIGN LANGUAGE CENTER.

(a) Subject to subsection (b), the Commandant of the Defense Language Institute Foreign Language Center (Institute) may confer an Associate of Arts degree in Foreign Language upon graduates of the Institute who fulfill the requirements for the degree.

(b) No degree may be conferred upon any student under this section unless the Provost certifies to the Commandant of the Institute that the student has satisfied all the requirements prescribed for such degree.

(c) The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

Subtitle D—Decorations, Awards, and Commendations

SEC. 541. AUTHORITY FOR AWARD OF THE MEDAL OF HONOR TO HUMBERT R. VERSACE FOR VALOR DURING THE VIETNAM WAR.

(a) WAIVER OF TIME LIMITATIONS.—Notwithstanding the time limitations specified in section 3744 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the military service, the President may award the Medal of Honor under section 3741 of that title to Humbert R. Versace for the acts of valor referred to in subsection (b).

(b) ACTION DESCRIBED.—The acts of valor referred to in subsection (a) are the actions of Humbert R. Versace between October 29, 1963, and September 26, 1965, while interned as a prisoner of war by the Vietnamese Communist National Liberation Front (Viet Cong) in the Republic of Vietnam.

SEC. 542. ISSUANCE OF DUPLICATE MEDAL OF HONOR.

(a) Section 3747 of title 10, United States Code, is amended—

(1) in the section heading, by adding at the end''; issuance of duplicate medal of honor'';

(2) by striking ''Any medal of honor'' and inserting ''(a) REPLACEMENT OF MEDALS.—Any medal of honor'';

(3) by inserting ''stolen,'' before ''lost or destroyed,''; and

(4) by adding at the end the following new subsection:

''(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.''.

(b) Section 6253 of such title is amended—

(1) in the section heading, by adding at the end ''; issuance of duplicate medal of honor'';

(2) by striking ''The Secretary of the Navy may replace'' and inserting ''(a) REPLACEMENT OF MEDALS.—The Secretary of the Navy may replace'';

(3) by inserting ''stolen,'' before ''lost or destroyed''; and

(4) by adding at the end the following new subsection:

''(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Navy may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 6247 of this title.''.

(c) Section 8747 of such title is amended—

(1) in the section heading, by adding at the end''; issuance of duplicate medal of honor'';

(2) by striking ''Any medal of honor'' and inserting ''(a) REPLACEMENT OF MEDALS.—Any medal of honor'';

(3) by inserting ''stolen,'' before ''lost or destroyed,''; and

(4) by adding at the end the following new subsection:

''(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Air Force may issue such person, without charge, one duplicate medal of honor, with ribbons and appurtenances. Such duplicate shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under the authority of this subsection shall not constitute the award of more than one medal of honor within the meaning of section 8744(a) of this title.''.

(d) CLERICAL AMENDMENTS.—(1) The item relating to section 3747 of such title in the table of sections at the beginning of chapter 357 of such title is amended to read as follows:

''3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement; issuance of duplicate medal of honor.'';

(2) The item relating to section 6253 of such title in the table of sections at the beginning of chapter 567 of such title is amended to read as follows:

''6253. Replacement; issuance of duplicate medal of honor.''; and

(3) The item relating to section 8747 of such title in the table of sections at the beginning of chapter 857 of such title is amended to read as follows:

''8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement; issuance of duplicate medal of honor.''.

SEC. 543. REPEAL OF LIMITATION ON AWARD OF BRONZE STAR TO MEMBERS IN RECEIPT OF SPECIAL PAY.

Section 1133 of title 10, United States Code, is repealed.

Subtitle E—Uniform Code of Military Justice

SEC. 551. REVISION OF PUNITIVE UCMJ ARTICLE REGARDING DRUNKEN OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.

(a) STANDARD FOR DRUNKEN OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.—Paragraph (2) of section 911 of title 10, United States Code (article III of the Uniform Code of Military Justice), is amended by striking ''0.10 grams or more of alcohol'' and inserting ''0.08 grams or more of alcohol'' both places such term appears.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to offenses committed on or after that date.

TITLE V1—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2002.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2002 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2002, the rates of monthly basic pay for members of the uniformed services shall be as follows:

MONTHLY BASIC PAY*,**,***

PAY GRADE	YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)														
	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
COMMISSIONED OFFICERS															
0–10	0	0	0	0	0	0	0	0	0	0	0	11601.90	11659.20	11901.30	12324.00
0–9	0	0	0	0	0	0	0	0	0	0	0	10147.50	10293.60	10504.80	10873.80
0–8	7180.20	7415.40	7571.10	7614.90	7809.30	8135.10	8210.70	8519.70	8608.50	8874.30	9259.50	9614.70	9852.00	9852.00	9852.00
0–7	5966.40	6371.70	6371.70	6418.20	6657.90	6840.30	7051.20	7261.80	7472.70	8135.10	8694.90	8694.90	8694.90	8694.90	8738.70
0–6	4422.00	4857.90	5176.80	5176.80	5196.60	5418.90	5448.60	5448.60	5628.60	6305.70	6627.00	6948.30	7131.00	7316.10	7675.20
0–5	3537.00	4152.60	4440.30	4494.30	4673.10	4673.10	4813.50	5073.30	5413.50	5755.80	5919.00	6079.80	6262.80	6262.80	6262.80
0–4	3023.70	3681.90	3927.60	3982.50	4210.50	4395.90	4696.20	4930.20	5092.50	5255.70	5310.60	5310.60	5310.60	5310.60	5310.60
0–3	2796.60	3170.40	3421.80	3698.70	3875.70	4070.10	4232.40	4441.20	4549.50	4549.50	4549.50	4549.50	4549.50	4549.50	4549.50
0–2	2416.20	2751.90	3169.50	3276.30	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10	3344.10
0–1	2097.60	2183.10	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50	2638.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE															
	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
AS AN ENLISTED MEMBER OR WARRANT OFFICER															
0–3E	0.00	0.00	0.00	3698.70	3875.70	4070.10	4232.40	4441.20	4617.00	4717.50	4855.20	4855.20	4855.20	4855.20	4855.20
0–2E	0.00	0.00	0.00	3276.30	3344.10	3450.30	3630.00	3768.90	3872.40	3872.40	3872.40	3872.40	3872.40	3872.40	3872.40
0–IE	0.00	0.00	0.00	2638.50	2818.20	2922.30	3028.50	3133.20	3276.30	3276.30	3276.30	3276.30	3276.30	3276.30	3276.30
WARRANT OFFICERS															
	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
W–5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4965.60	5136.00	5307.00	5478.60
W–4	2889.60	3108.60	3198.00	3285.90	3437.10	3586.50	3737.70	3885.30	4038.00	4184.40	4334.40	4480.80	4632.60	4782.00	4935.30
W–3	2638.80	2862.00	2862.00	2898.90	3017.40	3152.40	3330.90	3439.50	3558.30	3693.90	3828.60	3963.60	4098.30	4233.30	4368.90
W–2	2321.40	2454.00	2569.80	2654.10	2726.40	2875.20	2984.40	3093.90	3200.40	3318.00	3438.90	3559.80	3680.10	3801.30	3801.30
W–1	2049.90	2217.60	2330.10	2402.70	2511.90	2624.70	2737.80	2850.00	2963.70	3077.10	3189.90	3275.10	3275.10	3275.10	3275.10
ENLISTED MEMBERS															
	<2	2	3	4	6	8	10	12	14	16	18	20	22	24	26
E–9	0.00	0.00	0.00	0.00	0.00	0.00	3423.90	3501.30	3599.40	3714.60	3830.40	3944.10	4098.30	4251.30	4467.00
E–8	0.00	0.00	0.00	0.00	0.00	2858.10	2940.60	3017.70	3110.10	3210.30	3314.70	3420.30	3573.00	3724.80	3937.80
E–7	1986.90	2169.00	2251.50	2332.50	2417.40	2562.90	2645.10	2726.40	2808.00	2892.60	2975.10	3057.30	3200.40	3292.80	3526.80
E–6	1701.00	1870,80	1953.60	2033.70	2117.40	2254.50	2337.30	2417.40	2499.30	2558.10	2602.80	2602.80	2602.80	2602.80	2602.80
E–5	1561.50	1665,30	1745.70	1828.50	1912.80	2030.10	2110.20	12193.30	2193.30	2193.30	2193.30	2193.30	2193.30	2193.30	2193.30
E–4	1443.60	1517.70	1599.60	1680.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30	1752.30
E–3	1303.50	1385.40	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50	1468.50
E–2	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30	1239.30
E–1 >4+	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50	1105.50
E–1 <4++	1022.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

*Basic pay for 0–7 to 0–10 is limited to the rate of basic pay for level III of the Executive Schedule. Basic pay for 0–6 and below is limited to level V of the Executive Schedule.

**While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $13,598. 10, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

***While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,382.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

+Applies to personnel who have served 4 months or more on active duty.

++Applies to personnel who have served less than 4 months on active duty.

SEC. 602. PARTIAL DISLOCATION ALLOWANCE AUTHORIZED UNDER CERTAIN CIRCUMSTANCES.

(a) AUTHORIZATION OF PARTIAL DISLOCATION ALLOWANCE.—Section 407 of title 37, United States Code is amended——

(1) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively;

(2) in subsections (a)(1) and (b)(1), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(3) by inserting after subsection (b) the following new subsection:

''(c) PARTIAL DISLOCATION ALLOWANCE.—(1) Under regulations prescribed by the Secretary concerned, a member ordered to occupy or to vacate Government family housing for the convenience of the Government (including pursuant to the privatization or renovation of housing), and not pursuant to a permanent change of station, may be paid a partial dislocation allowance of $500.

''(2) Effective on the same date that the monthly rates of basic pay for members are increased for a subsequent calendar year, the Secretary of Defense shall adjust the rate for the partial dislocation allowance for that calendar year by the percentage equal to the percentage increase in the rate of basic pay for that calendar year.

''(3) Payments made under this subsection are not subject to the fiscal year limitations in subsection (e).''; and

(4) in subsection (d)(1) as redesignated by paragraph (1), by striking at the beginning ''The amount'' and inserting ''Except as provided in subsection (c), the amount''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2001.

SEC. 603. FUNERAL HONORS DUTY ALLOWANCE FOR RETIREES.

Section 435 of title 37, United States Code, is amended——

(1) in subsection (a), by inserting before the period at the end ''or a retired member of the armed forces who performs at least two hours of duty preparing for or performing honors at the funeral of a veteran''; and

(2) by adding at the end the following new subsection:

''(d) CONCURRENT PAYMENT.—Notwithstanding any other provision of law, the allowance paid to a retired member of the armed forces under subsection (a) shall be in addition to any other compensation authorized under title 10, title 37, and title 38 to which the retired member may be entitled.''.

SEC. 604. BASIC PAY RATE FOR CERTAIN RESERVE COMMISSIONED OFFICERS WITH PRIOR SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER.

Section 203(d) of title 37, United States Code, is amended by inserting '', or who earns a total of more than 1,460 points credited under section 12732(a)(2) of title 10 while serving as a warrant officer or as a warrant officer and enlisted member'' following ''or as a warrant officer and enlisted member''.

SEC. 605. FAMILY SEPARATION ALLOWANCE.

Section 427(c) of title 37, United States Code, is amended by amending the first sentence to read as follows:

''A member who elects to serve an unaccompanied tour of duty because dependent movement to the permanent station is denied for certified medical reasons is entitled to an allowance under subsection (a)(1)(A). In all other cases, a member who elects to serve a tour unaccompanied by his dependents at a permanent station to which movement of his dependents is authorized at the expense of the United States under section 406 of this title is not entitled to an allowance under subsection (a)(1)(A).''.

SEC. 606. HOUSING ALLOWANCE FOR THE CHAPLAIN FOR THE CORPS OF CADETS, UNITED STATES MILITARY ACADEMY.

Section 4337 of title 10, United States Code, is amended by striking the second sentence and inserting ''Notwithstanding any other provision of law, the chaplain is entitled to the same basic allowance for housing allowed to a lieutenant colonel, and to fuel and light for quarters in kind.''.

SEC. 607. CLARIFYING AMENDMENT THAT SPACE-REQUIRED TRAVEL FOR ANNUAL TRAINING RESERVE DUTY DOES NOT OBVIATE TRANSPORTATION ALLOWANCES.

Section 18505(a) of title 10, United States Code, is amended by striking ''annual training duty or'' each time such term appears.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. AUTHORIZE THE SECRETARY OF THE NAVY TO PRESCRIBE SUBMARINE DUTY INCENTIVE PAY RATES.

(a) IN GENERAL.—Section 301c of title 37, United States Code, is amended by striking subsection (b) and inserting the following:

''(b) A member who meets the requirements prescribed in subsection (a) is entitled to monthly submarine duty incentive pay in an amount prescribed by the Secretary of the Navy, but not more than $1,000 per month.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 612. EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER BONUSES AND SPECIAL PAYS.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(b) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(c) ENLISTMENT BONUS.—Section 309(e) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(d) RETENTION BONUS FOR MEMBERS QUALIFIED IN A CRITICAL MILITARY SKILL.—Section 323(i) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

SEC. 613. EXTENSION OF CERTAIN BONUSES AND SPECIAL PAY AUTHORITIES FOR NURSE OFFICER CANDIDATES, REGISTERED NURSES, NURSE ANESTHETISTS, AND DENTAL OFFICERS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(b) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302d(a)(1) of title 37, United States Code, is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(C) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302e(a)(1) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''September 30, 2003''.

(d) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302h(a)(1) of such title 37 is amended by striking ''September 30, 2002'' and inserting ''September 30, 2003''.

SEC. 614. EXTENSION OF AUTHORITIES RELATING TO NUCLEAR OFFICER SPECIAL PAYS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking ''December 31, 2001'' and inserting ''December 31, 2003''.

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312b(c) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''December 31, 2003''.

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312c(d) of such title 37 is amended by striking ''December 31, 2001'' and inserting ''December 31, 2003''.

SEC. 615. EXTENSION OF SPECIAL AND INCENTIVE PAYS.

(a) SPECIAL PAY FOR RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARTIME SPECIALTIES.—Section 302g(f) of title 37, United States Code, is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(b) SELECTED RESERVE REENLISTMENT BONUS.—Section 308b(f) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(C) SELECTED RESERVE ENLISTMENT BONUS.—Section 308c(e) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(d) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308d(c) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(e) SELECTED RESERVE AFFILIATION BONUS.—Section 308e(e) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(f) READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.—Section of 308h(g) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(g) PRIOR SERVICE ENLISTMENT BONUS.—Section 308i(f) of such title is amended by striking ''December 31, 2001'' and inserting ''December 31, 2002''.

(h) REPAYMENT OF EDUCATION LOANS FOR CERTAIN HEALTH PROFESSIONALS WHO SERVE IN THE SELECTED RESERVE.—Section 16302(d) of title 10, United States Code, is amended by striking ''January 1, 2002'' and inserting ''January 1, 2003''.

SEC. 616. ACCESSION BONUS FOR OFFICERS IN CRITICAL SKILLS.

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by inserting after section 323 the following new section:

''§ 324. Special Pay: officer critical skills accession bonus

''(a) ACCESSION BONUS AUTHORIZED.—Under regulations prescribed by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operated as a service in the Navy, and subject to the limitations in subsection (b), an individual who executes a written agreement to accept a commission as an officer of an armed force and serve on active duty in an officer critical skill for the period specified in the agreement may be paid an accession bonus not to exceed $20,000 upon acceptance of the written agreement by the Secretary concerned.

''(b) LIMITATION ON ELIGIBILITY FOR BONUS.—An individual may not be paid a bonus under subsection (a) if the individual has received, or is receiving, an accession bonus for the same period of service under subsections 302d, 302h, or 312b.

''(C) PRORATION.—The term of an agreement and the amount of the payment under subsection (a) may be prorated.

''(d) PAYMENT METHOD.—Upon acceptance of the written agreement by the Secretary concerned, the total amount payable pursuant to the agreement under subsection (a) becomes fixed and may be paid by the Secretary in either a lump sum or installments.

''(e) REPAYMENT.—(1) If an individual who has entered into an agreement under subsection (a) has received all or part of a bonus under this section fails to accept an appointment or to commence or complete the total period of active duty in the designated critical skill specified in the agreement, the Secretary concerned may require the individual to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, any or all sums paid to the individual under this section.

''(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

''(3) A discharge in bankruptcy under title II that is entered less than five years after the termination of a written agreement entered into. under subsection (a) does not discharge the individual signing the agreement from a debt arising under such agreement or under paragraph (1).

''(f) DEFINITION.—In this section, the term ''officer critical skill'' means a skill designated as critical with respect to accession of officers to the skill by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

''(g) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any agreement to continue on active duty in the armed forces entered into after September 30, 2003, and no agreement under this section may be entered into after that date.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of such title 37 is amended by inserting after the item relating to section 323 the following new item:

''324. Special Pay: officer critical skills accession bonus.''

SEC. 617. CRITICAL WARTIME SKILL REQUIREMENT FOR ELIGIBILITY FOR THE INDIVIDUAL READY RESERVE BONUS.

Section 308h(a)(1) of title 37, United States Code, is amended—

(1) by striking ''a combat or combat support skill of''; and

(2) by inserting ''is qualified in a skill or specialty designated by the Secretary concerned as critically short to meet wartime requirements and'' after ''and who''.

SEC. 618. HAZARDOUS DUTY INCENTIVE PAY: MARITIME BOARD AND SEARCH.

Section 301(a) of title 37, United States Code, is amended by inserting after paragraph (11) the following new paragraph:

''(12) involving regular participation as a member of a team conducting visit, board, search, and seizure operations as defined by the Secretary concerned, aboard vessels in support of maritime interdiction operations as designated by such Secretary.

Subtitle C—Travel and Transportation Allowances

SEC. 621. FUNDED STUDENT TRAVEL: EXCHANGE PROGRAMS.

Section 430 of title 37, United States Code, is amended—

(1) in subsection (a)(3), by inserting ''(or a school outside the United States if the dependent is attending that school for less than one year under a program approved by the school in the continental United States at which the dependent is enrolled)'' after ''United States''; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''(or a school outside the United States if the dependent is attending that school for less than one year under a program approved by the school in the continental United States at which the dependent is enrolled)'' after ''United States'' the first place it appears; and

(B) by adding at the end the following new subparagraph:

''(3) The transportation allowance under paragraph (1) for a dependent child who is attending a school outside the United States for less than one year under a program approved by the school in the continental United States at which the dependent is enrolled shall not exceed the allowance the member would be paid for a trip between the school in the continental United States and the member's duty station outside the continental United States and return.''.

SEC. 622. PAYMENT OF VEHICLE STORAGE COSTS IN ADVANCE.

Section 2634(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) Storage costs payable under this subsection may be paid in advance.''.

SEC. 623. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND THE BURIAL OF A DECEASED MEMBER OF THE ARMED FORCES.

(a) CONSOLIDATION OF AUTHORITIES.—Section 411f of title 37, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''ALLOWANCES AUTHORIZED.—(1)'' after ''(a)''; and

(B) by inserting at the end following new paragraph:

''(2) If a dependent of a deceased member who is authorized travel and transportation allowances under this section is unable to travel unattended to the burial ceremonies of the deceased member—

''(A) because of—

''(i) age;

''(ii) physical condition; or

''(iii) other justifiable reason, as determined under uniform regulations prescribed by the Secretaries concerned; and

''(B) there is no other dependent qualified for travel and transportation allowances under this section available and qualified to serve as an attendant for the dependent while traveling to and attending the burial ceremonies, an attendant may be paid roundtrip travel and transportation allowances under this section.'';

(2) in subsection (b)(1)—

(A) by striking ''(b)(1) Except as provided in paragraph (2)'' and inserting

''(b) LIMITATION ON ALLOWANCES.—(1) Except as provided in paragraphs (2) and (3)''; and

(B) by inserting before the period at the end, the following: ''and the time necessary for such travel''; and

(3) in subsection (b)(2), by striking ''be extended to accommodate'' and inserting ''not exceed the rates for 2 days and'';

(4) by adding at the end of subsection (b) the following new paragraph:

''(3) If a deceased member is interred in a cemetery maintained by the American Battle Monuments Commission, the allowances authorized under this section may be provided to and from such cemetery and may not exceed the rates for 2 days and time necessary for such travel.''; and

(5) by amending subsection (c) to read as follows:

''(c) DEFINITIONS.—(1) In this section, the term ''dependents'' means—

''(A) the surviving spouse (including a remarried surviving spouse) of the deceased member and any child of the deceased member as defined in section 401(a)(2);

''(B) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the parents (as defined in section 401(b)(2)) of the deceased member; or

''(C) if no person described in subparagraphs (A) or (B) is paid travel and transportation allowances under this section, then—

''(i) the person who directs the disposition of the remains of the deceased member under section 1482(c) of 74 title 10, United States Code, and two additional persons selected by that person who are closely related to the deceased member; or

''(ii) in the case of a deceased member whose remains are commingled and buried in a common grave in a national cemetery, the person who would have been designated under section 1482(c) of such title to direct the disposition of the remains if individual identification had been made and two additional persons selected by that person who are closely related to the deceased member.

''(2) In this section, the term ''burial ceremonies'' includes—

''(A) an interment of casketed or cremated remains;

''(B) a placement of cremated remains in a columbarium;

''(C) a memorial service for which reimbursement is authorized under section 1482(e)(2) of title 10; and

''(D) a burial of commingled remains that cannot be individually identified in a common grave in a national cemetery.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1482 of title 10, United States Code, is amended by striking subsection (d) and redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively.

(2) The Funeral Transportation and Living Expense Benefits Act of 1974 (37 U.S.C. 406 note; Public Law 93–257) is repealed.

SEC. 624. SHIPMENT OF PRIVATELY OWNED VEHICLES WHEN EXECUTING CONUS PERMANENT CHANGE OF STATION MOVES.

Section 2634(h)(1) of title 10, United States Code, is amended by inserting before the period at the end '', or when the Secretary concerned determines that the transport of a vehicle upon transfer is advantageous and cost-effective to the government''.

Subtitle D—Other

SEC. 631. MONTGOMERY GI BILL—SELECTED RESERVE ELIGIBILITY PERIOD.

Section 16133(a) of title 10, United States Code, is amended by striking '' 10-year'' and inserting ''14-year''.

SEC. 632. IMPROVED DISABILITY BENEFITS FOR CERTAIN RESERVE COMPONENT MEMBERS.

(a) MEDICAL AND DENTAL CARE FOR MEMBERS.—Section 1074a(a)(3) of title 10, United States Code, is amended by inserting before the period: '', or if otherwise authorized under applicable regulations''.

(b) MEDICAL AND DENTAL CARE FOR DEPENDENTS.—Section 1076(a)(2)(C) of such title 10 is amended by inserting before the period: '', or if otherwise authorized under applicable regulations''.

(c) ELIGILITY FOR DISABILITY RETIREMENT OR SEPARATION.—(1) Section 1204(2)(B)(iii) of such title 10 is amended by inserting before the semicolon: '', or if otherwise authorized under applicable regulations''.

(2) Section 1206(2)(C) of such title 10 is amended by inserting before the semicolon: '', or if otherwise authorized under applicable regulations''.

(d) RECOVERY, CARE, AND DISPOSITION OF REMAINS.—Section 1481(a)(2)(D) of such title 10 is amended by inserting before the semicolon: '', or if otherwise authorized under applicable regulations''.

(e) ENTITLEMENT TO BASIC PAY.—(1) Section 204(g)(1)(D) of title 37, United States Code, is amended by inserting before the period: '', or if otherwise authorized under applicable regulations''.

(2) Section 204(h)(1)(D) of title such 37 is amended by inserting before the period: '', or if otherwise authorized under applicable regulations''.

(f) COMPENSATION FOR INACTIVE-DUTY TRAINING.—Section 206(a)(3)(C) of such title 37 is amended by inserting before the period: '', or if otherwise authorized under applicable regulations''.

SEC. 633. ACCEPTANCE OF SCHOLARSHIPS BY OFFICERS PARTICIPATING IN THE FUNDED LEGAL EDUCATION PROGRAM.

(a) ACCEPTANCE OF SCHOLARSHIP.—Section 2004 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(g) An officer detailed at a law school under this section also may accept a fellowship, scholarship, or grant under section 2603 of this title. Any service obligation incurred under section 2603 shall be served consecutively with the service obligation incurred under subsection (b)(2)(C).''.

(b) CONFORMING AMENDMENT.—Section 2603 of such title 10 is amended by adding at the end the following new subsection:

''(c) A member who accepts a fellowship, scholarship, or grant in accordance with subsection (a) also may be detailed at a law school under section 2004 of this title. Any service obligation incurred under section 2004 shall be served consecutively with the service obligation incurred under subsection (b).''.

TITLE VII—ACQUISITION POLICY AND ACQUISITION MANAGEMENT

Subtitle A—Acquisition Policy

SEC. 701. ACQUISITION MILESTONE CHANGES.

(a) SYSTEM DEVELOPMENT AND DEMONSTRATION.—Section 2366(c) of title 10, United States Code, is amended—

(1) in paragraph (1) by striking ''engineering and manufacturing development'' and inserting ''system development and demonstration''; and

(2) in paragraph (2) by striking ''engineering and manufacturing development'' and inserting ''system development and demonstration''.

(b) MILESTONE B.—Section 2400 of title 10, United States Code, is amended—

(1) in subsections (a)(1)(A), (a)(2), (a)(4) and (a)(5), by striking ''milestone II'' each place it appears and inserting ''milestone B.''.

(2) in subsection (a)(2), by striking ''engineering and manufacturing development'' and inserting ''system development and demonstration.''.

(c) SYSTEM DEVELOPMENT AND DEMONSTRATION.—Section 2432 of title 10, United States Code, is amended in subsections (b)(3)(A), (c)(3)(A) and (h)(1), by striking ''engineering and manufacturing development'' each place it appears and inserting ''system development and demonstration.''.

(d) Section 2434 of title 10, United States Code, is amended in subsection (a), by striking ''engineering and manufacturing development'' and inserting ''system development and demonstration.''.

(e) SYSTEM DEVELOPMENT AND DEMONSTRATION AND FULL RATE PRODUCTION.—Section 2435 of Title 10, United States Code, is amended—

(1) in subsection (b) by striking ''engineering and manufacturing development'' and inserting ''system development and demonstration.''

(2) in subsection (c)(1), by striking ''demonstration and validation'' and inserting ''system development and demonstration.''

(3) in subsection (c)(2) by striking ''engineering and manufacturing development'' and inserting ''production and deployment.''

(4) in subsection (c)(3) by striking ''production and deployment '' and inserting ''full rate production.''—

(f) MILESTONE DESIGNATORS.—Section 8102(b) of Public Law 106–259 is amended—

(1) by striking ''milestone I'' and inserting ''milestone B.''

(2) by striking ''milestone II'' and inserting ''milestone C.''

(3) by striking ''milestone III'' and inserting ''full rate production.''.

(g) MILESTONE DESIGNATORS.—Section 81*l*(c) of Public Law 106–398, is amended—

(1) by striking ''Milestone I'' and inserting ''Milestone B.''

(2) by striking ''Milestone II'' and inserting ''Milestone C.''

(3) by striking ''Milestone III'' and inserting ''full rate production''.

SEC. 702. CLARIFICATION OF INAPPLICABILITY OF THE REQUIREMENT FOR CORE LOGISTICS CAPABILITIES STANDARDS TO THE NUCLEAR REFUELING OF AN AIRCRAFT CARRIER.

Section 2464(a)(3) of title 10, United States Code, is amended—

(1) by striking ''nuclear aircraft carriers,''; and

(2) by adding at the end the following new sentence:

''Core logistics capabilities identified under paragraphs (1) and (2) shall not include nuclear refueling of an aircraft carrier.''.

SEC. 703. DEPOT MAINTENANCE UTILIZATION WAIVER.

Section 2466(c) of title 10, United States Code, is amended by striking ''the waiver is'' and inserting ''a depot is fully utilized within existing resources and, where multiple depots are capable of performing the same maintenance activities that the utilization of another such depot is uneconomical, or that the waiver is otherwise''.

Subtitle B—Acquisition Workforce

SEC. 705. ACQUISITION WORKFORCE QUALIFICATIONS.

(a) AMENDMENTS TO AUTHORITY.—Section 1724 of title 10, United States Code, is Amnended—

(1) in subsection (a)—

(A) by striking ''(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must (except as provided in subsections (e) and (d))—'' and inserting ''(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that, with the exception of the Contingency Contracting Force identified in paragraph (c), in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must (except as provided in subsections (e) and (f))—''; and

(B) in paragraph (3)(A), by inserting a comma between ''business'' and ''finance'';

(2) by striking subsections (c) and (d); and

(3) by inserting after subsection (b) the following new subsections:

''(c) CONTINGENCY CONTRACTING FORCE.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish a Contingency Contracting Force consisting of employees and members of the armed forces whose mission, as determined by the Secretary, is to deploy in support of contingency operations and other Department of Defense operations.

''(2) The Secretary of Defense shall establish qualification requirements for such Contingency Contracting Force, to include—

''(A) completion of at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education, or similar educational institution as determined by the Secretary, in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management;

''(B) passing an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study in any of the disciplines listed in subparagraph (A); or

''(C) any combination of (A) and (B) equaling 24 semester hours or the equivalent as determined by the Secretary; and

''(D) such additional education and experience requirements as the Secretary may prescribe.

''(d) DEVELOPNENTAL OPPORTUNITIES.—Not withstanding other provisions of law, the Secretary of Defense may establish one or more programs for the purpose of recruiting, selecting, appointing, educating, qualifing, and developing the careers of personnel to meet the requirements in subparagraphs (A) and (B) of subsection (a)(3) above for contracting positions in the Department of Defense covered by this section; may appoint individuals to developmental positions in those programs; and may separate from the civil service any person appointed under this subsection who, as determined by the Secretary, fails to complete satisfactorily any program developed pursuant to this subsection. To qualify for any developmental program under this subsection, an individual must have met one of the following requirements:

''(1) Been awarded a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees.

''(2) Completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the disciplines of accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.

''(e) EXCEPTION.—(1) The requirements imposed under subsection (a) or (b) shall not apply to an employee or member who—

''(A) served as a contracting officer with authority to award or administer contracts in excess of the simplified acquisition threshold in the Executive agency on or before September 30, 2000;

''(B) served, on or before September 30, 2000, in a position in an Executive agency either as an employee in the GS–1102 series or as a member of the armed force in similar occupational specialty; or

''(C) is determined by the Secretary of Defense to be a member of the Contingency Contracting Force.

''(2) The requirements imposed under subsection (a) or (b) of this section shall not apply to an employee for purposes of qualifying to serve in the position in which the employee was serving on October 1, 1993, or any other position in the same or lower grade and involving the same or lower level of responsibilities as the position in which the employee was serving on such date.

''(3) To qualify for the exceptions in subparagraphs (A) or (B) of paragraph (1) of this subsection, a civilian employee must have met one of the following requirements, or have been granted a waiver under subsection (f), on or before September 30, 2000—

''(A) received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees;

''(B) completed at least 24 semester credit hours. (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing,

economics, industrial management, marketing, quantitative methods, and organization and management;

''(C) passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study in any of the disciplines listed in subparagraph (B); or

''(D) on October 1, 1991, had at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

''(f) WAIVER.—The acquisition career program board concerned may waive any or all of the requirements of subsections (a) and (b) with respect to an individual if the board certifies that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.''.

(b) CLERICAL AMENDMENT.—Section 1732(c)(2) of such title 10 is amended by inserting a comma between ''business'' and ''finance''.

SEC. 706. TENURE REQUIREMENT FOR CRITICAL ACQUISITION POSITIONS.

Section 1734 of title 10, United States Code, is amended—

(1) in paragraph (a)(1), by inserting ''as a program manager, deputy program manager, or senior contracting official of a major system, as that term is defined in section 23 02(5) of this title, and any person assigned to such other critical acquisition position as the Secretary of Defense may prescribe by regulation,'' after ''critical acquisition position''.

(2) in paragraph (a)(2), by inserting ''as a program manager, deputy program manager, or senior contracting official of a major system, as that term is defined in section 2302(5) of this title, and any person assigned to such other critical acquisition position as the Secretary of Defense may prescribe by regulation,'' after ''critical acquisition position''.

Subtitle C—General Contracting Procedures and Limitations

SEC. 710. AMENDMENT OF LAW APPLICABLE TO CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN.

Section 2855 of title 10, United States Code, is amended—

(1) in subsection (a) by striking the subsection designator ''(a)''; and

(2) by striking subsection (b).

SEC. 711. STREAMLINING PROCEDURES FOR THE PURCHASE OF CERTAIN GOODS.

Section 2534(g)(2) of title 10, United States Code, is amended by inserting before the period at the end: ''unless the head of a contracting activity determines—

''(A) that the amount of the purchase is $25,000 or less;

''(B) the precision level of the ball or roller bearings is rated lower than Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or their equivalent;

''(C) at least two manufacturers in the national technology and industrial base capable of producing the ball or roller bearings decline to respond to a request for quotation for the required items; and

''(D) the bearings are neither miniature nor instrument ball bearings, i.e. rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less.''.

SEC. 712. REPEAL OF THE REQUIREMENT FOR LIMITATIONS ON THE USE OF AIR FORCE CIVIL ENGINEERING SUPPLY FUNCTION CONTRACTS.

Section 345 of the National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261, 112 Stat. 1978) is repealed.

SEC. 713. ONE-YEAR EXTENSION OF COMMERCIAL ITEMS TEST PROGRAM.

Section 4202(e) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 184, 652 is amended by striking ''January 1, 2002'' and inserting ''January 1, 2003.''.

SEC. 714. MODIFICATION OF LIMITATION ON RETIREMENT OR DISMANTLEMENT OF STRATEGIC NUCLEAR DELIVERY SYSTEMS.

Section 1302(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1948), as amended by section 1501 (a) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 806), is further amended by striking paragraph (1)(D).

Subtitle D—Military Construction General Provisions

SEC. 715. EXCLUSION OF UNFORESEEN ENVIRONMENTAL HAZARD REMEDIATION FROM THE LIMITATION ON COST INCREASES FOR MILITARY CONSTRUCTION AND FAMILY HOUSING CONSTRUCTION PROJECTS.

Subsection 2853(d) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' immediately following ''apply to''; and

(2) by inserting immediately before the period at the end ''; or (2) the costs associated with environmental hazard remediation such as asbestos removal, radon abatement, lead-based paint removal or abatement, and any other legally required environmental hazard remediation, provided that such remediation requirements could not be reasonably anticipated at the time of budget submission''.

SEC. 716. INCREASE OF OVERSEAS MINOR CONSTRUCTION THRESHOLD USING OPERATIONS AND MAINTENANCE FUNDS.

Section 2805 of title 10, United States Code, amended—

(1) in subsection (b)(1), by striking ''$500,000'' and inserting ''$750,000'';

(2) in subsection (c)(1)(A), by striking ''$1,000,000'' and inserting ''$1,500,000''; and

(3) in subsection (c)(1)(B), by striking ''$500,000'' and inserting ''$750,000''.

SEC. 717. LEASEBACKS OF BASE CLOSURE PROPERTY.

(a) 1990 LAW.—Section 2905(b)(4)(E) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended as follows:

(1) in clause (iii), by striking ''A'' and inserting ''Except as provided in clause (v) below, a''

(2) by adding at the end the following new clause (v):

''(v) Notwithstanding clause (iii) or chapter 137 of title 10, United States Code, where the department or agency concerned leases a substantial portion of the installation, the department or agency may obtain, at a rate no higher than that charged to non-Federal tenants, facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of a lease under clause (i). Facility services and common area maintenance shall not include municipal services that the state or local government is required by law to provide to all landowners in its jurisdiction without direct charge, or firefighting or security-guard functions.''.

(b) 1988 LAW.—Section 204(b)(4) of the Defense Authorization Amendments and Base Closure and Realignment Act of (Public Law 100–526; 10 U.S.C. 2687 note) is amended by adding at the end the following new subparagraph (J):

''(J)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this title (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) Except as provided in clause (v) below, a lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii) or chapter 137 of title 10, United States Code, where the department or agency concerned leases a substantial portion of the installation, the department or agency may obtain, at a rate no higher than that charged to non-Federal tenants, facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of a lease under clause (i). Facility services and common area maintenance shall not include

municipal services that the state or local government is required by law to provide to all landowners in its jurisdiction without direct charge, or firefighting or security-guard functions.''.

SEC. 718. ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) IN GENERAL.—Subchapter IV of Chapter 169 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2886. Reimbursement of funds related to the execution of military family housing privatization projects

''The Secretary of Defense may, during the first year of an initiative under this Subchapter, transfer funds from appropriations available for the operation and maintenance of family housing to appropriations available for the pay of military personnel in such amounts as are necessary to offset additional housing allowance costs incurred as a result of such initiative.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter IV of chapter 169 of title 10 is amended by inserting after the item relating to section 2885 the following:

''2886. Reimbursement of funds related to the execution of military family housing privatization projects.''.

SEC. 719. ANNUAL REPORT TO CONGRESS ON DESIGN AND CONSTRUCTION.

(a) IN GENERAL.—Section 2861 of title 10, United States Code is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter III of chapter 169 of such title 10 is amended by striking the item referring to section 2861.

TITLE VIII—DEPARTMENT OF DEFENSE ORGANIZATION AND POSITIONS

Subtitle A—Department of Defense Organizations and Positions

SEC. 801. ORGANIZATIONAL ALIGNMENT CHANGE FOR DIRECTOR FOR EXPEDITIONARY WARFARE.

Section 5038(a) of title 10, United States Code, is amended by striking ''Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements, and Assessments'' and inserting ''Office of the Deputy Chief of Naval Operations for Warfare Requirements and Programs''.

SEC. 802. CONSOLIDATION OF AUTHORITIES RELATING TO DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.

(a) IN GENERAL.—Chapter 6 of title 10, United States Code, is amended, by adding at the end the following new section:

''§ 169. Regional centers for security studies

''(a) AUTHORITY TO ESTABLISH, OPERATE AND TERMINATE REGIONAL CENTERS.—The Secretary of Defense may establish, operate and terminate regional centers for security studies to serve as forums for bilateral and multilateral communication and military and civilian exchanges. Such regional centers shall use professional military education, civilian defense education, and related academic and other activities, as the Secretary deems appropriate, to pursue such communication and exchanges. The Secretary of Defense annually, in writing, shall evaluate the performance and value to the United States of each such regional center and determine whether to continue to operate such regional center.

''(b) ACCEPTANCE OF GIFTS AND CONTRIBUTIONS.—The Secretary may accept, hold, administer, and use gifts and contributions of money, personal property (including loans of property), and services for the purpose of defraying the costs or enhancing the operations of one or more of the Regional Centers, and may pay all reasonable expenses in connection with the conveyance or transfer of any such gifts. Contributions of money and proceeds from the sale of property accepted by the Secretary under this subsection shall be credited to funds available for the operation or support of the Center or Centers intended to benefit from such contribution and shall remain available until expended. No gift or contribution may be accepted under this subsection from a foreign state, or instrumentality or national thereof, or organization domiciled therein, nor anyone acting on behalf of any of them.

''(c) LIMITATION.—The Secretary may not accept a gift or donation under subsection (b) if the acceptance of the gift or donation would compromise or appear to compromise—

''(1) the ability of the Department of Defense, any employee of the Department or members of the armed forces to carry out the responsibility or duty of the Department in a fair and objective manner; or

''(2) the integrity of any program of the Department of Defense or any person involved in such a program.

''(d) ADMINISTRATION.—The Secretary may take the following actions in furtherance of the mission of Regional Centers operated under this section:

''(1) EMPLOYMENT AND COMPENSATION OF FACULTY AND STAFF.—Notwithstanding the provisions of title 5, United States Code, regarding appointment, pay and classification, the Secretary may employ such civilian directors, faculty and staff members for Regional Centers operated under this section as the Secretary determines necessary.

''(2) WAIVER OF COSTS.—The Secretary may waive reimbursement of the cost of conferences, seminars, courses of instruction or similar educational activities of such Regional Centers for foreign participants if the Secretary determines that attendance of such personnel without reimbursement is in the national security interests of the United States.

''(3) PAYMENT OF EXPENSES.—In addition to waiver of reimbursement of costs described in paragraph (2), the Secretary of Defense may pay the travel, subsistence, and similar personal expenses of foreign participants in connection with the attendance of such personnel at conferences, seminars, courses of instruction, or similar educational activities of such Regional Centers if the Secretary determines that payment of such expenses is in the national security interest of the United States.

''(e) REPORT TO CONGRESS.—The Secretary shall report annually to the appropriate committees of Congress on the status, objectives, operations and foreign participation of the Regional Centers.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Appropriate committees of Congress' means the Committees on Armed Services of the Senate and of the House of Representatives.

''(2) The term 'Contribution' means a contribution, gift or donation of funds, materials (including research materials), property or services (including lecture services and faculty services), but does not include a contribution made pursuant to chapter 138 of this title.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1306 of the National Defense Authorization Act for Fiscal Year 1995, (Public Law 103–337; 108 Stat. 2892) is repealed.

(2) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997, (Public Law 104–201; 110 Stat. 2653) is amended as follows—

(A) by striking subsections (a) and (b); and

(B) by striking the subsection designator ''(c)''.

(3) Section 1595 of title 10, United States Code, is amended as follows—

(A) in subsection (c), by striking paragraphs (3) and (5);

(B) by redesignating subparagraph (c)(4) as subparagraph (c)(3); and

(C) by striking subsection (e).

(4) Section 2611 of title 10, United States Code, is repealed.

(c) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 155 of such title 10 is amended by striking the item relating to section 2611; and

(2) The table of sections at the beginning of chapter 6 of such title 10 is amended, by adding at the end the following new item:

''169. Regional Centers for Security Studies''.

SEC. 803. CHANGE OF NAME FOR AIR MOBILITY COMMAND.

(a) Section 2544(d) of title 10, United States Code, is amended by striking ''Military Airlift Command'' and inserting ''Air Mobility Command''.

(b) Section 2545(a) of such title 10 is amended by striking ''Military Airlift Command'' and inserting ''Air Mobility Command''.

(c) Section 8074 of such title 10 is amended by striking subsection (c).

(d) Section 430(c) of title 37, United States Code, is amended by striking ''Military Airlift Command'' and inserting ''Air Mobility Command''.

(e) Section 432(b) of such title 37 is amended by striking ''Military Airlift Command'' and inserting ''Air Mobility Command''.

SEC. 804. TRANSFER OF INTELLIGENCE POSITIONS IN SUPPORT OF THE NATIONAL IMAGERY AND MAPPING AGENCY.

Section 1606 of title 10, United States Code, is amended by striking ''517'' and inserting ''544''.

Subtitle B—Reports

SEC. 811. AMENDMENT TO NATIONAL GUARD AND RESERVE COMPONENT EQUIPMENT: ANNUAL REPORT TO CONGRESS.

Section 10541 of title 10, United States Code, is amended to read as follows:

''(a) The Secretary of Defense shall submit to the Congress each year, not later than March 1, a written report concerning the equipment of the National Guard and the Reserve components of the armed forces, to include the U.S. Coast Guard Reserve. This report shall cover the current fiscal year and three succeeding years. The focus should be on major items of equipment which address large dollar-value requirements, critical Reserve component shortages and major procurement items. Specific major items of equipment shall include ships, aircraft, combat vehicles and key combat support equipment.

''(b) Each annual report under this section should include the following:

''(1) Major items of equipment required and on-hand in the inventories of each Reserve component.

''(2) Major items of equipment which are expected to be procured from commercial sources or transferred from the Active component to the Reserve components of each Service.

''(3) Major items of equipment in the inventories of each Reserve component which are substitutes for a required major item of equipment.

''(4) A narrative explanation of the plan of the Secretary concerned to equip each Reserve component, including an explanation of the plan to equip units of the Reserve components that are short major items of equipment at the outset of war or a contingency operation.

''(5) A narrative discussing the current status of the compatibility and interoperability of equipment between the Reserve components and the active forces, the effect of that level of compatibility or interoperability on combat effectiveness, and a plan to achieve full equipment compatibility and interoperability.

''(6) A narrative discussing modernization shortfalls and maintenance backlogs within the Reserve components and the effect of those shortfalls on combat effectiveness.

''(7) A narrative discussing the overall age and condition of equipment currently in the inventory of each Reserve component.

''(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the Future Years Defense Program Procurement Annex prepared by the Department of Defense.''.

SEC. 812. ELIMINATION OF TRIENNIAL REPORT ON THE ROLES AND MISSIONS OF THE ARMED FORCES.

(a) REPEAL OF REQUIREMENT FOR REPORT ON ASSIGNMENT OF ROLES AND MISSIONS.—Section 153 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the catchline and section designator ''(a) PLANNING; ADVICE; POLICY FORMULATION.—''; and

(2) by striking subsection (b).

(b) ROLES AND MISSIONS AS PART OF DEFENSE QUADRENNIAL REVIEW.—Subsection 118(e) of such title 10 is amended by inserting after the first sentence the following two new sentences: ''The Chairman shall also include his assessment of the assignment of functions (or roles and missions) to the Armed Forces and recommendations for change the Chairman considers necessary to achieve the maximum efficiency of the Armed Forces. This roles and missions assessment should consider the unnecessary duplication of effort among the armed forces and changes in technology that can be applied effectively to warfare.''.

SEC. 813. CHANGE IN DUE DATE OF COMMERCIAL ACTIVITIES REPORT.

Section 2461(g), title 10, United States Code is amended by striking ''February 1'' and inserting ''June 30''.

Subtitle C—Other Matters

SEC. 821. DOCUMENTS, HISTORICAL ARTIFACTS, AND OBSOLETE OR SURPLUS MATERIEL: LOAN, DONATION, OR EXCHANGE.

(a) IN GENERAL.—Section 2572 of title 10, United States Code, is amended—

(1) in subsection (a), by striking ''subsection (c)'' and inserting ''subsection (c)(1)'';

(2) in subsection (b), by striking ''subsection (c)'' and inserting ''subsection (c)(2)''; and

(3) in subsection (c)—

(A) by striking ''(c) This section'' and inserting ''(c)(1) Subsection (a)''; and

(B) by adding at the end the following new paragraph:

''(2) Subsection (b) applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and obsolete or surplus materiel.''.

(b) CONFORMING AMENDMENT.—The heading of such section is amended by striking ''condemned or obsolete combat'' and inserting ''obsolete or surplus''.

SEC. 822. CHARTER AIR TRANSPORTATION OF MEMEBERS OF THE ARMED FORCES.

Section 2640 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking ''an'' after ''contract with'' and inserting ''a domestic or foreign'';

(2) in subsection (b)(5), by striking ''checkrides'' and inserting ''cockpit safety observations'';

(3) in subsection (e), by striking ''Military Airlift Command'' and inserting ''Air Mobility Command'';

(4) in subsection (g), by striking ''in an emergency''; and

(5) in subsection (j)(1), by striking ''air carrier,''

TITLE IX—GENERAL PROVISIONS

Subtitle A—Matters Relating to Other Nations

SEC. 901. TESTS AND EVALUATION INITIATIVES.

(a) AUTHORITY TO ENGAGE IN COOPERATIVE TESTS AND EVALUATION AT U.S. AND FOREIGN RANGES AND OTHER FACILITIES WHERE TESTING MAY BE CONDUCTED.—Chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 23501. Agreements for the cooperative use of ranges and other facilities where testing may be conducted

''(a) AUTHORITY TO ENTER INTO INTERNATIONAL AGREEMENTS.—The Secretary of Defense, with the concurrence of the Secretary of State, may enter into a memorandum of understanding (or other formal agreement) with an eligible country or international organization for the purpose of reciprocal use of ranges and other facilities where testing of defense equipment may be conducted.

''(b) GENERAL NATURE OF AGREEMENT.—Formal agreements reached under subsection (a) shall require reciprocal use of test ranges and other facilities where testing may be conducted in the United States and at such ranges and facilities operated by an eligible country or international organization.

''(c) PAYMENT OF COSTS.—Any agreement for the reciprocal use of ranges and other facilities where testing may be conducted shall contain the following pricing principles for reciprocal application:

''(1) The price charged a recipient country for test and evaluation services furnished by the officers, employees, or governmental agencies of the supplying country or international organization, shall be the direct costs to the supplying country or international organization that are incurred as a result of the test and evaluation services acquired by the recipient country or international organization.

''(2) The recipient country or international organization may be charged for indirect costs related to the use of the range or other facility where testing may be conducted only as specified in the memorandum of understanding or other formal agreement.

''(d) RETENTION OF FUNDS COLLECTED FROM ELIGIBLE COUNTRIES AND INTERNATIONAL ORGANIZATIONS.—Amounts collected under subsection (c) from an eligible country or international organization shall be credited to the appropriation accounts under which such costs were incurred.

''(e) DEFINITIONS.—In this section:

''(1) Direct cost means any item of cost that is easily and readily identified to a specific unit of work or output within the range or facility where such testing and evaluation occurred, that would not have been incurred if such testing and evaluation had not taken place. Direct cost may include labor, materials, facilities, utilities, equipment, supplies, and any other resources of the range or facility where such test and evaluation occurred, that is consumed or damaged during such test and evaluation, or maintained for the recipient country or international organization.

''(2) Indirect costs means any item of cost that cannot readily, or directly, be identified to a specific unit of work or output. Indirect cost may include general and administrative expenses for the supporting base operations, manufacturing expenses, supervision, office supplies, utility, costs, etc. Such costs are accumulated in a cost pool and allocated to customers appropriately.

''(f) DELEGATION OF AUTHORITY.—The Secretary may delegate to the Deputy Secretary of Defense and to the head of one designated office of his choosing the authority to determine the appropriateness of the amount of indirect costs included in such charges.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''23501. Agreements for the cooperative use of ranges and other facilities where testing may be conducted.''.

(c) AUTHORITY TO USE MAJOR RANGE AND TEST FACILITY INSTALLATIONS OF THE MILITARY DEPARTMENTS UNDER THE DEPARTMENT OF DEFENSE CONTRACT.—Section 2681(c) of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding at the end the following new paragraph:

''(2) Notwithstanding the requirement for reimbursement of all direct costs under subparagraph (1), a contractor, using a Major Range and Test Facility Base installation in support of a Department of Defense requirement, may be provided access to and use of the Major Range and Test Facility Base Installations and charged for services for purposes of the contract utilizing the same criteria as would be applied to use of a Major Range and Test Facility Base Installation by an activity or agency of the Department of Defense. A contractor of a Department or agency of the Federal Government other than the Department of Defense shall be provided access to and use of a Major Range and Test Facility Base Installation and services in support of such contract at the discretion of the Secretary of Defense, and may be charged for access, use and services on the same basis as the Federal government Department or agency funding the contract.''.

SEC. ___.COOPERATIVE RESEARCH AND DEVELOPMENT PROJECTS: ALLIED COUNTRIES.

Section 2350a of title 10, United States Code, is amended as follows:

(1) In the title for Section 2350a—by striking out ''allied'' and inserting ''NATO ally,

major non-NATO ally, other friendly foreign country, or NATO organization''.

(2) Paragraph (a) is amended by striking ''one or more major allies of the United States or NATO organizations'' and inserting ''the North Atlantic Treaty Organization (NATO) or with one or more member countries of that Organization, or with any major non-NATO ally or other friendly foreign country or NATO organization''.

(3) Paragraph (b)(1) is amended—

(A) by striking ''(1)'';

(B) by striking ''the North Atlantic Treaty Organization (NATO)'' and inserting ''NATO'';

(C) by striking ''its major non-NATO allies.'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.''.

(4) Paragraph (b)(2) is amended by striking ''The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition and Technology.'' and inserting ''The authority of the Secretary to make a determination under paragraph (1) may be delegated only to the Deputy Secretary of Defense and to one other official the Secretary so determines.''.

(5) Paragraph (d)(1) is amended by striking ''the major allies of the United States'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

(6) Paragraph (d)(2) is amended by striking ''major ally of the United States'' and inserting ''a NATO ally, a major non-NATO ally or other fdendly foreign country or NATO organization''.

(7) Paragraph (e)(1)(B)(2)(A) is amended by striking ''one or more of the major allies of the United States.'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization.''.

(8) Paragraph (e)(1)(B)(2)(B) in amended by striking ''one or more major allies of the United States or NATO organizations'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

(9) Paragraph (e)(1)(B)(2)(C) is amended by striking ''one or more major allies of the United States'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

(10) Paragraph (e)(1)(B)(2)(D) in amended by striking ''one or more major allies of the United States'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

(11) Paragraph (f)(B)(1) is amended by striking ''(1)''.

(12) Paragraph (f)(B)(2) is amended by striking ''The Secretary of Defense and the Secretary of State, whenever they consider such action to be warranted, shall jointly submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives a report—(A) enumerating those countries to be added to or deleted from the existing designation of countries designated as major non-NATO allies for purposes of this section; and (B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section.''.

(13) Paragraph (g)(1)(A) is amended by striking ''major allies of the United States and other friendly foreign countries.'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

(14) Paragraph (i) is amended by striking ''(2) The term ''major ally of the United States'' means—(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or (B) a major non-NATO ally.''.

(15) Paragraph (i)(1) is amended by striking ''one or more major allies of the United States or NATO organizations'' and inserting ''a NATO ally, a major non-NATO ally or other friendly foreign country or NATO organization''.

SEC. 903. RECOGNITION OF ASSISTANCE FROM FOREIGN NATIONALS.

(a) IN GENERAL.—Chapter 57 of title 10, United States Code, is amended by inserting after section 1133 the following:

''§ 1134. Recognition of assistance from foreign nationals

''The Secretary of Defense may issue regulations, with the concurrence of the Secretary of State, authorizing members of the armed forces or civilian officers or employees of the Department of Defense to present to foreign nationals plaques, trophies, noncurrency coins, certificates, and other suitable commemorative items or mementos to recognize achievements or performance, not involving combat, that assists the armed forces of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1133 the following new item:

''1134. Recognition of assistance from foreign nationals.''.

SEC. 904. PERSONAL SERVICE CONTRACTS IN FOREIGN AREAS.

Under such regulations as the Secretary of State, with the concurrence of the Secretary of Defense, may prescribe, the Department of State shall use authority available to the Department of State to enter into personal services contracts with individuals to perform services in support of the Department of Defense in foreign countries.

Subtitle B—Department of Defense Civilian Personnel

SEC. 911. REMOVAL OF LIMITS ON THE USE OF VOLUNTARY EARLY RETIREMENT AUTHORITY AND VOLUNTARY SEPARATION INCENTIVE PAY FOR FISCAL YEARS 2002 AND 2003.

Section 1153(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654A–323) is amended—

(1) in paragraph (1), by striking ''(1) Subject to paragraph (2), the'' and inserting ''The'';

(2) by striking paragraph (2); and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2).

SEC. 912. AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.

(a) CLARIFICATION OF STATUS OF CIVILIAN ATTORNEYS ACTING AS A NOTARY.—Section 1044a(b)(2) of title 10, United States Code, is amended by striking ''legal assistance officers'' and inserting ''legal assistance attorneys''.

(b) AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.—Subsection (b)(4) of such section 1044a is amended by inserting ''and, when outside the United States, all civilian employees of the armed forces of suitable training,'' after ''duty status''.

SEC. 913. INAPPLICABILITY OF REQUIREMENT FOR STUDIES AND REPORTS WHEN ALL DIRECTLY AFFECTED DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES ARE REASSIGNED TO COMPARABLE FEDERAL POSITIONS.

Section 2461 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(i) INAPPLICABILITY WHEN ALL DIRECTLY AFFECTED DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES ARE REASSIGNED TO COMPARABLE FEDERAL POSITIONS.—The provisions of this section shall not apply when all directly affected Department of Defense civilian employees serving on permanent appointments are reassigned to comparable Federal positions for which they are qualified.''.

SEC. 914. PRESERVATION OF CIVIL SERVICE RIGHTS FOR EMPLOYEES OF THE FORMER DEFENSE MAPPING AGENCY.

Notwithstanding section 1612 of title 10, United States Code, the provisions of subchapters II and IV (sections 7511 through 7514 and sections 7531 through 7533, respectively) of chapter 75 of title 5, United States Code, continue to apply, for as long as the employee continues to serve as a Department of Defense employee in the National Imagery and Mapping Agency without a break in service, to each of those former Defense Mapping Agency employees who occupied positions established under title 5, United States Code, and who on October 1, 1996, became employees of the National Imagery and Mapping Agency under paragraph 1601 (a)(1) of title 10, United States Code pursuant to Title XI of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–20 1; 110 Stat. 2675, et seq.) and for whom the provisions of chapter 75 of title 5, United States Code, applied before October 1, 1996. Each such employee, at any time, may elect in writing to waive the provisions of this section, in which case such waiver shall be permanent as to that employee.

SEC. 915. FINANCIAL ASSISTANCE TO CERTAIN EMPLOYEES IN ACQUISITION OF CRITICAL SKILLS.

The Secretary of Defense may provide the Director, National Imagery and Mapping Agency, the authority to establish an undergraduate training program with respect to civilian employees of the National Imagery and Mapping Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish for civilian employees of the National Security Agency under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).

SEC. 916. PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES.

(a) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2410o. Pilot program for payment of retraining expenses

''(a) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of retraining expenses in accordance

with this section to facilitate the reemployment of eligible employees of the Department of Defense who are being involuntarily separated due to a reduction-in-force or due to relocation resulting from transfer of function, realignment, or change of duty station. Under the pilot program, the Secretary may pay retraining incentives to encourage non-Federal employers to hire and retain such employees.

''(b) ELIGIBLE EMPLOYEES.—For purposes of this section, an eligible employee is an employee of the Department of Defense, serving under an appointment without time limitation, who has been employed by the Department of Defense for a continuous period of at least 12 months and who has been given notice of separation pursuant to a reduction in force, except that such term does not include—

''(1) a re-employed annuitant under subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or another retirement system for employees of the Government;

''(2) an employee who, upon separation from Federal service, is eligible for an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or subchapter II of chapter 84 of such title; or

''(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

''(c) RETRAINING INCENTIVE.—(1) Under the pilot program, the Secretary may enter into an agreement with a non-Federal employer under which the non-Federal employer agees—

''(A) to employ an eligible person referred to in subsection (a) for at least 12 months for a salary that is mutually agreeable to the employer and such person; and

''(B) to certify to the Secretary the cost incurred by the employer for any necessary training, as defined by the Secretary, provided to such eligible employee in connection with the employment by that employer.

''(2) The Secretary may pay a retraining incentive to the non-Federal employer upon the employee's completion of 12 months of continuous employment with that employer. Subject to this section, the Secretary shall prescribe the amount of the incentive.

''(3) The Secretary may pay a prorated amount of the full retraining incentive to the non-Federal employer for an employee who does not remain employed by the non-Federal employer for at least 12 months.

''(4) In no event may the amount of retraining incentive paid for the training of any one person under the pilot program exceed the amount certified for that person under paragraph (1) or $10,000, whichever is greater.

''(d) DURATION.—No incentive may be paid under the pilot program for training commenced after September 30, 2005.

''(e) DEFINITIONS.—The following definitions apply in this section:

''(1) The term ''non-Federal employer'' means an employer that is not an Executive Agency, as defined in section 105 of title 5, United States Code, or the legislative or judicial branch of the Federal Government.

''(2) ''Reduction-in-force'' and ''transfer of function'' shall have the same meaning as in chapter 35 of title 5, United States Code.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such Chapter 141 is amended by adding at the end the following new item:

''2410o. Pilot program for payment of retraining expenses.''.

Subtitle C—Other Matters

SEC. 921. AUTHORITY TO ENSURE DEMILITARIZATION OF SIGNIFICANT MILITARY EQUIPMENT FORMERLY OWNED BY THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—Chapter 153 of title 10, United States Code, is amended by inserting after section 2572 the following new section:

''§ 2573. Continued authority to require demilitarization of significant military equipment after disposal

''(a) AUTHORITY TO REQUIRE DEMILITARIZATION.—The Secretary of Defense may require any person in possession of significant military equipment formerly owned by the Department of Defense—

''(1) to demilitarize the equipment:

''(2) to have the equipment demilitarized by a third party; or

''(3) to return the equipment to the Government for demilitarization.

''(b) COST AND VALIDATION OF DEMILITARIZATION.—When the demilitarization of significant military equipment is carried out by the person in possession of the equipment pursuant to paragraph (1) or (2) of subsection (a), the person shall be solely responsible for all demilitarization costs, and the United States shall have the right to validate that the equipment has been demilitarized.

''(c) RETURN OF EQUIPMENT TO GOVERNMENT.—When the Secretary of Defense requires the return of significant military equipment for demilitarization by the Government, the Secretary shall bear all costs to transport and demilitarize the equipment. If the person in possession of the significant military equipment obtained the property in the manner authorized by law or regulation and the Secretary determines that the cost to demilitarize and return the property to the person is prohibitive, the Secretary shall reimburse the person for the purchase cost of the property and for the reasonable transportation costs incurred by the person to purchase the equipment.

''(d) ESTABLISHMENT OF DEMILITARIZATION STANDARDS.—The Secretary shall issue regulations to prescribe what constitutes demilitarization for each type of significant military equipment, with the objective of ensuring that the equipment does not pose a significant risk to public safety and does not provide a significant weapon capability or military-unique capability and ensure that any person from whom private property is taken for public use under this section receives just compensation.

''(e) EXCEPTIONS.—This section does not apply—

''(1) when a person is in possession of significant military equipment formerly owned by the Department of Defense for the purpose of demilitarizing the equipment pursuant to a Government contract.

''(2) to small arms weapons issued under the Defense Civilian Marksmanship Program established in Title 36, United States Code.

''(3) to issues by the Department of Defense to museums where modified demilitarization has been performed in accordance with the Department of Defense Demilitarization Manual, DoD 4160.21–M–1; or

''(4) to other issues and un-demilitarized significant military equipment under the provisions of the provisions of the Department of Defense Demilitarization Manual, DoD 4160.21–M–1.

''(f) DEFINITION OF SIGNIFICANT MILITARY EQUIPMENT.—In this section, the term ''significant military equipment'' means—

''(1) an article for which special export controls are warranted under the Arms Export Control Act (22 U.S.C. 2751 et seq.) because of its capacity for substantial military utility or capability, as identified on the United States Munitions List maintained under section 121.1 of title 22, Code of Federal Regulations; and 46

(2) any other article designated by the Department of Defense as requiring demilitarization before its disposal.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2572 the following new item:

''2573. Continued authority to require demilitarization of significant military equipment after disposal.''.

SEC. 922. MOTOR VEHICLES: DOCUMENTARY REQUIREMENTS FOR TRANSPORTATION FOR MILITARY PERSONNEL AND FEDERAL EMPLOYEES ON CHANGE OF PERMANENT STATION.

(a) MILITARY PERSONNEL.—Section 2634 of title 10, United States Code, is amended as follows:

(1) by redesignating subsections (f), (g) and (h) as subsections (g), (h), and (i) respectively; and

(2) by inserting after subsection (e) the following new subsection;

''(f) Motor vehicles transported under this section are not subject to the provisions of the Anti Car Theft Act of 1992, as amended, or any implementing regulations. The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a Service in the Navy) will prescribe regulations designed to ensure members do not present for shipment stolen vehicles.''.

(b) CIVILIAN EMPLOYEES.—Section 5727 of title 5, United States Code, is amended as follows:

(1) by redesignating subsection (f) as subsection (g); and

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

''(f) Motor vehicles transported under this section are not subject to the provisions of the Anti Car Theft Act of 1992, as amended, or any implementing regulations. Regulations prescribed under section 5738 of this title will include provisions designed to ensure employees do not present for shipment stolen motor vehicles under subsection (b) of this section.''.

SEC. 923. DEPARTMENT OF DEFENSE GIFT INITIATIVES.

(a) LOAN OR GIFT OF OBSOLETE MATERIAL AND ARTICLES OF HISTORICAL INTEREST.—Section 7545 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting the following catchline after the subsection designator: ''ADDITIONAL ITEMS TO BE DONATED BY THE SECRETARY OF THE NAVY.'';

(B) by striking ''books, manuscripts, works of art, drawings,'' and all that follows to the dash and inserting ''obsolete combat or shipboard material not needed by the Department of the Navy, to'';

(C) in paragraph (5), by striking ''World War I or World War 11'' and inserting ''a foreign war.'';

(D) in paragraph (6), by striking ''soldiers'' and inserting ''servicemen's''; and

(E) in paragraph (8), by inserting ''or memorial'' after ''a museum''; and

(2) in subsection (b), by inserting the following catchline after the subsection designator: ''MAINTENANCE OF THE RECORDS OF THE GOVERNMENT.—'';

(3) in subsection (c), by inserting the following catchline after the subsection designator: ''SECRETARIAL AUTHORITY TO MAKE GIFTS OR LOANS.—''; and

(4) by adding at the end the following new subsection:

''(d) AUTHORITY TO TRANSFER A PORTION OF A VESSEL.—The Secretary may lend, give or otherwise transfer any portion of the hull or superstructure of a vessel stricken from the Naval Vessel Register and designated for scrapping to a qualified organization listed under subsection (a). The terms and conditions of any agreement for the transfer of a portion of a vessel under this section shall include a requirement that the transferee will maintain the material conveyed in a condition that will not diminish the historical value of the material or bring discredit upon the Navy.''.

(b) LOAN, GIFT, OR EXCHANGE OF DOCUMENTS, HISTORICAL ARTIFACTS, AND CONDEMNED OR OBSOLETE, COMBAT MATERIAL.—Section 2572(a)(1) of such title 10 is amended by striking the period after ''A municipal corporation'' and inserting county or other political subdivision of a state.''.

SEC. 924. REPEAL OF THE JOINT REQUIREMENTS OVERSIGHT COUNCIL SEMI-ANNUAL REPORT.

Section 916 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654) is repealed.

SEC. 925. ACCESS TO SENSITIVE UNCLASSIFIED INFORMATION.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

§ ''2332. Limited access to sensitive unclassified information by administrative support contractors

''(a) AUTHORITY.—-Notwithstanding sections 552a of title 5, 2320 of title 10, and 1905 of title 18, United States Code, the Secretary of Defense may provide administrative support contractors with limited access to, and use of, sensitive unclassified information, provided that—

''(1) such disclosure is not otherwise prohibited by law;

''(2) access shall be limited to sensitive unclassified information that is necessary for the administrative support contractor to perform contractual duties;

''(3) administrative support contractors shall be subject to the same restrictions on using, reproducing, modifying, performing, displaying, releasing or disclosing such sensitive unclassified information as are applicable to employees of the United States; and

''(4) administrative support contractors shall be subject to the same civil and criminal penalties for unauthorized disclosure or use of such sensitive unclassified information as are applicable to employees of the United States.

''(b) DEFINITIONS.—The following definitions apply to this section:

''(1) The term ''sensitive unclassified information'' means all unclassified information for which disclosure to an administrative support contractor is prohibited by the Privacy Act (5 U.S.C. §552a); section 2320 of this title; or the Trade Secrets Act (18 U.S.C. §1905).

''(2) The term ''administrative support contractor'' means any officer or employee of a contractor or subcontractor who performs any of the following for or on behalf of the Department of Defense: secretarial or clerical support; provisioning or logistics support; data entry; document reproduction, scanning, or imaging; operation, management, or maintenance of paper-based or electronic mail rooms, file rooms, or libraries; installation, operation, management, or maintenance of internet or intranet systems, networks, or computer systems; and facilities or information security.''.

(b) CLERICAL AMENDNENT.—The table of sections at the beginning of such chapter 137 is amended by adding at the end the following new item:

''2332. Limited access to sensitive unclassified information by administrative support contractors.''.

SEC. 926. WATER RIGHTS CONVEYANCE, ANDERSEN AIR FORCE BASE, GUAM.

(a) AUTHORITY TO CONVEY.—In conjunction with the conveyance of a utility system under the authority of section 2688 of title 10, United States Code, and in accordance with all the requirements of that section, the Secretary of the Air Force may convey all right, title, and interest of the United States, or such lesser estate as the Secretary considers appropriate to serve the interests of the United States, in the water rights related to Andy South (also known as the Andersen Administrative Annex, MARBO (Marianas Bonins Base Command), and the Andersen Water Supply Annex (also known as the Tumon Water Well or the Tumon Maui Well), Air Force properties located on Guam.

(b) ADDITIONAL REQUIREMENTS.—The Secretary may exercise the authority contained in subsection (a) only if—

(1) the Secretary has determined that there exists adequate supplies of potable groundwater under Andersen Air Force Base that are sufficient to meet the current and long-term requirements of the installation for water;

(2) the Secretary has determined that such supplies of groundwater are economically obtainable; and,

(3) the Secretary requires the conveyee to provide a water system capable of meeting the water supply needs of Anderson Air Force Base, as determined by the Secretary.

(c) INTERIM WATER SUPPLIES.—If the Secretary determines that it is in the best interests of the United States to transfer title to the water rights and utility systems at Andy South and Andersen Water Supply Annex prior to placing into service a new replacement water system and well field on Andersen Air Force Base, the Secretary may require that the United States have the primary right to all water produced from Andy South and Andersen Water Supply Annex until such new replacement water system and well field is placed into service and operates to the satisfaction of the Secretary. In exercising the authority of this subsection, the Secretary may retain a reversionary interest in the water rights and utility systems at Andy South and Andersen Water Supply Annex until such time as the new replacement water system and well field is placed into service and operates to the satisfaction of the Secretary.

(d) SALE OF EXCESS WATER AUTHORIZED.—(1) If the Secretary exercises the authority contained in subsection (a), he may provide in any such conveyance that the conveyee of the water system may sell to public or private entities such water from Andersen Air Force Base as the Secretary determines to be excess to the needs of the United States. In the event the Secretary authorizes the conveyee to resell water, the Secretary shall negotiate a reasonable return to the United States of the value of such excess water sold by the conveyee, which return the Secretary may receive in the form of reduced charges for utility services provided by the conveyee.

(2) If the Secretary cannot meet the requirements of subsection (c), and the Secretary determines to proceed with a water utility system conveyance under section 2688 of title 10, United States Code, without the conveyance of water rights, the Secretary may provide in any such conveyance that the conveyee of the water system may sell to public or private entities such water from Andy South and Andersen Water Supply Annex as the Secretary determines to be excess to the needs of the United States. The Secretary will negotiate a reasonable return to the United States of the value of such excess water sold by the conveyee, which return the Secretary may receive in the form of reduced charges for utility services provided by the conveyee.

(e) DEFINITIONS.—(1) For purposes of this section, ''Andersen Air Force Base'' means the Main Base and Northwest Field.

(2) The water rights referred to in subsection (a) shall be considered as part of a ''utility system'' as that term is defined in section 2688(g)(2) of title 10, United States Code.

(f) APPLICATION OF THE OTHER LAND DISPOSAL ACTS.—The water rights related to Andy South and Andersen Water Supply Annex shall not be considered as real property for purposes of the Act of November 13, 2000, to amend the Organic Act of Guam, and for other purposes (Public Law 106–504; 114 Stat. 2309) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.).

SEC. 927. REPEAL OF REQUIREMENT FOR SEPARATE BUDGET REQUEST FOR PROCUREMENT OF RESERVE EQUIPMENT.

Section 114(e) of title 10, United States Code, is repealed.

SEC. 928. REPEAL OF REQUIREMENT FOR TWO-YEAR BUDGET CYCLE FOR THE DEPARTMENT OF DEFENSE.

Section 1405 of the Department of Defense Authorization Act, 1986 (31 U.S.C. 1105 note) is repealed.

SECTIONAL ANALYSIS

Sections 101 through 106 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and the Defense Agencies in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 302 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 303 authorizes appropriations for fiscal year 2002 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home in amounts equal to the budget authority included in the President's Budget for fiscal year 2002.

Section 304 would amend section 5(a) of the Multinational Force and Observers (MFO) Participation Resolution, to authorize the President to approve contracting out logistical support functions in support of the MFO that are currently performed by U.S. military personnel and equipment. The resolution was enacted in December 1981, in order to authorize the United States to deploy peacekeepers and observers to Sinai, Egypt to assist in the fulfillment of the Camp David Accords. In this regard, it should be noted that section 5(a) authorizes any agency of the United States to provide administrative and technical support and services to the MFO without reimbursement when the provision of such support or services would not result in significant incremental costs to the United States.

Administrative and technical support is provided under section 5(a) by the U.S. Army's 1st Support Battalion pursuant to international agreements with the Arab Republic of Egypt, the State of Israel, and the MFO. These agreements stipulate the types of unit functions required to be performed by the MFO in order for it to comply with its treaty verification mission. The two primary support functions currently provided by the United States to the MFO, are aviation and logistics support. Aviation support is provided to the MFO by ninety-nine soldiers and ten U.S. Army UH–1H helicopters. General logistical support to the MFO is provided by one hundred and fifty soldiers assigned to the U.S. Logistical Support Unit.

Section 305 would authorize the Secretary of Defense or designee to enter into multiple-year operating contracts or leases or charters of commercial craft, where economically feasible, in advance of the availability of funds in the working capital fund. The contract authority is available for obligation for one year and cannot exceed in its entirely $427,100,000. In subsequent years, the Department may submit requests for additional contract authority. This authority is appropriate for working capital funds where a history of use indicates an annual utilization of these items by DoD customers will be more than sufficient to pay for the annual costs. The use of annual leases, charters or contracts is not cost effective in obtaining capital items, or the use of commercial craft. To reduce the overall costs for DoD, authority to enter into multiple-year leases and charters is needed. Additional annual appropriated funds, however, are not needed, since the revenues generated from the use of these items to fill customer orders will cover these costs.

Section 1301 of title 31, United States Code, discusses the application of appropriations and requires, in subsection (d), that to authorize making a contract for the payment of money in excess of an appropriation a new law must specifically state that such a contract may be made. As the change specifically addresses only multiple-year leases, charters or contracts by working capital funds, the contract authority granted by this proposal would not impact other programs.

Similar authority, successfully utilized by the Navy Industrial Fund in connection with the long term vessel charters of T–5 tankers, was approved by Congress as part of the Supplemental Appropriations Act of 1983. That program and the use of contract authority was favorably reviewed by the Comptroller General in B–174839, March 20, 1984. As indicated in the opinion, working capital funds are precluded from negotiating cost effective multiple-year contracts for capital items or associated services without posting obligations for the entire amount, even though no appropriations are likely to ever be needed.

The Military Sealift Command (MSC) provides world-wide capability for sealift, prepositioning assets, and a wide arrange of oceanographic services. They operate approximately 125 ships worldwide with civilian mariners. Because the Military Sealift Command is a Working Capital Fund activity, their funding is provided through customer orders for sealift services, generally on an annual basis. Contract authority is required to allow MSC to enter into multiple year leases in advance of appropriations. The legislative proposal provides that authority.

It is advantageous for the Government to have MSC enter into multiple year leases for these charter and associated services for a number of reasons, including:

The 29 prepositioned ships carry a variety of items., including ammunition, fuel, medical supplies, and heavy armored equipment. The offload and onload of this cargo requires significant logistics infrastructure and is a costly undertaking. The DoD infrastructure is sized for that operation to take place concurrent with the required maintenance schedule for the ships, which ranges from two to five years depending on the type of ship and type of cargo. The contract period is established to coincide with this schedule. If these contracts were required to be annual contracts, there could be significant operational degradation and excessive demand on the DoD infrastructure due to offload and onload requirements at potentially annual periods.

The commercial market standard is for multiple year charters. There are savings to DoD by negotiating multiple year leases, consistent with commercial practices. In addition, DoD would not be able to effectively compete for annual contracts because foreign flag carriers are not interested in competing for short-term contracts due to the costs they incur to re-flag the vessels and to prepare or modify ships to meet DoD needs. Past experience indicates that the costs to DoD would be significantly higher if competition were limited to currently U.S.-flag vessels on an annual basis.

If the legislation is not enacted, MSC will be required to negotiate the contracts on an annual basis, resulting in increased costs and potential disruptions to military operations.

Section 310. The Navy and the U.S. Environmental Protection Agency (EPA) entered into an agreement in January 2001 for payment of EPA response costs at the Hooper Sands Site, South Berwick, Maine for EPA's remaining past response costs incurred by the agency for the period from May 12, 1992 through July 31, 2000. Activities of the Navy are liable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as generators who arranged for disposal of the hazardous substances that ended up at the site, and there are no other viable responsible parties. Under the agreement, the Navy would pay for EPA's final response actions that were undertaken to protect human health and the environment at this site. The agreement also stipulated that the Navy would seek authorization from Congress in the FY02 legislative program for payment of costs previously incurred by EPA at the site. Should Congress approve this legislative proposal, the Navy would pay EPA with funds from the Navy's ''Environmental Restoration Account, Navy'' in an amount equal to the principle ($809,078.00) and interest ($196,400.00), or a total of $1,005,478.00.

Section 311 would extend the authority to conduct the pilot program from September 30, 2001 to September 30, 2003. The original legislation authorized the pilot program to run for two years from the date of enactment on November 18, 1997. Section 325 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 512) extended that two-year deadline an additional two years.

The initial extension was requested because the Department of Defense implementation guidance, required by the statute, had not been completed as of the fall of 1998. In order to fulfill the purpose of the legislation and adequately assess the feasibility and advisability of the sale of economic incentives, the pilot program was extended another two years from its original deadline. We are requesting an additional two-year extension to allow further opportunity for the Department to assess the feasibility of the program. States have been slower to develop emission-trading programs than initially anticipated and more time is desired to allow military installations to become familiar with the benefits of economic incentive programs.

Section 351 also provides authority to the Department of Defense (DoD) to retain proceeds from the sale of Clean Air Act emission reduction credits, allowances, offsets, or comparable economic incentives. Federal fiscal law and regulations generally require proceeds from the sale of government property to be deposited in the U.S. Treasury. These authorities preclude an agency from keeping the funds generated by reducing air emissions and selling the credits as does private industry. This inhibits the reinvestment of those funds to purchase air credits needed in other areas and eliminates any incentive for installations to spend the money required to generate the credits in order to sell them.

The Clean Air Act (CAA) mandates that states establish state implementation plans (SIPS) to attain and maintain the national ambient air quality standards (NAAQs), which are health based standards established for certain criteria air pollutants, e.g., ozone, particulate matter, carbon monoxide. To further this mandate, the 1990 Clean Air Act Amendments provided language encouraging the states to include ''economic incentive'' programs in their SIPs. Such programs encourage industry to reduce air pollution by offering monetary incentives for the reduction of emissions of criteria air pollutants.

A significant and growing number of state and local air quality districts have established various types of emission trading systems. Absent the proposed legislation, the military services would be required to remit any proceeds from the sale of economic incentives to the U.S. Treasury. The proposed legislation grants military installations authority to sell the economic incentives and to retain the proceeds in order to create a local economic incentive to reduce air pollution above and beyond legal requirements. Retention and use of proceeds at the installation level is a key component of the pilot program.

Section 312 would remove the requirement for the Department of Defense to submit an annual report to Congress on its reimbursement of environmental response action costs for the top 20 defense contractors, as well as on the amount and status of any pending requests for such reimbursement by those same firms. This reporting requirement was slated to end in December 1999 pursuant to section 3003(a) of the Federal Reports Elimination and Sunset Act of 1995, Pub. L. 104–66; however, it was reinstated by section 1031 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65.

The Department strongly recommends removal of this statutory reporting requirement because the data collected are not necessary, or even helpful, for properly determining allowable environmental response action costs on Government contracts. Moreover, the Department does not routinely collect data on any other categories of contractor overhead costs.

This reporting requirement is very burdensome on both the Department and contractors, diverting limited resources for data collection efforts that do not benefit the procurement process. Not only are there 20 different firms involved, but for most of these contractors, data must be collected for multiple locations in order to get an accurate company-wide total. In many cases the data must be derived from company records because it is not normally maintained in contractor accounting systems. After the data is collected, Department contracting officers must review, assemble, and forward the data through their respective chains of command to the Defense Contract Audit Agency for validation. After validation, the data is provided to the Secretary of Defense's staff for consolidation into the summary report provided to Congress.

In addition, the summary data provided to Congress in this annual report have shown that the Department is not expending large sums of money to reimburse contractors for such costs. The Department's share of such costs in FY99 was approximately $11 million. In the preceding years the costs were, $13 million in FY98, $17 million for FY97, and $4 million for FY96.

Section 315 would amend section 2482(b)(1) of title 10, to extend its reach to all Defense working capital fund activities that provide the Defense Commissary Agency services, and allow them to recover those administrative and handling costs the Defense Commissary Agency would be required to pay for acquiring such services.

Currently, section 2482(b)(1) restricts the amount that the United States Transportation Command could charge to the Defense Commissary Agency for such services to the price at which the service could be obtained through full and open competition, as section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)) defines such terms. These same restrictions, however, do not apply to other Defense working capital fund activities and preclude the United States Transportation Command from recovering ''freight forwarding'' costs that the Defense Commissary Agency would ordinarily have had to pay a commercial contractor.

If enacted, the proposed amendment would end this inequity, by applying a single cost-effective guideline for such charges to all Defense working capital fund activities. It should also be noted that the last sentence of the proposed amendment continues the current policy of insuring that costs associated with mobilization requirements, maintenance of readiness, or establishment or maintenance of the infrastructure to support mobilization or readiness requirements, are not passed on to the customers of the Defense Commissary Agency.

This proposal will not increase the budgetary requirements of the Department of Defense.

Section 316 requires that the Defense Commissary Agency surcharge account be reimbursed for the commissary's share of the depreciated value of its stores when a Military Department allows the occupation of a facility—previously acquired, constructed or improved with commissary surcharge funds—to be used for non-commissary related purposes.

Section 317 would permit the Defense Commissary Agency (DECA) to sell limited exchange merchandise at locations where no exchange facility is operated by an Armed Service Exchange. Under Section 2486(b) of title 10, United States Code, the Secretary of Defense may authorize DeCA to purchase and sell as commissary store inventory a limited line of exchange merchandise. This amendment is required to obtain the necessary authority for DeCA to procure the exchange merchandise items from the Armed Service Exchange. The Armed Service Exchange selling price to DeCA for such items would not exceed the normal exchange retail cost less the amount of the commissary surcharge, so that the amount paid by the patron would be the same. If the Exchange cannot supply the items authorized to be sold by DeCA, DeCA may procure them from any authorized source subject to the limitations of section 2486(e) of title 10 (i.e., that such items are only exempt from competitive procurement if they comply with the brand name sale requirements of being sold in the commercial stores). Regardless from whom such items are procured, they must be sold in commissaries at cost plus the amount of the surcharge.

Section 318 would amend a portion of section 2482 (a) of title 10 that is entitled ''Private Operation'' to delete overly restrictive language. The current section authorizes Commissary stores to be operated by private persons under a contract, but prohibits the contractor from carrying out functions for the procurement of products to be sold in the Commissary or from engaging in functions related to the actual management of the stores. Consequently, the Department is precluded from realizing the potential benefits that can be derived from contracting out the operation and management of the stores. By deleting this language a private contractor selected to operate Commissary stores would be allowed to apply best commercial practices in both store operations and supply chain management, and to achieve economy of scale savings in procurement, distribution, and transportation of products to be sold in the Commissary stores. This change will allow the Department to initiate pilot programs to test these potential benefits at selected Commissary stores.

Section 320 would establish permanent authority for active Department of Defense units and organizations to reimburse National Guard and Reserve units and organizations for the expenses incurred when Guard and Reserve personnel provide them intelligence and counterintelligence support. For the last five years, Congress has authorized such reimbursement in each year's defense appropriations act. See e.g., section 8059 of the Department of Defense Appropriations Act, 2001 (Public Law 106–259; 114 Stat. 656, 687). For the past several years the language of these annual provisions has remained unchanged, and the Department proposes to establish authority for such reimbursement on a permanent basis.

Such reimbursement constitutes an exception to the general principle that funds for active DoD organizations may not be expended to pay the expenses of Guard and Reserve units, and vice versa. By their training and experience, reserve intelligence personnel make unique contributions to the intelligence and counterintelligence programs of active DoD units and organizations. They also provide invaluable surge capability to help respond to unforeseen contingencies. Guard and Reserve units do not program funds for such support of active DoD units and organizations, which makes it essential that the supported active units and organizations have the authority to reimburse the affected Guard and Reserve units and organizations for the expenses they occur in providing personnel to perform such support. The practical effect of this reimbursement authority is in fact to further implement the principle that active units and organizations should pay for the expenses of their own programs and activities, while Guard and Reserve units and organizations should do the same.

A January 5, 1995 Deputy Secretary of Defense memorandum, ''Peacetime Use of Reserve Component Intelligence Elements'' approved a DoD ''Implementing Plan for Improving the Utilization of the Reserve Military Intelligence Force'' dated December 21, 1994. This plan explicitly recognized the requirement for an arrangement under which active units and organizations receiving reserve intelligence support would reimburse the affected reserve units for their expenses in providing such support.

This memo was superseded by DoD Directive 3305.7, ''Joint Reserve Intelligence Program (JRIP),'' February 29, 2000. Under section 3.1 of this Directive, ''The JRIP engages [reserve component] intelligence assets during periods of active and inactive duty to support validated DoD intelligence requirements across the entire engagement spectrum from peacetime through full mobilization, coincident with wartime readiness training.'' Reimbursement of the affected reserve units is a cornerstone of this arrangement, and such reimbursement is absolutely essential to success of the JRIP. Five years of experience with this arrangement have made it a mature program that should be permanently authorized.

Section 321 will authorize for sale the remaining materials in the National Defense Stockpile for which there is no Department of Defense requirement and which have not yet been authorized for sale.

Section 401 prescribes the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2002.

Section 405 prescribes the strengths for the selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal year 2002.

Section 406 prescribes the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2002.

Section 407 prescribes the minimum end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2002.

Section 408 prescribes the maximum end strengths for the reserve components of the Army and Air Force for non-dual status military technicians for fiscal year 2002.

Section 409 would replace the current sections 12011 and 12012 of title 10, United States Code, with new sections 12011 and 12012, which would accommodate both senior grade officers (0–4, 0–5, 0–6) and senior grade enlisted members (E–8, E–9) of the Active Guard and Reserve force. These new sections would include tables for each Reserve component, vice each Service, for senior grade officer (12011) and enlisted member (12012) ceilings. This proposed amendment would provide for a non-static method of authorizing senior grade Active Guard and Reserve members, thus eliminating the requirement to request changes in legislation when the size of the Active Guard and Reserve force changes. The methodology would be consistent with that used for Active component senior grade officers, and tie the number of senior grade authorizations to the size of the Active Guard and Reserve force.

Section 410. The proposed amendment to section 523 of title 10, United States Code, increases Defense Officer Personnel Management Act-authorized end strength limitations for active duty Air Force officers in the grade of major. This would continue progress toward achieving an appropriate distribution of officers within the Air Force. An appropriate distribution may be achieved by increasing the authorized strengths of commissioned officers in the grade of major by seven

percent starting in fiscal year 2002. This proposed amendment would not increase the total number of commissioned officers authorized for the Air Force and would not affect the officer-to-enlisted ratio.

The budgetary impact of this proposal on Air Force Military Personnel appropriation budget requirements would be a net increase of $10 million in FY 2002, as the grade relief is phased in, and a net increase of approximately $20 million per year thereafter.

Section 501 would repeal subsection 1074a(d) of title 10, United States Code, which requires certain health care for Selected Reserve members of the Army assigned to units scheduled to deploy within 75 days after mobilization. Since this provision was enacted, the Department has implemented several programs to ensure Reserve component members are medically ready.

The Army has implemented a program called FEDS–HEAL, which is an alliance with the Department of Veterans Affairs (DVA) and the Department of Health and Human Services (DHHS) that allows Army Reserve and National Guard members to complete physical examinations, receive inoculations and complete other medical requirements in DVA and DHHS healthcare facilities across the country. This significantly enhances access for Reserve component members of the Army to meet medical and dental readiness requirements.

DoD policy now requires an annual dental examination. To track Reserve component dental readiness, the Department has developed a standard dental examination form that can be completed by a member's personal civilian dentist. Moreover, the recently expanded TRICARE Dental Program provides Reserve component members with an affordable means of completing dental examinations and receiving dental care through a much larger provider network. The cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

The current statutory requirement to conduct a full physical examination every two years for members over the age of 40 and dental care identified during the annual dental screening is difficult to implement for a select population that is very fluid with a relatively high turnover of individuals each year. Those Reserve Component units and individual Reserve Component members identified as early-deploying change frequently. The annual cost to the Department to meet this over–40 physical examination requirement for early deploying unit members every two years is $3.8 million, or over four times the annual cost if an exam were provided every five years as required for other members of the Reserve force. Additionally, requiring a complete medical examination every two years exceeds the recommendations of the U.S. Preventive Services Task Force, a 20–member non-federal panel commissioned by the Public Health Service in 1984 to develop recommendations for clinicians on the appropriate use of preventive measures. The Task Force does not consider such frequency of examinations cost effective in terms of identifying disease or determining deployability. The use of yearly health assessment questionnaires and appropriate age specific tests during the five-year periodic medical examination provide sufficient medical screening of the population over age 40. Finally, providing medical and dental services for a specific population in only two of the seven Reserve Components creates an inequity among members of the Selected Reserve and among Reserve Components.

This recommendation was contained in the Secretary of Defense report to Congress on the means of improving medical and dental care for Reserve Component members, which Secretary Cohen sent to Congress on November 5, 1999.

Section 502 would amend section 640 of title 10, United States Code, to afford members whose mandatory dates of separation or retirement were delayed due to medical deferment, a period of time to transition to civilian life following termination of medical deferment. It would afford active duty members whose mandatory separations or retirements incident to Chapter 36 or Chapter 63 of this title, a period of time, not to exceed 30 days, following termination of suspensions made under section 640, to transition to civilian life.

As currently written, section 640 requires immediate separation or retirement of those medically deferred members who would have been subject to mandatory separation or retirement under this title for age (section 1251), length of service (sections 633–636), promotion (sections 632, 637) or selective early retirement (section 638). An abrupt termination, especially of a medical deferment, could cause undue hardship on those whose planned departure to civilian life was unexpectedly interrupted and now must be resumed posthaste. Depending upon the nature of the medical deferment, there may be some problems with employment opportunities should the member be thrust back into civilian life without a reasonable preparation time. The 30–day period would allow individuals sufficient time to transition to civilian life, without the distractions of the circumstances of their deferments. This leeway must be provided for these members to reschedule the many details incident to final departure from military life.

Section 503 would add a new section to title 10, United States Code, to provide for the detail of an officer in a grade not below lieutenant commander to serve as Officer-in-Charge of the United States Navy Band. While so serving, an officer who holds a grade lower than captain (0–6) would have the grade of captain. The officer's permanent status as a commissioned officer would not be changed by his detail under this section.

Navy has one Limited Duty Officer captain (0–6) Bandmaster (6430) billet—the position of Officer in Charge/Leader, U.S. Navy Band. The United States Navy Band, Washington, D.C. is the Navy's premier musical representative. As such, Navy established this prestigious position at the captain level because of its extremely high visibility; its importance to Navy representation; the enormous demands of command as well as the technical skill required of the incumbent; to provide proper recognition and compensation for the officer serving as the Band's leader; and to elevate and maintain this organization's status at an appropriate level.

Army, Marine Corps, and Air Force premier Service-band Commanding Officers/Commanders are also 0–6 billets and selection for those positions is accomplished in a manner similar to that used by the U.S. Navy Band. Upon assignment to these positions, leaders of the Army, Marine Corps, and Air Force bands are specifically ''selected'' for promotion to 0–6. That is not the case with the Officer-in-Charge/Leader of the U.S. Navy Band because selection for and appointment to this position is limited to the Limited Duty Officer community. As such, those selected for this special appointment are generally officers with 28–32 years of total active service at the time of selection and appointment as Officer-in-Charge/Leader, U.S. Navy Band. However, the established career path of Limited Duty Officers typically results in selection for this position while serving in the grade of lieutenant commander (0–4) or commander (0–5) and flow points normally do not provide an opportunity for promotion to 0–6 prior to statutory retirement.

Section 504. General/flag officers serving above the grade of 0–8 serve in a temporary grade that is authorized by the position. Such officers generally hold a permanent grade of 0–8. Under current law, for the officer to retire in a grade above 0–8, the Secretary of Defense must determine and then certify to the President and the Congress that such officer served satisfactorily on active duty in the higher grade. Most officers who serve in grades above 0–8 are approved for retirement in the highest grade held. Section 504 would retain the requirement for the Secretary of Defense to certify that the service of an officer on active duty in a grade above 0–8 was satisfactory in order for the officer to be retired in the grade above 0–8, but would do away with the requirement for the Secretary of Defense to provide that certification in writing to the President and the Congress. Further, Section 504 would require the Secretary of Defense to issue written regulations to implement these procedures.

Section 505 would modify sections of titles 10, 37, and 20 of the United States Code to extend temporary military drawdown authorities through Fiscal Year (FY) 2004. Most of these authorities were initially established in the FY 1991 through FY 1993 National Defense Authorization Acts (NDAA). They were designed to enable the Services to reduce their military forces through a variety of voluntary and involuntary programs and to provide benefits to assist departing members in their transition to civilian life. The FY 1994 NDAA extended these authorities through FY 1999. The Department later requested a further extension through FY 2003, but the FY 1999 NDAA only extended them through FY 2001.

Section 505 would add no new or changed programs. Rather, it would extend the expiration date by three years for existing programs. Programs affected include: early retirement authority, enabling Services to offer retirement to members with 15 through 19 years of service; voluntary separation incentive or special separation benefit (VSI/SSB), which offers an annuity or lump sum payment to members separating with between 6 and 19 years of service; waivers of time-in-grade and commissioned service time requirements for officers; and relaxation of certain selective early retirement and reduction-in-force restrictions. Separate, but similar, provisions are included for Reserve and Guard forces. These programs are discretionary and Service Secretaries, when authorized by the Secretary of Defense, may determine whether or not to use the programs.

Transition benefits are otherwise not discretionary. Some apply either to individuals involuntarily separated during the drawdown period or to those accepting VSI or SSB. These include a transition period in which the member and family members continue to receive health care, commissary and exchange benefits, use of military housing, extension of separation or retirement travel, transportation, and storage benefits for up to one year, and extension of the time limitations on the Reserve Montgomery GI Bill. Others provide transition benefits to all departing members during the drawdown period, educational leave to prepare for post-military community and public service, and continued enrollment of dependents for up to one year to graduate from Department of Defense Dependent Schools.

These programs have helped the Services take large reductions in a short time. Although reductions have stabilized and drawdown tools are not currently needed to achieve overall end-strength, they may be

necessary to accomplish force-shaping reductions. In FY 1999 and 2000, the Air Force used early retirement, time in grade, commissioned service time waivers, and VSI/SSB to accomplish medical right-sizing and to alleviate a significant field grade imbalance in the chaplain corps. In FY 2001 and beyond, the Air Force anticipates a continued need for drawdown tools (with associated benefit programs) to stabilize non-line end-strengths. Future force-shaping initiatives could also require limited use of drawdown tools.

Section 506. Subsection (a) adds a new section 1558 at the end of chapter 79 of title 10:

Section 1558(a) authorizes the Secretary of the military department concerned to correct the military records of a person to reflect the favorable outcome of a special board, retroactive to the date of the original board.

Section 1558(b) provides that, in the case of a person who was separated, retired or transferred to an inactive status as a result of the recommendation of a selection board and later becomes entitled to retention on or restoration to active duty or active status as a result of a records correction under section 1558(a), the person shall be restored to the same status, rights and entitlements in his or her armed force as he or she would have had but for the selection board recommendation. If the member does not consent to such restoration, he or she will be entitled to appropriate back pay and allowances.

Section 1558(c) provides that a special board outcome unfavorable to the person considered confirms the action of the original board, retroactive to the date of the original board.

Section 1558(d) authorizes the Secretary concerned to prescribe regulations to implement section 1558, including prescribing the circumstances under which special board consideration is available, when it is contingent on application by the person seeking consideration, and time limits for making such application. Such regulations, issued by the Secretary of a military department, must be approved by the Secretary of Defense.

Section 1558(e) provides that a person challenging the action or recommendation of a selection board is not entitled to judicial relief unless he or she has been considered by a special board under section 1558, or has been denied such consideration by the Secretary concerned. Denial of consideration by a special board is made subject to judicial review only on the basis that it is arbitrary, capricious, not based on substantial evidence, or otherwise contrary to law. If a court sets aside the Secretary's decision to deny such consideration, it shall remand the matter to the Secretary for consideration by a special board. The recommendation of a special board, or a decision resulting from that recommendation, is made subject to judicial review only on the basis that it is contrary to law or involved a material error of fact or a material administrative error. If a court sets aside such a recommendation or decision, it shall remand to the Secretary for new special board consideration, or a new action on the special board's recommendation, as the case may be. These limitations on reviewability and remedies parallel those applicable to reserve component selection boards under 10 U.S.C. 14502 and are in accord with current Federal Circuit law regarding review of military personnel decisions. Murphy v. U.S., 993 F.2d 871 (Fed. Cir. 1993). The term ''contrary to law'' is intended to encompass constitutional as well as statutory violations.

Section 1558(f) provides that the remedies prescribed in section 1558 are the exclusive remedies available to a person challenging the action or recommendation of a selection board, as that term is defined in section 1558(j).

Section 1558(g) provides that section 1558 does not limit the existing jurisdiction of any federal court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided for in section 1558.

Section 1558(h) contains time limits for action by the Secretary concerned on a request for consideration by a special board (six months) and on the recommendation of a special board (one year after convening the board). Failure to act within these time limits will be deemed a denial of the requested relief The Secretary, acting personally, may extend these time limits in appropriate cases, but may not delegate the authority to do so.

Section 1558(i) provides that section 1558 does not apply to the Coast Guard when it is not operating as a service in the Navy.

Section 1558(j)(1) defines ''special board'' to encompass any board, other than a special selection board convened under section 628 or 14502 of title 10, convened by the Secretary concerned to consider a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component, in place of consideration by a prior selection board that considered or should have considered the person. A board for correction of military or naval records under section 1552 of title 10 may be a special board if so designated by the Secretary concerned.

Section 1558(j)(2) defines ''selection board,'' for the purposes of section 1558, as encompassing existing statutorily established selection boards, (except a promotion selection board convened under section 573(a), 611 (a) or 14101 (a) of title 10), and any other board convened by the Secretary concerned to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces, or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

Subsection (b) adds new subsections (g), (h) and (i) to section 628 of title 10, the section authorizing special selection boards for promotion of active duty list commissioned and warrant officers (redesignating existing subsection (g) as subsection (j). New subsections (g) and (h) correspond exactly to subsections (g) and (h) of section 14502 of title 10, the ROPMA provision authorizing special selection boards for promotion of reserve active status list commissioned officers.

New subsection (g) provides that no court or official of the United States shall have power or jurisdiction over any claim by an officer or former officer based on his or her failure to be selected for promotion unless the officer has first been considered by a special selection board, or his claim has been rejected by the Secretary concerned without consideration by a special selection board. In addition, this subsection precludes any official or court from granting relief on a claim for promotion unless the officer has been selected for promotion by a special selection board.

Subsection (h) permits judicial review of a decision to deny special selection board consideration. A court may overturn such a decision and remand to the Secretary concerned to convene a special selection board if it finds the decision to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law. The term ''contrary to law'' is intended to encompass constitutional as well as statutory violations. Subsection (i) also provides that if a court finds that the action of a special selection board was contrary to law or involved material error of fact or material administrative error, it shall remand to the Secretary concerned for a new special selection board. No other form of judicial relief is authorized.

Subsection (i) provides (1) that nothing in this legislation limits the existing jurisdiction of any court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided for in this legislation, and (2) that nothing in this legislation limits the existing authority of the Secretary of a military department to correct a military record under section 1552 of title 10.

Subsection (c) provides that the amendments made by this legislation are retroactive in effect, except that they do not apply to any judicial proceeding commenced in a federal court before the date of enactment.

Section 511 would allow the Service Secretaries to routinely transfer Reserve officers to the Retired Reserve—without requiring that the officer request such a transfer—for those officers who are required by statute to be removed from the reserve active status list because of failure of selection for promotion, length of service, or age. This section would add a similar authority with respect to warrant officers and enlisted members who have reached the maximum age or years of service as prescribed by the Secretary concerned. However, this section would allow these members to request discharge or, in some cases, transfer to an inactive status list in lieu of transfer to the Retired Reserve. Giving the Service Secretaries this authority would also help protect those members who entered military service after September 7, 1980. Members who entered military service after that date and are discharged after qualifying for a non-regular retirement (former members) remain eligible to receive retired pay, but that pay is calculated on the pay scale in effect when discharged, rather than the pay scale in effect when they request retired pay. This is significant since the retired pay for a former member in most cases will be significantly less then that of a member of the Retired Reserve because of the pay scale used to determine the amount of retired pay. This amendment would require reservists to make a positive election to be discharged with the full understanding of the possible economic consequences of that decision.

Section 512. A specific definition with respect to Reserve component members was added as section 991(b)(2) of title 10, United States Code, by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The purpose of this definition was to ensure consistent treatment of Active and Reserve component members serving under comparable circumstances and preclude Reserve component members from being credited with deployed days when they could spend off-duty time in their home.

As provided in the National Defense Authorization Act for Fiscal Year 2001, the Active component will count ''home station training'' for deployment purposes whenever the member is unable to spend off-duty hours in the housing in which he or she resides when on garrison duty at his or her permanent duty station or homeport. To maintain consistency between Active and Reserve component members, the definition of deployment with respect to Reserve component members must be amended.

Absent the proposed change in Section 512, an active duty member who is not able to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or

homeport, because the member is performing home station training, will be credited with a day of deployment, while a Reserve component member serving under comparable circumstances will not because they will be within the 100-mile or three-hour limit. Section 512 would ensure consistency between Active and Reserve component members with respect to the PERSTEMPO definition.

Section 513 would eliminate the periodic physical examination requirement for members of the Individual Ready Reserve (IRR), which is required once every five years. In lieu of conducting a physical examination every five years, these members would receive a physical examination upon a call to active duty, if they have not had a physical examination within the previous five years. However, the Secretary concerned would have the authority to provide a physical examination when necessary to meet military requirements. There is little return on investment for any program to conduct physical exams for the more than 450,000 members of the IRR. The annual cost of ensuring that IRR members are examined as to physical condition at least every five years is approximately $2.3 million. This cost reflects approximately 10 percent of what the Department should be spending annually on physical exams for this population. However, the Department is able to provide only about 11,000 of the more than 90,000 required physical exams for IRR members each year. In this period of constrained resources, it would be far more cost-effective to conduct physical exams on these Reserve members at the time they are ordered to active duty. This recommendation was contained in the Secretary of Defense's report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress on November 5, 1999.

Section 514 would amend titles 10, 14 and 38, United States Code (U.S.C.), to provide the same benefits and protections for Reserve Component (RC) members while in a funeral honors duty status as provided when RC members perform inactive duty training (IDT) or traveling to or from IDT. Sections to be amended are:

(1) 10 U.S.C. 802—persons subject to the Uniformed Code of Military Justice. Section 514 would specify that members of a Reserve Component are subject to the Uniform Code of Military Justice while performing funeral honors duty under 10 U.S.C. 12503.

(2) 10 U.S.C. 1061—eligibility for commissary and exchange benefits for dependents of a deceased Reserve Component member. Section 514 would specify that the dependents of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty would be eligible for commissary and exchange benefits on the same basis as the surviving dependents of an active duty member.

(3) 10 U.S.C. 1475 and 1476—payment of a death gratuity. Section 514 would authorize payment of a death gratuity upon the death of a Reserve Component member who died while in a funeral honor duty status, or while traveling to or from such duty.

(4) 14 U.S.C. 704—military authority of members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same authority, rights and privileges as a member of the Regular Coast Guard of a corresponding grade or rating when the member is in a funeral honors duty status.

(5) 14 U.S.C. 705—benefits for members of the Coast Guard Reserve. Section 514 would specify that a member of the Coast Guard Reserve would have the same benefits as a member of the Naval Reserve of corresponding grade, rating and length of service when the member is in a funeral honors duty status.

(6) 38 U.S.C. 101—definitions. Section 514 would add the term ''funeral honors duty'' and define that term, and then include that term in the definition of ''active military, naval, or air service.'' Including the definition of funeral honors duty in the term active military, naval and air service, would entitle a Reserve Component to healthcare and disability compensation from the Department of Veterans Affairs for a service-connected disability incurred or aggravated while in a funeral honors duty status or traveling to or from such duty.

Amending the various statutes to add funeral honors duty as a duty status in which these benefits are provided is important to ensure a viable program of rendering honors at the funerals of our veterans.

Section 515 would specify that the performance of funeral honors by members of the Army National Guard of the United States or Air National Guard of the United States, while in a state status, satisfies the two-person funeral honors detail requirement. While members of the National Guard would meet this requirement when called to duty under a provision of title 10 or title 32, United States Code (U.S.C.), they are not in a federal status when performing duty in a state military duty status, and therefore would not fulfill the two-person requirement for performing funeral honors when in a state status. Amending 10 U.S.C. 1491 to permit National Guard members to fulfill this requirement when performing duty in a state status would help ensure this important mission is accomplished.

Section 516 would authorize Reserve Component members who have been ordered to active duty under section 12301(d) of title 10, United States Code (U.S.C.), to serve in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)), to be added to the authorized active duty end strength. It would also authorize the ceiling for general and flag officers and officers in the grades of O–6, O–5 and O–4 serving on active duty in those grades to be increased by a number equal to the number of officers in each pay grade serving on active duty in support of a contingency operation. Lastly, it would authorize the ceiling for enlisted members in the grades of E–9 and E–8 serving on active duty in those grades to be increased by a number equal to the number of enlisted members in each pay grade serving on active duty in support of a contingency operation.

Currently, Reserve Component members who are involuntarily called to active duty are exempt from the strength limitations in sections 115, 517 and 523 of title 10. Just as the Services involuntarily call Reserve Component personnel to active duty under section 10 U.S.C. 12304, to meet the operational requirements to support a contingency, the Services also use volunteers from their Reserve Components to meet the operational requirements of a contingency operation. These volunteers are called to active duty under 10 U.S.C. 12301(d). Regardless of the authority used, a voluntary call to active duty or an involuntary call to active duty, the additional manpower represents an unprogrammed expansion of the force to meet operational requirements. The authority to increase the end strength limits and grade ceilings would permit the Services to meet contingency operation requirements without adversely affecting the manpower programmed for other national security objectives. Finally, absent such an authority, the Services have an incentive to use non-volunteers to support these operations to avoid adversely affecting their end strength. This authority to expand the force by the number of Reserve Component members serving on active duty to support the contingency would encourage the Services to use volunteers to meet these mission requirements.

Section 517 would authorize payment of the financial assistance provided under 10 U.S.C. 16201 to a student who has been accepted into an accredited medical or dental school. Section 517 would further amend section 16201 to authorize payment of subsequent financial assistance to an officer who received financial assistance under this section while a student enrolled in medical or dental school and has now graduated and enters residency training in a healthcare professions wartime skill designated by the Secretary of Defense as critically short. When such a student agrees to financial assistance for residency training, the two-for-one service commitment previously incurred for financial assistance while attending medical or dental school may be reduced to one year for each year, or part thereof, of financial assistance previously provided. However, the service obligation incurred for residency training would remain at two-for-one. Finally, Section 517 would authorize the service obligation incurred for financial assistance for a partial year to be incurred in six-month increments for those agreements that require a two-for-one pay back. Thus, for every six months, or part thereof, of benefits paid under this program the recipient would be obligated for one year of service in the Selected Reserve. Currently, two years of service obligation is incurred for each partial year of financial assistance provided, regardless of the number of months in that partial year.

These amendments would provide a more robust incentive program that recruiters could offer students in the healthcare professions in order to entice them into joining the Guard or Reserve. The current medical recruiting incentives, which originated in the early to mid 1980s, must be updated to enable reserve recruiters to compete with hospitals, HMOs and communities who offer financial incentives to medical and dental students in return for a commitment to work for them once they become a qualified physician or dentist. As an example, both the Army Reserve and the Army National Guard, which account for 65 percent of Army medical requirements, have not been able to achieve medical recruiting goals and are experiencing serious medical end strength shortfalls.

In summary, Section 517 would enhance the recruiting incentives targeted at students entering the health care profession in four ways: (1) allow medical and dental school students to receive a stipend, (2) allow subsequent financial assistance for officers who have completed medical or dental school and enter residence training in a critically short wartime skill, (3) allow the service obligation to be reduced to one-for-one when a physician or dentist accepts additional financial assistance for residency training, and (4) allow those service obligations which require a two-for-one pay back to be incurred in six-month increments.

Section 518. Section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) amended section 641(1) of title 10, United States Code (U.S.C.), to exclude certain reserve component officers serving on active duty for periods of three years or less from the active duty list for promotion purposes. The amendment inadvertently excluded a number of reserve officers on active duty for three years or less who should properly be considered on the active duty list. For example, Senior Reserve Officers' Training Corps non-scholarship graduates who attend law school in an educational delay status are ordered to active duty for a period of three years and, as a result of the recent amendment, are placed on the reserve active-status

list, rather than on the active duty list. These officers, however, should compete for selection for promotion with their contemporaries on the active duty list, e.g., officers who are ordered to active duty for a period of four years as a consequence of their participation in the Senior Reserve Officers' Training Corps scholarship program.

Section 518 would amend section 641 to provide that reserve officers ordered to active duty for three years or less would be placed on the reserve active-status list only if their placement was required by regulations prescribed by the Secretary concerned and only if ordered to active duty for three years or less with placement on the reserve active-status list specified in their orders,. This amendment would provide the Secretaries of the military departments with the authority to prevent an inappropriate application of section 641(1)(D).

However, Section 518 would allow Reserve officers who are called to active duty to meet mission requirements of the active forces to be released to resume a reserve career following a limited period of active duty (three years or less) and to be considered for promotion by a reserve promotion selection board and managed under the provisions of subtitle E of title 10, U.S.C., in the same manner as their contemporaries not serving on active duty. Reserve component general/flag officers would, under service regulations, be retained on the reserve active-status list while serving on active duty for a period of three years or less under the provisions of 10 U.S.C. 526(b)(2).

Finally, Section 518 would allow the service secretary to return a Reserve officer to the reserve active status list who otherwise met the criteria of this exemption, but for the fact that the officer was on active duty and had already been placed on the active duty list at the time section 641(1)(D), as amended by Public Law 106–398, was enacted.

Section 519 would permit Reserve component members on active duty and members of the National Guard on full-time National Guard duty to prepare for and perform funeral honors for veterans as required by section 1491 of title 10, United States Code, without counting against active duty end strength. The delivery of funeral honors to veterans is a continuous peacetime mission that has escalated from its recent inception and mandate in Public Law 105–261. Further, funeral honors mission requirements are projected to continue their expansive growth in the out years. Section 519 would allow the Services to fulfill the funeral honors mission without adversely impacting readiness and affecting the end strength needed to meet their wartime missions. For the Department to meet the requirements of the law regarding the provision of funeral honors for veterans, it is critical to have Reserve component participation in this Total Force mission. This end strength exemption would remove an impediment to greater Reserve component participation in funeral honors, provide greater latitude in manpower application, and greatly assist the Department in meeting the expanding requirements of the veterans' funeral honors law.

Section 520. Section 555 of the National Defense Authorization Act for Fiscal Year 2000 amended section 12310(b) of title 10, United States Code, to expand the duties that may be assigned to Reserves, who are on active duty, in connection with organizing, administering, recruiting, instructing, or training the reserve components. While the apparent intent of the amendment was to expand the permissible activities of all Active Guard and Reserve (AGR) personnel, practically, the amendment applies only to AGR personnel performing active duty under section 12301(d) of title 10 and does not include AGR personnel performing full-time National Guard duty under title 32 of the United States Code. Therefore, Section 520 seeks to clarify the current law, aligning the current practices in these missions with the legislative authority governing them. This change is necessary because, effectively, there are few distinctions between the roles of AGR personnel serving on active duty and the roles of reservists performing full-time National Guard duty, outside of the different chains of command that each respective group must report to.

This section would amend section 12310(b) by inserting language that clearly would make the section applicable to Reserves who are members of the National Guard serving on fulltime National Guard duty under section 502(f) of title 32 in connection with organizing, administering, recruiting, instructing, or training the reserve components. It would ensure that National Guard AGR personnel are treated in the same manner as AGR personnel of the other reserve components when determining the scope of permissible duties and functions that they may perform. Section 520 would clarify the authority for AGR personnel on full-time National Guard duty to support an increasing number of operations and missions being assigned in whole or in part to the National Guard. Such duties include operational airlift support activities, standby air defense operations, anticipated ballistic missile defense operations, land information warfare activities, and the use of National Guard instructors to train both active component and reserve component personnel. Thus, this section is important because, while some of these duties have been periodically performed by AGR personnel on full-time duty, there has been no explicit, binding, legal authority which would outline the limits governing their actions.

Section 521 would amend section 516 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) to extend the time during which the Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to reserve officers commissioned through the Army Officer Candidate School.

Section 12205(a) provides that no person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, or be federally recognized in a grade above the grade of lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

Section 516 authorized the Secretary of the Army to waive the applicability of section 12205(a) to any officer who before the enactment of Public Law 105–261 was commissioned through the Army's Officer Candidate School. The waiver may continue in effect for no more than two years. A waiver under the section may not be granted after September 30, 2000.

Section 521 would amend section 516 to permit the Secretary to waive the applicability of section 12205(a) to any officer who was commissioned through the Army's Officer Candidate School without regard to the date of commissioning and would extend the Secretary's authority under the section to September 30, 2003.

This additional period would enable the Army to determine how to alleviate the problems experienced by some officers commissioned through the Army Officer Candidate School in obtaining a baccalaureate degree during the relatively short period before they are eligible for promotion to captain and during times when they may be engaged either in intense training or deployments for long periods.

Section 522 would amend section 12305 of title 10, United States Code, to afford members whose mandatory dates of separation or retirement were delayed due to stop loss action, a period of time to transition to civilian life following termination of stop loss. Specifically, Section 522 would add subsection (c) to afford active duty members whose mandatory separations or retirements incident to sections 1251 or 632–637 are delayed pursuant to invocation of section 12305, a period of time—not to exceed 90 days following termination of suspensions made under section 12305—to transition to civilian life.

As currently written, section 12305 requires immediate separation or retirement of those affected by stop loss, who, without stop loss, would have been subject to mandatory separation or retirement under this title for age (section 1251), length of service (sections 633–636), or promotion (sections 632, 637). An abrupt termination of stop loss could cause undue hardship on those whose planned departure to civilian life was unexpectedly interrupted and now must be resumed posthaste. For example, the Air Force invoked stop loss in support of Operation Allied Force in 1998. Following the termination of stop loss on 22 June 1998, eight officers with a mandatory (by law) date of separation were required to retire upon their original date of separation (1 July 1998); another three officers were required to separate/retire by 1 August 1998. On the other hand, members with a date of separation set by policy were given the option of either extending their dates of separation up to 6 months or withdrawing them. Some leeway must also be provided for members with dates of separation established by law to reschedule the many details incident to final departure from military life.

Section 531. The Marine Corps War College seeks Congressional authority and regional accreditation to issue a master's degree in Strategic Studies. The authority to begin this process is vested in the Commanding General of the Marine Corps Combat Developments Command and was authorized on 1 June 2000. In December 1999, the Marine Corps University achieved a seven-year goal by becoming accredited by the Southern Association of Colleges and schools to award a master's degree in Military Studies. While this accreditation was awarded to the Marine Corps University, it specifically addressed only the degree awarded by the Command and Staff College. The Marine Corps War College now seeks similar authority.

The uniqueness of the Marine Corps War College's curriculum and program of study is unparalleled by other civilian universities or Federal War Colleges. Most of the Marine graduates of the Marine Corps War College become faculty members of the Command and Staff College and, since the Command and Staff College already awards a master's degree, it would be very beneficial for these future faculty members to possess the required academic credentials when arriving at their new positions at the Command and Staff College.

A master's degree program would enhance the professional reputation and prestige of the Marine Corps War College. This would facilitate the Marine Corps War College's efforts to sustain and recruit a world class faculty and demonstrate a high level of faculty competence as first rate scholars and speakers. Section 531 is intended only as a technical amendment to the existing legislation. Enactment of this section would not result in an increase in the budgetary requirements of the Marine Corps.

Section 532. Section 206(d) of title 37, United States Code, states that ''[t]his section does not authorize compensation for work or study by a member of a reserve component in connection with correspondence courses of an armed force.'' This is similar to the limitation in the definition of ''inactive-duty training'' found in 37 U.S.C. 101(22), which states inactive-duty training ''does not include work or study in connection with a correspondence course of a uniformed service.''

Since the correspondence course restrictions were enacted more than 50 years ago, technological advances affecting instructional methodology have made these restrictions outdated. The law, as currently written, also contradicts recent Congressional directions to maximize the use of technologies such as telecommuting for the federal sector and the National Guard's Distributed Technology Training Project (DTTP).

The Secretary of Defense's training technology vision is to ''ensure that DoD personnel have access to the highest quality education and training that can be tailored to their needs and delivered cost effectively, anytime and anywhere.'' The future learning environment created by the application of new technology will extend learning opportunities for Service members, active and reserve, around the globe. This technology will be available at work (whether at a military base or in the civilian sector), at home, and at individual workstations provided for public use at libraries and military classrooms. Distributed Learning is defined as structured learning that takes place without requiring the physical presence of an instructor. Distributed learning is synchronous and/or asynchronous learning mediated with technology and may use one or more of the following media: audio/videotapes, CD-ROMs, audio/video teletraining, correspondence courses, interactive television, and video conferencing. Advanced Distributed Learning is an evolution of distributed, or distance, learning that emphasizes collaboration on standards-based versions of reusable objects, networks, and learning management systems, yet may include some legacy methods and media.

The awarding of compensation and/or credit involving innovative learning technologies should be for the successful independent completion of the required learning based on Service standards. It is the Service Secretary's responsibility to establish what is ''required'' learning for the purposes of compensating and/or awarding credit to Reserve component personnel. In this context, ''required'' learning means education/training that is necessary for individual and/or unit readiness as called for by law, DoD policy, or Service regulation. Required distance/distributed learning and/or advanced distributed learning courses may have some paper-based phases or modules and can be compensated. In addition, it is the Service secretary's responsibility to develop the policies and procedures to ensure successful and accountable implementation of their Reserve component's Distributed Learning programs. Such policies and procedures should include, but not be limited to, such topics as tracking members' participation at a distance, measuring successful performance/participation, failure policies, telecommuting policies, equipment funding and availability, equipment liability, personal liability, virtual training, virtual drilling, scheduling, documentation, accountability, and implementation guidance.

Section 532 would make no change in resource requirements because budgetary decisions associated with the compensation and/or credit for Reserve component members for work performed through non-traditional methods is left up to the discretion of the Service Secretaries.

Section 533 would modify section 2031 of title 10, United States Code, to strike the second sentence in paragraph (a)(1) which reads as follows: ''The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500.''

JROTC is DoD's largest youth program with over 450,000 students enrolled in more than 2,900 secondary schools. The statutory mission for JROTC is to instill in students the value of citizenship, service to the United States, personal responsibility, and a sense of accomplishment. Surveys of JROTC cadets indicate that about 40 percent of the graduating high school seniors with more than two years participation in the JROTC program are interested in some type of military affiliation (active duty enlistment, officer program participation, or service in the Reserve or Guard). Translating this to hard recruiting numbers, in Fiscal Years (FY) 1996–2000, about 9,000 new recruits per year entered active duty after completing two years of JROTC. The proportion of JROTC graduates who enter the military following completion of high school is roughly five times greater that the proportion of non-JROTC students. Therefore, the program pays off in citizenship as well as recruiting.

Recognizing the merits of the JROTC program, the Military Services have undertaken an aggressive expansion program and are committed to reach the statutory maximum of 3,500 by FY 2006. As a result of this planned growth, the Military Services have witnessed a marked increase in the number of schools seeking establishment of JROTC units. We now face the real potential that DoD and a waiting school might both wish to proceed with an activation, yet face a legislative cap that prevents execution of such a mutually-desirable course of action. Enactment of Section 533 would permit DoD to be responsive to mutually agreeable school needs which might exceed the present 3,500–unit cap set in law.

Section 534 would extend eligibility for the Nurse Officer Candidate Accession Program to students enrolled at civilian educational institutions with a Senior Reserve Officers' Training Program (SROTP) who are not eligible for Senior Reserve Officers' Training Programs.

The Nurse Officer Candidate Accession Program (NCP) is a primary accession source of new nurse officers and provides a hedge against difficulty in the direct procurement market. It provides financial assistance to students enrolled in a baccalaureate nursing program in exchange for an active duty commitment upon graduation.

Market projections indicate increasing difficulty in recruiting students for the NCP due to an increase in civilian career opportunities and declining nursing school enrollment. Evidence from nursing journals and employment industry statistics confirm that a tightening job market for nurses is expected over the next few years.

Section 213Oa of title 10, United States Code, currently restricts eligibility for the NCP to students enrolled in a nursing program at a civilian educational institution ''that does not have a Senior Reserve Officers' Training Program.''

Eligibility requirements for the SROTP limit age to 27 years. SROTP scholarships for junior or senior level students are limited to a few quotas each year only to replace students lost through attrition. The NCP age limit is up to 34 years and only bars those within six months of graduation. Recruiters report considerable interest in the NCP program by SROTP-ineligible students.

Extending NCP eligibility to SROTP-ineligible students would expand the potential applicant pool and demonstrate strong Congressional support and commitment to providing future nurse officers with the necessary skills to meet our healthcare mission around the world.

Section 535. The Defense Language Institute Foreign Language Center serves as the Defense Department's primary foreign language teaching and resource center. The Institute has been accredited by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (Commission) since 1979. The Commission has recommended that the Institute obtain degree-granting status to maintain its accreditation. The Secretary of Education has endorsed that recommendation. Section 535 would provide the authority for the Institute to grant an Associate of Arts degree. There are no resource implications other than the routine administrative requirements to produce a diploma suitable for presentation upon graduation.

Section 541 is pursuant to the provisions and procedures of section 1130 of title 10, United States Code. The Honorable Sherrod Brown of the House of Representatives requested the Secretary of the Army, the appropriate official under section 1130, to review the circumstance of this case. Section 541 follows the determination made under section 1130(b)(2) that the award of the decoration warrants approval. It further recommends a waiver of the specified time restrictions prescribed by law. The Secretary of the Army and the Chairman of the Joint Chiefs of Staff both agree and recommend that Humbert R. Versace be awarded the Medal of Honor. Section 541 would waive the period of time limitations under Section 3744 of title 10 to authorize the President to award Humbert R. Versace the Medal of Honor.

Section 541 would authorize the President to award the Medal of Honor to Humbert R. Versace, who served in the United States Army during the Vietnam War and who was assigned as a Captain with A Detachment, 5th Special Forces Group. It would waive the specific provisions of section 3744 of title 10 that the award be made within three years of the date of the act upon which the award is based. The acts of then-Captain Humbert R. Versace clearly distinguish him conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty, as required by section 3741 of title 10 to merit this legislation and the award.

Section 542 would amend sections 3747, 6253 and 8747 of title 10, United States Code, to provide clear authority for the Secretaries of the military departments to replace certain medals if stolen and to issue medal of honor recipients one duplicate medal of honor, with ribbons and appurtenances.

Sections 3747, 6253 and 8747 currently authorize free replacement of any medal of honor, distinguished service cross, distinguished service medal, silver star, Navy cross, Navy and Marine Corps medal, or Air Force cross that is lost or destroyed or becomes unfit for use without the fault or neglect of the recipient. Enactment of Section 542 would also clarify the intent of these sections to authorize specifically the replacement of medals that are stolen, subject to the limitation that the theft was without the fault or neglect of the recipient.

If enacted, Section 542 would also authorize the Service Secretaries to issue each medal of honor recipient one duplicate medal free of charge. There is no provision in title 10 that authorizes issuance of a duplicate medal of honor so that the recipient can donate the original medal or otherwise safeguard it and wear the duplicate to functions

and events. In fact, sections 3747, 6253 and 8747 of title 10, in conjunction with sections 3744(a), 6247 and 8744(a) of such title, may be construed to prohibit the issuance of a duplicate medal of honor.

If Section 542 is enacted, medal of honor recipients would have to make written application to the Secretary concerned for the issuance of a duplicate medal, which would be marked, as determined by the Secretary concerned, as a duplicate or for display purposes only. The issuance of a duplicate medal under this new authority would not constitute the award of ''more than one'' medal of honor to the same person. Sections 3744(a), 6247 and 8744(a) of title 10 prohibit the award of ''more than one'' medal of honor to a person.

Issuance of a duplicate medal of honor for display purposes would allow recipients to place their original medals in safekeeping or donate them to institutions for permanent display while retaining the duplicate to wear at events. Medal of honor recipients are expected to wear their medals at many of the events to which they are invited. According to the Congressional Medal of Honor Society, many of the 152 living recipients would like to donate or otherwise safeguard their original medals because the value of the medals on the ''black market'' has made them an attractive target for theft. Medals marked as duplicates, by contrast, would presumably have little or no ''black market'' value and would be less attractive targets for theft.

The cost of issuing duplicate medals of honor would be minimal. The current cost of a medal of honor is approximately eighty-five dollars. If every living recipient requested a duplicate, the cost would not exceed $15,000, including shipping.

Section 543. Section 541 of the Floyd D. Spence National Defense Authorization Act for FY 2001 (114 Stat. 1654A–114) enacted section 1133 of title 10, United States Code (U.S.C.), that restricts eligibility for the Bronze Star Medal to members of the Armed Forces who are in receipt of special pay under section 310 of title 37, U.S.C., at the time of the events for which the decoration is to be awarded or who receive such pay as a result of those events. ''Special pay'' under section 310 includes both hostile fire pay (HFP) and imminent danger pay (IDP). The reason for the change stemmed from the belief that someone whose duties never took them away from home did not perform the same kind of service as someone who was in the combat zone. The perception was that most people who received IDP or HFP served in a combat zone.

Currently, military personnel serve in 43 areas which qualify for IDP or HFP, but only two areas are further designated ''combat zones''—Yugoslavia (Serbia, Kosovo, Albania, the Adriatic Sea, the Ionian Sea above the 39th parallel, and the airspace above these areas) and the Persian Gulf. Service members qualify for IDP not only in wartime conditions, but also if they are subject to physical harm or imminent danger due to terrorism, civil insurrection, or civil war. HFP is awarded when a service member is subject to hostile fire or explosion of hostile mines; on duty in an area in which he is in imminent danger of being exposed to hostile fire or explosion of hostile mines; or is killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action. The decision to declare an area eligible for receipt of IDP or HFP is not immediate. A recommendation is made by the regional commander in chief, endorsed by the Joint Chiefs of Staff, and then approved by DoD Force Management Policy.

No other higher-level valor award, e.g., the Medal of Honor, Service Cross, Silver Star, or Distinguished Flying Cross, has similar eligibility criteria. Historically, the Bronze Star Medal has been awarded outside of combat areas, such as during the Korean conflict when it was approved for personnel stationed in Okinawa for meritorious service in connection with military operations against Northern Korea. Therefore, limiting eligibility for the Bronze Star Medal to only those members serving in an area where imminent danger pay is authorized or to those receiving hostile fire pay would exclude many deserving members of the Armed Forces.

Awarding of the Bronze Star Medal should be disassociated with any requirement for IDP or HFP and should instead stand alone. The revolution in military warfare has changed the way the U.S. has traditionally viewed force application and the decorations, many of whose origins recognized traditional ground combat operations, must also keep up and recognize the changes in the way the U.S. conducts warfare.

Section 551 would amend the Uniform Code of Military Justice to lower the blood alcohol concentration (BAC) necessary to establish drunken operation of a motor vehicle from 0. 1 to 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams per 210 liters of breath. This change would bring military practice in line with the recently enacted nationwide drunk driving standard found in section 351 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2001, Public Law 106–346, 114 Stat. 1356A–34.

On March 3, 1998, President Clinton directed the Secretary of Transportation to develop a plan to promote a .08 BAC legal limit, which would include ''setting a. 08 BAC standard on Federal property, including. . . on Department of Defense installations, and ensuring strong enforcement and publicity of this standard. . . .''

Consistent with this planning effort, DoD legislation was proposed in its omnibus legislative package in the spring of 1999 to amend the Uniform Code of Military Justice to reduce the blood and breath alcohol levels for the offense of drunken operation of a vehicle, aircraft, or vessel from 0.10 to 0.08 grams. The U.S. Senate adopted section 562 of S. 974 to make corresponding changes to the United States Code. H.R. 1401, as adopted by the U.S. House of Representatives, contained no similar provision. The Senate receded in Conference on this provision. S. 1059 was then substituted and enacted, signed by the President, and became Public Law 106–65.

The Conference Committee Report to S. 1059, National Defense Authorization Act for Fiscal Year 2000, requested the Secretary of Defense to submit a report to the Armed Services Committees ''on the Department's efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents. The report should include the Secretary's recommendations for any appropriate changes.'' The Conference Report noted that a recent General Accounting Office (GAO) study concluded that statutory reductions, by themselves, did not appear sufficient to reduce the number and severity of alcohol-related accidents.

The GAO study cited by the Conference Report is entitled ''Highway Safety: Effectiveness of State .08 Blood Alcohol Laws'' (June 1999). This GAO report concludes that ''.08 BAC laws in combination with other drunk driving laws as well as sustained public education and information efforts and strong enforcement can be effective, [but] the evidence does not conclusively establish that .08 BAC laws by themselves result in reductions in the number and severity of crashes involving alcohol.'' GAO Report at 22–23.

The GAO report further found that ''it is difficult to accurately predict how many lives would be saved if all states passed .08 BAC laws. The effect of a .08 BAC law depends on a number of factors, including the degree to which the law is publicized; how well it is enforced; other drunk driving laws in effect; and the unique culture of each state, particularly public attitudes concerning alcohol.'' GAO Report at 23. ''A .08 BAC law can be an important component of a state's overall highway safety program, but a .08 BAC law is not a 'silver bullet'. Highway safety research shows that the best countermeasure against drunk driving is a combination of laws, sustained public education, and vigorous enforcement.'' GAO Report at 23.

Since 1983, DoD has pursued a ''comprehensive approach'' to reduce drunk driving, believing that the best countermeasure against drunk driving is a combination of laws, public education, and enforcement. This comprehensive range of programs currently include: a 0.10 blood alcohol concentration (BAC) statute enforceable by court-martial; strong policies to achieve a reduction in impaired driving; a system for preliminary and mandatory suspension of licenses in cases of impaired driving; innovative education and training programs; a screening program for identifying alcohol dependent individuals; a process to notify State driver's license agencies regarding licenses suspended for impaired driving; a local awards program for successful impaired driving programs; and a system to monitor and ensure quality control for impaired driving programs.

Together, these programs have resulted in a reduction in alcohol-related traffic accidents for DoD personnel which compares favorably to analogous statistics of the National Highway Traffic Safety Administration (NHTSA) for the 50 states and the District of Columbia.

DoD recommends that the effectiveness of the existing DoD programs be further enhanced through the amendment of Article 111(2) of the Uniform Code of Military Justice, 10 U.S.C. §911(2), to reduce the enforceable BAC level to 0.08.

Reducing the BAC level to 0.08 would be consistent with statutes or administrative policies already in effect in 19 States, the District of Columbia, and Puerto Rico. Six additional States currently have under consideration legislation to change to the 0.08 BAC level. If enacted, DoD believes the 0.08 BAC limit would be an important component of our overall traffic safety program and support a significant reduction in the annual number of alcohol-related fatal and non-fatal crashes involving DoD personnel, with corresponding human and economic savings.

Section 601 The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies. To ensure that the uniformed services can recruit and retain a force of sufficient numbers and quality to support the military, strategic and operational plans of this nation, military compensation must be adequate. Comparison of the earnings of military members with their civilian counterparts suggests that without some adjustment to both the level and structure of basic pay, the military will continue to face serious difficulties in both recruiting and retention.

The results of the military and civilian earnings profile comparisons and the life-cycle earnings analysis conducted by the 9th Quadrennial Review of Military Compensation (9th QRMC) lead to several recommendations that both raise the level of pay and alter the structure of the pay table as well. The structural modifications include targeting pay raises to the enlisted mid-grade ranks that will better match their earnings profile, over a career, with that of

comparably-educated civilian counterparts and provide a sufficient incentive for these members to complete a military career. Recommended adjustments:

Target large basic pay increases for enlisted members serving in the E–5 to E–7 grades with 6–20 years of service. This would alter the pay structure and thus the shape of the earnings profile, increasing the slope of the earnings profile for midgrade enlisted members to partially achieve the levels suggested by the 9th QRMC.

Raise basic pay for grades E–8 and E–9, to maintain incentives throughout the enlisted career and prevent pay inversion.

Provide a modest increase in basic pay for junior enlisted members. This increase reflects the importance of preventing further deterioration in the percentage of high quality recruits.

Provide for structural changes in selected pay cells for E3, E4, and E5 to motivate members to seek early promotion in the junior grades.

Raise basic pay for grades O–3 and O–4 to provide increased retention incentives.

Provide a modest increase for other officers to recognize their contribution to the defense effort.

Subsection (a) waives the adjustment in basic pay that is prescribed in section 1009 of title 37, United States Code. Subsection (b) provides a pay table describing the changes in basic pay. These increases are summarized in the table on the following page:

Grade	Percentage increase	Grade	Percentage increase
E–1	6.0	W–1	8.5*
E–2	6.0	W–2	8.5*
E–3	6.0*	W–3	8.0
E–4	6.6*	W–4	7.5
E–5	7.5*	W–5	7.0
E–6	7.5*	O–3	6.0
E–7	8.5	O–4	6.5
E–8	9.0	others	5.0
E–9	9.5*	.....	.....

*The following pay cells are increased by a different percentage for structural purposes:
E–3 <2: 7.3
E–4 <2: 12.0; E–4 >6 (through >26): 6.0
E–5 <2: 13.0
E–6 <2: 8.0
E–9 >26: 10.0; M/S: 10.0
W–1 <2: 15.0; W–1 >3: 14.0
W–2 >2: 6.0; W–2 >3: 11.0; W–2 >4: 11.0

Section 602 would amend section 407 of title 37, United States Code, to authorize payment of a partial dislocation allowance of $500 to members who are ordered, for the convenience of the Government (including pursuant to the privatization or renovation of housing), to move into or out of military family housing. Section 601 would allow members to receive a partial dislocation allowance for a government-directed move at the current permanent duty station.

Currently, a member directed to move due to privatization or renovation of government housing does so at the member's personnel expense. In line with the current dislocation allowance authority, the member is making an authorized move; however, there is no authority to provide the member a dislocation allowance to set-up the new home. Section 601 would provide a partial dislocation allowance to help members defer moving expenses caused by the government's housing decisions. Section 601 would limit payment in these circumstances to $500 initially. Adjustments would be made annually in a manner consistent with the full dislocation allowance. Section 601 also would specify that payments made under new subsection 407(c) shall not be subject to a fiscal year limitation like other DLA payments.

Section 603 would provide the Service Secretaries with the discretionary authority to pay the funeral honors duty allowance to military retirees who volunteer to perform honors at the funeral of a veteran. If authorized by the Secretary concerned, the retiree would receive this allowance without forfeiting any retired or retainer pay, disability compensation, or any other compensation provided under titles 10, 37 and 38. This recognizes that military retirees are a valuable personnel resource that can be employed to meet the funeral honors mission. By using retirees to perform this mission, it would allow active duty and reserve personnel to continue to train for and perform other vital military missions. It also recognizes that this minimal level of compensation could be used to encourage retirees to volunteer to perform this mission. Finally, by not requiring any offset of their retired or retainer pay, or any other compensation, Section 602 not only would reduce the administrative burden placed on the Defense Finance and Accounting Service, but it also would provide an incentive to retirees who, in the vast majority of cases, would otherwise actually receive less compensation than that provided by their retired or retainer pay if they had to forfeit that pay in order to receive the funeral honors duty allowance.

Section 604 would authorize Reserve Component commissioned officers in the pay grade of O–1, O–2 or O–3 who are not on active duty, but have accumulated a minimum of 1460 points (the equivalent of four years of active duty) as a warrant officer or enlisted member, to be paid at the O–1E, O–2E or O–3E rate. Currently, a company grade officer with at least four years of prior active duty service as a warrant officer or as an enlisted member is entitled to be paid at a slightly higher rate. The increase in pay recognizes the additional experience these officers have gained while serving as a warrant officer or an enlisted member and rewards them accordingly. A Reserve commissioned officer who has accumulated at least 1,460 points-the equivalent of four years of active duty-has gained significant military experience similar to that of a member who qualifies for this increase in pay because of prior active duty service. Moreover, because of the part-time nature of their service, these officers have gained that experience over a longer period of time and are generally more mature. Allowing these officers to receive this increase in pay recognizes and rewards that experience on the same basis as officers who gained their experience purely through active duty service.

Section 605 would modify section 427 of title 37, United States Code, to authorize the payment of a Family Separation Allowance to those members who elect to serve an unaccompanied—versus accompanied—tour because the member is denied travel of the member's dependents due to certified medical reasons. Currently, the law prescribes that a member who elects to serve a tour of duty unaccompanied by his or her dependents, at a permanent station to which the movement of dependents is authorized, is not entitled to a Family Separation Allowance. The law provides, however, that the Secretary concerned may grant a waiver to that prohibition when it would be inequitable to deny the allowance to the member because of unusual family or operational circumstances. Under existing waiver authority, the Services approve waivers when a member chooses to serve an unaccompanied tour because travel of the individual's dependents to the new station is denied due to medical reasons. This change would remove the statutory requirement for the Secretary concerned to issue a waiver in these circumstances before the Family Separation Allowance is payable. This program efficiency would ease the administration of the Family Separation Allowance program. In addition, adoption of Section 604 would have no effect on expenditures for the Family Separation Allowance program.

Section 606 would amend section 4337 of title 10, United States Code, to authorize a housing allowance for the chaplain for the Corps of Cadets at the United States Military Academy. The chaplain, who is a civilian employee of the Academy, would receive the same allowance for housing as is allowed to a lieutenant colonel. The chaplain would also receive fuel and light for quarters in kind.

Currently, section 4337 reads as follows: ''There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.'' Although section 4337, read literally, authorizes a quarters allowance for the chaplain at the Academy with fuel and light in kind, the Comptroller General has determined that this part of the section has been effectively repealed.

The source statute for section 4337 was enacted in 1896 and codified as part of title 10 on 10 August 1956. The Comptroller General issued an opinion on August 28, 1959, which held that Congress intended the Classification Act of 1949 to supersede the source statute for section 4337. The purpose of the Classification Act was to ensure that Federal employees in like positions received equal pay. The Comptroller General concluded that the provisions relating to a quarters allowance for the academy chaplain were closely related to compensation and, therefore, the reenactment of the quarters provision as part of title 10 in 1956 was ''erroneous. Ms. Comp Gen. B–140003. Consequently, the military academy chaplain, although charged rent for quarters, has not received a quarters allowance, despite the plain language of section 4337.

This situation has, over time, undermined the Army's ability to attract, hire and retain appointees for the position of chaplain at the Academy, a position mandated by section 4331(b)(5) of title 10. Enactment of Section 605 would ameliorate this problem by providing clear authority to update and restore the academy chaplain's housing allowance, at a reasonable and appropriate pay grade level.

The cost to implement Section 605 is estimated at $14,000 per year, although a portion of that expenditure would be recouped as rent paid by the academy chaplain.

Section 607 would amend section 18505(a) of title 10, United States Code, by removing the language relating to space-required travel on military aircraft by Reserve component members when the purpose of that travel is to perform ''annual training duty.'' A statutory authority for Reserve component members to travel in a space required status when performing active duty for training (including annual training duty) is not necessary since these members are already authorized by DoD regulation to travel in a space-required status. Of particular concern with the addition of annual training duty to section 18505 is the applicability of section 18505(b) to members performing such duty. Section 18505(b) prohibits a member from receiving travel, transportation and per them allowances associated with space-required travel—allowances to which the member was previously entitled before section 18505 was amended by section 384 of Public Law 106–398 (the National Defense Authorization Act for Fiscal Year 2001) to add ''annual training duty.''

Since annual training is a requirement for satisfactory participation in the Selected

Reserve, the Services budget for those training tours—this includes travel, transportation and per diem allowances. While section 12305 of title 10 allows Reserve component members to consent to perform active duty and active duty for training without pay, it is not appropriate to use this authority in conjunction with annual training. If this authority is being used in conjunction with annual training duty for Reserve component members who do not have an annual training requirement, the Department can address this issue through policy guidance.

If enacted, this proposal would have no cost or budgetary effect.

Section 611 would amend section 301c of title 37, United States Code, to remove submarine duty incentive pay (SUBPAY) rates from law, enabling the Secretary of the Navy to adjust SUBPAY rates when changes are needed to support submarine accession and retention requirements. Section 611 also would establish a maximum monthly SUBPAY rate of $1,000. The effective date for these changes would be 1 October 2002.

Enlisted submarine Sailors receive SUBPAY while on shore duty if they incur at least 14 months of obligated service beyond their shore duty Projected Rotation Date, ensuring they are assignable to future submarine sea duty. SUBPAY, unlike Career Sea Pay or any other enlisted incentive or special pay program, is a direct indicator of how well submarines will be manned with experienced sea returnees as much as three years into the future. Additionally, getting experienced Sailors back to a submarine for 14 months actually encourages experienced Sailors to stay past the 14-month minimum requirement: of those Sailors with between 10 and 14 years of service, who are currently serving on board a submarine and who went back to sea for at least 14 months, 79 percent obligated themselves for at least a two-year minimum activity tour on that submarine.

In 1999, the decline in the propensity of enlisted submarine personnel to incur additional obligated service (and future sea duty service) equated to 776 lost man-years of at-sea submarine service—enough manpower to operate 5 submarines for one year. Higher SUBPAY rates could be used to stem this decline and entice undecided submarine Sailors at the critical 10- to 12-year decision point to choose a 20-year or greater Navy career. In addition, higher SUBPAY rates could help Navy meet submarine non-nuclear enlisted recruiting goals, which have not been met in the last decade.

The current statutory SUBPAY rate tables have been duplicated in SECNAVINST 7220.80E, as well as in Tables 23–3 through 23–5 of Volume 7A, Chapter 23 of the Department of Defense Financial Management Regulations. Thus, removing the SUBPAY rates from law would provide the service secretary with a timely, flexible and pay grade-targeted method to address the looming personnel-related issues that are probable given the uncertain future Submarine Force of Record, which could add as many as 13 submarine crews by FY2004 and 19 crews by FY2015.

SUBPAY was last increased in 1988, when it was raised to restore the approximate value that it had for submarine Sailors when the SUBPAY program was previously revised in 1981. Since 1988, the value of SUBPAY has eroded by approximately 47 percent (based on the Consumer Price Index—Urban Direct Index from 1988 to 1999 and projected to 2001). If granted this new discretionary authority, Navy intends to target first the most critically manned pay grades—mid grade enlisted Sailors and junior to mid grade officers. This would increase the maximum enlisted payment rate from $355 to $425, but would maintain the maximum officer payment rate at $595. Therefore, the budgetary impact of Section 611 would be a net increase of $15.0 million in FY 2003 and a net increase of approximately $14.5 million per year thereafter through FY 2007.

Section 612 would extend the authority to employ accession and retention bonuses for enlisted personnel, and continuation pay for aviators, ensuring that adequate staffing is provided for hard-to-retain and critical skills, including occupations that are arduous or that feature extremely high training and replacement costs. Experience shows that retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in critical military skills.

Section 613 would extend the authority to employ accession and retention incentives to support staffing for nurse and dentist billets which have been chronically undersubscribed. Experience shows that manning levels in the nursing and dental fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective personnel levels within these fields.

Section 614 would extend the authority to employ accession and retention incentives, ensuring adequate manning is provided for hard-to-retain skills, including occupations that are arduous or feature extremely high training costs. Experience shows retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost-effectiveness of these incentives in supporting effective manning in these occupations. In the case of the Nuclear Officer Incentive Pay Program, a two-year extension demonstrates support to career-oriented officers.

Nuclear officer accessions and retention continue to fall below that required to safely sustain the post-drawdown force structure. Fiscal Year (FY) 1999 retention for submarine officers was 30 percent (required 29 percent); for nuclear-trained Surface Warfare Officers (SWO(N)s) it was 20 percent (required 21 percent). FY 2000 retention for submarine officers was 28 percent (required 34 percent); for SWO(N)s it was 21 percent (required 21 percent). Although adequate for now, nominal retention rates must improve by FY 2001 to 38 percent for submarine officers and 24 percent for SWO(N)s to adequately meet growing manning requirements. Likewise, current accession production must improve. Although nuclear accession goals were met for FY 2000 (the first time meeting submarine officer accessions since FY 1991), FY 2001 nuclear officer accession goals have increased to meet the manning requirements for an increased force size.

Inadequate accessions in previous years and continued poor retention only compound the sacrifices incurred by those officers remaining, as demanding and stressful sea tours are lengthened to meet safety and readiness requirements. If the shortfall of officers due to both effects is sufficiently severe, the entire sea/shore rotation plan becomes unbalanced, and officers eventually must rotate directly from one sea tour to the next. This was the case in the 1960s and 1970s when many officers spent as many as 16 or more of their first 20 years in sea duty and nuclear or warfare-related training and supervisory assignments. Eventually, many of these remaining officers find the sacrifices too great and resign from the service. History has shown retention erodes further, requiring even more accessions, and the ''vicious cycle'' repeats. The success of the Naval Nuclear Propulsion Program is a direct result of quality personnel, rigorous selection and training, and high standards that exceed those of any other nuclear program in the world. Maintaining this unparalleled record of safe and successful operations depends on attracting and retaining the right quantity and highest quality of officers in the Naval Nuclear Propulsion Program.

Representing nearly half the Navy's major combatants and 60 percent of combat tonnage, nuclear-powered warships are repeatedly called upon to protect our vital interests and respond to crises around the world. They represent the cornerstones of our continued maritime supremacy and are an integral part of our national security posture. Adequate manning with top quality individuals is key to the continued safe operation of the program.

The attraction of the civilian job market for nuclear-trained officers remains strong. These officers possess special skills as a result of expensive and lengthy Navy training. They also come predominantly from the very top of their classes at some of the nation's best colleges and universities. As a result, these officers are highly sought for positions in career fields, both within and outside of the nuclear power industry, due to their educational background and management experience. The competition for well-qualified, experienced technical personnel coupled with the lowest unemployment rate in over two decades, indicate that the marketability of nuclear-trained officers will likely increase. Officers leaving the Navy after five years of service can expect to transition to the civilian workforce at about the same level of compensation, but with greatly increased potential earnings and without the arduous schedules and family separation.

The Nuclear Officer Incentive Pay program, in its current structure, remains the surest and most cost-effective means of meeting current and future manning requirements. Long-term program support through a four-year program extension is strongly encouraged. The two-year extension would demonstrate Congressional commitment commensurate with that made by Naval officers who have chosen to reap the rewards and endure the sacrifices of a career in the Nuclear Propulsion Program.

Section 615 would extend the authorization for critical recruiting and retention Reserve component incentive programs. Recruiting has become increasingly more challenging and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting effort. Absent these incentives, the Reserve components may experience difficulty in meeting skilled manning and strength requirements. Moreover, the Reserve components rely heavily on being able to recruit individuals with prior military service. The prior service market is a high priority for the Reserve components since assessing individuals with prior military experience reduces training costs and retains a valuable, trained military asset in the Total Force. The prior service enlistment bonus offers an incentive to those individuals with prior military service to transition to the Selected Reserve.

Equally important to the recruiting effort is retaining members of the Selected Reserve. The Selected Reserve reenlistment bonus, which was increased last year from

$5,000 to $8,000, is necessary to ensure the Reserve components maintain the required manning levels by retaining members who are already serving in the Selected Reserve. Moreover, the special pay for enlisted members assigned to certain high priority units provides the Services with an incentive designed to reduce manning shortfalls in critical undermanned units.

The Reserve components have historically found it challenging to meet the required manning in the health care professions. The incentive that targets those healthcare professionals who possess a skill that has been identified as critically short is essential if the Reserve components are to meet required manning levels in these skill areas.

The expanded role of the Reserve components requires not only a robust Selected Reserve force, but also a robust manpower pools—the Individual Ready Reserve. Extending the Individual Ready Reserve bonus authority would allow the Reserve components to target this bonus at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Combined, the Reserve component bonuses and special pays provide a robust array of incentives that are necessary if the Reserve components are to meet manning requirements. Extending these authorities would ensure continuity of these programs. Since these incentive programs are recurring Service budget items, there is no additional cost for extending these authorities.

Section 616 would amend title 37, United States Code, by establishing a broad authority for an Officer Critical Skill Accession Bonus to provide needed flexibility for Service Secretaries to recruit officers with critical skills. This is intended to preclude the need to add future individual statutory bonus provisions for specific officer career categories experiencing an accession shortfall.

Over the past several years, officers with certain critical skills have separated from service at higher than historical rates, and recruitment of officers into these critical specialties has declined. This is, in large measure, likely a result of higher compensation and benefits being offered for these skills in the private sector. Recruitment shortages among officer skills can be expected to further erode absent enactment of statutory authority for monetary incentives that can be utilized to offset the pull on these critical specialties from the civilian marketplace. Examples of specialties currently short (and which have no, or inadequate, statutory bonus authority for use to target the shortages) include the Air Force's declining cumulative continuation rates among officers in communications-information systems (CIS) (35 percent in 1999), some electrical engineers (39 percent in 1999 for developmental engineers, and 31 percent for civil engineers in 1999), scientific (53 percent in 1999), and acquisitions (averaged 38 percent from 1997–1999). Shortfalls in retention in these skills are occurring while Air Force accession rates have also continued to fall below the Air Force goal. As of June 30, 2000, the Air Force accessed 74 percent of its goal for weather officers, 69 percent for developmental engineers, 83 percent for air traffic control and combat operations, and 90 percent for CIS. Authority for the Air Force to offer a financial incentive to boost manning in the Engineering and Scientific career and CIS specialties is particularly critical.

Further, the Navy is experiencing shortages in their Civil Engineer Corps (CEC) career field. The Navy has failed to recruit the required number of CEC officers in the past three fiscal years (1998 through 2000). In Fiscal Year 2000, the Navy only accessed 54 percent of the CEC accession goal; it projects to meet only 67 percent of the Fiscal Year 2001 CEC accession goal, and projects to remain short in the out-years. Shortages of that magnitude translate to undersupervision in an unusually sensitive mission area. Authority to offer CEC officer-recruits an accession bonus is critical if the Navy is to have the compensation tools it needs to increase the number of CEC officer-recruits to levels needed to man future CEC force structure requirements. An accession bonus authority would give Navy the competitive edge it needs to attract the most qualified candidates to the Navy CEC.

Rather than seeking additional individual statutory authorities for these critical officer specialties, and any others that may emerge in the future, this proposal seeks a broad accession pay authority. Under such statutory authority, the Departments would establish program parameters and implementation strategies to ensure the Service Secretaries are provided the flexibility they need to address officer critical specialty shortfalls in a timely manner.

Based on current projections, the net effect of adoption of Section 616 would be an increase of $18.05M in Fiscal Year 2002 ($.05M for Navy and $18M for Air Force), Army and Marine Corps do not anticipate they would utilize this authority in Fiscal Year 2002.

Section 617 would allow the Secretary concerned to target this incentive to individuals who possess a skill that is critically short to meet wartime requirements and who agree to enlist, reenlist or voluntarily extend an enlistment in the Individual Ready Reserve. The current statute authorizes payment of this bonus to individuals who possess a skill that is critically short in a combat or combat support mission. However, this bonus is not authorized for individuals who possess a critically short skill in a combat service support mission. As a result of the drawdown and restructuring of the force over the past decade, the Reserve components have assumed a variety of new missions across the full range of mission areas. Of particular concern is the ability to meet the expanded combat service support mission requirements in the Army Reserve. To meet manpower requirements in its expanded combat support and combat service support role, the Army Reserve must rely heavily on members of the Individual Ready Reserve. Expanding this authority to allow the Secretary concerned to target this bonus in those skill areas that are critically short, regardless of the type of mission, would help reduce critical mobilization manning shortages. This proposed change is consistent with other active duty and Selected Reserve bonus authorities, which provide the Service Secretary with the authority to identify those skill areas that are critically short and require added incentives to achieve the necessary manning level to meet mission requirements.

Section 618 would amend section 301 of title 37, United States Code, to authorize payment of hazardous duty incentive pay for members of Visit Board Search and Seizure teams conducting operations in support of maritime interdiction operations.

Boarding crews participating in these operations face several hazards inherent to the duty involved. These include the hazards of physically boarding a vessel at sea from a small boat while carrying weapons, inspection gear, and protective clothing. Further hazards exist in the actual conduct of the inspections, such as hazards connected with crew hostilities, pest infestations, and numerous unseen dangers. For example, containers must be accessed, which often requires climbing considerable distances above the deck, balancing in precarious positions while opening the container, and facing the risk the container contents may have shifted during the transit. In addition, cargo may have mixed, causing a hazard (for example, bulk cargo such as fertilizer, when mixed with salt water or oil, can emit hazardous fumes). Hazardous Duty Incentive Pay would provide a financial recognition to personnel participating in these operations for this unusually hazardous duty.

The net effect of adoption would be an increase of $0.2 million for the Navy.

Section 621 would amend section 430 of title 37, United States Code, to extend the entitlement to funded student dependent travel to members stationed outside the continental United States with dependents under the age of 23 who are enrolled in a school in the continental United States but are attending a school outside the United States as part of a school-sponsored exchange program. At present, members stationed overseas are entitled to funding for this program, but only if the student is physically located in the United States. This creates an inequity for those members whose dependents attend a school in the United States, but are part of a temporary exchange program located outside the United States. Both sets of members deserve equal treatment.

Section 621 would reimburse travel expenses for student dependents under the age of 23 of a member stationed outside the continental United States when the dependents are enrolled in a school in the continental United States but are attending a school outside the United States as part of a school sponsored-exchange program for less than a year. Section 621 would further limit reimbursement in these cases to the cost of travel between the school in the continental United States where the student dependent is enrolled and the member's overseas duty station.

Section 622 would amend section 2634 of title 10, United States Code, by adding a new subsection 2634(b)(4) authorizing payment of vehicle storage costs in advance. Section 2634 authorizes the Secretary concerned to store a member's vehicle at government expense under certain circumstances, but does not provide for advance payment of these costs. Vehicle storage costs at a commercial facility can range from $100 to $300 per month, and many of these facilities require deposits equal to two or three times the monthly storage rate. The Military Traffic Management Command estimates there are approximately 20,000 vehicles that are stored in commercial facilities annually.

Having to pay for these advance payments out of pocket comes at the worst possible time for the military member—during a permanent change of station move. The variety of expenses associated with a move put a significant strain on the financial condition of members, often requiring them to acquire significant debt while they wait for government reimbursement to catch up. At no additional cost to the Government, Section 622 would eliminate one portion of this burden, reducing to some degree the hardship associated with a military life that requires frequent moves.

Section 623 would amend section 411f of title 37, United States Code; strike subsection (d) of section 1482 of title 10, United States Code; and repeal the Funeral Transportation and Living Expense Benefits Act of 1974 (Public Law 93–257).

Currently, the three statutes cited above authorize allowances for family members and others to attend burial ceremonies of deceased members of the armed forces. The statutes differ in scope and application. For example, section 1482(d) prohibits the payment of per diem, while per diem may be

paid under the other two sections. The purpose of Section 622 is to establish uniform authority.

Section 411f of title 37 authorizes round trip travel and transportation allowances for ''dependents of a member who dies while on active duty or inactive duty in order that such dependents may attend the burial ceremonies of the deceased member.'' Allowances under the section, including per diem, are limited to travel and transportation to a location in the United States, Puerto Rico, or United States possessions and ''may not exceed the rates for two days.'' If a deceased member was ordered to active duty from a place outside the United States, allowances may be provided for travel and transportation to and from such place and may be extended to account for the time necessary for such travel. Dependents include the surviving spouse, unmarried children under 21 years of age, unmarried children incapable of self-support, and unmarried children enrolled in school and under 23 years of age. Section 411f(c) provides that if no person qualifies as a surviving spouse or unmarried child, the parents of a member may be paid the travel and transportation allowances authorized under the section.

Section 1482(d) of title 10 applies when, as a result of a disaster involving multiple deaths of members of the armed forces, the Secretary of the military department has possession of commingled remains that cannot be individually identified and must be buried in a common grave in a national cemetery. Under section 1482(d), the Secretary may pay the expenses of round trip transportation to the cemetery for a person who would have been authorized under section 1482(c) to direct the disposition of the remains of the member if individual identification had been made. Also, the Secretary may pay the expenses of transportation for two additional persons closely related to the decedent who are selected by the person who would have been designated under section 1482(c). No per diem may be paid.

The Funeral Transportation and Living Expense Benefits Act of 1974 applies only to families of deceased members of the armed forces who died while classified as a prisoner of war or as missing in action during the Vietnam conflict and whose remains are returned to the United States after January 27, 1973. Family members may be provided ''funeral transportation and living expenses benefits.'' Benefits include round trip transportation from the family member's residence to the place of burial, ''living expenses, and other such allowances as the Secretary shall deem appropriate.'' Eligible family members include ''the deceased's widow, children, stepchildren, mother, father, stepfather and stepmother.'' If none of the family members in the preceding sentence ''desire to be granted such benefits,'' then the benefits may be granted to the deceased's brothers, sisters, half-brother, and half sisters.

For members of the armed forces during World War II and the Korean War whose remains have recently been recovered and identified, there may be no family members who can be provided travel and transportation allowances to attend the burial. As noted above, under section 411f, dependents who may receive travel and transportation allowances include a surviving spouse, certain ummarried children, primarily those under 21 years of age, and parents if there is no surviving spouse or qualifying child. However, in these cases, the surviving spouse and parents may be deceased and no child may qualify because of their age. Section 623 would amend section 411f and add a new provision similar to the provision in section 1482(d) of title 10, concerning the burial of remains that are commingled and cannot be identified. Under Section 623, if there is no surviving spouse, no qualified child, and no parent, then the person designated to direct disposition of the remains could receive travel and transportation allowances along with two additional persons closely related to the deceased member selected by the person who directs disposition of the remains. In many cases, this would likely include an adult child or children of the deceased member.

Section 623 would also amend section 411f to authorize the payment of travel and transportation allowances for a person to accompany a family member who qualifies for travel and transportation allowances but who is unable to travel alone to the burial ceremonies because of age, physical condition, or other justifiable reason as determined under uniform regulations prescribed by the Secretaries concerned. Allowances would be payable under these circumstances only if there is no other person qualified for allowances available to assist the family member.

Section 623 would also amend section 411f to provide a new basis for authorizing travel and transportation allowances outside the United States, Puerto Rico, and United States possessions. Currently, the only exception is when the member was ordered to active duty from a place other than in the United States, Puerto Rico, or the United States possessions. Section 623 would amend section 411f(b) to authorize the payment of travel and transportation allowances to a cemetery maintained by the American Battle Monuments Commission outside the United States.

Section 623 would amend section 411f(b) to make uniform the rule concerning the time period for which allowances may be paid. Currently, section 411f(b) restricts the period to two days for travel within the United States, Puerto Rico, and United States possessions. For travel outside these areas, the two-day period may be extended ''to accommodate the time necessary for such travel.'' Under Section 623, all travel and transportation allowances, regardless of where the travel occurs, would be limited to two days and the time necessary for travel.

Section 623 would also strike subsection (d) from section 1482 of title 10, relating to the burial of commingled remains in a common grave. Section 411f would be amended by adding a new subsection (d) to define burial ceremonies as including ''a burial of commingled remains that cannot be individually identified in a common grave in a national cemetery.'' Thus, the authority in section 411f would provide the basis for travel and transportation allowances under these circumstances. Unlike section 1482(d), this authority would include the payment of per diem.

Finally, Section 623 would repeal the Funeral Transportation and Living Expense Benefits Act of 1974. The Act, enacted in 1974, authorizes travel and transportation allowances for the family of any deceased member of the armed forces who died while classified as a prisoner of war or missing in action during the Vietnam conflict. Section 411f was enacted in 1985. Both statutes provide similar authority. The Act's authority is somewhat broader because eligible family members include the surviving spouse, all children (regardless of age), parents, and siblings. The Act would be repealed to provide uniform treatment among all family members of persons who die while on active duty or inactive duty.

Section 624 would modify section 2634 of title 10, United States Code, to authorize service members to ship a privately-owned vehicle (POV) from the old Continental United States (CONUS) duty station to the new CONUS duty station when the cost of shipment and commercial transportation would not exceed the cost of driving the POV to the new station as is currently authorized.

Currently, when executing a permanent change of station move in CONUS, service members are allowed to ship POVs between CONUS duty stations only when physically incapable of driving, there is a change of a ship's homeport, or there is insufficient time to drive. Members with dependents who possess two POVs would be authorized to ship one POV and drive the other if the cost of driving one POV and shipping the other did not exceed the cost driving two POVs. Cost comparisons would take into account mileage rates by the most direct regularly traveled route, per diem, cost of commercial transportation and the cost of shipping the car by commercial car carrier. Section 624 would be cost-neutral, and enhance force protection by minimizing the number of miles driven by members making permanent changes of station, thereby limiting exposure to accidents. Civilian employees of DoD are currently authorized to ship POVs in CONUS when it is determined to be more advantageous and cost-effective to the Government.

Section 631 would extend the maximum period that a member of the Selected Reserve would be authorized to use the educational benefits provided under the Montgomery GI Bill for the Selected Reserve (MGIB–SR) from the current 10-year limit to 14 years. With the increased use of the Reserve components, members of the Selected Reserve are spending more time performing military duties. The additional time spent performing military service reduces the amount of time they have available for other activities—be it a civilian job, time with the family, other leisure activities, or civilian education. Balancing a full-time civilian career and a military career is becoming increasingly more challenging. One area that is likely to suffer is the pursuit of civilian education. Increasing the number of years that a member of the Selected Reserve has to use this benefit would recognize their increased commitment to military service and provide them with an extended opportunity to use this benefit. Additionally, since membership in the Selected Reserve is required in order to use the MGIB–SR educational benefit, it would also serve as a retention incentive for those who have not been able to use the benefit by the current 10-year limiting period.

Section 632 would add overnight health care coverage when authorized by regulations for Reserve Component members who, although they may reside within a reasonable commuting distance of their inactive duty training site, are required to remain overnight between successive drills at that training site because of mission requirements. Some Reserve Component members are required to remain overnight in the field when performing inactive duty training. Others may be training late into the evening or performing duty early in the morning, which could make commuting to and from their residence impractical. On those occasions when it is not feasible for members who live in the area to return to their residence between successive drills because of mission requirements, they are currently not protected should they become injured or ill during that overnight stay. The Secretary of Defense report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress on November 5, 1999, recognized this shortcoming and recommended that the law be amended to provide medical coverage when the member remains overnight between successive training periods, even if they reside within reasonable commuting distance.

Section 633. Section 2004 of title 10, United States Code, authorizes the Secretary of a Military Department to detail selected commissioned officers at accredited law schools for training leading to the degree of bachelor of laws or juris doctor. No more than 25 officers from each Military Department may commence such training in any single year. Officers detailed for legal training must agree to serve on active duty following completion of the training for a period of two years for each year of legal training. This service obligation is in addition to any service obligation incurred by the officer under any other provision of law or agreement.

Section 2603 of title 10 authorizes any member of the Armed Forces to accept a scholarship in recognition of outstanding performance in the member's field, to undertake a project that may be of value to the United States, or for development of the member's recognized potential for future career service. Section 2603(b) requires a member of the Armed Forces who accepts a scholarship under section 2603 to serve on active duty for a period at least three times the length of the period of the education or training.

Section 2004 does not specifically authorize an officer attending law school under the Funded Legal Education Program to accept a scholarship from the law school or other entity. Also, section 2603 does not indicate that the authority to accept a scholarship to obtain education or training under the section can be used in conjunction with the authority in another section authorizing education or training, such as section 2004. Moreover, if the authority in section 2004 for a funded legal education can be used in conjunction with the authority in section 2603 to obtain training or education through a scholarship, the resulting service obligation for an officer participating in the Funded Legal Education Program who accepts a scholarship is unclear. The statutes could be interpreted to require consecutive service obligations in excess of twelve years or concurrent service obligations of much less.

An officer who accepts a scholarship would reduce the expenditure of appropriated funds of the military department concerned. Obtaining a scholarship may also benefit an officer participating in the funded legal education program. For example, in the Army, to minimize the costs associated with the funded legal education program, an officer must attend a law school in the officer's state of legal residency that will permit the Army to pay in-state tuition rates or a law school that will grant in-state tuition rates to out-of-state students. This effectively prohibits officers from seeking admission into many of the most highly rated law schools in the United States. If an officer could accept a scholarship to cover all or part of the costs of attending law school, it may be unnecessary to require the officer to attend a school at which the officer qualifies for in-state tuition rates.

Section 633 would amend sections 2004 and 2603 to authorize an officer detailed to law school for legal training under section 2004 to accept a scholarship from the school or other entity under section 2603, with the service obligations incurred under both sections to be served consecutively.

Section 701. As a result of studies done in response to direction in Section 912 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85), Defense Science Board reports, and General Accounting Office reports, as well as a desire to implement best commercial practices, the Department rewrote its acquisition policy documents. The purpose of the rewrite was to focus on providing proven technology to the warfighter faster, reducing total ownership cost, and emphasizing affordability, supportability, and interoperability. As part of the rewrite, the Department created a new model of the acquisition process that separates technology development from system integration, allows multiple entry points into the acquisition process, and requires demonstration of utility, supportability, and interoperability prior to making a commitment to production. As part of the model, milestone names were changed to Milestone A (approval to begin analysis of alternatives), Milestone B (approval to begin integrated system development and demonstration), and Milestone C (approval to begin low-rate production). The phases of acquisition were changed to Concept and Technology Development (in which alternative concepts are considered and technology development is completed), System Development and Demonstration (in which components are integrated into a system and the system is demonstrated), and Production and Deployment (in which the system is produced at a low-rate to allow for initial operational test and evaluation, creation of a production base, efficient ramp-up of production to full-rate, and deployment). Within the Production and Deployment phase is the Full-Rate Production Decision Review at which the results of operational test and evaluation and live-fire test are considered.

The purpose of this proposed legislation is to make changes in current statutes, which was based on the old milestone 0/I/II/III model, so that they correspond to similar events based on the new milestone A/B/C model. There is no intent to diminish congressional oversight or to change the content or amount of reporting requirements to the Congress, although the timing of some reports will change.

Under the new milestone A/B/C model, program initiation begins later than under the old milestone 0/I/II/III model. The reason for this is that the new model anticipates more extensive technology development before committing to a new program using those technologies, while the old model completed technology development after program initiation. Approval to begin analysis of alternatives that previously occurred at Milestone 0 (that now corresponds to Milestone A) will continue to be done in Concept and Technology Development. Work that was previously done in Demonstration and Validation (or Program Development and Risk Reduction) is split around Milestone B with the technology development work being done in Concept and Technology Development (before Milestone B) and the system prototyping and engineering and manufacturing development being done in System Development and Demonstration (after Milestone B).

Requirements identified in law for Milestone I or prior to Demonstration and Validation phase, intended to apply to an initiated program, are changed to be required at Milestone B or prior to System Development and Demonstration. Likewise, requirements identified in law for Milestone II or prior to Engineering and Manufacturing Development, intended to apply to system engineering work, are changed to be required at Milestone B or prior to System Development and Demonstration, both of which encompass this work effort. All requirements identified in the law for Milestone III or prior to production would be required at the full rate production decision.

Sections 2366, 2400, 2432 and 2434, are essentially unchanged in reporting requirements.

Section 2435 of Title 10 requires an acquisition program baseline be developed prior to entering work following each of the milestone I, II, and III decisions. In the case of the acquisition program baseline, a new baseline description will be generated at program initiation, and at each major transition point (from system development and demonstration to low-rate production, and from low-rate production to full-rate production). The first and second program baselines will be completed later than baselines generated under current statute. The first baseline will continue to describe the system concept at program initiation and will also serve to describe the program through engineering development. The second baseline will describe the system as engineered prior to beginning production. There will be no change in the description for the third baseline.

Section 8102(b) of Public Law 106–259 and Section 811 (c) of Public Law 106–398 require Information Technology certification at each major decision point (i.e., milestone). These requirements have been translated from the milestones I/II/III of the old model to milestones A/B/C of the new model.

Section 702 conforms the nuclear aircraft carrier exclusion from the statute to actual practice by specifying that the exclusion from maintaining core logistics capabilities, with respect to nuclear aircraft carriers under section 2464 of title 10, United States Code, applies only to the nuclear refueling of an aircraft carrier. The term ''core logistics capabilities'' is used to define those maintenance and repair standards which should be continually met by the Armed Forces so that it will be able to maintain and repair, on its own, a variety of military equipment. These requirements are adhered to as an assurance that, in times of emergency, the military can meet mobilization, training and operation requirements without requiring outside (contractor) intervention or hindrance.

While the current law reads to exclude a nuclear aircraft carrier, in its entirety (including all maintenance processes), from a requirement to maintain a core logistics capability, this revision intends to apply this exclusion solely to the process of refueling. Nuclear aircraft carrier work, other than nuclear refueling, is currently—and will continue to be—a core logistics capability that is maintained in accordance with the provisions of 10 U.S.C. §2464. Furthermore, every other type of naval surface combatant currently utilized is required to maintain core logistics capabilities. To completely exclude these carriers from the requirement to maintain these capabilities would be to set the carrier apart from other naval surface combatants, which was not the intention of the Navy in formulating its original legislation.

Therefore, this amendment is meant to both clarify the original intent of the drafters for 10 U.S.C. §2464 and to discourage situations which could result in future problems, such as the privatization of unique carrier items which were not meant to be excluded from the requirement for maintaining core logistics capabilities.

Section 703. The Department is committed to fully utilizing its organic depots in order to maintain a core logistics capability. There are circumstances, however, when a depot is utilized to its maximum capability and, because of the limitations imposed by 10 U.S.C. §2466, the Department is prohibited from contracting out the work. The work must still be performed by in-house depots, resulting in delays and excess costs. This provision would expand the waiver authority, permitting the Secretaries to waive the limitation once a depot has achieved full utilization. This will result in savings to the customers and in more timely accomplishment of the work. In situations where multiple depots can perform the same type of maintenance activity, it may not be economical to transfer the work from a fully-utilized depot to one that is operating at less than maximum capacity but in a different

geographic region. The Secretary may waive the limitations if he makes a determination that it would be uneconomical, due to reasons such as cost or logistical constraints, to transfer such workload.

Section 705 would clarify the intent of amendments to section 1724 of title 10, United States Code, that were made by Section 808 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654A–208). It would also establish a Contingency Contracting Force, and authorizes the Secretary of Defense to establish one or more developmental programs for contracting officers, employees and applicants for the GS–1102 series, and recruits and military personnel in similar occupational specialties.

Section 808 established strict minimum qualification requirements for contracting officers and civilian employees in GS–1102 positions. It also made these requirements applicable to military members in similar occupational specialties. Section 808 also amended the exception provision in section 1724 of title 10, United States Code, to except from the new requirements persons ''for the purpose of qualifying to serve in a position in which the person is serving on September 30, 2000.'' The legislative history accompanying this change stated that the new requirements were intended to apply only to new entrants into the GS–1102 occupational series in the Department of Defense and to contracting officers with authority above the simplified acquisition threshold, but not to current employees. This proposal would make clear this intent by excluding from the new requirements military and civilian personnel who were serving, or had served, as contracting officers, employees in the GS–1102 series, or military personnel in similar occupational specialties on or before September 30, 2000. This proposal would also reinstate the qualifications requirements that were previously contained in section 1724 for current employees that are excluded from the new qualifications requirements.

This proposal would also provide the Secretary with flexibility to establish one or more developmental programs, which would educate people to meet the statutory minimum qualification requirements of a degree and 24 credit hours in business. Their purpose would be to enable personnel to obtain the education necessary to meet the performance requirements of the future acquisition workforce. A significant number of the Department's current, seasoned acquisition workforce personnel will be eligible to retire within five years. This makes it imperative that the Department have access to the maximum number of superior applicants. We anticipate that the Office of the Secretary of Defense would establish one or more programs in which candidates that meet some, but not all, of the minimum requirements could be educated to meet the remaining requirements within a specified period of time. For example, a candidate may have a four-year degree, but not the twenty-four credit hours in business-related courses. Another candidate may be close to a degree, including 24 credit hours in business. Each would be provided a specified period of time (in no case more than three years) to meet all of the statutory requirements. We would anticipate that any person who failed to meet all of the statutory requirements within the time specified would be subject to separation from federal service. This flexibility will give the Department the necessary mechanisms for accessing the greatest number of superior applicants, while retaining its goal of maintaining a high-quality, professional contracting workforce.

This proposal would also addresses the need to recognize a contracting force whose mission is to deploy in support of contingency operations and other Department of Defense operations. This force, which consists primarily of enlisted personnel, but which includes both military officers and civilian employees, meets a unique need within the Department and has unique training and qualification requirements.

This proposal would maintain the requirement for 24 semesters hours of business-related course work or the equivalent and give the Secretary flexibility to establish other minimum requirements to meet the unique needs of persons performing contracting in support of contingency and other Department operations.

Section 706. The current language in section 1734(a) of title 10, United States Code, applies to the tenure requirement of over 13,500 critical acquisition positions (caps). This proposal would retain the qualifications to occupy a CAP. The proposed change would require tenure only for personnel in those critical acquisition positions where continuity is especially important to the success of DoD's acquisition programs. Ensuring the tenure of these individuals assigned to program offices and the associated system acquisition functions like systems engineering, logistics, contracting, etc., therein provides the stability originally sought by section 1734. This change would allow more flexibility to meet organizational mission priorities; enhance career development programs for those holding the remaining critical acquisition positions who perform either functions outside of a program office or functions not related to systems acquisitions (such as procuring spare parts or policy formulation); and would ensure DoD develops the best-qualified individuals for CAPS in program offices and systems acquisition functions.

The current section 1734 undertakes to improve the quality and professionalism of the DoD acquisition workforce in part through a career development program for acquisition professionals. This proposal would retain that intent, while emphasizing the importance of specific job experience and program continuity, responsibility, and accountability for acquisition personnel working in program offices or supporting system acquisition programs who are performing critical acquisition functions. This proposal also would expand career-broadening opportunities for personnel in other CAPS and would result in a reduction of waiver reporting requirements. The proposal balances the needs for program continuity, responsibility, accountability, and career development, while eliminating an unnecessary administrative burden, increasing productivity, and allowing the workforce to be responsive to changing organizational needs.

Section 710 would amend section 2855 of title 10, United States Code, to repeal a provision of law that prevents the Department of Defense (DOD) from achieving its goal of 40 percent of the dollar value of architectural & engineering (A&E) service contracts awarded to small businesses. This goal was established by section 712(a) the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 Note).

The Small Business Competitiveness Demonstration Program was established to see if small business concerns could maintain a reasonable percentage of dollars awarded in four Designated Industry Groups (digs) in an unrestricted competitive environment. A&E services is one of the DIGS. The Program establishes a small business participation goal of 40 percent of the dollars awarded in each of the aforementioned DIGS. The statute further states that if small business concerns fail to achieve the 40 percent goal during a twelve month period, the agency shall re-establish set-aside procedures to the extent necessary to achieve the 40 percent goal (Section 712(a) of Pub. L. 100–656).

Notwithstanding the authority of the Demonstration Program, section 2855(b) generally prohibits DOD from using small business set-aside procedures in the awarding of A&E service contracts when the estimated award price is greater than $85,000. Section 2855(b)(2) provides for revision of the $85,000 threshold if the Secretary of Defense determines that it is necessary to ensure that small business concerns receive a reasonable share of A&E contracts. DOD estimates that they would need to increase the threshold to over $1 million to accomplish this end. This would be so disproportionate to the $85,000 statutory threshold that it is more appropriate to seek a legislative change.

Further, DOD would need to continually readjust the threshold over time to reflect changes in small business participation. For example, in fiscal year 1999, DOD achieved a small business A&E participation rate of 16.4 percent, significantly below the 40 percent goal established by the Demonstration Program. Historically, approximately 30 percent of A&E awards were made to small businesses. Continual adjustments to the threshold to reflect such changes in small business participation would be impractical and confusing to both contracting officials and small businesses.

Repealing section 2855(b) will eliminate the $85,000 threshold. As a result, A&E contracts for military construction and military family housing projects could be set aside exclusively for small businesses to achieve the small business competitiveness demonstration A&E goal mandated by 15 U.S.C. 644. Accordingly, this proposal would eliminate conflicting statutory provisions that currently are making it unnecessarily difficult for DOD to achieve the small business goal for A&E contracts.

Section 711. Section 2534 of title 10, United States Code provides that ball and roller bearings must be acquired from domestic sources even when such a restriction is not in the Government's interest. This amendment would provide an exception to this restriction if a determination is made that the purchase amount is $25,000 or less; the precision level of the ball or roller bearings is lower than Annual Bearing Engineering Committee (ABC) 5 or Roller Bearing Engineering Committee (RBC) 5, or their equivalent; at least two manufacturers in the national technology and industrial base capable of producing the required ball or roller bearings decline to respond to a request for quotation for the required items and the bearings are neither miniature or instrument ball bearings as defined in section 252.225.7016 of title 48 of the Code of Federal Regulations. This exception was developed in conjunction with the Department of Commerce, the agency with primary oversight for this area.

If enacted, this amendment would significantly reduce the burdensome administrative process Department of Defense purchasers must follow for small procurement that do not impact the industrial base. It would also provide needed flexibility for readiness concerns. The large procurement that will have an impact on the industrial base remain reserved for domestic suppliers.

Section 712 relates to congressional interest in the Air Force Contractor Operated Civil Engineering Supply Store (CACAOS) program. This proposal would remove constraints on the Air Force's ability to combine CACAOS with A–76 cost comparisons.

FY 98 & 97 Defense Authorization Acts, (Committee Reports 105 H Rpt. 132, 104 H. Rpt. 563)

In the Committee Report to the 1998 Defense Authorization Act, the House Committee on National Security specifically directed the Secretary of the Air Force not to combine CACAOS functions with other service functions when considering multi-function service contracts until a thorough analysis is conducted. Such analysis would include an economic analysis that would assess the merits of combining these services to increase efficiencies at Air Force installations. The committee also directed the Secretary of the Air Force not to change the current operation of any CACAOS, or to permit any combinations of supply and services functions in upcoming procurement, that would violate or circumvent the tenets of any current CACAOS contractual agreement. The Committee had similar language in its report on the 1997 Defense Authorization Act (and also directed the Secretary of the Army and the Secretary of the Navy to consider the application of the CACAOS program as a means to further reduce the cost of essentially non-governmental functions).

FY 99 Defense Authorization Act

Congressional concerns over CACAOS made its way into section 345 of Public Law 10526 1, which, in addition to extolling the virtues of CACAOS, established two requirements if the Air Force wishes to combine a CACAOS with an A–76 study. First, the Secretary of Defense has to notify Congress of the proposed combined competition or contract, the agency has to explain why a combined competition or contract is the best method by which to achieve cost savings and efficiencies to the Government. The Act also established a mandatory GAO Review of the Secretary of Defense's explanation of the projected cost savings and efficiencies. The Comptroller General reviews the report and submits to Congress a briefing regarding whether the cost savings and efficiencies identified in the report are achievable.

The CACAOS law was based upon the assumption that the government would be running an inefficient supply operation for materials to be used in Government operations. The environment today is entirely different. Due to A–76 emphasis, Civil Engineering (CE) is being competitively source; hardware super stores and the International Merchant Purchase Authorization Card (IMPACT) make it unnecessary to maintain supply inventories; and greater competition is obtained when the supply function is included in the CE effort. CACAOS was designed to replace inefficient government management of commercial supply inventories. As we contract out CE and other base support functions, the users of these supplies will be contractors instead of government organizations. The Department will end up creating situations where the CE contractor, or the Most Efficient Organization (MFO), will be required to obtain supplies from the CACAOS contractor in order to do their work. These common commercial items would become Government Furnished Property (HFP) under the contract and the CE contractor cannot be held fully responsible for all aspects of project completion. If CACAOS fails to provide suitable materials on schedule, the CE contractor could be entitled to an equitable adjustment for late or defective HFP.

As a general rule, the Department should only provide HFP when the government owns or has available unique or specialized materials that the contractor would not be able to obtain. CACAOS materials are common commercial items readily available through multiple sources. The requirement to provide these materials should be made a part of the CE contract to keep the government out of the middle of two separate contracts and avert the transfer of performance risk to the government. Also, with the advent of today's hardware super stores (Home Depot, HQ, etc.) with their large inventories and low prices, it doesn't make sense to establish a CACAOS-style operation. With the speed and convenience of the IMPACT, even the MFO would not choose to establish a large supply infrastructure for the common commercial items.

Section 345(b)(6) states that ''Ninety-five percent of the cost savings realized through the use of contractor-operated civil engineering supply stores is due to savings in the actual cost of procuring supplies.'' This statement is no longer accurate and seems to apply to Form 9 processing costs, not IMPACT card costs.

Section 713. The National Defense Authorization Act for Fiscal Year 1996, included the Federal Acquisition Reform Act of 1996 (FAR) and the Information Technology Management Reform Act of 1996 (ITMRA). FARA and ITMRA were subsequently renamed the Clinger-Cohen Act of 1996. This proposal would modify section 4202 of the Clinger-Cohen Act to extend the test program for certain commercial items.

Section 2304(g) of title 10, United States Code, and sections 253(g) and 427 of title 41, United States Code, permit the use of special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold (SAT). Section 4202 of the Clinger-Cohen Act, Application of Simplified Procedures to Certain Commercial Items, extended the authority to use special simplified procedures to purchases for amounts greater than the SAT but not greater than $5 million if the contracting officer reasonably expects, based on the nature of the supplies or services, and on market research, that offers will include only commercial items. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administration costs for both Government and industry.

The test program was enacted into law on February 10, 1996. Final changes to the Federal Acquisition Regulation (FAR) to implement the test program were issued on the statutory deadline of January 1, 1997. The due date for the Comptroller General report does not provide sufficient time to process a legislative proposal that would prevent the test program from expiring once the Comptroller General has submitted the report. This proposal would extend the test program authority to January 1, 2003, to provide sufficient time to assess this potentially valuable acquisition reform authority based on the GAO's findings and, if warranted, seek to make this authority permanent.

Section 714 eliminates the prohibition on using funds to retire or dismantle Peacekeeper intercontinental ballistic missiles below certain levels. This provision is in specific support of the amended budget and will result in considerable savings.

Section 715. The proposed change would provide the Services the flexibility to proceed with construction contracts without disruption or delay by excluding the cost associated with unforeseen environmental hazard remediation from the limitation on cost increases. Unforeseen environmental hazard remediation refers to asbestos removal, radon abatement, lead-based paint removal or abatement, and any other legislated environmental hazard remediation that could not be reasonably anticipated at the time of budget submission.

Currently, section 2853 of title 10, United States Code only excludes the settlement of a contractor claim from the limitation on cost increases. The Senate Appropriations Committee Report (106–290) which accompanied the Military Construction Appropriation Bill for Fiscal Year 2001 (S. 2521) allows the Services to exclude unforeseen environmental remediation costs from the application of reprogramming criteria for military construction and family housing construction projects. However, this report language presents a conflict with the unqualified language of the statute. A reprogramming action is required when the cost increase for a military construction or military family housing project will exceed 25 percent of the amount appropriated for the project or 200 percent of the minor construction project ceiling specified in Section 2805 (a)(1), Title 10, United States Code, whichever is less. A reprogramming action refers to the requirement to provide an advance congressional report and seek congressional approval before proceeding with the work.

Section 716. The revised language raises the threshold on unspecified minor construction projects performed with operations and maintenance funding. Thresholds are increased to $750,000 for general projects (from $500,000) and to $1,500,000 for projects involving life safety issues (from $1,000,000). The O&M unspecified minor construction thresholds were last raised in 1997.

The current thresholds limit the Services' ability to complete projects in areas with high costs of construction, such as overseas and in Alaska and Hawaii. The reality is $500,000 does not buy much construction, even in ''normal'' cost areas, at a time when the average regular military construction (MilCon) project costs $12 million. On these small construction projects, labor costs cut heavily into the amount of tangible ''brick and mortar'' which any project must deliver to make a facility usable to its customer. Without this relief, there may be a two or three year delay in completing needed small construction projects if MilCon appropriations must be used, as unspecified minor construction funds within this appropriation are very limited and regular MilCon projects must be individually authorized and appropriated in advance.

Section 717. The proposed legislation seeks authority for Federal tenants to obtain facility services and common area maintenance directly from the local redevelopment authority (LRA) or the LRA's assignee as part of the leaseback arrangement rather than procure such services competitively in compliance with Federal procurement laws and regulations. This authority to pay the LRA or LRA's assignee for such services under this authority would be allowed only when the Federal tenant leases a substantial portion of the installation; only so long as the facility services or the specific type of common area maintenance are not of the type that a state or local government is obligated by state law to provide to all landowners in its jurisdiction for no individual cost; and only when the rate charged to the Federal tenant is no higher than that charged to non-Federal entities. The proposed legislation also expands the availability of using leaseback authority for property on bases approved for closure in BRAC 1988.

A leaseback is when the Department of Defense transfers nonsurplus base closure (BRAC) property by deed or through a lease in furtherance of conveyance to an LRA. The transfer requires the LRA to lease the property back to the Federal Department or Agency (Federal tenant) for no rent to satisfy a Federal need for the property.

Current leaseback legislation does not exempt Federal tenants from Federal procurement laws and regulations when they attempt to obtain facility services and common area maintenance, such as janitorial, grounds keeping, utilities, capital maintenance, and other services that are normally provided by a landlord. Compliance with the procurement laws and regulations may result in a third party contractor providing such services for facilities leased from the LRA and for common areas shared by other tenants of the LRA. In many cases, this may conflict with the LRA's or its assignee's arrangements for providing such services to the various tenants on property owned or held by the LRA. The LRA usually prefers that its contractor perform such services on behalf of the LRA's tenants. LRAs have been hesitant in using leaseback arrangements due to the Federal tenants' inability to obtain these services directly from the LRAs or share the common area maintenance costs with other tenants of the LRAs.

Under current law, only property at BRAC '91, '93, and '95 closure installations can be transferred under the leaseback authority. To help minimize small Federal land holdings within larger parcels transferred to the LRA on BRAC '88 bases, the leaseback authority should be expanded to apply to BRAC '88 installations.

Section 718. The proposed change would allow the Military Departments to reimburse the Military Personnel appropriations from Military Construction, Family housing appropriations during the first year of execution of a military family housing privatization project. Members occupying privatized housing are entitled to, and receive, housing allowances. Since housing allowances are paid from the Military Personnel appropriations, the Military Department needs to reimburse these appropriations for the increased housing allowance bill caused by privatization from the funds previously programmed and budgeted in the Military Construction, Family Housing appropriations. Providing the flexibility to reimburse these funds at the time of execution will enable the Services to accurately determine how much should be reimbursed to meet housing allowance requirements.

It is extremely difficult to predict when the project will be awarded and therefore to program the correct amount of funds at the correct time. Transferring funds into military personnel appropriations early has proven to be premature and led to shortfalls in the Family Housing appropriation. For example, the Army estimates that Family Housing, Army will lose approximately $100 million from FY98 through FY01 due to the premature transfer of funds to Military Pay and subsequent slippage in privatization awards. Such losses cannot be reversed since there is no mechanism to reprogram from Military Personnel appropriations back into Family Housing following the passage of the respective appropriation bills into law. This proposal precludes unnecessary shortfalls in the family housing appropriations created when premature transfers leave the Military Departments without the resources to continue funding installations experiencing privatization slippage.

Section 719. The report requires an extensive manpower effort. The Department's budget submission, budget testimony and responses to other report and statutory requirements, etc., provide Congress with much of the same information as required in this report. The Services can provide specific data more efficiently on an as-needed basis.

In addition, this report was recommended for termination in 1995 based on survey data collected in response to the Paperwork Reduction Act, with estimated cost savings of at least $50,000 per year.

Section 801 amends section 5038(a) of title 10, United States Code, which requires that there be a Director for Expeditionary Warfare within the Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements and Assessments.

A recent organizational alignment split the functions of the Deputy Chief of Naval Operations for Resources, Warfare Requirements, and Assessments into two distinct Deputy Chiefs of Naval Operations. In this alignment, the Director for Expeditionary Warfare maintains the same role and responsibilities but now falls under the Deputy Chief of Naval Operations for Warfare Requirements and Programs.

This proposal reflects that organizational change.

Section 802 amends chapter 6 of title 10, United States Code, by adding a new section 169 to consolidate the various existing legal authorities governing the DoD Regional Centers to ensure each of the Regional Centers can operate under the same set of authorities, which will ensure they can operate effectively.

The Department of Defense Regional Centers for Security Studies are an important national security initiative developed by Secretary Cohen and his predecessor, William Perry. These Centers, which serve as essential institutions for bilateral and multilateral communication and military and civilian exchanges, now exist for each major region—Europe, Asia, Latin America, Africa and most recently for the Middle East.

The Regional Centers are very important tools for achieving U.S. foreign and security policy objectives, both for the Secretary of Defense and for the regional CINCS. The Centers allow the Secretary and the CINCs to reach out actively and comprehensively to militaries and defense establishments around the world to lower regional tensions, strengthen civil-military relations in developing nations and address critical regional challenges. The Department has had extremely good results with the Centers in each region. For example, more than twenty Marshall Center graduates are now ambassadors or defense attaches for their countries and another twenty serve as service chiefs or in other similarly influential positions.

Currently the five Regional Centers operate under a patchwork of existing legal authorities. As each new center was established, new legislation was passed to govern each center. As a result, no single center has the same set of legal rules guiding how it can operate. The patchwork of authorities hinders effective management and oversight of the Centers, and provides broad authority for some Centers but only limited authority for other Centers.

A central component of the department's proposal would ensure that all DoD Regional Centers are able to waive reimbursement of the costs of conferences, seminars courses of instruction and other activities associated with the Centers. The proposal also would ensure that all Centers could accept foreign and domestic gifts, hire faculty and staff, including directors and deputy directors, and invite a range of participants to the Centers. Without these authorities, the Regional Centers will not be able to operate at maximum effectiveness.

Both the Marshall Center and the Asia-Pacific Center for Security Studies, the oldest of the five Centers, have specific authority to waive reimbursement of costs associated with participating in center activities. The Center for Hemispheric Defense Studies also has authority to waive costs, but its authority falls under a different provision of title 10, United States Code, than the similar authorities for the Marshall Center and the Asia-Pacific Center. The Africa Center for Strategic Studies and the Near East-South Asia Center can waive some costs under section 1051 of title 10, but this authority is more limited than the authorities under which the other three Centers operate.

The ability to waive reimbursement of certain costs associated with participating in center activities is absolutely critical to the effectiveness of the Regional Centers as engagement tools for both the Secretary of Defense and the regional CINCS. Many participants in center activities are from developing countries that cannot afford to send personnel to institutions like the regional Centers. Without the authority to waive reimbursement of certain costs, most participants from developing countries would not attend the Centers. In contrast, consistent with existing authorities, most participants from developed nations, whose contributions provide balance, shared regional leadership and non-U.S. perspectives, pay for their own travel, lodging, meals and expenses in connection with Center courses.

Section 802 would provide the authority to waive reimbursement of certain costs associated with the Centers to all of the Regional Centers by repeating the diverse set of existing authorities concerning cost issues and instead providing a single legal provision concerning cost waivers for all of the Centers.

In addition to providing a single authority for the Centers to waive reimbursement of costs, the proposal also ensures that other existing authorities governing the Regional Centers apply to all of the Centers. By ensuring that all of the Centers can accept foreign and domestic gifts, hire faculty and staff, and invite participants from defense-related government agencies and non-governmental organizations, the proposal will improve the Centers in several ways. First, by gaining the authority to accept gifts, all Centers will be able to cover a greater percentage of their operating costs using funds from outside the Department budget. Allowing both public and private foreign institutions to contribute to regional Centers operations also will enhance the involvement of those donor countries in the Centers and strengthen their commitment to the missions of the Centers. In terms of participation, the Centers in many cases are unique in their ability to bring together participants from across the spectrum of the national security establishment in their respective countries. Broadening this pool to include participants from non-governmental organizations and legislative institutions will further strengthen the quality of discussion at the Centers and help establish additional important professional relationships among participants from the various regions.

Finally, enactment of section 802 would confirm the authority of the Secretary of Defense to manage all the Centers effectively. The combination of diverse legal authorities and unique organizational structures has made effective management and oversight of the Centers quite challenging. To address this management challenge, the Department created a Management Review Board last year (2000). The MRB is comprised of the Assistant Secretary of Defense (International Security Affairs) and the Director of the Joint Staff, or their designees, and members from the Comptroller, Program Analysis and Evaluation, General Counsel, Joint Staff and the Services. The DoD proposal to consolidate existing, legal authorities concerning the Regional Centers and apply them to all of the Centers will further improve the ability of the MRB to ensure that the Regional Centers are thoroughly incorporated into the Department's broader engagement strategy and funded appropriately.

This proposal provides no new spending authority. No additional resources are needed to implement these changes and as the existing departmental management structure matures, the Department expects to realize greater efficiencies in the management of the Regional Centers.

Section 803 would amend all references to the former ''Military Airlift Command'' contained in title 10 and title 37 to refer to the command by its current designation as the ''Air Mobility Command.'' By Special Order AMC GA–1, 1 June 1992, Air Mobility Command replaced the Military Airlift Command as a United States Air Force Major Command. This change was previously recognized to a certain extent in title 10, United States Code 130a (Management headquarters and headquarters support activities personnel; limitation), subparagraph (d) (Limitation on Management Headquarters and Headquarters Support Personnel Assigned to United States Transportation Command), which specifically identified Air Mobility Command as a component command of United States Transportation Command. That provision in section 130a was deleted by section 921 of Public Law 106–65, 5 October 1999. As Military Airlift Command no longer exists and Air Mobility Command is not referenced in any statute, updating the listed provisions of the United States Code is appropriate.

Section 804 would amend section 1606 of title 10, United States Code, to increase the number of Defense Intelligence Senior Executive Service (DISES) positions authorized within the Defense Civilian Intelligence Personnel System (DCIPS) from 517 to 544. Enactment of the proposed amendment would enable the Secretary of Defense to allocate the 27 additional DISES positions to the National Imagery and Mapping Agency (NIMA), as the Director of Central Intelligence (DCI) simultaneously cuts 27 Senior Intelligence Service (SIS) positions from the Central Intelligence Agency (CIA).

When section 1606 was inserted into title 10, United States Code, by section 1632(b) of the Department of Defense Intelligence Personnel Policy Act of 1996 (Public Law 104–201; 110 Stat. 2745, 2747) the number of DISES positions was set at 492. This ceiling, however, was raised to 517 positions by section 1142 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654).

The conference report accompanying the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, however, states that these ''25 additional positions are authorized for the entire defense intelligence community and are not intended to be allocated to any single agency within the defense intelligence community.'' See H.R. Rep. No. 106–945 at 865 (2000). The report also directed ''the Secretary of Defense to report to the Committees on Armed Services of the Senate and the House of Representatives, not later than March 15, 2001, on how the additional senior executive service positions are allocated within the defense intelligence community.'' H.R. Rep. No. 106–945 at 865 (2000).

Based on this guidance, the 25 new DISES positions are being reviewed for use and distribution within the DCIPS community as a whole. This expansion of DISES positions within the general DCIPS community, however, does not address a pressing need to allocate an additional 27 DISES positions to NIMA as part of a Congressionally mandated administrative transfer intelligence positions from CIA to NIMA.

Since DCIPS and NIMA were created in 1996, NIMA has been staffed at senior levels by DISES personnel, Defense Intelligence Senior Level (DISL) personnel, and SIS personnel. It should be noted in this regard, however, that when the initial DCIPS cap was set at 492, the 27 positions that CIA filled with SIS personnel on temporary detail were not included in the 492 figure.

One of the complex aspects of the establishment of NIMA, was the commingling of intelligence officials from the Department and other federal agencies that was needed to staff the new agency. But, in establishing NIMA the Congress made it clear that this unique staffing arraignment would be temporary. In section 1113 of the National Imagery and Mapping Agency Act of 1996 (Public Law 104–201, 110 Stat. 2675, 2684) the Congress expressly provided that: ''Not earlier than two years after the effective date of this subtitle, the Secretary of Defense and the Director of Central Intelligence shall determine which, if any, positions and personnel of the Central Intelligence Agency are to be transferred to the National Imagery and Mapping Agency. The positions to be transferred, and the employees serving in such positions, shall be transferred to the National Imagery and Mapping Agency under the terms and conditions prescribed by the Secretary of Defense and the Director of Central Intelligence.''

In keeping with this congressional mandate, the Secretary and the DCI signed a Memorandum of Agreement (MOA) in February 2000 that set the total number of positions to be transferred from CIA to NIMA. Under the agreement, CIA personnel that are currently temporarily detailed to NIMA would be permanently detailed to NIMA; These employees, however, would remain as CIA employees. Budget agreements implementing the MOA also provide that the previously discussed 27 SIS positions would be included in the total number of 56 positions to be transferred from CIA to NIMA. These agreements also provide that in conjunction with the transfer of these 27 senior level positions to NIMA, CIA would cut 27 SIS positions. Consequently, the enactment of the proposed amendment would have no budgetary impact, because the increase of the DISES ceiling is offset by the corresponding reduction of SIS positions at CIA.

Section 811 would amend section 10541 of title 10 concerning the annual report to Congress on National Guard and Reserve Component equipment. During the preparation of the budget year 2000 National Guard and Reserve Component Equipment Report, it became clear that changes were needed to both the report and process in order to make the report more relevant to Congress. As a result, a joint working group was commissioned from the Office of the Assistant Secretary of Defense for Reserve Affairs to analyze the report and process. Key changes were coordinated with all Services and are included in the legislative proposal above.

Specifically, subsection (a) would adjust the date of the report from February 15th to March 1st of each year. This would allow time to incorporate the President's budget projections into the report, thus making the report a more meaningful and up-to-date report during the Congressional legislative process. It would also officially require data from the U.S. Coast Guard Reserve, which has been provided in past years but is not required by law.

Subsection (b) would eliminate the requirement for data that is no longer viable, such as the full wartime requirement of equipment over successive 30-day periods and non-deployable substitute equipment. It would also expand the requirement for the current status of equipment compatibility to all Reserve Components, instead of just for the Army. Overall, the revised subsection (b) is written to expand the scope and remove the restrictive nature of the language. This would provide the Reserve Components the ability to present a clearer and more complete picture of the Reserve Component equipment needs.

Section 812 would repeal subsection 153(b) of title 10 and amend section 118(e) to consolidate redundant reporting requirements related to the assessment of service roles and missions. Subsection 153(b) requires the Chairman to submit to the Secretary of Defense, a review of the assignment of roles and missions to the armed forces. The review must address changes in the nature of threats faced by the United States, unnecessary duplication of effort among the armed forces, and changes in technology that can be applied effectively to warfare. The report must be prepared once every three years, or upon the request of the President or the Secretary.

Section 118 of title 10 established a permanent requirement for the Secretary to conduct a Quadrennial Defense Review (QDR) in conjunction with the Chairman. The Department of Defense has designed the QDR to be a fundamental and comprehensive examination of America's defense needs from 1997–2015; to include assessments of potential threats, strategy, force structure, readiness posture, military modernization programs, defense infrastructure, and other elements of the defense program. Amending subsection 118(e) would explicitly require the Chairman's review of the QDR to include an assessment of service roles and missions and recommendations for change that would maximize force efficiency and resources.

Simultaneously preparing the QDR and the roles and missions study requires the concentrated efforts of many Joint Staff action officers for a period of more than eighteen months. Eliminating this duplication of effort, however, will significantly enhance the Joint Staff's ability to meet an expanding list of congressionally or Department of Defense mandated reporting requirements on a wide variety of sensitive defense topics. These topics include joint experimentation, training, and integration of the armed forces, examination of new force structures, operational concepts, and joint doctrine; global information operations; and homeland defense, particularly with regard to managing the consequences of the use of weapons of mass destruction within the United States, its territories and possessions.

Section 813 would change the due date for the Commercial Activities Report to Congress, required by section 12461(g), title 10, United States Code, from February 1st of each fiscal year to June 30th of each fiscal year. The Commercial Activities Report is developed using the same in-house inventory database as the Department's Federal Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each Fiscal Year. That inventory is subject to challenges by interested parties. In order to ensure that the Commercial Activities Report is as accurate as possible and consistent with other reports submitted to Congress covering the same Fiscal Year, it is necessary to consider the FAIR inventory challenges when compiling it. This process is normally not complete until April or May of each year. In past years, the Department has submitted an interim response to Congress regarding the Commercial Activities Report indicating that the report would not be submitted until June.

Section 821 would amend section 2572 of title 10. Section 2572(a) authorizes the Secretary of a military department to lend or give certain types of property described in section 2572(c) that are not needed by the department to specified entities, such as municipal corporations, museums, and recognized war veterans' associations. Section

2572(b) authorizes the Secretary of a military department to exchange the items described in section 2572(c) with any individual, organization, institution, agency, or nation if the exchange will directly benefit the historical collection of the armed forces.

Section 821 would expand the categories of property that the military departments may exchange under section 2572(b). Currently, the military departments may exchange books, manuscripts, drawings, plans, models, works of art, historical artifacts and obsolete or condemned combat materiel for similar items. Property may also be exchanged for conservation supplies, equipment, facilities, or systems; search, salvage, and transportation services; restoration, conservation, and preservation systems; and educational programs. The amendment would expand the current authority to exchange ''condemned or obsolete combat material'' and authorize the military departments to exchange any ''obsolete or surplus material'' of a military department for ''similar items'' and for the enumerated services if the items or services will directly benefit the historical collection of the armed forces.

Section 822 would amend section 2640 of title 10, United States Code. This section requires the Department of Defense to meet safety standards established by the Secretary of Transportation under section 44701 of title 49, United States Code and requires air carriers to allow the Department of Defense to perform technical safety evaluation inspections of a representative number of their aircraft. This amendment would require the same safety standards be applied to foreign air carriers as to the domestic air carriers in an effort to provide better protection to members of the armed forces.

Section 822(2) would require ''check-rides'' to be accomplished on carriers. As DOD personnel conducting the inspection are usually not qualified pilots in all the various types of aircraft they are required to inspect, the term ''cockpit safety observations'' more accurately describe the process involved.

Section 822(3) of the proposal would designate authority within the Department of Defense to delegate a representative to make determinations to leave unsafe aircraft. This change is a technical change to update the command name from ''Military Airlift Command'' to its successor ''Air Mobility Command''.

Section 822(4) of the proposal would authorize the Secretary of Defense to waive the requirements of the statute in an emergency, based on the recommendation of the Commercial Airlift Review Board. As paragraph (1) would extend the inspection requirements to foreign air carriers, there may be instances that do not constitute an emergency but because of operational necessity a waiver may be appropriate. An example would be where there is only one carrier available in a foreign country but the host government will not allow an inspection on sovereignty principals. If all other information available to the Commercial Airlift Review Board indicate a safe air carrier, a waiver may be appropriate.

Section 822(5) would amend subsection (j) of section 2640 title 10 United States Code that states certain terms listed therein have the same meanings as given by section 40102(a) of title 49 of the United States Code. ''Air Carrier'' is listed in subsection (j) and is defined in title 49 as a ''citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.'' Deleting ''air carrier'' from the definition section in addition to the changed in paragraph (1) will allow the safety standards to be applied equally to foreign and domestic carriers.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Section 901 would amend title 10 by adding a new section 23501 to authorize the Secretary of Defense, with the concurrence of the Secretary of State, to enter agreements, at reasonable cost, with eligible countries and international organizations, for the reciprocal use of ranges and other facilities where testing may be conducted. As military equipment becomes more complex, so does the need for more advanced, complex, and costly test and evaluation capabilities. In this environment, it is increasingly difficult and expensive for one nation to fulfill all of its legitimate research, development, test and evaluation (RDT&E) requirements at ranges and facilities under its control.

One way to reduce the cost of developing the next generation of U.S. weapons, and those of our friends and allies, is to take full advantage of the unique test capabilities available here and abroad. For example, the United Kingdom has a unique Artillery Recovery Range in Shoeburyness where we may recover rounds undamaged after firing for engineering evaluation. This uniqueness of the range comes from its geography. Shoeburyness lies on a gently sloping shoreline that extends for several miles before terminating in a large tidal basin from which undamaged spent rounds may be recovered with ease. No other facility in the world provides this capability. Similarly, the United States has unique test capabilities not available in other countries. The 8+ Mach test track at Holloman Air Force Base in N.M. is unequaled anywhere in the world. Unfortunately, under current authority, it is often cost-prohibitive for the United States and the United Kingdom, for example, to reach an agreement that would allow each country to use the other's facilities to develop superior weapons to meet 21st Century challenges.

To obtain access to foreign ranges and facilities at reasonable rates, the Department needs new authority to provide eligible countries or international organizations reciprocal access, at reasonable rates, to U. S. facilities; and the enactment of this proposal would provide that new authority.

As the Secretary of Defense observed in a memorandum dated March 23, 1997: ''International Armaments Cooperation is a key component of the Department of Defense Bridge to the 21st Century. We already do a good job of international cooperation at the technology end of the spectrum; we need to extend this track record of success across the remainder of the spectrum.''

Reciprocal use of test and evaluation ranges and facilities is the next step in this process, and one that will expand long-standing international partnerships the United States has enjoyed in the equipment acquisition process. In this regard, the Department notes that the Congress ''has supported a number of [Department of Defense] initiatives to help offset the growing burden of [RDT&E] infrastructure support cost.'' See S. Rep. No. 104–12, at 176–77 (1995). It is also worthy of note that the Congress has encouraged the Department to engage in such cooperative ventures by stating in the same report: ''our allies are showing a much greater interest in using U.S. test ranges and facilities because of encroachment problems overseas, and the Department should be more aggressive in encouraging and facilitating such request.'' See S. Rep. No. 104–12, at 177 (1995).

Enactment of the authority granted in subsection (a) of this proposal would also enhance interoperability at all weapon system and force levels; and interoperability is the cornerstone of Joint Vision 2020. It is axiomatic, that interoperability between U.S. forces, and coalition or allied forces, enhances the effectiveness of the combined force to act in concert to deter or defeat aggression. Accordingly, continued success in regional conflicts depends on continuous improvement of U.S. interoperability with our friends and allies around the globe.

No additional funds are required to implement the authority granted in subsection (a) of this proposal. Testing services will be paid for by customers according to the principles and provisions prescribed in the proposal and negotiated in a Memorandum of Understanding. Pricing principles call for reasonable and equitable charges between partner countries. Matters concerning security, liability and similar issues will be fully addressed in Memorandums of Understanding (or other formal agreements) entered based on this proposal.

Section 901(c) would amend Section 2681 of title 10, United States Code, ''Use of Test and Evaluation Installations by Commercial Entities.'' Section 2681 was enacted in 1994 to provide greater access for commercial users to the Major Range and Test Facility Base Installations. The section requires a commercial entity to reimburse the Department of Defense for all direct costs associated with the test and evaluation activities. In addition, commercial entities can be charged indirect costs related to the use of the installation, as deemed appropriate.

The Major Range and Test Facility Base (MRTFB) is a set of installations and organizations operated by the Military Departments principally to provide T&E support to defense acquisition programs. Historically, defense acquisition programs used the MRTFB for testing, with the Department of Defense component serving as the actual customer. The acquisition program approved the work statement and provided funding through a funding document issued directly to the test organization. In response to acquisition reform initiatives, most program managers now leave the decision of where to perform (developmental) testing to the contractor. Nonetheless, many contractors choose to test at MRTFB activities because of the facilities and expertise available. In other cases, technical requirements drive them to the MRTFB as the only source of adequate T&E support. Under section 2681, defense contractors are charged as commercial entities, even though the use of the range is in direct support of the Department of Defense component.

In the past, MRTFB Installations did not charge defense contractors a fully burdened rate to use their facilities when conducting test in association with a defense contract. A Service audit finding opined that the MRTFB installations had misapplied the law and determined defense contractors to be commercial users, thereby requiring them to be charged the fully burdened rate. However, weapons programs have prepared their budgets under the assumption that the fully burden rate would not be charged to the defense contractors acting on their program's behalf. The amendment proposed in subsection (c) of this proposal would make MRTFB test and evaluation services available to defense contractors under the same access and user charge policies as applied to the sponsoring Department of Defense component. This would assure that the MRTFB is able to perform its fundamental role of support to defense acquisition programs under the same policies as existed prior to section 2681, while continuing to leave the choice of ''where to test'' to the defense contractor. In addition, the amendment proposed in subsection (c) of this proposal would extend this concept to the contractors of other U.S. government agencies. If section 901(c) is not enacted, there may be a cost increase to specific research and development programs.

Section 902 would amend 10 U.S.C. §2350a to improve the Department's ability to enter

into cooperative research and development projects with other countries. This amendment would incorporate references to the term: ''Major non-NATO ally'' to allow countries like Australia, South Korea or Japan to be recognized, not just as other friendly foreign countries, but as major allies.

Section 903 would amend chapter 53 of title 10, United States Code, to provide the Secretary of Department the authority to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

Currently, the Department's authority to recognize superior achievements and performance by foreign nationals is limited to awarding military decorations to military attaches and other foreign nationals for individual acts of heroism, extraordinary achievement or meritorious achievement, when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign of the Armed Forces of the United States. See sections 1121, 3742, 3746, 3749, 6244–46, 8746, and 8749–50, of title 10, United States Code, and Executive Orders 11046 and 11448.

The vast majority of engagement programs conducted by the Department of Defense, in support of the national Security Strategy, however, do not involve diplomatic contacts, or heroic acts, but unit-level engagement and cooperation between U.S. servicemembers and foreign nationals, in a variety of training, exercise, and peacetime operational settings. In these instances, many of these expenses that would be authorized by this proposal are currently being paid out of the pockets of soldiers, sailors, airmen, Marines, and members of the Coast Guard.

One of many examples of how this gap in legislative authority adversely impacts on American servicemembers is the experience of the United States Army Special Forces Command (Airborne). Since the first Special Forces unit was activated on June 19, 1952, Special Forces personnel have routinely deployed overseas to: train U.S. allies to defend themselves and counter the threat of dangerous insurgents, in so doing, Special Forces personnel often serve as teachers and ambassadors. As a result, the Special Forces Command is often called upon by regional combatant commanders, American Ambassadors, and other agencies to participate in a wide variety of peacetime engagement events, because of its global reach, regional focus, cultural awareness, language skills and military expertise.

During Fiscal Year 2000, the command had 2,102 personnel deployed on 81 missions in 51 countries. The activities conducted during these deployments included peace operations in the Balkans, humanitarian demining operations worldwide, deployments in support of the Department of State, African Crisis Response Initiative, joint and combined exercise training, counterdrug operations, and mobile training team deployments. In addition, elements of the command host annual marksmanship and other international competitions involving military skills.

During this period of time members of the Special Forces Command participated in 328 deployments that required the purchase or production of plaques, trophies, coins, certificates of appreciation or commendation and other suitable mementos for presentation to foreign nationals. These items were used to recognize achievements such as placing first, second or third in competitions, graduating at the top of formal training courses, and other acts meriting recognition by U.S. officials. Since the authority to present military awards for valor, heroism or meritorious service as outlined above generally does not apply to such expenses, the men and women of the command have a long tradition of paying such expenses out of their own pockets, or from funds received from private organizations such as the Special Forces Association.

Assuming that the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2000, averaged $260.00 per deployment (the current ''minimal value'' threshold set by section 7342(a)(5) of title 5, United States Code), the men and women of that command would have spent $85,280.00 out of their own pockets, or obtained donations from private organizations such as the Special Forces Association, in order to carry out these missions.

Enactment of this proposal would enhance the execution of Department engagement programs, by providing another means of establishing goodwill today that will contribute to improved security relationships tomorrow. But most importantly, it would relieve servicemembers from the need to pay such expenses out of pocket, by authorizing commanders to pay for these expenses from the budgets allocated to them to conduct these critical missions.

Section 904 would give the Department of Defense (DoD) the personal service contract authority currently exercised by other agencies with overseas activities, It would allow DoD to hire the in-country support personnel necessary to carry out its national security mission, particularly in the newly independent states.

In those countries where the DoD does not have a Status of Forces Agreement or does not have a major military presence including a program for civilian personnel administration of local national employees, that service has traditionally been performed on a reimbursable basis by the Department of State (DOS). DOS has used its personal service contract authority to provide workers for DoD units such as Defense Attache Offices, Security Assistance Offices, and Military Liaison Teams, that are frequently co-located with the U.S. Embassy and may come under Chief of Mission authority. DoD does not have personal service contract authority and DOS counsel recently determined DOS is prohibited from using its personal service contract authority to provide workers for an agency that does not have such authority.

DOS has begun terminating personnel service contracts that support DoD requirements. DoD units have been faced with the need to either use a non-personal service contract or obtain Full-Time Equivalent (FTE) authority. Use of non-personal service contracts may be inappropriate for the type of work performed, cause security and access problems at the Embassy, and be in violation of local labor law. FTE has not been readily available to support time-limited programs such as the Partnership for Peace and Military Liaison Teams. FTE has been particularly difficult to obtain for overseas units that are under headquarters constraints such as for the OUSD (Policy) office that supports arms control delegations in Geneva.

Section 911 would amend section 1153 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (NDAA) to limits on the use of voluntary early retirement authority and voluntary separation incentive pay for fiscal years 2002 and 2003. Section 1153 authorized the Department to use Voluntary Separation Incentive Pay (VSIP) and Voluntary Early Retirement Authority (VERA) for workforce restructuring for three years. In the past, VERA and VSIP could only be used in conjunction with reduction in force. Under this new authority, it is no longer necessary to abolish a position in order to grant early retirement or pay the incentive. The vacant position may be refilled with an employee with skills critical to the Department. This is necessary to shape the Defense workforce of the future.

Section 1153 authorized these programs to be carried out for workforce restructuring in FY 2002 and FY 2003 ''only to the extent provided in a law enacted by the One Hundred Seventh Congress.'' This provision would satisfy that requirement.

Section 912 would amend section 1044a title 10 to clarify the status of civilian attorneys to act as notaries. Section 1044a(b)(2) authorizes ''civilian attorneys serving as legal assistance officers'' to perform notarial services. Civilian attorneys have no designation under Office of Personnel Management position descriptions as legal assistance ''officers.'' Within Department of Defense documents, civilian attorneys providing legal assistance services are referred to as legal assistance attorneys. For this and other reasons related to the efficient management of legal assistance offices, subsection (b) would amend section 1044a(b)(2) to refer to legal assistance attorneys.

Section 912(b) would amend section 1044a(b)(4) of title 10 to expand a category of persons who may perform notarial acts under the section. Section 1044a(b)(4) authorizes members of the armed forces who are designated by regulation to perform notarial acts. As amended, subsection (b)(4) would authorize civilian employees of the armed forces to perform notarial acts if they are designated by regulations of the armed forces to have notarial powers. This would alleviate a particular problem overseas, where military notaries are not always available. The change would allow the Service Secretaries, and the Secretary of Transportation with respect to the Coast Guard, to extend notary authority to civilian nonlawyer assistants, e.g., 64 paralegals and legal assistance office in-take personnel.

Section 913 would amend section 2461 of title 10 concerning the conversion of commercial or industrial type functions to contractor performance. Federal agencies may convert commercial activities to contract or interservice support agreement without cost comparison under Office of Management and Budget Circular A–76 (A–76) when all directly affected Federal employees serving on permanent appointments are reassigned to other comparable Federal positions for which they are qualified. This revision would make the statutory requirements inapplicable under these same circumstances.

The analysis requirements of section 2461 of title 10, United States Code, are met using the commercial activities study procedures of A–76 and the Revised Supplemental Handbook, Such studies typically take two to four years to reach an initial decision. When the result of the study is a conversion of a function to contract performance, affected Federal employees may be subject to reduction-in-force procedures. The proposed statutory revision would permit Department of Defense activities to convert a function to contract performance without incurring the potential length and cost of an A–76 study. This revision would not alter the requirements of section 2641 where an A–76 study is undertaken. It would not alter the rights of employees who are sub9ect to an A–76 study.

Section 914 clarifies that former Defense Mapping Agency personnel transferred into the National Imagery and Mapping Agency pursuant to the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, retain third party appeal rights under chapter 75 for such time as they remain Department of Defense employees employed without a break in service in the National

Imagery and Mapping Agency. The section also permits the employees so affected to waive the provisions of this section. However, by doing so, the employee forfeits his or her rights under this section. Personnel who have those rights and who are assigned or detailed by NIMA to positions of the CIA or other agencies would retain those rights vis-a-vis NIMA while assigned or detailed to those positions.

Section 915 would allow the Secretary of Defense to provide the Director, NIMA the authority to set up a critical skills undergraduate training program parallel to those authorized to NSA, DIA, CIA, and the military departments. These programs are intended to further the goal of enhanced recruitment of minorities for careers in the Intelligence and Defense Communities. Under these programs agencies recruit high school graduates who otherwise would not qualify for employment and then send them to obtain undergraduate degrees in critical skills areas such as computer science. These employees are required to commit to remaining in the Government for specified payback periods. No costs are anticipated in fiscal year 2002. Fiscal year 2003 costs are currently estimated at less than $1,000,000. This proposal imposes no costs on other organizations.

Section 916 would add a new section to title 10, United States Code, and would establish a three-year pilot program permitting payment of retraining expenses for DoD employees scheduled to be involuntarily separated from DoD due to reductions-in-force or transfers of function. In the National Defense Authorization Act for Fiscal Year 1995, a pilot program of this nature was established for employees affected by BRAC. (See Public Law 103–337, Section 348.)

The program, which may be created at the discretion of the Secretary of Defense, focuses on permitting a company to recoup the costs it incurs in training an employee for a job with that company. The purpose of this incentive is to encourage non-Federal employers to hire and retain individuals whose employment with DoD is terminated. To be eligible for the reimbursement, a company must have employed the former DoD employee for at least 12 months. In short, this proposal allows payment for training for a specific job; it is not designed towards generic, non-job specific training.

Expanded use of incentives such as contained in this proposal would provide DoD with an enhanced management tool to reduce adverse impacts on employees. Availability of this option would also reduce costs associated with VSIP payments and the placement of employees through the DoD Priority Placement Program.

Section 921 responds to section 1051 of the Strom Thurmond National Defense Authorization Act for Fiscal year 1999 (Public Law 105–261), which identified the need for improved procedures for demilitarizing excess and surplus defense property. The proposal would amend Title 10, United States Code, to permit the United States to recover Significant Military Equipment (SME) that has been released by the Government without proper demilitarization. In recent years, the possession of improperly demilitarized Department of Defense property by individuals and business entities has caused grave concern both in the media and in Congress and has been a topic of study for the Defense Science Board.

Questions on the amount of compensation due a possessor of these materials have arisen in those cases where confiscation has been permitted. This proposal, if enacted, would provide needed clarification on several issues. First, it would codify in law the type of material subject to recovery by specifically adopting the definition of SME as is contained in the Code of Federal Regulations. Second, it would permit a possessor to be compensated in an amount covering purchase cost, if any, and reasonable administrative costs, such as transportation and storage costs, assuming the possessor obtained the property through legitimate channels. Note that exceptions are provided for certain categories, including museums and the Civilian Marksmanship program.

Section 922 would revise section 2634 of title 10, and section 5727 of title 5, United States Code, by exempting motor vehicles shipped by members of the armed forces and federal employees from the provisions of the Anti Car Theft Act of 1992, as amended. The Anti Car Theft Act of 1992, (the ''Act''), codified at Sections 1646b and 1646c of title 19, United States Code, requires customs officers to conduct random inspections of automobiles and shipping containers that may contain automobiles that are being exported, for the purpose of determining 66 whether such automobiles are stolen. In addition, the Act requires that all persons or entities exporting used automobiles, including those exported for personal use, provide the vehicle identification number (V.I.N.) and proof of ownership information to the Customs Service at least 72 hours before the automobile is exported. The Customs Service is also required, consistent with the risk of stolen automobiles being exported, to randomly select used automobiles scheduled for export and check the V.I.N. against information in the National Crime Information Center to determine if the automobile has been reported stolen. Customs Service regulations implementing the Act are at Section 192.2 of title 19 of the Code of Federal Regulations.

Motor vehicles shipped under the authority of section 2634 of title 10 and section 5727 of title 5 are owned or leased by members of the armed forces or federal employees and are being transported out of the country pursuant to the member's or employee's change of permanent station orders. The vast majority of motor vehicles shipped under these two provisions of law belong to Department of Defense personnel, and are for personal use while the member or employee is abroad. In most cases, these motor vehicles are returned to the United States along with the member or employee upon completion of duty overseas. These motor vehicles are not being exported for the purpose of entering into the commerce of a foreign country and normally may not be sold to foreign nationals in the country to which the military member or employee is assigned. Their shipment is arranged and normally paid for by the United States government. In addition, in the case of military members and Department of Defense civilian employees, regulations promulgated by the Department of Defense pursuant to authority granted in Section 2634 of title 10, require that the member produce adequate proof of ownership prior to shipment and, in the case of leased vehicles, proof that the lease has at least 12 months remaining. Under the circumstances, the chance that any such motor vehicle may be stolen is extremely remote. In over fifty years of shipping such motor vehicles overseas, there have been few, if any, documented cases in which a stolen vehicle has been shipped overseas by a military member or federal employee.

Application of the Act to motor vehicles transported under these sections has had an adverse impact on shipment times and has resulted in additional expense to the U.S. government in the form of delayed shipments and costs associated with random inspections. In addition, it has imposed a burden on military members and federal employees by requiring unnecessary and duplicative documentation, and delaying the transit times of their motor vehicles. Although these costs and burdens are not extraordinary on an individual basis, they are unwarranted and wasteful in light of the extremely remote chance that stolen vehicles may be shipped.

This proposal would exempt shipments of motor vehicles under these sections from the Act, and provide the authority to continue to regulate such shipments in a manner that is consistent with the needs of the various agencies affected. The revision would also eliminate an ambiguity caused by section 2634(b) and the new Customs Service regulations. The refusal to ship a member's vehicle because of the Customs regulation would entitle the member to government paid storage for the duration of the overseas tour.

With regard to section 2634 of title 10, Subsection (1) would delete the word ''surface'' as a limiting factor in allowing shipment of vehicles by the cheapest form of transportation if US owned or US flag vessels are not reasonably available. This deletion will also align section 2634 of title 10 closer to the provisions of section 5727 of title 5, which does not have such a limitation. Transportation provided to military members would still be limited to a cost no higher than the cost of surface transportation.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense or other federal agencies, and may result in savings from not having to store the vehicles at government expense.

Section 923 concerns Department of Defense gift initiatives. The amendments would clarify items which may be loaned or given under section 7545 of title 10, United States Code, and give the Secretary express authority to donate portions of the hull or superstructure of a vessel stricken from the Naval Vessel Register to a qualified organization. Amendments to section 7545(a) of title 10 would clarify that the Secretary may donate either obsolete ordinance material or obsolete combat material under this section. The proposed new language is consistent with the Secretary's existing authority to lend, give or exchange ''obsolete combat materiel'' to qualified organizations under section 10 U.S.C. 2572, a statute which is similar, but not identical, to section 7545. Addition of the term ''obsolete shipboard material''covers items such as anchors and ship propellers, which are frequently sought from the Navy for use as display items.

The deletion of ''World War I or World War II'' and replacement with ''a foreign war'' would allow coverage of other wars, such as the Korean, Vietnam, and Persian Gulf wars as well as any future war. The deletion of ''soldiers'' and replacement with ''servicemen's'' would clarify that associations related to any branch of military service are qualified organizations.

A new subsection (d) is added because currently no federal statute expressly addresses the loan or gift of a major portion of the hull or superstructure of a Navy submarine or surface combatant. The Navy has received two requests for large portions of vessels currently slated for scrapping. These requests pertain to the sail of a Navy submarine (the uppermost part of a submarine), and the island of the USS *America* (the uppermost part of this decommissioned aircraft carrier). The *America's* island stands several stories above its flight deck. The Navy anticipates receiving more requests, particularly for submarine sails because the Los Angeles class nuclear submarines, all but one of which are named after particular American cities, are now being decommissioned and scrapped. If a vessel can be donated in its entirety, the Navy should have the authority to donate a portion of the vessel for use solely as a permanent memorial. Also, if there is

a reason that a vessel cannot be donated in its entirety (e.g., removal of a reactor compartment), this new subsection would authorize the Secretary to donate any part of the remainder of the vessel to a qualified organization.

The Secretary of the Navy has existing authority under 10 U.S.C. §7306 to donate 68 vessels stricken from the Naval Vessel Register. The Secretary also has existing authority to donate material and historical artifacts described in 10 U.S.C. 2572 and 7545. A large portion of a vessel does not fall squarely within the parameters of any of these three statutes, and thus the new subsection (d) authorizes the Secretary to lend, give or otherwise transfer portions of a vessel stricken from the Naval Vessel Register to an organization listed under subsection (a). Terms and conditions of any agreement for the transfer of a portion of a vessel shall include a requirement that the transferee maintain the material in a condition that will not diminish the historical value of the material or bring discredit upon the Navy. Any donation authorized pursuant to this subsection remains subject to all applicable environmental laws and regulations. In accordance with section 7545(a), no expense would be incurred by the United States in carrying out this section.

The amendments to section 2572 of title 10 would clarify the eligibility requirements for political subdivisions of a state to reccive condemned or obsolete combat material for static display purposes. The operating instruction for the Aircraft Management and Regeneration Center (AMARC) notes that aircraft for display purposes cannot ordinarily be given or loaned to a county without further administrative paperwork. Since many airports are operated by counties and other state political subdivisions that are not municipal corporations, the law as currently written presents a substantial limitation on the Air Force's ability to provide aircraft and other historical material for static display at such county entities.

AMARC's role in donating or loaning military property for static displays is to be transitioned to the United States Air Force Museum. Clarifying section 2572(a)(1) to include counties and other political subdivisions of a state as permissible recipients of loans and donations would expand the Museum's ability to foster good will and civic pride in the United States Air Force and its history through static displays.

There are several statutes which do treat counties differently from municipal corporations, particularly with regard to taxes and services. Section 5520 of title 10 does list separate definitions for cities and counties for the purpose of withholding income or employment taxes. The proposed legislation would not affect these other statutes nor the distinctions they draw between governmental entities.

Section 924 would repeal section 916 to resolve an incongruous and burdensome reporting requirement for the Chairman of the Joint Chiefs of Staff. The reporting requirements demanded by this language-particularly subsection (c)(3), which the Department is unable to comply with-runs counter to the responsibilities of the CJCS as the Chairman of the JROC, and will prove to be overly burdensome without necessarily producing a positive or desired result.

Section 153 of title 10 establishes the CJCS responsibility to advise the Secretary of Defense on requirements, programs, and budgets. The JROC, established in section 181 of title 10, assists the CJCS in fulfilling these advisory responsibilities and this section further establishes that ''the functions of the CJCS, as chairman of the Council, may only be delegated to the Vice Chairman of the Joint Chiefs of Staff.'' Other members of the JROC provide inputs to the JROC Chairman in the form of opinions, advice, and recommendations, which represent extremely useful information. However, having received the JROC member's inputs (including those from the combatant commanders-in-chief) the CJCS is singularly accountable to provide the best military advice on joint requirements to the Secretary.

Appearing before the SASC Subcommittee on Emerging Threats and Capabilities on April 4, 2000, the Commander-in-Chief of U.S. Joint Forces Command amplified the point that the JROC is an advisory body. He provided explicit testimony that his input to the JROC and attendance at selected JROC meeting is what matters—not his vote—since the JROC is not a voting body. Additionally, since JROC deliberations are characteristically conducted in executive session, there is no mechanism to collect the specific advice by individual members.

The CJCS has directed the JROC to refocus on examination of a broader spectrum of future joint warfighting requirements and fully to integrate joint experimentation activities into the requirements, capabilities, and acquisition process. The raw facts required in the semi-annual report that document a brief series of today's decisions will not capture the profound implications of framing operational architectures and operational concepts on which future decisions will be judged. Furthermore, in an era in which the Department is seeking opportunities to reduce the size of management headquarters, the significant workloads driven by these reporting requirements will drive workforce requirements in the wrong direction—and for little return on the investment. In sum, the reporting requirements will likely prove to be overly burdensome without meeting Congressional intent. The intent of this reporting requirement may be met through CJCS, VCJCS, and others' annual or special testimony, and occasional specific reports to Congress.

Section 925 would authorize limited access of sensitive unclassified information for administrative support contractors. Pursuant to the authority granted in section 129a of title 10, United States Code, the Secretary of Defense has promulgated personnel policies that promote the downsizing and outsourcing of administrative support (e.g., secretarial or clerical services, mail room operation, and management of computer or network resources). By employing such measures, the Department has realized substantial savings, as often contracting out these services is the least costly way to perform them consistent with military requirements and the needs of the Department. In many cases, however, additional savings must be forgone, because such duties may require contractors to be exposed to, or require substantive access to, sensitive unclassified information such as third party trade secrets, proprietary information, and personal information protected by the Privacy Act.

Section 926 will allow Andersen AFB to use the sale of water rights located off the main installation as an incentive to pay for a new water system located on Andersen AFB. The authority this proposal would provide to the Air Force could only be used in conjunction with existing utility privatization authority under 10 U.S.C. 2688. Subject to the specific provisions of this proposal, the rules governing a conveyance under 10 U.S.C. 2688 would apply to the transaction, including those for competition, fair market value, and reporting to Congress. The Air Force desires to obtain offers to replace the current well system with new wells located on Andersen AFB (the Main Base or Northwest Field). But this is contingent on there being adequate potable groundwater on Andersen AFB (Main Base or Northwest Field). If there is not sufficient groundwater on Andersen AFB (Main Base or Northwest Field) to allow use of this authority, subsection (d) authorizes the Secretary to allow sale of excess water from the existing wells to help pay for modernization and operation of a new water system.

Andersen AFB's Main Base and Northwest Field properties cover an area roughly 8 miles wide and 2–4 miles long (24.5 square miles). Andersen AFB currently also includes several noncontiguous properties: The two largest are the Harmon Annex, which cover 2.8 square miles and is located along the west side of the Island about 4 miles south of Northwest Field; and Andy South, which includes the Andersen South housing area and dormitories, covers 3.8 square miles, and is located about 8 miles south of the Main Base. The water system at Andersen AFB is currently owned, operated, and maintained by the Air Force. Andersen AFB wells satisfy the base's total water requirements. Andersen's water utility system includes 9 ground water wells (identified as Tumon Maui Well and Wells # 1, 2, 3, 5, 6, 7, 8, and 9), chlorination and fluoridation equipment, air strippers, several ground level storage tanks, several booster pump stations, approximately 481,000 linear feet of piping ranging in size from less than 2-inches to 30-inches in diameter, 353 building services, 48 air relief valves, 717 main valves, 11 post indicator valves, 439 fire hydrants, and 13 meters.

Andersen AFB's nine wells (and associated system components) are located several miles off the Main Base. There is one well at ''Tumon'' (900 gallons per minute (gpm)) and eight wells at the ''Andy South'' area (149–440 gpm each, 2090 gpm total). The water is pumped from the wells to the Main Base several miles away crossing non-federal properties. The Air Force's Andy South property is in the process of being declared excess property pursuant to the Federal Property Act, but neither the water rights nor the wells are part of that action.

A new water system needs to be built due to the advancing age (35–50+ years) and corrosive environment that has deteriorated the system components. The logistics involved in performing the maintenance and repair work off-base make it difficult for the mechanics to control the deterioration. As a result, more pipes, valves and pumps are failing. In 1999, the 16'' main to the base leaked at a rate of 200–250 gallons per minute and was repaired under pressure. The tank isolation valves are so old they are not used because of fear the valves might break. A major failure to the transmission line or the 50+ year old Santa Rosa Tank could leave the Main Base with only 250,000 gallons of available water (less than 15% of the average daily demand.) This amount is insufficient for fire protection and normal operations.

The base estimates it costs about $800,000 per year for electricity just to produce and transmit water to the Main Base from the off-base wells. Savings of 20–40% are expected if wells on the Main Base or the contiguous Northwest Field are constructed.

Anti-Terrorism and Force Protection would improve if wells were located on the Main Base or Northwest Field. Well House No. 3 already experienced a break-in and theft of electrical parts. Furthermore, there is no control over groundwater contamination from non-Air Force sources. The Tumon Maui well and Well No. 2 are currently not in operation due to groundwater contamination. Current requirements are about 55 million gallons per month. In the past two years, Andersen used up to 100 million gallons per month.

This provision further will provide an opportunity to meet long term water needs with no USAF capital investment, reduce short range modernization/rehabilitation costs for the aged and reconfigured off-base water supply system (Tumon Maui well and Wells 1–3 were originally built to support off-base sites, for example the old Andy South), eliminate the need to retain real property in Andy South, greatly enhance force protection needs for vital water resources, and increase system reliability and redundancy. Guam is chronically short of potable water supplies. The water from Andy South and Andersen Water Supply Annex, if available for commercial sale, would be of substantial value. The Air Force believes that value would be more than sufficient to pay the cost of installation of a new series of wells on Andersen AFB, either the Main Base or Northwest Field, and repair the existing system on the base.

Section 927 would repeal the requirement for a separate budget request for procurement of reserve equipment by repealing section 114(e) of title 10, United States Code.

Section 928 would repeal the requirement for a two-year budget cycle for the department of defense by repealing section 1405 of the department of defense authorization act, 1986 (31 U.S.C. 1105 note).

By Mr. SMITH of Oregon:

S. 1156. A bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH of Oregon. Mr. President, today I rise to introduce the Electric Bike Safety Act of 2001. This bill will encourage and provide more opportunities for Americans to enjoy the leisure and healthful benefits of riding bicycles. This legislation would amend the Consumer Product Safety Act CPSA, to provide that low-speed electric bicycles are consumer products subject to such Act. As the CPSA is now written, low-speed electric bicycles are not considered consumer products, but rather a motorized vehicle subject to all regulations set by the National Transportation Safety Administration, NTSA, which regulates automobiles and motorcycles.

As a result of low-speed electric bicycles being treated as motorcycles, they are required to meet burdensome and unnecessary standards, making low-speed electric bicycles much more costly than they need to be. Subjecting electric bicycles to motor vehicle requirements would mean the addition of a large array of costly and unnecessary equipment, brake lights, turn signals, automotive grade headlights, and rear-view mirrors.

Making electric bicycles accessible for more Americans will benefit the lives of thousands of Americans. Electric bicycles provide disabled riders the freedom of mobility without the cost or stigma of an electric wheelchair. Electric bicycles provide older riders with increased lifestyle flexibility due to increased mobility that electric bicycles allow them. Electric bicycles provide law enforcement officers a practical way to patrol neighborhoods and towns in a manner consistent with the highly successful emphasis on ''Community Policing''. Electric bicycles provide short and medium distance commuters an environmentally friendly and healthy way to get to work. In short, this bill is pro-Americans with disabilities, pro-elderly, pro-safety, and pro-environment. Electric bicycles will prove beneficial to many more Americans if we in Congress do our part to make electric bicycles affordable.

In my home State of Oregon, there are thousands of people who ride bicycles each day, whether as a means of transportation, exercise, or recreation. The City of Corvallis, OR, has 63 miles of bike lanes and paths and as a result has a very high number of people who commute to work on their bicycles. Area companies such as Hewlett-Packard and CH2M-Hill even offer changing areas and showers as a way to encourage their employees to ride bicycles to work. The Corvallis Police Department is also able to utilize electric bikes as a community friendly way to patrol the city.

I believe that placing electric bicycles under the regulation of the Consumer Product Safety Commission will be only ensure the safety of electric bicycles, but will promote their use by making electric bicycles an affordable alternative form of transportation to millions of Americans.

By Mr. SPECTER (for himself, Ms. LANDRIEU, Ms. COLLINS, Mr. SCHUMER, Ms. SNOWE, Mr. LEAHY, Mr. COCHRAN, Mr. BREAUX, Mr. ALLEN, Mr. BIDEN, Mr. BOND, Mrs. CARNAHAN, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. DODD, Mr. EDWARDS, Mr. FRIST, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LIEBERMAN, Mrs. LINCOLN, Ms. MIKULSKI, Mr. MILLER, Mr. REED, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, AND Mr. WARNER):

S. 1157. A bill to reauthorize the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact, a Pacific Northwest Dairy Compact, and an Intermountain Dairy Compact; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I join today with thirty-eight of my colleagues to introduce legislation authorizing interstate dairy compacts. Members of the U.S. House of Representatives have introduced similar legislation with 162 cosponsors, including 17 members of the Pennsylvania delegation.

This legislation will create a much needed safety net for dairy farmers in the Northeast and other regions and will bring greater stability to the prices paid to farmers. The bill authorizes an Interstate Compact Commission to take such steps as necessary to assure consumers of an adequate local supply of fresh fluid milk and to assure the continued viability of dairy farming within the compact region. Specifically, states that choose to join a compact would enter into a voluntary agreement to create a minimum farm-price for milk within the compact region to form a safety net for dairy farmers when farm milk prices fall below the established compact price. This price would take into account the regional differences in the costs of production for milk, thereby providing dairy farmers with a fair and equitable price for their product.

Specifically, the bill would authorize Pennsylvania, New Jersey, Delaware, New York, Maryland, and Ohio to join the existing Northeast Interstate Dairy Compact, which has been in operation since July 1997. Most of these States have already agreed to join the Compact with strong support from their governors and legislatures. In the Commonwealth of Pennsylvania, Governor Ridge has been a very strong supporter and advocate of the Compact. The Pennsylvania Senate and House of Representatives have sent a clear signal to Congress by voting with overwhelming majorities of 44 to 6 and 181 to 20, respectively, to authorize the Commonwealth's participation in the Northeast Dairy Compact.

In addition to expanding the current Northeast Interstate Dairy Compact, the bill would authorize southern States to form a similar compact to provide price stability in their region. I am pleased to join so many of my colleagues from the South in introducing this legislation. Finally, the legislation would allow formation of other compacts in the Pacific Northwest and Intermountain region within three years. We have included language in this bill to recognize the efforts in these States to support dairy compacts and to avoid their exclusion if these efforts lead to passage of compact legislation by their State governments.

In total, twenty-five States have already approved dairy compact legislation. This is a broad mandate from States that are attempting to meet the needs of dairy farmers, producers, consumers and other citizens concerned with the future of their milk supply. These States recognize the many positive aspects of dairy compacts. The benefits include providing dairy farmers with a fairer and more stable price structure; providing consumers with price stability and a steady, reliable source of local milk for their consumption; enhancement of conservation efforts in areas threatened by sprawl; and maintenance of rural economies that have been suffering for quite some time from the loss of income-generating farmers.

Over the past several years, I have worked closely with my colleagues in the Senate in order to provide a more equitable price for our nation's milk

producers. I supported amendments to the Farm Bills of 1981 and 1985, the Emergency Supplemental Appropriations Bill of 1991, the Budget Resolution of 1995 and the most recent Farm Bill in 1996 in an effort to insure that dairy farmers receive a fair price. As a member of the U.S. Senate Agriculture Appropriations Subcommittee, I have worked to ensure that dairy programs have received the maximum possible funding, including high quality dairy research conducted at Penn State University. I have also been a leading supporter of the Dairy Export Incentive Program which facilitates the development of an international market for United States dairy products.

In recent years, however, dairy farmers have faced low prices for dairy products. Prices have fluctuated greatly over the past several years, thereby making any long-term planning impossible for farmers. These economic conditions have placed our Nation's dairy farmers in an all but impossible position and this is borne out in dairy farmers' declining ranks.

Our Nation's farmers are some of the hardest working and most dedicated individuals in America. During my tenure as a United States Senator, I have visited numerous small dairy farms in Pennsylvania. I have seen these hard working men and women who have dedicated their lives to their farms. The downward trend in dairy prices is an issue that directly affects all of us. We have a duty to ensure that our Nation's dairy farmers receive a fair price for their milk. If we do nothing, many small dairy farmers will be forced to sell their farms and leave the agriculture industry. This will not only impact the lives of these farmers, but will also have a significant negative impact on the rural economies that depend on the dairy industry for support. Further, the large-scale departure of small dairy farmers from agriculture could place our nation's steady supply of fresh fluid milk in jeopardy, thereby affecting every American.

We must recognize the importance of this problem and take prompt action. Twenty-five States have asked us to pass this legislation and provide a necessary tool for their dairy farmers. I urge my colleagues to cosponsor and support this legislation as we continue to work in Congress to bring greater stability to our Nation's dairy industry.

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

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

S. 1157

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 ''Dairy Consumers and Producers Protection Act of 2001''.

SEC. 2. NORTHEAST INTERSTATE DAIRY COMPACT.

Section 147 of the Agricultural Market Transition Act (7 U.S.C. 7256) is amended—

(1) in the matter preceding paragraph (1), by striking ''States'' and all that follows through ''Vermont'' and inserting ''States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont'';

(2) by striking paragraphs (1), (3), and (7);

(3) in paragraph (2), by striking ''Class III-A'' and inserting ''Class IV'';

(4) by striking paragraph (4) and inserting the following:

''(4) ADDITIONAL STATE.—Ohio is the only additional State that may join the Northeast Interstate Dairy Compact.'';

(5) in paragraph (5), by striking ''the projected rate of increase'' and all that follows through ''Secretary'' and inserting ''the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 553 of title 5, United States Code''; and

(6) by redesignating paragraphs (2), (4), (5), and (6) as paragraphs (1), (2), (3), and (4), respectively.

SEC. 3. SOUTHERN DAIRY COMPACT.

(a) IN GENERAL.—Congress consents to the Southern Dairy Compact entered into among the States of Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia, subject to the following conditions:

(1) LIMITATION OF MANUFACTURING PRICE REGULATION.—The Southern Dairy Compact Commission may not regulate Class II, Class III, or Class IV milk used for manufacturing purposes or any other milk, other than Class I, or fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a ''Federal milk marketing order'') unless Congress has first consented to and approved such authority by a law enacted after the date of enactment of this joint resolution.

(2) ADDITIONAL STATES.—Florida, Nebraska, and Texas are the only additional States that may join the Southern Dairy Compact, individually or otherwise.

(3) COMPENSATION OF COMMODITY CREDIT CORPORATION.—Before the end of each fiscal year in which a Compact price regulation is in effect, the Southern Dairy Compact Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 553 of title 5, United States Code.

(4) MILK MARKETING ORDER ADMINISTRATOR.—At the request of the Southern Dairy Compact Commission, the Administrator of the applicable Federal milk marketing order shall provide technical assistance to the Compact Commission and be compensated for that assistance.

(b) COMPACT.—The Southern Dairy Compact is substantially as follows:

''ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

''§ 1. Statement of purpose, findings and declaration of policy

''The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the south, and to assure consumers of an adequate, local supply of pure and wholesome milk.

''The participating states find and declare that the dairy industry is an essential agricultural activity of the south. Dairy farms, and associated suppliers, marketers, processors and retailers are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

''The participating states further find that dairy farms are essential and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

''In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

''Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the order system.

''By entering into this compact, the participating states affirm that their ability to regulate the price which southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

''Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

''In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

''ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

''§ 2. Definitions

''For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

''(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with

the principles expressed in subdivision (b) of section three.

''(2) 'Commission' means the Southern Dairy Compact Commission established by this compact.

''(3) 'Commission marketing order' means regulations adopted by the commission pursuant to sections nine and ten of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

''(4) 'Compact' means this interstate compact.

''(5) 'Compact over-order price' means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulations in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

''(6) 'Milk' means the lacteral secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

''(7) 'Partially regulated plant' means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

''(8) 'Participating state' means a state which has become a party to this compact by the enactment of concurring legislation.

''(9) 'Pool plant' means any milk plant located in a regulated area.

''(10) 'Region' means the territorial limits of the states which are parties to this compact.

''(11) 'Regulated area' means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

''(12) 'State dairy regulation' means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

''§ 3. Rules of construction

''(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

''(b) The compact shall be construed liberally in order to achieve the purposes and intent enunciated in section one. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

''ARTICLE III. COMMISSION ESTABLISHED

''§ 4. Commission established

''There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

''§ 5. Voting requirements

''All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission's by-laws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

''§ 6. Administration and management

''(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its by-laws an executive committee composed of one member elected by each delegation.

''(b) The commission shall adopt by-laws for the conduct of its business by a two-thirds vote, and shall have the power by the same vote to amend and rescind these by-laws. The commission shall publish its by-laws in convenient form with the appropriate agency or officer in each of the participating states. The by-laws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

''(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

''(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

''(1) To sue and be sued in any state or federal court;

''(2) To have a seal and alter the same at pleasure;

''(3) To acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

''(4) To borrow money and issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of section eighteen of this compact;

''(5) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties and qualifications; and

''(6) To create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

''§ 7. Rulemaking power

''In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

''ARTICLE IV. POWERS OF THE COMMISSION

''§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation

''The commission is hereby empowered to:

''(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

''(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

''(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

''(4) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

''(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve or promote more efficient assembly and distribution of milk.

''(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

''(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

''§ 9. Equitable farm prices

''(a) The powers granted in this section and section ten shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article

shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

''(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents per gallon at Atlanta, Ga., however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in nineteen hundred ninety, and using that year as a base, the foregoing one dollar fifty cents per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

''(c) A commission marketing order shall apply to all classes and uses of milk.

''(d) The commission is hereby empowered to establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The commission is also empowered to establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

''(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

''(f) When establishing a compact over-order price, the commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

''(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

''§ 10. Optional provisions for pricing order

''Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to any of the following:

''(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

''(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers.

''(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

''(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

''(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

''(A) With respect to regulations establishing a compact over-order price, the commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

''(B) With respect to any commission marketing order, as defined in section two, subdivision three, which replaces one or more terminated federal orders or state dairy regulations, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

''(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

''(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

''(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

''(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, Section 18(a).

''(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

''(11) Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

''ARTICLE V. RULEMAKING PROCEDURE

''§ 11. Rulemaking procedure

''Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. §553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

''§ 12. Findings and referendum

''(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. §553(c)), the commission shall make findings of fact with respect to:

''(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

''(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

''(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

''(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

''§ 13. Producer referendum

''(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection 9(f), is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

''(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who,

during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

''(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper–Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) hereof and subject to the provisions of subdivision (2) through (5) hereof.

''(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

''(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

''(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

''(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

''(5) In order to insure that all milk producers are informed regarding the proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his or her cooperative.

''§ 14. Termination of over-order price or marketing order

''(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

''(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

''(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. §553).

''ARTICLE VI. ENFORCEMENT

''§ 15. Records; reports; access to premises

''(a) The commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

''(b) Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

''(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars or to imprisonment for not more than one year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

''§ 16. Subpoena; hearings and judicial review

''(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

''(b) Any handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

''(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to section seventeen. Any proceedings brought pursuant to section seventeen, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

''§ 17. Enforcement with respect to handlers

''(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

''(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

''(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

''(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

''(1) Commencing an action for legal or equitable relief brought in the name of the commission of any state or federal court of competent jurisdiction; or

''(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

''(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

''ARTICLE VII. FINANCE

''§ 18. Finance of start-up and regular costs

''(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under section six, subdivision (d), paragraph four. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

''(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

''§ 19. Audit and accounts

''(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

''(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

''(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

''ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

''§ 20. Entry into force; additional members

''The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia and when the consent of Congress has been obtained.

''§ 21. Withdrawal from compact

''Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

''§ 22. Severability

''If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compacting state may accept the conditions of Congress by implementation of this compact.''.

SEC. 4. PACIFIC NORTHWEST DAIRY COMPACT.

Congress consents to a Pacific Northwest Dairy Compact proposed for the States of California, Oregon, and Washington, subject to the following conditions:

(1) TEXT.—The text of the Pacific Northwest Dairy Compact shall be identical to the text of the Southern Dairy Compact, except as follows:

(A) References to ''south'', ''southern'', and ''Southern'' shall be changed to ''Pacific Northwest''.

(B) In section 9(b), the reference to ''Atlanta, Georgia'' shall be changed to ''Seattle, Washington''.

(C) In section 20, the reference to ''any three'' and all that follows shall be changed to ''California, Oregon, and Washington.''.

(2) LIMITATION OF MANUFACTURING PRICE REGULATION.—The Dairy Compact Commission established to administer the Pacific Northwest Dairy Compact (referred to in this section as the ''Commission'') may not regulate Class II, Class III, or Class IV milk used for manufacturing purposes or any other milk, other than Class I, or fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a ''Federal milk marketing order'').

(3) EFFECTIVE DATE.—Congressional consent under this section takes effect on the date (not later than 3 year after the date of enactment of this Act) on which the Pacific Northwest Dairy Compact is entered into by the second of the 3 States specified in the matter preceding paragraph (1).

(4) COMPENSATION OF COMMODITY CREDIT CORPORATION.—Before the end of each fiscal year in which a price regulation is in effect under the Pacific Northwest Dairy Compact, the Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 553 of title 5, United States Code.

(5) MILK MARKETING ORDER ADMINISTRATOR.—At the request of the Commission, the Administrator of the applicable Federal milk marketing order shall provide technical assistance to the Commission and be compensated for that assistance.

SEC. 5. INTERMOUNTAIN DAIRY COMPACT.

Congress consents to an Intermountain Dairy Compact proposed for the States of Colorado, Nevada, and Utah, subject to the following conditions:

(1) TEXT.—The text of the Intermountain Dairy Compact shall be identical to the text of the Southern Dairy Compact, except as follows:

(A) In section 1, the references to ''southern'' and ''south'' shall be changed to ''Intermountain'' and ''Intermountain region'', respectively.

(B) References to ''Southern'' shall be changed to ''Intermountain ''.

(C) In section 9(b), the reference to ''Atlanta, Georgia'' shall be changed to ''Salt Lake City, Utah''.

(D) In section 20, the reference to ''any three'' and all that follows shall be changed to ''Colorado, Nevada, and Utah.''.

(2) LIMITATION OF MANUFACTURING PRICE REGULATION.—The Dairy Compact Commission established to administer the Intermountain Dairy Compact (referred to in this section as the ''Commission'') may not regulate Class II, Class III, or Class IV milk used for manufacturing purposes or any other milk, other than Class I, or fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a ''Federal milk marketing order'').

(3) EFFECTIVE DATE.—Congressional consent under this section takes effect on the date (not later than 3 year after the date of enactment of this Act) on which the Intermountain Dairy Compact is entered into by the second of the 3 States specified in the matter preceding paragraph (1).

(4) COMPENSATION OF COMMODITY CREDIT CORPORATION.—Before the end of each fiscal year in which a price regulation is in effect under the Intermountain Dairy Compact, the Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 553 of title 5, United States Code.

(5) MILK MARKETING ORDER ADMINISTRATOR.—At the request of the Commission, the Administrator of the applicable Federal milk marketing order shall provide technical assistance to the Commission and be compensated for that assistance.

Ms. LANDRIEU. Mr. President, today I rise, along with thirty-eight of my colleagues, to introduce legislation which would reauthorize the Northwest Dairy Compact and establish the Southern, Pacific and Inter-mountain Compacts.

State officials and dairy producers across the country are concerned that the current Federal milk marketing order pricing system does not fully account for regional differences in the costs of producing milk. As a result, 25 States, including my State of Louisiana, have passed legislation requesting that Congress approve their right to form regional compacts. The compact, when ratified by Congress, authorizes creation of an interstate compact commission which would guide the pricing of fluid milk sold in the region. Consumers, processors, producers, State officials and the public all participate in determining Class I fluid milk prices.

The Northeast Dairy Compact, enacted in 1996, and due to expire this year, has proven extremely successful in balancing the interests of consumers, dairy farmers, processors and retailers by maintaining milk price stability and doing so at no cost to taxpayers.

By ratifying the Southern Dairy Compact we have the opportunity to assure consumers an adequate, affordable and fresh milk supply while preserving the health of farms, whose social and economic contributions remain so critical to the vitality of our country's rural communities.

In my State of Louisiana, over four hundred dairy farms help maintain economic stability in one of our Nation's poorest regions. In the past ten years, nearly a quarter of the dairy farms in my State have gone out of business, and many more are in danger of shutting down unless we authorize the return of milk pricing power back to the States. Had Louisiana been a member of a Southern Dairy Compact last year, its 468 dairy farms would have received $11.9 million in compact payments, increasing income for the average Louisiana dairy farmer by nearly thirteen percent. This, at a time when dairy farmers are faced with depressed prices not seen in the last 25 years.

There are those in Congress who have opposed dairy compacts since the day the idea was introduced. However, dairy compacts are not antitrade, do not increase milk production and milk from outside the compact region is not excluded from sale in the compact region. Over the past five years, New England's dairy farmers have put into practice the compact's promise of providing stable prices for farmers and

consumers, strengthening rural communities and preserving our environment. It is time to allow the States the opportunity to provide their farmers the stability they so desperately need.

Ms. COLLINS. Mr. President, I rise with my colleagues today to introduce the Dairy Consumers and Producers Protection Act. Our legislation reauthorizes the Northeast Interstate Diary Compact and allows other regions of the country to form compacts as well. In doing so, our bill extends to additional consumers and producers the benefits we enjoy in the Northeast.

The Northeast Dairy Compact has proven successful in balancing the interests of processors, retailers, consumers and dairy farmers by maintaining milk price stability. Last year, 458 dairy farmers in Maine received payments under the compact totaling $4.8 million. The payments averaged approximately $10,500 per farmer, or enough to help farmers maintain viable operations, sustain rural communities, and ensure a reliable supply of wholesome dairy products for consumers.

The Northeast Dairy Compact is an innovative approach to promoting stability in the New England dairy industry. The Compact provides for a commission, comprised of delegates from each State, which is granted the authority to set a minimum farm price for Class I (fluid) milk. The difference between the compact price and the Federal milk order price, or the ''over-order obligation,'' is paid to the commission by the processors. The commission then redistributes these funds to compact producers based on the volume of milk sold by the farmer within the region.

The success of the Northeast Dairy Compact in promoting the viability of dairy farming and sustaining rural communities in New England has not gone unnoticed. Nineteen additional State legislatures have overwhelmingly passed compact legislation. Our legislation recognizes this strong support for compacts on the state level and provides Congressional consent for these States to join the Northeast compact or form compacts of their own.

For all that the Compact accomplishes for farmers in the Northeast, one might think that it puts farmers from other parts of the country at a competitive disadvantage. However, this is not the case. The Compact Commission has instituted safeguards, as required by the authorizing legislation, that prevents the overproduction of milk. Incentive payments are provided to farmers who do not increase production and have actually led to a decrease of 0.6 percent in the amount of milk produced in the region. Consequently, we can be sure that surplus milk from the Northeast is not impacting milk markets in other regions of the country. It is important to note that our legislation includes the overproduction protections included in the original Dairy Compact legislation.

The Northeast Dairy Compact is set to expire on September 30, 2001. While the saying goes that all good things must come to an end, I do not believe that ought to be the case with the Compact. Dairy farmers in my State agree and have written, e-mailed, and called to express to me their hope that Congress will extend the authorization of the Northeast Dairy Compact. I have appreciated hearing just how important the Compact is to my constituents, and I look forward to working with my colleagues in the Senate to see that the Diary Consumers and Producers Protection Act is enacted.

Mr. JOHNSON. Mr. President, I rise today to strongly support the extension and the expansion of the Northeast Dairy Compact as a reasonable and proven way to help dairy farmers in New England and beyond.

Dairy farms are truly the agricultural heart of New York State. Their survival is vital to the economic, social, and cultural well-being of the State. I am such an enthusiastic advocate for the Compact because, it offers the means to maintain not only healthy dairy farms in my State, but the rural settings and communities upon which so much of New York and the rest of the country depend.

Historically, dairy prices have been subject to unpredictable and unacceptable fluctuations in prices. In the face of such uncertainty, the current Federal price support system was designed to provide basic levels of assistance to dairy producers. Unfortunately, the support provided, while helpful, is often inadequate. Many dairy farmers in New York and elsewhere are unable to operate at a profit. As a remedy, the Dairy Compact was designed to provide producers with supplemental support, through assessments to processors, when the Marketing Order price is low. Most importantly, the price stability afforded by the Compact is especially important to farmers as a planning tool.

As originally implemented, the Dairy Compact did not include New York. The Bill that has been introduced would allow New York State and other States in the Northeast, Southeast and elsewhere to join the Compact. The New York Legislature, like 25 other State Legislatures, has voted to join the Compact. Why? Because over the 4 years that the Compact has been in existence it has made the difference for many family farmers between surviving as a dairy producer or selling their land for development which is slowly decimating our rural landscape. It has helped us maintain a local supply of affordable milk for consumers including women and children throughout the Compact region at no cost to the government and without placing an undue burden on consumers.

New York is an important dairy producing and consuming State. As of the year 2000, we had about 7,200 dairy herds and produced 11.9 billion pounds of milk. That year, New York ranked third behind California and Wisconsin in both the number of milk cows and total milk produced. The viability of dairy farms is very, very important to my State. If New York had been a member of compact that year when dairy prices were at rock bottom, they would have received an average payment per farm of $18,200. While that size payment will not lead to prosperity, it will help keep the farm going. Several New York dairy farms sell milk to the Compact, and thus receive some of these benefits. I want to ensure that all dairy farms are in the State can participate, and the only way to do that is to expand the Compact.

Opponents of the Compact claim that if it were to be expanded, farmers in the Compact region would overproduce fluid milk thus driving prices down in other parts of the country. This is not the case. The Compact legislation that we propose today specifically acts to prevent such an over production through a supply management feature that rewards dairy producers in the Compact who maintain relatively stable levels of production. If needed, this tool could be used to control over-production from an expanded Compact and thus minimize negative impacts elsewhere.

Other important features of the Compact that are important to remember include the following: It has been fully reviewed and found to be legal. It includes a feature to protect disadvantaged women, infant and children, and in fact, in the year 2000, the Compact paid the WIC program close to $1.8 million to reimburse WIC for any extra expense the program incurred under the Compact. Approximately 1 percent of Compact payments are similarly set aside to reimburse school lunch programs.

I am concerned about the move towards consolidation in the dairy industry. While some concentration is to be expected, recent trends indicate that a few very large dairy operations and processing plants are grabbing up more and more. Many dairy operations are also succumbing to unplanned sprawl. By helping small at-risk farms stay afloat, the Compact is a hedge against unhealthy amounts of consolidation. It also helps to preserve the rural life style, the countryside settings with open spaces, and the economic core of communities that are so important to my New York and so many others.

In sum, the Dairy Compact is an effective way for States, New York and others, to obtain from Congress the regulatory authority over the region's interstate markets for milk. It offers a price stability that is incredibly helpful, and it helps to slow the demise of a tradition that our country holds dear, the family farm.

Ms. SNOWE. Mr. President, I rise today to join Senator SPECTER of Pennsylvania in support of the Dairy Consumers and Producers Protection Act of 2001. We are joined by 37 of our colleagues from New England and throughout the Mid-Atlantic and the Southeast.

This legislation reauthorizes the very successful Northeast Interstate Dairy Compact which allows the producers of milk to, as a dairy farmer from York Country, ME, recently said, set a little higher bottom for the price of locally produced fresh milk. The current Compact only adds a small incremental cost to the current Federal milk marketing order system that already sets a floor price for fluid milk in New England. The bill also gives approval for States contiguous to the participating New England States to join, in this case, Pennsylvania, New York, New Jersey, Delaware, and Maryland.

The legislation also grants Congressional approval for a new Southern Dairy Compact, made up of 14 States: Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

This issue is really a State rights issue more than anything else, Mr. President, as the only action the Senate needs to take is to give its congressional consent under the Compact Clause of the United States Constitution, Article I, section 10, clause 3, to allow the 25 States to proceed with their two independent compacts.

All of the legislatures in these twenty-five States have ratified legislation that allows their individual States to join a Compact, and the Governor of every State has signed a compact bill into law. Half of the States in this country, await our Congressional approval to address farm insecurity by stabilizing the price of fresh fluid milk on grocery shelves and to protect consumers against volatile price swings.

All of the Northeast and Southern Compact States together make up about 28 percent of the Nation's fluid milk market—New England production is only about 3½ percent of this. This is somewhat comparable to Minnesota and Wisconsin which together make up to 24 percent of the fluid milk market. California makes up another 20 percent.

Over ninety-seven percent of the fluid milk market in New England is contained within the area, and fluid milk markets are local due to the demand for freshness and because of high transportation costs, so any complaints raised in other areas about unfair competition simply does not hold water. The existence of the Northeast Dairy Compact does not threaten or financially harm any other dairy farmer in the country. Nor is there one penny of Federal funds involved—not one cent.

Only the consumers and the processors in the New England region pay to support the minimum price to provide for a fairer return to the area's family dairy farmers and to protect a way of life important to the people of the Northeast. Importantly, under the Compact, New England retail milk prices have been among the lowest and the most stable in the country. No wonder other States want to follow our lead.

When Congress wants to try something new, it often sets up a pilot program to test out an idea in a particular locality or region, and then appraises the outcome to see if the project was successful. This is how the Northeast Dairy Compact originated as it was included in the 1996 Farm bill as a three year pilot program—to sunset on April 4, 1999—at the same time as the adoption of the required consolidation of Federal milk marketing orders. The milk marketing orders were extended until October 1, 1999 in the Omnibus Appropriations of FY 1999, which also automatically extended the Compact until October 1, 1999.

Because of efforts by myself and other Compact supporters, we fought to receive a two-year extension of the Northeast Compact, which was incorporated in the Omnibus spending bill funding several government agencies for FY 2000. The Compact will expire on September 30 of this year if no further action is taken by this body.

I want to make it clear to my colleagues how important the continuation of the Northeast Dairy Compact is to me and the dairy farmers and consumers in Maine. I stand here not with my hand outstretched for federal farm dollars for Maine—of all income received by farmers in my State, only about 9 percent comes from Federal funding, unlike other States whose income received through Federal dollars is well over 75 percent—rather to urge you to support a very successful program that does not cost the federal government one penny—not one cent, and is supported by the very people who are affected by it.

I plan to use every avenue open to me to make sure the Compact continues to operate as, once the Compact Commission is shut down even temporarily, it cannot magically be brought back to life again. It would take many months if not a year to restore the successful process that is now in place. I will not gamble with the livelihoods of the dairy farmers of Maine in that irresponsible fashion.

All during the time of the Northeast Compact, fluid milk prices in New England have been among the lowest and have reflected great price stability. The consumers of New England have been spending a few extra pennies for fresh fluid milk—a recent University of Connecticut report recently estimated no more than 4.5 cents a gallon—to ensure a safety net for dairy farmers so that they can continue a historic way of life that is helpful to the regional economy.

I have been pleasantly surprised that, while my mail certainly reflects discontent when gasoline prices rise by pennies, I have not received any swell of outrage of consumer complaints about milk prices over the last 3½ years that the Compact has been in place. The reality is that the initial pilot Compact project we so thoughtfully created has been a huge success.

In 2000, dairy farmers in Maine received on average, $10,500 per dairy farm from the Compact Commission, the governing body set up to keep overproduction of fluid milk in check, and among other duties, ensure that the Federal nutrition programs, such as the Women, Infants, and Children Program, or WIC, are held harmless under the Compact. In fact, the advocates of these federal nutrition programs support the Compact and serve on its commission.

The Northeast Interstate Dairy Compact has provided the very safety net that we had hoped for when the Compact passed as part of the omnibus farm bill of 1996. The Dairy Compact has helped farmers maintain a stable price for fluid milk during times of volatile swings in farm milk prices.

Also, consider what has happened to the number of dairy farms staying in business since the formation of the Dairy Compact. It is now known that, throughout New England, there has been a decline in the number of dairy farmers going out of business. In Maine, for instance, the loss of dairy farms was 16 percent from 1993 to 1997. The Compact then went into effect and from that time until now, the loss of dairy farms has dropped to 9 percent.

The Compact has given dairy farmers a measure of confidence in the near term for the price of their milk so they have been willing to reinvest in their operations by upgrading and modernizing facilities, acquiring more efficient equipment, purchasing additional cropland and improving the genetic base of their herds. Without the Compact, farmers would not have had the courage to do these things and their lenders would not have had the willingness to meet their capital needs.

The Compact has also protected future generations by helping local milk remain in the region and preventing dependence on milk a single source of milk that can lead to higher milk prices through increased transportation costs and increased vulnerability to natural catastrophes.

The bottom line is, the Compact has helped the economies of the New England States. The presence of farms are protecting open spaces critical to every State's recreational, environmental and conservation interests. These open spaces also serve as a buffer to urban sprawl and boost tourism so important to my home state of Maine.

Through its bylaws, the Compact has also preserved State sovereignty by adopting the principle of ''one state—one vote,'' requiring that any pricing change be approved by two-thirds of the participating states in the Compact.

There are compensation procedures that are implemented by the New England Dairy Commission specifically to protect against increased production of fresh milk. The Compact requires that the Compact Commission take such action as necessary to ensure that a minimum price set by the commission for

the region over the Federal milk marketing order floor price does not create an incentive for producers to generate additional supplies of milk. When there has been a rise in the Federal floor price for Class I fluid milk, the Compact has automatically shut itself off from the pricing process. Since there is no incentive to overproduce, there has been no rush to increase milk production in the Northeast as was feared by Compact opponents. No other region should feel threatened by a dairy compact for fluid milk produced and sold mainly at home.

The consumers in the Northeast Compact area, the now in the Mid-Atlantic area and the Southeast area, have shown their willingness to pay a few pennies more for their milk if the additional money is going directly to the dairy farmer. Environmental organizations have also supported dairy compacting as Compacts help to preserve dwindling agricultural land and open spaces.

I urge my colleague not to look success in the face and turn the other way, but to support us in passing this legislation that half of our states have requested.

Mrs. CLINTON. Mr. President. I am pleased to join with my colleagues today as an original cosponsor of the Dairy Consumers and Producers Protection Act of 2001. This legislation is vitally important to New York dairy farmers, New York's economy, and rural communities around the country.

From Watertown and Glen Falls to Ithaca and Jamestown, NY farmers and New York farms are an invaluable part of our State's economy and its landscape. Agriculture is one of New York's top industries. What is grown in our State makes its way to homes and kitchen tables across the country, and around the world.

In particular, the dairy industry is a pillar of New York's economy. Milk is New York's leading agricultural product, creating almost $2 billion in receipts. And New York ranks third in the country in terms of the value of dairy products sold, surpassed only by California and Wisconsin.

Yet, as I travel throughout New York State, I meet dairy farmers who are working harder, but still struggling to make ends meet. Volatile milk prices make it very difficult for New York dairy farmers to negotiate loans, to invest in expansion, and to plan for the future.

That is why it is so important that we join with our colleagues from other States to expand the Northeast Dairy Compact to include New York. If New York had been a member of the Northeast Dairy Compact last year, the over 7,000 dairy farms in New York would have received an estimated $132.6 million in payments, an average of $18,200 for each farm, thereby increasing income for the average New York dairy farm by approximately eight percent.

In addition, New York farmland and farms have become prime land for development and sprawl. We must make sure that farmers all across New York and around the country get the help that they need to hold onto their farms, and to preserve our fields and open spaces. They are an important part of what makes New York so unique and so beautiful.

Helping to preserve New York's dairy farms by expanding the Northeast Diary Compact is the right thing to do. Not only does it ensure the security of our dairy farmers in New York and in other parts of the country, it guarantees an adequate supply of fresh milk at reasonable prices and helps to preserve precious open space.

Mr. JEFFORDS. Mr. President, today, I rise today to express my support for the Dairy Consumers and Producers Protection Act of 2001, important legislation that would re-authorized and expand the Northeast Dairy Compact, and ratify a Southern Compact. Growing support and recognition of the effectiveness and ingenuity of the Northeast Dairy Compact has led twenty-five States to enact compact legislation. These States now look to Congress to grant them the right to join the Northeast Compact, or to form a Southern Compact.

It is critical that we keep pace with the demands of State governments, and provide them with the authority to develop a regional pricing mechanism for Class I (fluid) milk. Farmers across our Nation face radically different conditions and factors of production. Differences in climate, transportation, feed, energy and land value validate the need for regional pricing. Compacts allow States to address these differences and create a price level that is appropriate for producers, processors, retailers, and consumers.

The Northeast Dairy Compact was originally authorized as a three-year pilot program in the 1996 Farm Bill. Sine July of 1997, when the Compact Commission first set the Class I over-order price at $16.94, the Northeast Dairy Compact has proven to be a great success, providing farmers with a fair price for their milk, protecting consumers from price spikes, reducing market dependency upon milk from a single source, controlling excess supply, and helping to preserve rural landscapes by strengthening farm communities. And, unlike so many of our country's agricultural programs, the benefits of the dairy compact are realized at no cost to the Federal Government.

The Northeast Dairy Compact is managed by the Compact Commission. The Commission, comprised of 26 delegates from the six New England member States, includes producers, processors, retailers and consumer representatives. Each State governor appoints three or five delegates to represent their State's vote on the Commission. The Commission meets monthly to evaluate and establish the current Compact over-order price for Class I (fluid) milk. Using a formal rule-making process, the Commission hears testimony to establish a price that takes into account the purchasing power of the public, and the price necessary to yield a reasonable return to producers and distributors. Any price change proposed by the Commission is subject to a two-thirds vote by the State delegations as well as a producer referendum.

The Compact Commission's price regulation works in conjunction with the Federal Government's pricing program, which establishes minimum prices paid to dairy farmers for their raw milk. Under the Compact, processors pay the difference between the Compact over-order price for fluid milk, currently $16,94, and the price established monthly by federal regulation for the same milk. The over-order premium is paid on class I (fluid) milk, and is only paid when the Compact over-order price is higher than the price set by the Federal milk marketing orders. Processors purchasing milk for other dairy products such as cheese or ice cream are not subject to the Compact's pricing regulations, although all farmers producing milk in the region, for any purpose, share equally in the Compact's benefits.

In order to protect low-income consumers from any increases in cost caused by the Compact, the Compact legislation imposes regulations on the Commission requiring that the Women, Infants and Children, WIC program, as well as School Lunch Programs, must be reimbursed for any additional costs they may incur as a result of compact activity. Three percent of the pooled proceeds are set aside to fulfill these obligations.

Compact legislation also contains a clause that holds the Commission responsible for any purchases of milk or milk products by the Commodity Credit Corporation, CCC, that result from the operation of the Compact. The Secretary of Agriculture has the authority to determine those costs and ensure that the Commission honors its obligations.

After money is withheld for the WIC and School Lunch programs, as well the CCC, the Compact Commission makes disbursements to farmer cooperatives and milk handlers. These entities then make payments to individual farmers based on their level of production. These payments are only made when the Federal market order price falls below the price set by the Compact Commission, effectively creating a floor for milk prices. This, in turn, decreases price volatility in the region.

The stability created by the Compact pricing mechanism is important for several reasons. It guarantees farmers a fair price for their product and allows them to plan for the future. Farmers, knowing that they can count on a fair price, can allocate money to purchase and repair machinery, improve farming practices, and above all, stay in business.

Throughout our great Nation, the family farm continues to be a vital part of our rural community and agricultural infrastructure. In New England, and across our country, farms continue to support our rural economies. Farms create economic stability by supporting local businesses such as feed stores, farm equipment suppliers and local banks. The continuing disappearance of small farms is making life very difficult for agri-businesses and disrupting the overall rural economic infrastructure.

The importance of the family farm extends well beyond the rural economy, however. Preservation of the family farm has important environmental consequences as well. Numerous environmental organizations have expressed their support for dairy compacts. They recognize the ability of compacts to protect our farms and preserve our dairy industry. These organizations include the Sierra Club, the Conservation Law Foundation and the National Trust for Historic Preservation. These groups, as well as numerous other environmentally conscious organizations, recognize farmers as good stewards of the land, and value the ability of farms to sustain productive use of the land, while preserving open space.

Even though compacts enjoy widespread support across much of our country, opponents have worked tirelessly to discredit the merits of dairy compacts. These critics, however, must contend with the strong record of success that the Northeast Dairy Compact has put forth.

During its first four years, the Northeast Compact has stood up to numerous legal challenges. Courts have ruled in favor of the Compact on every level, including the U.S. Supreme Court. The courts have recognized the Compact as a proper and constitutional grant of congressional authority, permitted under the Commerce and Compact clauses of the U.S. Constitution. These decisions have upheld the Commission's authority to regulate milk within the region, as well as milk produced outside of the region.

Concerns have also been raised about the Compact's effect on interstate trade. Opponents of the Northeast Compact argue that compacts restrict the movement of milk between States that are in the Compact, and States that lie outside the Compact. Compacts, however, do not restrict the movement of milk into the region. For example, producers in eastern New York State benefit from the Northeast Compact. By shipping their milk in the region, farmers are eligible to receive the Compact price for their products.

Another common misconception is that the Compact leads to overproduction. The Northeast Dairy Compact, however, has not led to overproduction during its first four years. In fact, during 2000, the Northeast Dairy Compact states produced 4.7 billion pounds of milk, a 0.6 percent reduction from 1999. Since the Northeast Dairy Compact has been in effect, milk production in the region has risen by just 2.2 percent. Nationally, milk production rose 7.4 percent from 1997 to 2000. Over this same period, California, the largest milk producing Sate in the country, increased its milk production by 16.9 percent.

To protect against overproduction, the Compact Commission has developed a supply management program that rewards farmers who do not increase production. Under the program, 7.5 cents per hundred-weight is withheld by the Commission. This money is refunded to producers that have not increased their production by more than 1 percent during the given year. While this program has only been in place since 2000, we believe that it will be a useful tool in preventing overproduction.

Finally, opponents argue that compacts are harmful to consumers, especially low-income consumers. The facts show that this not the case. On May 2, 2001, an independent study out of the University of Connecticut's Food Marketing Policy Center offers new evidence regarding the impact of the Northeast Dairy Compact on consumer prices. The Food Marketing Policy Center performed a four-year analysis of retail milk prices using supermarket scanner data from 18 months prior to Compact implementation, up through July of 2000. This period of time captured the volatile prices preceding Compact implementation, as well as the pricing behavior that followed. The study found that the Northeast Dairy Compact was responsible for only 4.5 cents of the 29-cent increase in retail prices following Compact implementation. The study concludes that wider profit margins by processors and retailers account for 11 cents of the 29-cent increase. Since the Compact went into effect, these wider profit margins have drawn nearly $50 million out of the pockets of New England consumers.

The study suggests that retail stores and processors have used price gouging and ''tacitly collusive price conduct'' to lock in wider profit margins. The study states: ''Leading firms in the supermarket-marketing channel have used their dominant market positions to elevate retail prices in the Northeast Compact Region.'' In conclusion, the study contends: ''The major policy now facing New England consumers of fluid milk is not the Northeast Dairy Compact. It is the exercise of market power by the region's leading retailers and milk processor.'' While this study raises some serious concerns regarding the New England dairy industry, it illustrates that the effects of the Compact on consumers have been benign.

A May 11, 2001 article in Cheese Market News written by Jim Tillison, Chairman of the Alliance of Western Producers, further addresses the consumer issue. Mr. Tillison writes:

''Now, unless I am wrong, in every dairy state there are many times more consumers than dairy farmers. It would seem that it would be very difficult to get compact legislation passed if consumers were strongly opposed to it. That must not have been the case if some 25 state legislatures have passed compact legislation. What's more, 25 governors who have had the power to veto state compact legislation haven't. (Cheese Market News, May 11, 2001)

Tillison continues by examining the reasons why consumers support the Compact. These include decreases in retail price volatility and the need for a fresh supply of milk. Tillison states, ''Consumers like the idea of milk for their kids being produced locally. Even though the milkman delivering ''fresh'' milk to the consumer's doorstep is a thing of the past, that doesn't mean that consumers don't want fresh milk.'' At this time, I would ask unanimous consent that Jim Tillison's article, ''Let's Talk About Compacts'' be submitted for the RECORD.

Under our legal system, individual states have the authority to establish their own dairy pricing mechanism. Because of the nature and size of the dairy industries in the Northeast and South, states in these regions are better served by coming together to form a unified pricing mechanism. By supporting the rights of states to form dairy compacts, we maintain the safety and continuity of our milk supply, protect consumers from volatile milk prices, and conserve open land.

Originally created as a three-year pilot program, the Northeast Dairy Compact has been extremely successful in demonstrating the merits of compacts. We no longer need to speculate about the potential effects of compacts. We now have the hard evidence, they are good for farmers, good for consumers, and good for the environment. I ask that the Senate recognize this by extending and expanding the Northeast Dairy Compact, and ratifying a Southern Compact.

In closing, I urge the Senate to support this important legislation. Our States have come to us, and asked us to grant them the right to regulate the minimum farm price of milk, the right to save their family farms. We must grant them that right.

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

[From the Cheese Market News, May 11, 2001]

LET'S TALK ABOUT COMPACTS

(By Jim Tillison)

Here we go again. The issue of dairy compacts is ''heating up'' once again. Studies have been done and to now one's surprise they are biased depending on which aide you are on. Let's try to look past all the rhetoric to what is causing all the stir and discuss the stir that is being caused.

First, let us review the process involved in putting a dairy compact in place.

Essentially, the compact process result in negating interstate commerce laws. In other words, it allows the dairy producers in a number of states to regulate the price of milk paid by fluid processors in those states. Any milk brought into the state for fluid purposes is subject to the compact.

The process starts with the state legislatures in each state in which interested producers reside passing legislation supporting

putting a compact in place. Now, unless I am wrong, in every dairy state there are many times more consumers than dairy farmers. It would seem that it would be very difficult to get compact legislation passed if consumers were strongly opposed to it. That must not be the case if some 25 state legislatures have passed compact legislation. What's more, 25 governors who have had the power to veto state compact legislation haven't.

Arguably, this is proof that consumers are not opposed to dairy compacts even though it can result in higher milk prices. One reason could be that the extra revenue the compact price generates over and above the federal order price (when, and only when, it is higher than the set compact price) goes directly to the dairy farmers.

Another reason could be that a compact minimum Class I price removes much of the volatility from consumer prices. Just as there was a lot less volatility in milk prices when the support price was $13.10, there is a lot less volatility when Class I has a minimum price, too.

Still another reason could be that consumers like the idea of milk for their kids being produced ''locally.'' Milk isn't orange juice. It has a different mystique. Even though the milkman delivering ''fresh'' milk to the consumer's doorstep is a thing of the past, that doesn't mean that consumers don't want fresh milk. The lack of success that UHT milk and powdered milks have had here as compared to Europe, one could argue, is because of consumers' desire for (and the availability of) fresh milk.

One can sort of understand fluid processors opposing dairy compacts. It certainly can result in higher average milk costs for processors. Fortunately for the processor, the consumer is apparently willing to accept the slight increase. And, if one study reported on is correct, processors and retailers are taking advantage of the consumer's willingness as well.

What is difficult to understand is the opposition to compacts by some producers. This opposition seems to be based on the fear that it will negatively affect them. This fear appears to have been generated more by economic theory than fact.

The theory was based on a single premise—money makes milk, more money makes more milk. A dairy compact will give producers in compact states more money. This will result in them producing more milk. This additional milk will go into manufactured products which will hurt producers in states where the majority of milk goes into cheese. At least that's the theory.

The fact is that more money hasn't brought on more milk in the one compact area currently in existence. Only one of the Northeast compact states, Vermont, is in the top 20 milk-producing states. And, the total area has not seen milk production rise faster there than the national average.

Has the Northeast Compact hurt producers in other areas of the country? The answer is no. Will a Southeast Compact bring on a surge of milk production? Again, the answer is no. Just take a look at what happened after Class I differentials were raised $1.00 per hundred weight in the Southeast in 1986. Did milk production boom? Did it outstrip demand? Did cheese plants spring up from Arkansas to Florida? No, no, no.

Finally, the argument that really makes me knuckle is that the Northeast Compact passage and implementation was political. It wasn't mandated by Congress. It didn't stand on its own two feet. Congress never got to vote on the compact on its own. It was only supposed to be a transition program while federal order reform was taking place. Secretary of Agriculture Dan Glickman didn't have to implement it.

Don't ask me to respond to those kind of comments. What hearing was ever held or separate vote taken on forward contracting? I don't recall any serious discussion of the portion of a recent budget bill that exempted one county in Nevada from federal order Class I differentials. Of course Glickman had to implement it . . . the pet project of a Vermont Democratic senior senator in an election year. Think about it.

The dairy industry has many more important issues to spend political capital on. Issues that really are having, or will have, an impact on it. Instead of fighting over compacts, it should be working together to improve our potential for growth in world markets by really pushing for fair trade, dealing with environmental and food safety issues and developing programs that will allow all segments of the industry to continue to flourish in the 21st century.

The views expressed by CMN's guest columnists are their own opinions and do not necessarily reflect those of Cheese Market News.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 118—TO DESIGNATE THE MONTH OF NOVEMBER 2001 AS ''NATIONAL AMERICAN INDIAN HERITAGE MONTH''

Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. AKAKA, Mr. STEVENS, Mr. CORZINE, Mr. BROWNBACK, Mr. MCCAIN, Mr. DASCHLE, Mr. JOHNSON, Mr. COCHRAN, Mr. BAUCUS, Mr. CONRAD, Mr. DOMENICI, Ms. STABENOW, Mr. BINGAMAN, Mr. CRAPO, Mrs. MURRAY, Ms. CANTWELL, Mr. WELLSTONE, Mr. THOMAS, Mrs. BOXER, Mr. KENNEDY, Mr. DAYTON, Mr. CRAIG, Mr. REID, Mr. SMITH of Oregon, Mr. KERRY, Mr. ALLARD, Mr. DORGAN, Mr. SCHUMER, and Mr. BREAUX) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 118

Whereas American Indians, Alaska Natives, and Native Hawaiians were the original inhabitants of the land that now constitutes the United States;

Whereas American Indian tribal governments developed the fundamental principles of freedom of speech and separation of powers that form the foundation of the United States Government;

Whereas American Indians, Alaska Natives, and Native Hawaiians have traditionally exhibited a respect for the finiteness of natural resources through a reverence for the earth;

Whereas American Indians, Alaska Natives, and Native Hawaiians have served with valor in all of America's wars beginning with the Revolutionary War through the conflict in the Persian Gulf, and often the percentage of American Indians who served exceeded significantly the percentage of American Indians in the population of the United States as a whole;

Whereas American Indians, Alaska Natives, and Native Hawaiians have made distinct and important contributions to the United States and the rest of the world in many fields, including agriculture, medicine, music, language, and art;

Whereas American Indians, Alaska Natives, and Native Hawaiians deserve to be recognized for their individual contributions to the United States as local and national leaders, artists, athletes, and scholars;

Whereas this recognition will encourage self-esteem, pride, and self-awareness in American Indians, Alaska Natives, and Native Hawaiians of all ages; and

Whereas November is a time when many Americans commemorate a special time in the history of the United States when American Indians and English settlers celebrated the bounty of their harvest and the promise of new kinships: Now, therefore, be it

Resolved, That the Senate designates November 2001 as ''National American Indian Heritage Month'' and requests that the President issue a proclamation calling on the Federal Government and State and local governments, interested groups and organizations, and the people of the United States to observe the month with appropriate programs, ceremonies, and activities.

Mr. CAMPBELL. Mr. President, along with thirty of my colleagues today I am pleased to introduce a resolution to recount the many contributions American Indians and Alaska Natives have made to this great Nation and to designate November, 2001, as ''National American Indian Heritage Month'' as Congress has done for nearly a decade.

American Indians and Alaska Natives have left an indelible imprint on many aspects of our everyday life that most Americans often take for granted. The arts, education, science, the armed forces, medicine, industry, and government are a few of the areas that have been influenced by American Indian and Alaska Native people over the last 500 years. In the medical field, many of the healing remedies that we use today were obtained from practices already in use by Indian people and are still utilized today in conjunction with western medicine.

Many of the basic principles of democracy in our Constitution can be traced to practices and customs already in use by American Indian tribal governments including the doctrines of freedom of speech and separation of powers.

The respect of Native people for the preservation of natural resources, reverence for elders, and adherence to tradition, mirrors our own values which we developed in part, through the contact with American Indians and Alaska Natives. These values and customs are deeply rooted, strongly embraced and thrive with generation after generation of Native people.

From the difficult days of Valley Forge through our peace keeping efforts around the world today, American Indian and Alaska Native people have proudly served and dedicated their lives in the military readiness and defense of our country in wartime and in peace.

It is a fact that on a per capita basis, Native participation rate in the Armed Forces outstrips the rates of all other groups in this Nation. Many American Indian men made the ultimate sacrifice in the defense of this Nation, some even before they were granted citizenship in 1924.

Many of the words in our language have been borrowed from Native languages, including many of the names of

the rivers, cities, and States across our Nation. Indian arts and crafts have also made a distinct impression on our heritage.

It is my hope that by designating the month of November 2001, as ''National American Indian Heritage Month,'' we will continue to encourage self-esteem, pride, and self-awareness amongst American Indians and Alaska Natives of all ages.

November is a special time in the history of the United States: we celebrate the Thanksgiving holiday by remembering the Indians of the Northeast and English settlers as they enjoyed the bounty of their harvest and the promise of new kinships.

By recognizing the many Native contributions to the arts, governance, and culture of our Nation, we will honor their past and ensure a place in America for Native people for generations to come. I ask for the support of my colleagues on both sides of the aisle for this resolution, and urge the Senate to pass this important matter.

SENATE RESOLUTION 119—COMBATING THE GLOBAL AIDS PANDEMIC

Mr. BAYH (for himself, Mr. SMITH of Oregon, Mr. DASCHLE, Mr. LEAHY, Mr. BINGAMAN, Mr. LUGAR, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KERRY, Mr. KENNEDY, Mr. LIEBERMAN, Mrs. CLINTON, Mr. WELLSTONE, Mr. DEWINE, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LEVIN, Mr. CORZINE, Mr. SPECTER, Mr. TORRICELLI, Mr. GRAHAM, and Ms. SNOWE) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 119

Whereas the international AIDS pandemic is of grave proportions and is growing;

Whereas the epicenter of the AIDS pandemic is sub-Saharan Africa, and incidences of contraction of HIV, AIDS, and related diseases are growing in the Caribbean basin, Russia, China, Southeast Asia, and India at alarming rates;

Whereas AIDS pandemic-related statistics are especially staggering in sub-Saharan Africa—

(1) the infection rate is 8 times higher than the rest of the world;

(2) in the region, over 17,000,000 people have already lost their lives to AIDS or AIDS-related illnesses, with another 24,000,000 living with AIDS, according to the World Health Organization and Joint United Nations Program on HIV/AIDS;

(3) in many countries in the region, life expectancy will drop by 50 percent over the next decade;

(4) more than 12,000,000 African children have lost 1 or both parents to AIDS or AIDS-related illnesses, and that number will grow to more than 35,000,000 by 2010;

(5) if current trends continue, 50 percent or more of all 15–year olds in the worst affected countries, such as Zambia, South Africa, and Botswana, will die of AIDS or AIDS-related illnesses; and

(6) one-quarter of the sub-Saharan African population could die of AIDS or AIDS-related illnesses by 2020, according to the Central Intelligence Agency;

Whereas confronting the AIDS pandemic is a moral imperative of the United States and other leading nations of the world;

Whereas confronting the AIDS pandemic is in the national interest of the United States, given that 42 percent of United States exports go to the developing world, where the incidence of AIDS is growing most rapidly;

Whereas in today's globalized environment, goods, services, people—and disease—are moving at the fastest pace in world history;

Whereas we cannot insulate our citizenry from the global AIDS pandemic and related opportunistic disease, and we must provide leadership if we are to reverse global infection rates;

Whereas the AIDS pandemic is perhaps the most serious and challenging transnational issue facing the world in the post-Cold War era;

Whereas the AIDS pandemic is decimating local skilled workforces, straining fragile governments, diverting national resources, and undermining states' ability to provide for their national defense or international peacekeeping forces;

Whereas United Nations Secretary General, Kofi Annan, asserts that between $7,000,000,000 and $10,000,000,000 is needed annually to address the AIDS pandemic, yet current international assistance efforts total roughly a little more than $1,000,000,000 per annum;

Whereas the United States has joined the call from the United Nations Secretary General, Kofi Annan, and others in support of a global fund to assist national governments, international organizations, and nongovernmental organizations in the prevention, care, and treatment of AIDS and AIDS-related illnesses; and

Whereas the United Nations Special Session on AIDS, taking place in June 2001, and the Group of Eight Industrialized Nations meeting in July 2001, are key opportunities for more states, governments, international organizations, the private sector, and civil society to donate assistance to the global fund: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the tragedy of the AIDS pandemic in human terms, as well as its devastating impact on national economies, infrastructures, political systems, and all sectors of society;

(2) strongly supports the formation of a Global AIDS and Health Fund;

(3) calls for the United States to remain open to providing greater sums of money to the global fund as other donors join in supporting this endeavor;

(4) calls on other nations, international organizations, foundations, the private sector, and civil society to join in providing assistance to the global fund;

(5) urges all national leaders in every part of the world to speak candidly to their people about how to avoid contracting or transmitting the HIV virus;

(6) calls for the United States to continue to invest heavily in AIDS treatment, prevention, and research;

(7) urges international assistance programs to continue to emphasize science-based best practices and prevention in the context of a comprehensive program of care and treatment;

(8) encourages international health care infrastructures to better prepare themselves for the successful provision of AIDS care and treatment, including the administration of AIDS drugs;

(9) urges the Administration of President George W. Bush to encourage participants at the United Nations General Assembly Special Session on AIDS in June, and the Group of Eight Industrialized Nations meeting in July, to contribute to the global fund; and

(10) calls for United States representatives at the United Nations General Assembly Special Session on AIDS and Group of Eight Industrialized Nations meeting to emphasize the need to maintain focus on science-based best practices and prevention in the context of a comprehensive program of care and treatment, combating mother-to-child transmission of the HIV virus, defeating opportunistic infections, and improving infrastructure and basic care services where treatment medicines are available, and seek additional resources to support the millions of AIDS orphans worldwide.

SENATE RESOLUTION 120—ORGANIZATION OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 120

Resolved, That the Majority Party of the Senate for the 107th Congress shall have a one seat majority on every committee of the Senate, except that the Select Committee on Ethics shall continue to be composed equally of members from both parties. No Senator shall lose his or her current committee assignments by virtue of this resolution.

SEC. 2 Notwithstanding the provisions of Rule XXV the Majority and Minority Leaders of the Senate are hereby authorized to appoint their members of the committees consistent with this resolution.

SEC. 3 Subject to the authority of the Standing Rules of the Senate, any agreements entered into regarding committee funding and space prior to June 5, 2001, between the Chairman and Ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the Chairman and Ranking member.

SEC. 4 The provisions of this resolution shall cease to be effective, except for Sec. 3, if the ratio in the full Senate on the date of adoption of this resolution changes.

SENATE RESOLUTION 121—EXPRESSING THE SENSE OF THE SENATE REGARDING THE POLICY OF THE UNITED STATES AT THE 53RD ANNUAL MEETING OF THE INTERNATIONAL WHALING COMMISSION

Mr. KERRY (for himself, Ms. SNOWE, Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mr. SARBANES, Mrs. BOXER, Mr. KENNEDY, and Mr. FEINGOLD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 121

Whereas whales have very low reproductive rates, making whale populations extremely vulnerable to pressure from commercial whaling;

Whereas whales migrate throughout the world's oceans and international cooperation is required to successfully conserve and protect whale stocks;

Whereas in 1946 the nations of the world adopted the International Convention for the Regulation of Whaling, which established the International Whaling Commission to provide for the proper conservation of the whale stocks;

Whereas the Commission adopted a moratorium on commercial whaling in 1982 in order to conserve and promote the recovery of the whale stocks;

Whereas the Commission has designated the Indian Ocean and the ocean waters

around Antarctica as whale sanctuaries to further enhance the recovery of whale stocks;

Whereas many nations of the world have designated waters under their jurisdiction as whale sanctuaries where commercial whaling is prohibited, and additional regional whale sanctuaries have been proposed by nations that are members of the Commission;

Whereas several member nations of the Commission have taken reservations to the Commission's moratorium on commercial whaling and 1 member nation is currently conducting commercial whaling operations in spite of the moratorium and the protests of other nations;

Whereas the Commission has adopted several resolutions at recent meetings asking member nations to abandon plans to initiate or continue commercial whaling activities conducted under reservation to the moratorium;

Whereas another member nation of the Commission has taken a reservation to the Commission's Southern Ocean Sanctuary and continues to conduct unnecessary lethal scientific whaling in the waters of that sanctuary;

Whereas the Commission's Scientific Committee has repeatedly expressed serious concerns about the scientific need for such lethal whaling;

Whereas scientific information on whales can readily be obtained through non-lethal means;

Whereas the lethal take of whales under reservations to the Commission's policies have been increasing annually;

Whereas there continue to be indications that whale meat is being traded on the international market despite a ban on such trade under the Convention on International Trade in Endangered Species (CITES), and that meat may be originating in one of the member nations of the Commission;

Whereas engaging in unauthorized commercial whaling and lethal scientific whaling undermines the conservation program of the Commission: Now, therefore, be it,

Resolved, That it is the sense of the Senate that—

(1) at the 53rd Annual Meeting the International Whaling Commission the United States should—

(A) remain firmly opposed to commercial whaling;

(B) initiate and support efforts to ensure that all activities conducted under reservations to the Commission's moratorium or sanctuaries are ceased;

(C) oppose the lethal taking of whales for scientific purposes unless such lethal taking is specifically authorized by the Scientific Committee of the Commission;

(D) seek the Commission's support for specific efforts by member nations to end illegal trade in whale meat; and

(E) support the permanent protection of whale populations through the establishment of whale sanctuaries in which commercial whaling is prohibited;

(2) at the 12th Conference of the Parties to the Convention on International Trade in Endangered Species, the Uunited States should oppose all efforts to reopen international trade in whale meat or downlist any whale population; and

(3) the United States should make full use of all appropriate diplomatic mechanisms, relevant international laws and agreements, and other appropriate mechanisms to implement the goals set forth in paragraphs (1) and (2).

Mr. KERRY. Mr. President, As Chairman of the Oceans and Fisheries Subcommittee, I rise today to submit a resolution regarding the policy of the United States at the upcoming 53rd Annual Meeting of the International Whaling Commission, IWC. I wish to thank the Ranking Member of the Subcommittee, Ms. SNOWE, for co-sponsoring this resolution. I wish to also thank my colleagues Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mrs. BOXER, Mr. SARBANES, Mr. KENNEDY and Mr. FEINGOLD for co-sponsoring as well.

The IWC will meet in London from July 23–27th. Despite an IWC moratorium on commercial whaling since 1985, Japan and Norway have harvested over 1000 minke whales since the moratorium was put in place. Whales are already under enormous pressure world wide from collisions with ships, entanglement in fishing gear, coastal pollution, noise emanating from surface vessels and other sources. The need to conserve and protect these magnificent mammals is clear.

The IWC was formed in 1946 in recognition of the fact that whales are highly migratory and that they do not belong to any one Nation. In 1982, the IWC agreed on an indefinite moratorium on all commercial whaling beginning in 1985. Unfortunately, Japan has been using a loophole that allows countries to issue themselves special permits for whaling under scientific purposes. The IWC Scientific Committee has not requested any of the information obtained by killing these whales and has stated that Japan's scientific whaling data is not required for management. Norway, on the other hand, objects to the moratorium on whaling and openly pursues a commercial fishery for whales.

This resolution calls for the U.S. delegation to the IWC to remain firmly opposed to commercial whaling. In addition, this resolution calls for the U.S. to oppose the lethal taking of whales for scientific purposes unless such lethal taking is specifically authorized by the Scientific Committee of the Commission. The resolution calls for the U.S. delegation to support an end to the illegal trade of whale meat and to support the permanent protection of whale populations through the establishment of whale sanctuaries in which commercial whaling is prohibited.

I ask unanimous consent to insert into the RECORD a statement from the World Wildlife Fund, WWF, concerning the upcoming meeting of the IWC and the protection of whales.

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

STATEMENT OF WORLD WILDLIFE FUND

Today, populations of nearly all the great whales are at depressed levels, a legacy of unsustainable whaling during the last two centuries. Some, such as the North Atlantic right and Antarctic blue whales, survive as a few hundred individuals at the brink of extinction, having failed to rebound from past exploitation. Others are believed to be returning to healthy levels. While direct human impacts on whales remain a concern, other more diffuse threats may ultimately exact a greater toll. Rapid climate warming in the next few decades is expected to disrupt whale migration, breeding, and food support. And accumulation of DDT, PCBs, and other toxic contaminants in the marine food chain is already affecting some whales and may endanger their immune systems and ability to reproduce. Such broad-based threats to the marine environment are difficult to address in ways that will alleviate harm to whales specifically, and make it all the more important that whales are not also threatened by uncontrolled commercial whaling.

The International Whaling Commission, IWC, was established under the 1946 International Convention for the Regulation of Whaling, and is the sole international regulatory body charged with the management of cetaceans. International regulation of whaling was recognized by the UN Convention on the Law of the Sea, and reaffirmed by Agenda 21 as essential for these highly migratory species.

Despite the global moratorium on commercial whaling put in place by the IWC in 1986, over 1000 Northern and Southern minke whales are still being caught each year. Within the IWC, Japan continues to catch hundreds of whales (many in the Southern Ocean which is designated as an IWC whale sanctuary) using a loophole for scientific research, while Norway pursues an openly commercial hunt under a legal ''objection'' to the moratorium. For over a decade, both countries have proceeded without IWC approval and indeed in the face of repeated censure by the Commission. Norway is currently moving to re-open international trade in whale products despite a ban under CITES, and Japan has just extended its scientific whaling to include sperm and Bryde's whales as well as the two species of minkes.

Japan and Norway's insistence on hunting whales despite the moratorium has brought IWC to a dangerous impasse. No sound management scheme currently exists to ensure the sustainability of whaling, although a Revised Management Scheme, RMS, that could help to do so has been under discussion in the IWC for several years.

Japan and Norway have long said they viewed completion of the RMS as a turning point in their efforts to lift the whaling moratorium, and both countries have harshly criticized IWC for failing to reach agreement on the RMS. In recent IWC talks, however, the great majority of countries present sought to include crucial safeguards on the supervision and control of whaling in the RMS. They did so over the strenuous and repeated objections of Japan and Norway, who seemed unwilling to agree to safeguards that would ensure that commercial whaling does not threaten whale populations.

In addition, Japan and Norway are supported in the IWC by the votes of a loyal group of countries, many of them small island states that receive significant assistance from Japan. This gives the whalers a blocking minority of votes and has exacerbated the IWC's deadlock.

Because a tiny minority of countries in the IWC refuses to cease commercial whaling, it is imperative that new safeguards (including highly precautionary catch limits and provisions on monitoring, surveillance, and control such as DNA sampling of all whales caught, a diagnostic DNA register, and sanctions for non-compliance) be agreed that will contain their activities and bring them back under full IWC control at the earliest possible date. An RMS could advance this goal provided it contains sufficient safeguards, including a Revised Management Procedure that sets all catch limits at zero unless otherwise calculated and approved. Such an RMS should replace the now obsolete 1974 management scheme.

The IWC 53rd Conference of Parties meets at Hammersmith, London, in late July of

this year. The Hammersmith meeting must make progress in resolving the impasse within IWC, bringing whaling by Norway and Japan under international control as a matter of urgency, and ensuring that any discussion on the RMS incorporate rigorous safeguards to rein in current and potential whaling abuses.

The IWC's mandate requires first and foremost that it prevent the return of uncontrolled large-scale commercial whaling. This is the near-term agenda by which it will be judged and is currently the main contribution it has to offer conservation of cetaceans more broadly. For the IWC to remain relevant over the long term, however, it must expand its scope of engagement to address the other human activities which threaten whales and focus action on ensuring the survival of the most endangered species.

Ms. SNOWE. Mr. President, the resolution that Senator KERRY and I are submitting is very timely and important. As we work here in the Senate today, representatives of nations from around the globe are preparing for the 53rd Annual Meeting of the International Whaling Commission to be held in London July 23–27, 2001. At this meeting, the IWC will determine the fate of the world's whales through consideration of proposals to end the current global moratorium on commercial whaling. The adoption of any such proposals by the IWC would mark a major setback in whale conservation. It is imperative that the United States remain firm in its opposition to any proposals to resume commercial whaling and that we, as a nation, continue to speak out passionately against this practice.

It is also time to close one of the loopholes used by nations to continue to whale without regard to the moratorium or established whale sanctuaries. The practice of unnecessary lethal scientific whaling is outdated and the value of the data of such research has been called into question by an international array of scientists who study the same population dynamics questions as those who harvest whales in the name of science. This same whale meat is then processed and sold in the marketplace. These sentiments have been echoed by the Scientific Committee of the IWC which has repeatedly passed resolutions calling for the cessation of lethal scientific whaling, particularly that occurring in designated whale sanctuaries. They have offered to work with all interested parties to design research protocols that will not require scientists to harm or kill whales.

Last year, Japan expanded their scientific whaling program over the IWC's objections. The resolution that we are offering expresses the Sense of the Senate that the United States should continue to remain firmly opposed to any resumption of commercial whaling and oppose, at the upcoming IWC meeting, the non-necessary lethal taking of whales for scientific purposes.

Commercial whaling has been prohibited for many species for more than sixty years. In 1982, the continued decline of commercially targeted stocks led the IWC to declare a global moratorium on all commercial whaling which went into effect in 1986. The United States was a leader in the effort to establish the moratorium, and since then we have consistently provided a strong voice against commercial whaling and have worked to uphold the moratorium. This resolution reaffirms the United States' strong support for a ban on commercial whaling at a time when our negotiations at the IWC most need that support. Norway, Japan, and other countries have made it clear that they intend to push for the elimination of the moratorium, and for a return to the days when whales were treated as commodities.

The resolution would reiterate the U.S. objection to activities being conducted under reservations to the IWC's moratorium. The resolution would also oppose all efforts made at the Convention on International Trade in Endangered Species, CITES, to reopen international trade in whale meat or to downlist any whale population. In addition, the IWC, as well as individual nations including the United States, has established whale sanctuaries that would prevent whaling in specified areas even if the moratorium were to be lifted. Despite these efforts to give whale stocks a chance to rebuild, the number of whales harvested has increased in recent years, tripling since the implementation of the global moratorium in 1986. This is a dangerous trend that does not show signs of stopping.

Domestically, we work very hard to protect whales in U.S. waters, particularly those considered threatened or endangered. Our own laws and regulations are designed to give whales one of the highest standards of protection in the world, and as a result, our own citizens are subject to rules designed to protect against even the accidental taking of whales. Commercial whaling is, of course, strictly prohibited. Given what is asked of our citizens to protect against even accidental injury to whales here in the United States, it would be grossly unfair if we retreated in any way from our position opposing commercial, intentional whaling by other countries. Whales migrate throughout the world's oceans, and as we protect whales in our own waters, so should we act to protect them internationally.

Whales are among the most intelligent animals on Earth, and they play an important role in the marine ecosystem. Yet, there is still much about them that we do not know. Resuming the intentional harvest of whales is irresponsible, and it could have ecological consequences that we cannot predict. Therefore, it is premature to even consider easing conservation measures.

The right policy is to protect whales across the globe, and to oppose the resumption of commercial whaling. I urge my colleagues to support swift passage of this resolution.

SENATE RESOLUTION 122—RELATING TO THE TRANSFER OF SLOBODAN MILOSEVIC TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA, AND FOR OTHER PURPOSES

Mr. MCCONNELL (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 122

Whereas Slobodan Milosevic has been transferred to the International Criminal Tribunal for Yugoslavia to face charges of crimes against humanity;

Whereas the transfer of Slobodan Milosevic and other indicted war criminals is a triumph of international justice and the rule of law in Serbia;

Whereas corruption and warfare under the Milosevic regime caused Yugoslavia extensive economic damage, including an estimated $29,400,000,000 in lost output and a foreign debt that exceeds $12,200,000,000; and

Whereas democrats and reformers in the Federal Republic of Yugoslavia deserve the support and encouragement of the United States: Now, therefore, be it

Resolved, That (a) the Senate hereby—

(1) recognizes the courage of Serbian democrats, in particular, Serbian Prime Minister Zoran Djindjic, in facilitating the transfer of Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia; and

(2) calls for the continued transfer of indicted war criminals to the International Criminal Tribunal for Yugoslavia and the release of all political prisoners held in Serbian prisons.

(b) It is the sense of the Senate that the United States should remain committed to providing foreign assistance to support the success of economic, political, and legal reforms in the Federal Republic of Yugoslavia.

Mr. MCCONNELL. Mr. President, Senator LEAHY and I welcome the news of the transfer yesterday of Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia, ICTY. Last year, we worked to include language in the fiscal year 2001 Foreign Operations Appropriations bill to condition assistance to Serbia on, among other issues, certification by the President that the government is cooperating with the ICTY on the ''surrender and transfer'' of war criminals to The Hague.

While our efforts to secure justice for the victims of Milosevic's atrocities through Section 594 of P.L. 106–429 contributed to dramatic events in early April, when Milosevic was first arrested, and again yesterday, the real credit for facilitating the transfer belongs to Serbian democrats and reformers, in particular Prime Minister Zoran Djindjic. I am pleased that they recognize the importance of forward progress on the issue of war crimes, and I think it bodes well for the country's overall prospects for successful economic, political, and legal reforms.

The resolution we submit today recognizes the courage of Serbian democrats and reaffirms our commitment to providing U.S. foreign assistance to support much needed reforms in the Federal Republic of Yugoslavia (FRY). We hope that Prime Minister Djindjic, and other reformers, continue to demonstrate courageous leadership, such as

they did yesterday. Other indicated war criminals should be transferred to The Hague and all political prisoners in Serbian jails should be immediately released.

There is no victory sweeter than justice. It is now up to the ICTY to deliver justice to the victims and the survivors of atrocities committed in Kosovo, Bosnia, and Croatia.

Mr. LEAHY. Mr. President, last year, when Senator MCCONNELL and I included language in the fiscal year 2001 Foreign Operations bill to condition United States assistance in Serbia on the Federal Republic of Yugoslavia's cooperation with the War Crimes Tribunal, we could not predict what the effect of our provision would be. While we both wanted to support democracy and economic reconstruction in Serbia, we also felt strongly that if Serbia's leaders wanted our assistance they should fulfill their international responsibility to apprehend and surrender indicted war criminals to The Hague.

I am very grateful for the way Senator MCCONNELL and his staff have worked closely with me and my staff on this. It has been a classic case of how conditioning our assistance and working together, with the Administration, can achieve a result that significantly advances the cause of international justice. Milosevic's transfer to the War Crimes Tribunal should bring hope to millions of people throughout the former Yugoslavia.

Above all, as Senator MCCONNELL has already noted, we should congratulate Prime Minister Djindjic and other Serb leaders who have risked their lives and their careers for their country's future. It is a legacy that few people in history can claim. Those who have criticized Prime Minister Djindjic for surrendering Milosevic should be aware that for the United States there is no alternative. We will not support a Serb Government that does not cooperate with the War Crimes Tribunal. We expect the apprehension and transfer to The Hague of the other publicly indicted war criminals who remain at large in Serb territory, and the release of the remaining political prisoners in Serbia's jails.

I also want to recognize the Serb people who suffered terribly under Milosevic's disastrous policies, and who increasingly saw that in order to rebuild their country and establish democracy and the rule of law on a solid footing, it was necessary to bring to justice the people who devastated the former Yugoslavia in their names. We submit this resolution on their behalf, and on behalf of Milosevic's other victims, dead and alive, in Kosovo, Bosnia, and Croatia.

SENATE RESOLUTION 123—AMENDING THE STANDING RULES OF THE SENATE TO CHANGE THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO THE ''COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP''

Mr. KERRY (for himself and Mr. BOND) submitted the following resolution; which was considered and agreed to:

S. RES. 123

Resolved, That the Standing Rules of the Senate are amended—

(1) in paragraph (1)(o) of rule XXV—

(A) by striking ''**Business,** to'' and inserting ''**Business and Entrepreneurship,** to''; and

(B) by inserting ''and Entrepreneurship'' after ''Committee on Small Business'' each place that term appears;

(2) in paragraph 3(a) of rule XXV, by inserting ''and Entrepreneurship'' after ''Small Business''; and

(3) by inserting ''and Entrepreneurship'' after ''Committee on Small Business'' each place that term appears.

SENATE CONCURRENT RESOLUTION 57—RECOGNIZING THE HEBREW IMMIGRANT AID SOCIETY

Mr. KENNEDY (for himself and Mr. BROWNBACK) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 57

Whereas the United States has always been a country of immigrants and was built on the hard work and dedication of generations of those immigrants who have gathered on our shores;

Whereas, over the past 120 years, the Hebrew Immigrant Aid Society (HIAS), the oldest international migration and refugee resettlement agency in the United States, has assisted more than 4,500,000 migrants of all faiths to immigrate to the United States, Israel, and other safe havens around the world;

Whereas, since the 1970s, HIAS has resettled more than 400,000 refugees from more than 50 countries in the United States and provided high quality resettlement services through a network of local Jewish community social service agencies;

Whereas HIAS has helped bring to the United States such outstanding individuals as former Secretary of State Henry Kissinger, artist Marc Chagall, Olympic goldmedalist Lenny Krayzelberg, poet and Nobel Laureate Joseph Brodesky, and author and restaurateur George Lang;

Whereas HIAS has assisted with United States refugee programs overseas, often as a joint voluntary agency, providing refugee processing, cultural orientation, and other services in Moscow, Vienna, Kiev, Tel Aviv, Rome, and Guam;

Whereas through publications, public meetings, and radio and television broadcasts, HIAS is a crucial provider of information, counseling, legal assistance, and other services, including outreach programs for the Russian-speaking immigrant community, to immigrants and asylum seekers in the United States;

Whereas HIAS plays a vital role in serving the needs of refugees, immigrants, and asylum seekers, and continues to work in areas of conflict and instability, seeking to rescue those who are fleeing from danger and persecution; and

Whereas on September 9, 2001, HIAS will celebrate the 120th anniversary of its founding: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That (a) Congress—

(1) recognizes the Hebrew Immigrant Aid Society (HIAS), and the immigrants and refugees that HIAS has served, for the contributions they have made to the United States; and

(2) congratulates HIAS on the 120th anniversary of its founding.

(b) It is the sense of Congress that the President should issue a proclamation recognizing September 9, 2001, as the 120th anniversary of the founding of the Hebrew Immigrant Aid Society, and calling on the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate appreciation for the contributions made by HIAS to the United States.

Mr. KENNEDY. Mr. President, I am proud to submit a resolution honoring the 120th anniversary of the founding of the Hebrew Immigrant Aid Society. During its distinguished history, the Society has helped more than 4.5 million immigrants of all faiths who have come to the United States, Israel, and other safe havens around the world. Since 1970, the Society has assisted more than 400,000 refugees from more than 50 countries in resettling in the United States, and these individuals have provided indispensable contributions to this country.

I also commend the Hebrew Immigrant Aid Society for its continuing efforts to remind this country of the importance of a wise policy on refugees. As crises occur throughout the world, the Society has helped ensure that the United States has an effective and humane response to each human tragedy. By maintaining a vigorous refugee resettlement program, we set an example for other nations to follows.

The Hebrew Immigrant Aid Society continues to have a vital role in serving the needs of refugees, immigrants, and asylum seekers. Our country owes it an enormous debt of gratitude, and I urge the Senate to agree to this well-deserved tribute.

SENATE CONCURRENT RESOLUTION 58—EXPRESSING SUPPORT FOR THE TENTH ANNUAL MEETING OF THE ASIA PACIFIC PARLIAMENTARY FORUM

Mr. AKAKA (for himself and Mr. INOUYE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 158

Whereas the Asia Pacific Parliamentary Forum was founded by former Japanese Prime Minister Yasuhiro Nakasone in 1993;

Whereas the Tokyo Declaration, signed by 59 parliamentarians from 15 countries, entered into force as the founding charter of the forum on January 14 and 15, 1993, establishing the basic structure of the forum as an inter-parliamentary organization;

Whereas the original 15 members, one of which was the United States, have increased to 27 member countries;

Whereas the forum serves to promote regional identification and cooperation

through discussion of matters of common concern to all member states and serves, to a great extent, as the legislative arm of the Asia-Pacific Economic Cooperation;

Whereas the focus of the forum lies in resolving political, economic, environmental security, law and order, human rights, education, and cultural issues;

Whereas the forum will hold its tenth annual meeting on January 6 through 9, 2002, which will be the first meeting of the forum hosted by the United States;

Whereas approximately 270 parliamentarians from 27 countries in the Asia Pacific region will attend this meeting;

Whereas the Secretariat of the meeting will be the Center for Cultural and Technical Exchange Between East and West in Honolulu, Hawaii;

Whereas the East-West Center is an internationally recognized education and research organization established by the United States Congress in 1960 largely through the efforts of the Eisenhower administration and the Congress;

Whereas it is the mission of the East-West Center to strengthen understanding and relations between the United States and the countries of the Asia Pacific region and to help promote the establishment of a stable, peaceful and prosperous Asia Pacific community in which the United States is a natural, valued and leading partner; and

Whereas it is the agenda of this meeting to advance democracy, peace, and prosperity in the Asia Pacific region:

Now, therefore, be it *Resolved by the Senate (the House of Representatives Concurring),* That the Congress—

(1) expresses support for the tenth annual meeting of the Asia Pacific Parliamentary Forum and for the ideals and concerns of this body;

(2) commends the East-West Center for hosting the meeting of the Asia Pacific Parliamentary Forum and the representatives of the 27 member countries; and

(3) calls upon all parties to support the endeavors of the Asia Pacific Parliamentary Forum and to work toward achieving the goals of the meeting.

Mr. AKAKA. Mr. President, on behalf of Senator INOUYE and myself, I rise to submit a Senate Concurrent Resolution concerning the forthcoming tenth annual meeting of the Asia Pacific Parliamentary Forum, APPF, that will take place in Honolulu in January 2002.

The Asia Pacific Parliamentary Forum consists of 27 countries of which the United States is one of the original founders. Our former colleague, Senator Bill Roth, was one of the leaders of this organization which was created as a parliamentary counterpart to the heads of state meeting of the Asia Pacific Economic Cooperation, APEC, organization.

The first meeting was held in Singapore in 1991, and, earlier this year, Chile sponsored the ninth annual meeting. Next year, for the first time, the annual meeting will be hosted by the United States in Hawaii. The Center for Cultural and Technical Exchange Between East and West, better known as the East West Center, will provide the Secretariat for the meeting which is expected to attract approximately 270 parliamentarians from countries in the Asia-Pacific region.

Participating countries include Australia, Canada, Chile, China, Russia, Mexico, South Korea, Peru, Ecuador, Costa Rica, Mongolia, the Philippines, and New Zealand. Discussions and debates are frank and open. The meetings provide an opportunity for legislators in these countries to hear and exchange views on a diversity of topics including human rights, security, law, the economy, and the environment.

I invite my colleagues to attend next year's early January meeting in Hawaii. It is an occasion to meet with leaders on both sides of the Pacific for frank discussions and to experience as well the spirit of Aloha.

AMENDMENTS SUBMITTED AND PROPOSED

SA 850. Mr. NICKLES proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

SA 851. Mr. CRAIG proposed an amendment to the bill S. 1052, supra.

SA 852. Mr. REID proposed an amendment to the bill S. 1052, supra.

SA 853. Mr. THOMPSON proposed an amendment to the bill S. 1052, supra.

SA 854. Mr. KYL (for himself and Mr. NICKLES) proposed an amendment to the bill S. 1052, supra.

SA 855. Mr. CARPER proposed an amendment to the bill S. 1052, supra.

SA 856. Mr. FRIST (for himself and Mr. BREAUX) proposed an amendment to the bill S. 1052, supra.

SA 857. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 858. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources.

SA 859. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, supra; which was referred to the Committee on Energy and Natural Resources.

SA 860. Mr. REID (for Mr. KENNEDY (for himself and Mr. GREGG)) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

TEXT OF AMENDMENTS

SA 850. Mr. NICKLES proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 131, after line 20, insert the following:

TITLE III—APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(a) APPLICATION OF STANDARDS.—

(1) IN GENERAL.—Each Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incorporated into this section.

(2) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—Any individual who receives a health care item or service under a Federal health care program shall have a cause of action against the Federal Government under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a group health plan;

(B) the Federal Government shall be deemed to be the plan sponsor of each Federal health care program; and

(C) each individual eligible for benefits under a Federal health care program shall be deemed to be a participant, beneficiary, or enrollee under that program.

(b) FEDERAL HEALTH CARE PROGRAM DEFINED.—In this section, the term ''Federal health care program'' has the meaning given that term under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b) except that, for purposes of this section, such term includes the Federal employees health benefits program established under chapter 89 of title 5, United States Code.

SA 851. Mr. CRAIG proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, as follows:

At the appropriate place insert the following:

SEC. . SENSE OF THE SENATE REGARDING FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) FINDINGS.—The Senate finds:

(1) Medical savings accounts eliminate bureaucracy and put patients in control of their health care decisions.

(2) Medical savings accounts extend coverage to the uninsured. According to the Treasury Department, one-third of MSA purchasers previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings accounts out of reach for millions of Americans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that a patients' bill of rights should remove the restrictions on the private-sector medical savings account demonstration program to make medical savings accounts available to more Americans.

SA 852. Mr. REID proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 154, between lines 2 and 3, insert the following:

''(11) LIMITATION ON AWARD OF ATTORNEYS' FEES.—

''(A) IN GENERAL.—Subject to subparagraph (B), with respect to a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under this subsection and prevails in that action, the amount of attorneys' contingency fees that a court may award to such participant, beneficiary, or estate under subsection

(g)(1) (not including the reimbursement of actual out-of-pocket expenses of an attorney as approved by the court in such action) may not exceed an amount equal to ⅓ of the amount of the recovery.

''(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of an award of attorneys' fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the following:

''(9) LIMITATION ON ATTORNEYS' FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' contingency fees, subject to subparagraph (B), a court shall limit the amount of attorneys' fees that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) to the amount of attorneys' fees that may be awarded under section 502(n)(11).

''(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys' fees allowed under subparagraph (A) as equity and the interests of justice may require.

SA 853. Mr. THOMPSON proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 170, between lines 21 and 22, insert the following:

''(9) CHOICE OF LAW.—A cause of action brought under paragraph (1) shall be governed by the law (including choice of law rules) of the State in which the plaintiff resides.

SA 854. Mr. KYL (for himself and Mr. NICKLES) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 156, between lines 15 and 16, insert the following:

''(17) DAMAGES OPTIONS.—

''(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

''(i) Equitable relief as provided for in subsection (a)(1)(B).

''(ii) Unlimited economic damages, including reasonable attorneys fees.

''(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (notwithstanding the definition contained in paragraph (2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section.''.

On page 170, between lines 21 and 22, insert the following:

''(9) DAMAGES OPTIONS.—

''(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

''(i) Equitable relief as provided for in section 502(a)(1)(B).

''(ii) Unlimited economic damages, including reasonable attorneys fees.

''(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.

SA 855. Mr. CARPER proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

''(10) STATUTORY DAMAGES.—The remedies set forth in this subsection shall be the exclusive remedies for any cause of action brought under this subsection. Such remedies shall include economic and noneconomic damages, but shall not include any punitive damages.

SA 856. Mr. FRIST (for himself and Mr. BREAUX) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bipartisan Patients' Bill of Rights Act of 2001''.

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

TITLE I—PATIENTS' BILL OF RIGHTS

Subtitle A—Right to Advice and Care

SEC. 101. ACCESS TO EMERGENCY MEDICAL CARE.

(a) COVERAGE OF EMERGENCY SERVICES.—If a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage for any benefits consisting of emergency medical care, except for items or services specifically excluded from coverage, the plan or issuer shall, without regard to prior authorization or provider participation—

(1) provide coverage for emergency medical screening examinations to the extent that a prudent layperson, who possesses an average knowledge of health and medicine, would determine such examinations to be necessary; and

(2) provide coverage for additional emergency medical care to stabilize an emergency medical condition following an emergency medical screening examination (if determined necessary), pursuant to the definition of stabilize under section 1867(e)(3) of

the Social Security Act (42 U.S.C. 1395dd(e)(3)).

(b) COVERAGE OF EMERGENCY AMBULANCE SERVICES.—If a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage for any benefits consisting of emergency ambulance services, except for items or services specifically excluded from coverage, the plan or issuer shall, without regard to prior authorization or provider participation, provide coverage for emergency ambulance services to the extent that a prudent layperson, who possesses an average knowledge of health and medicine, would determine such emergency ambulance services to be necessary.

(c) CARE AFTER STABILIZATION.—

(1) IN GENERAL.—In the case of medically necessary and appropriate items or services related to the emergency medical condition that may be provided to a participant, beneficiary, or enrollee by a nonparticipating provider after the participant, beneficiary, or enrollee is stabilized, the nonparticipating provider shall contact the plan or issuer as soon as practicable, but not later than 1 hour after stabilization occurs, with respect to whether—

(A) the provision of items or services is approved;

(B) the participant, beneficiary, or enrollee will be transferred; or

(C) other arrangements will be made concerning the care and treatment of the participant, beneficiary, or enrollee.

(2) FAILURE TO RESPOND AND MAKE ARRANGEMENTS.—If a group health plan, and a health insurance issuer that offers health insurance coverage, fails to respond and make arrangements within 1 hour of being contacted in accordance with paragraph (1), then the plan or issuer shall be responsible for the cost of any additional items or services provided by the nonparticipating provider if—

(A) coverage for items or services of the type furnished by the nonparticipating provider is available under the plan or coverage;

(B) the items or services are medically necessary and appropriate and related to the emergency medical condition involved; and

(C) the timely provision of the items or services is medically necessary and appropriate.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to apply to a group health plan, and a health insurance issuer that offers health insurance coverage, that does not require prior authorization for items or services provided to a participant, beneficiary, or enrollee after the participant, beneficiary, or enrollee is stabilized.

(d) REIMBURSEMENT TO A NONPARTICIPATING PROVIDER.—The responsibility of a group health plan, and a health insurance issuer that offers health insurance coverage, to provide reimbursement to a nonparticipating provider under this section shall cease accruing upon the earlier of—

(1) the transfer or discharge of the participant, beneficiary, or enrollee; or

(2) the completion of other arrangements made by the plan or issuer and the nonparticipating provider.

(e) RESPONSIBILITY OF PARTICIPANT.—The coverage required under subsections (a), (b), and (c) shall be provided by a group health plan, and a health insurance issuer that offers health insurance coverage, in a manner so that, if the services referred to in such subsections are provided to a participant, beneficiary, or enrollee by a nonparticipating provider with or without prior authorization, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan or health insurance issuer from negotiating reimbursement rates with a nonparticipating provider for items or services provided under this section.

(g) DEFINITIONS.—In this section:

(1) EMERGENCY AMBULANCE SERVICES.—The term ''emergency ambulance services'' means, with respect to a participant, beneficiary, or enrollee under a group health plan, or a health insurance issuer that offers health insurance coverage, ambulance services furnished to transport an individual who has an emergency medical condition to a treating facility for receipt of emergency medical care if—

(A) the emergency services are covered under the group health plan or health insurance coverage involved; and

(B) a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of such emergency transport to result in placing the health of the participant, beneficiary, or enrollee (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(2) EMERGENCY MEDICAL CARE.—The term ''emergency medical care'' means, with respect to a participant, beneficiary, or enrollee under a group health plan, or a health insurance issuer that offers health insurance coverage, covered inpatient and outpatient items or services that—

(A) are furnished by any provider, including a nonparticipating provider, that is qualified to furnish such items or services; and

(B) are needed to evaluate or stabilize (as such term is defined in section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)) an emergency medical condition.

(3) EMERGENCY MEDICAL CONDITION.—The term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the participant, beneficiary, or enrollee (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

SEC. 102. OFFERING OF CHOICE OF COVERAGE OPTIONS.

(a) REQUIREMENT.—If a group health plan provides coverage for benefits only through a defined set of participating health care professionals, the plan shall offer the participant the option to purchase point-of-service coverage (as defined in subsection (b)) for all such benefits for which coverage is otherwise so limited. Such option shall be made available to the participant at the time of enrollment under the plan and at such other times as the plan offers the participant a choice of coverage options.

(b) POINT-OF-SERVICE COVERAGE DEFINED.—In this section, the term ''point-of-service coverage'' means, with respect to benefits covered under a group health plan coverage of such benefits when provided by a nonparticipating health care professional.

(c) SMALL EMPLOYER EXEMPTION.—

(1) IN GENERAL.—This section shall not apply to any group health plan with respect to a small employer.

(2) SMALL EMPLOYER.—For purposes of paragraph (1), the term ''small employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 25 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of this paragraph, the provisions of subparagraph (C) of section 712(c)(1) shall apply in determining employer size.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) as requiring coverage for benefits for a particular type of health care professional;

(2) as preventing a group health plan from imposing higher premiums or cost-sharing on a participant for the exercise of a point-of-service coverage option; or

(3) to require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

(e) SPECIAL POINT OF SERVICE PROTECTION FOR INDIVIDUALS IN DENTAL PLANS.—For purposes of applying the requirements of this section under sections 2707 and 2753 of the Public Health Service Act and section 714 of the Employee Retirement Income Security Act of 1974, section 2791(c)(2)(A) of the Public Health Service Act and section 733(c)(2)(A) of the Employee Retirement Income Security Act of 1974, only relating to limited scope dental benefits, shall be deemed not to apply.

SEC. 103. PATIENT ACCESS TO OBSTETRIC AND GYNECOLOGICAL CARE.

(a) GENERAL RIGHTS.—

(1) DIRECT ACCESS.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in subsection (b) may not require authorization or referral by the primary care provider described in subsection (b)(2) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating physician who specializes in obstetrics or gynecology.

(2) OBSTETRICAL AND GYNECOLOGICAL CARE.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in subsection (b) shall treat the provision of obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described under paragraph (1), by a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care provider.

(b) APPLICATION OF SECTION.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in this subsection is a plan or issuer, that—

(1) provides coverage for obstetric or gynecologic care; and

(2) requires the designation by a participant, beneficiary, or enrollee of a participating primary care provider other than a physician who specializes in obstetrics or gynecology.

(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to require that a group health plan or a health insurance issuer approve or provide coverage for—

(A) any items or services that are not covered under the terms and conditions of the plan or coverage;

(B) any items or services that are not medically necessary and appropriate; or

(C) any items or services that are provided, ordered, or otherwise authorized under subsection (a)(2) by a physician unless such items or services are related to obstetric or gynecologic care;

(2) to preclude a group health plan or health insurance issuer from requiring that the physician described in subsection (a) notify the designated primary care professional or case manager of treatment decisions in accordance with a process implemented by the plan or issuer, except that the plan or issuer shall not impose such a notification requirement on the participant, beneficiary, or enrollee involved in the treatment decision;

(3) to preclude a group health plan or health insurance issuer from requiring authorization, including prior authorization, for certain items and services from the physician described in subsection (a) who specializes in obstetrics and gynecology if the designated primary care provider of the participant, beneficiary, or enrollee would otherwise be required to obtain authorization for such items or services;

(4) to require that the participant, beneficiary, or enrollee described in subsection (a)(1) obtain authorization or a referral from a primary care provider in order to obtain obstetrical or gynecological care from a health care professional other than a physician if the provision of obstetrical or gynecological care by such professional is permitted by the group health plan or health insurance coverage and consistent with State licensure, credentialing, and scope of practice laws and regulations; or

(5) to preclude the participant, beneficiary, or enrollee described in subsection (a)(1) from designating a health care professional other than a physician as a primary care provider if such designation is permitted by the group health plan or health insurance issuer and the treatment by such professional is consistent with State licensure, credentialing, and scope of practice laws and regulations.

SEC. 104. ACCESS TO PEDIATRIC CARE.

(a) PEDIATRIC CARE.—If a group health plan, and a health insurance issuer that offers health insurance coverage, requires or provides for a participant, beneficiary, or enrollee to designate a participating primary care provider for a child of such participant, beneficiary, or enrollee, the plan or issuer shall permit the participant, beneficiary, or enrollee to designate a physician who specializes in pediatrics as the child's primary care provider if such provider participates in the network of the plan or issuer.

(b) RULES OF CONSTRUCTION.—With respect to the child of a participant, beneficiary, or enrollee, nothing in subsection (a) shall be construed to—

(1) require that the participant, beneficiary, or enrollee obtain prior authorization or a referral from a primary care provider in order to obtain pediatric care from a health care professional other than a physician if the provision of pediatric care by such professional is permitted by the plan or issuer and consistent with State licensure, credentialing, and scope of practice laws and regulations; or

(2) preclude the participant, beneficiary, or enrollee from designating a health care professional other than a physician as a primary care provider for the child if such designation is permitted by the plan or issuer and the treatment by such professional is consistent with State licensure, credentialing, and scope of practice laws.

SEC. 105. TIMELY ACCESS TO SPECIALISTS.

(a) TIMELY ACCESS.—

(1) REQUIREMENT OF COVERAGE.—

(A) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall ensure that participants, beneficiaries, and enrollees receive timely coverage for access to appropriate medical specialists when such specialty care is a covered benefit under the plan or coverage.

(B) APPROPRIATE MEDICAL SPECIALIST DEFINED.—In this subsection, the term ''appropriate medical specialist'' means a physician (including an alleopathic or osteopathic physician) or health care professional who is appropriately credentialed or licensed in 1 or more States and who typically treats the diagnosis or condition of the participant, beneficiary, or enrollee.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed—

(A) to require the coverage under a group health plan, or health insurance coverage, of benefits or services;

(B) to prohibit a plan or health insurance issuer from including providers in the network only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees;

(C) to prohibit a plan or issuer from establishing measures designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer; or

(D) to override any State licensure or scope-of-practice law.

(3) ACCESS TO CERTAIN PROVIDERS.—

(A) PARTICIPATING PROVIDERS.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from requiring that a participant, beneficiary, or enrollee obtain specialty care from a participating specialist.

(B) NONPARTICIPATING PROVIDERS.—

(i) IN GENERAL.—With respect to specialty care under this section, if a group health plan, or a health insurance issuer that offers health insurance coverage, determines that a participating specialist is not available to provide such care to the participant, beneficiary, or enrollee, the plan or issuer shall provide for coverage of such care by a nonparticipating specialist.

(ii) TREATMENT OF NONPARTICIPATING PROVIDERS.—If a group health plan, or a health insurance issuer that offers health insurance coverage, refers a participant, beneficiary, or enrollee to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee beyond what the participant, beneficiary, or enrollee would otherwise pay for such specialty care if provided by a participating specialist.

(b) REFERRALS.—

(1) AUTHORIZATION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from requiring an authorization in order to obtain coverage for specialty services so long as such authorization is for an appropriate duration or number of referrals.

(2) REFERRALS FOR ONGOING SPECIAL CONDITIONS.—

(A) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall permit a participant, beneficiary, or enrollee who has an ongoing special condition (as defined in subparagraph (B)) to receive a referral to a specialist for the treatment of such condition and such specialist may authorize such referrals, procedures, tests, and other medical services with respect to such condition, or coordinate the care for such condition, subject to the terms of a treatment plan referred to in subsection (c) with respect to the condition.

(B) ONGOING SPECIAL CONDITION DEFINED.—In this subsection, the term ''ongoing special condition'' means a condition or disease that—

(i) is life-threatening, degenerative, or disabling; and

(ii) requires specialized medical care over a prolonged period of time.

(c) TREATMENT PLANS.—

(1) IN GENERAL.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from requiring that specialty care be provided pursuant to a treatment plan so long as the treatment plan is—

(A) developed by the specialist, in consultation with the case manager or primary care provider, and the participant, beneficiary, or enrollee; and

(B) if the plan or issuer requires such approval, approved in a timely manner by the plan or issuer consistent with the applicable quality assurance and utilization review standards of the plan or issuer.

(2) NOTIFICATION.—Nothing in paragraph (1) shall be construed as prohibiting a plan or issuer from requiring the specialist to provide the plan or issuer with regular updates on the specialty care provided, as well as all other necessary medical information.

(d) SPECIALIST DEFINED.—For purposes of this section, the term ''specialist'' means, with respect to the medical condition of the participant, beneficiary, or enrollee, a health care professional, facility, or center (such as a center of excellence) that has adequate expertise (including age-appropriate expertise) through appropriate training and experience.

SEC. 106. CONTINUITY OF CARE.

(a) TERMINATION OF PROVIDER.—If a contract between a group health plan, and a health insurance issuer that offers health insurance coverage, and a treating health care provider is terminated (as defined in paragraph (e)(4)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage, and an individual who is a participant, beneficiary or enrollee under such plan or coverage is undergoing an active course of treatment for a serious and complex condition, institutional care, pregnancy, or terminal illness from the provider at the time the plan or issuer receives or provides notice of such termination, the plan or issuer shall—

(1) notify the individual, or arrange to have the individual notified pursuant to subsection (d)(2), on a timely basis of such termination;

(2) provide the individual with an opportunity to notify the plan or issuer of the individual's need for transitional care; and

(3) subject to subsection (c), permit the individual to elect to continue to be covered with respect to the active course of treatment with the provider's consent during a transitional period (as provided for under subsection (b)).

(b) TRANSITIONAL PERIOD.—

(1) SERIOUS AND COMPLEX CONDITIONS.—The transitional period under this section with respect to a serious and complex condition shall extend for up to 90 days from the date of the notice described in subsection (a)(1) of the provider's termination.

(2) INSTITUTIONAL OR INPATIENT CARE.—

(A) IN GENERAL.—The transitional period under this section for institutional or nonelective inpatient care from a provider shall extend until the earlier of—

(i) the expiration of the 90-day period beginning on the date on which the notice described in subsection (a)(1) of the provider's termination is provided; or

(ii) the date of discharge of the individual from such care or the termination of the period of institutionalization.

(B) SCHEDULED CARE.—The 90 day limitation described in subparagraph (A)(i) shall include post-surgical follow-up care relating

to non-elective surgery that has been scheduled before the date of the notice of the termination of the provider under subsection (a)(1).

(3) PREGNANCY.—If—

(A) a participant, beneficiary, or enrollee has entered the second trimester of pregnancy at the time of a provider's termination of participation; and

(B) the provider was treating the pregnancy before the date of the termination;

the transitional period under this subsection with respect to provider's treatment of the pregnancy shall extend through the provision of post-partum care directly related to the delivery.

(4) TERMINAL ILLNESS.—If—

(A) a participant, beneficiary, or enrollee was determined to be terminally ill (as determined under section 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation; and

(B) the provider was treating the terminal illness before the date of termination;

the transitional period under this subsection shall extend for the remainder of the individual's life for care that is directly related to the treatment of the terminal illness.

(c) PERMISSIBLE TERMS AND CONDITIONS.—A group health plan, and a health insurance issuer that offers health insurance coverage, may condition coverage of continued treatment by a provider under this section upon the provider agreeing to the following terms and conditions:

(1) The treating health care provider agrees to accept reimbursement from the plan or issuer and individual involved (with respect to cost-sharing) at the rates applicable prior to the start of the transitional period as payment in full (or at the rates applicable under the replacement plan after the date of the termination of the contract with the plan or issuer) and not to impose cost-sharing with respect to the individual in an amount that would exceed the cost-sharing that could have been imposed if the contract referred to in this section had not been terminated.

(2) The treating health care provider agrees to adhere to the quality assurance standards of the plan or issuer responsible for payment under paragraph (1) and to provide to such plan or issuer necessary medical information related to the care provided.

(3) The treating health care provider agrees otherwise to adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to require the coverage of benefits which would not have been covered if the provider involved remained a participating provider; or

(2) with respect to the termination of a contract under subsection (a) to prevent a group health plan or health insurance issuer from requiring that the health care provider—

(A) notify participants, beneficiaries, or enrollees of their rights under this section; or

(B) provide the plan or issuer with the name of each participant, beneficiary, or enrollee who the provider believes is eligible for transitional care under this section.

(e) DEFINITIONS.—In this section:

(1) CONTRACT.—The term ''contract between a group health plan, and a health insurance issuer that offers health insurance coverage, and a treating health care provider'' shall include a contract between such a plan or issuer and an organized network of providers.

(2) HEALTH CARE PROVIDER.—The term ''health care provider'' or ''provider'' means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State; and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(3) SERIOUS AND COMPLEX CONDITION.—The term ''serious and complex condition'' means, with respect to a participant, beneficiary, or enrollee under the plan or coverage, a condition that is medically determinable and—

(A) in the case of an acute illness, is a condition serious enough to require specialized medical treatment to avoid the reasonable possibility of death or permanent harm; or

(B) in the case of a chronic illness or condition, is an illness or condition that—

(i) is complex and difficult to manage;

(ii) is disabling or life- threatening; and

(iii) requires—

(I) frequent monitoring over a prolonged period of time and requires substantial ongoing specialized medical care; or

(II) frequent ongoing specialized medical care across a variety of domains of care.

(4) TERMINATED.—The term ''terminated'' includes, with respect to a contract (as defined in paragraph (1)), the expiration or nonrenewal of the contract by the group health plan or health insurance issuer, but does not include a termination of the contract by the plan or issuer for failure to meet applicable quality standards or for fraud.

SEC. 107. PROTECTION OF PATIENT-PROVIDER COMMUNICATIONS.

(a) IN GENERAL.—Subject to subsection (b), a group health plan, and a health insurance issuer that offers health insurance coverage, (in relation to a participant, beneficiary, or enrollee) shall not prohibit or otherwise restrict a health care professional from advising such a participant, beneficiary, or enrollee who is a patient of the professional about the health status of the participant, beneficiary, or enrollee or medical care or treatment for the condition or disease of the participant, beneficiary, or enrollee, regardless of whether coverage for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as requiring a group health plan, or a health insurance issuer that offers health insurance coverage, to provide specific benefits under the terms of such plan or coverage.

SEC. 108. PATIENT'S RIGHT TO PRESCRIPTION DRUGS.

(a) IN GENERAL.—To the extent that a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage for benefits with respect to prescription drugs, and limits such coverage to drugs included in a formulary, the plan or issuer shall—

(1) ensure the participation of physicians and pharmacists in developing and reviewing such formulary; and

(2) in accordance with the applicable quality assurance and utilization review standards of the plan or issuer, provide for exceptions from the formulary limitation when a non-formulary alternative is medically necessary and appropriate.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from excluding coverage for a specific drug or class of drugs if such drugs or class of drugs is expressly excluded under the terms and conditions of the plan or coverage.

SEC. 109. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

(a) COVERAGE.—

(1) IN GENERAL.—If a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage to a qualified individual (as defined in subsection (b)), the plan or issuer—

(A) may not deny the individual participation in the clinical trial referred to in subsection (b)(2);

(B) subject to subsections (b), (c), and (d) may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the participant's, beneficiaries, or enrollee's participation in such trial.

(2) EXCLUSION OF CERTAIN COSTS.—For purposes of paragraph (1)(B), routine patient costs do not include the cost of the tests or measurements conducted primarily for the purpose of the clinical trial involved.

(3) USE OF IN-NETWORK PROVIDERS.—If one or more participating providers is participating in a clinical trial, nothing in paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(b) QUALIFIED INDIVIDUAL DEFINED.—For purposes of subsection (a), the term ''qualified individual'' means an individual who is a participant or beneficiary in a group health plan or an enrollee in health insurance coverage and who meets the following conditions:

(1)(A) The individual has a life-threatening or serious illness for which no standard treatment is effective.

(B) The individual is eligible to participate in an approved clinical trial according to the trial protocol with respect to treatment of such illness.

(C) The individual's participation in the trial offers meaningful potential for significant clinical benefit for the individual.

(2) Either—

(A) the referring physician is a participating health care professional and has concluded that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1); or

(B) the participant, beneficiary, or enrollee provides medical and scientific information establishing that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1).

(c) PAYMENT.—

(1) IN GENERAL.—Under this section a group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for payment for routine patient costs described in subsection (a)(2) but is not required to pay for costs of items and services that are reasonably expected to be paid for by the sponsors of an approved clinical trial.

(2) STANDARDS FOR DETERMINING ROUTINE PATIENT COSTS ASSOCIATED WITH CLINICAL TRIAL PARTICIPATION.—

(A) IN GENERAL.—The Secretary shall, in accordance with this paragraph, establish standards relating to the coverage of routine patient costs for individuals participating in

clinical trials that group health plans and health insurance issuers must meet under this section.

(B) FACTORS.—In establishing routine patient cost standards under subparagraph (A), the Secretary shall consult with interested parties and take into account —

(i) quality of patient care;

(ii) routine patient care costs versus costs associated with the conduct of clinical trials, including unanticipated patient care costs as a result of participation in clinical trials; and

(iii) previous and on-going studies relating to patient care costs associated with participation in clinical trials.

(C) APPOINTMENT AND MEETINGS OF NEGOTIATED RULEMAKING COMMITTEE.—

(i) PUBLICATION OF NOTICE.—Not later than November 15, 2002, the Secretary shall publish notice of the establishment of a negotiated rulemaking committee, as provided for under section 564(a) of title 5, United States Code, to develop the standards described in subparagraph (A), which shall include—

(I) the proposed scope of the committee;

(II) the interests that may be impacted by the standards;

(III) a list of the proposed membership of the committee;

(IV) the proposed meeting schedule of the committee;

(V) a solicitation for public comment on the committee; and

(VI) the procedures under which an individual may apply for membership on the committee.

(ii) COMMENT PERIOD.—Notwithstanding section 564(c) of title 5, United States Code, the Secretary shall provide for a period, beginning on the date on which the notice is published under clause (i) and ending on November 30, 2002, for the submission of public comments on the committee under this subparagraph.

(iii) APPOINTMENT OF COMMITTEE.—Not later than December 30, 2001, the Secretary shall appoint the members of the negotiated rulemaking committee under this subparagraph.

(iv) FACILITATOR.—Not later than January 10, 2003, the negotiated rulemaking committee shall nominate a facilitator under section 566(c) of title 5, United States Code, to carry out the activities described in subsection (d) of such section.

(v) MEETINGS.—During the period beginning on the date on which the facilitator is nominated under clause (iv) and ending on March 30, 2003, the negotiated rulemaking committee shall meet to develop the standards described in subparagraph (A).

(D) PRELIMINARY COMMITTEE REPORT.—

(i) IN GENERAL.—The negotiated rulemaking committee appointed under subparagraph (C) shall report to the Secretary, by not later than March 30, 2003, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceedings and whether such consensus is likely to occur before the target date described in subsection (F).

(ii) TERMINATION OF PROCESS AND PUBLICATION OF RULE BY SECRETARY.—If the committee reports under clause (i) that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date described in subsection (F), the Secretary shall terminate such process and provide for the publication in the Federal Register, by not later than June 30, 2003, of a rule under this paragraph through such other methods as the Secretary may provide.

(E) FINAL COMMITTEE REPORT AND PUBLICATION OF RULE BY SECRETARY.—

(i) IN GENERAL.—If the rulemaking committee is not terminated under subparagraph (D)(ii), the committee shall submit to the Secretary, by not later than May 30, 2003, a report containing a proposed rule.

(ii) PUBLICATION OF RULE.—If the Secretary receives a report under clause (i), the Secretary shall provide for the publication in the Federal Register, by not later than June 30, 2003, of the proposed rule.

(F) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under subparagraph (C)(i), and for purposes of this paragraph, the ''target date for publication'' (referred to in section 564(a)(5) of title 5, United States Code) shall be June 30, 2003.

(G) EFFECTIVE DATE.—The provisions of this paragraph shall apply to group health plans and health insurance issuers that offer health insurance coverage for plan or coverage years beginning on or after January 1, 2004.

(3) PAYMENT RATE.—In the case of covered items and services provided by—

(A) a participating provider, the payment rate shall be at the agreed upon rate, or

(B) a nonparticipating provider, the payment rate shall be at the rate the plan or issuer would normally pay for comparable services under subparagraph (A).

(d) APPROVED CLINICAL TRIAL DEFINED.—

(1) IN GENERAL.—In this section, the term ''approved clinical trial'' means a clinical research study or clinical investigation approved or funded (which may include funding through in-kind contributions) by one or more of the following:

(A) The National Institutes of Health.

(B) A cooperative group or center of the National Institutes of Health.

(C) Either of the following if the conditions described in paragraph (2) are met:

(i) The Department of Veterans Affairs.

(ii) The Department of Defense.

(2) CONDITIONS FOR DEPARTMENTS.—The conditions described in this paragraph, for a study or investigation conducted by a Department, are that the study or investigation has been reviewed and approved through a system of peer review that the Secretary determines—

(A) to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health, and

(B) assures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review.

(e) CONSTRUCTION.—Nothing in this section shall be construed to preclude a plan or issuer from offering coverage that is broader than the coverage required under this section with respect to clinical trials.

(f) PLAN SATISFACTION OF CERTAIN REQUIREMENTS; RESPONSIBILITIES OF FIDUCIARIES.—

(1) IN GENERAL.—For purposes of this section, insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the requirements of this section with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not cause such failure by the issuer.

(2) CONSTRUCTION.—Nothing in this section shall be construed to affect or modify the responsibilities of the fiduciaries of a group health plan under part 4 of subtitle B.

(g) STUDY AND REPORT.—

(1) STUDY.—The Secretary shall study the impact on group health plans and health insurance issuers for covering routine patient care costs for individuals who are entitled to benefits under this section and who are enrolled in an approved clinical trial program.

(2) REPORT TO CONGRESS.—Not later than January 1, 2006, the Secretary shall submit a report to Congress that contains an assessment of—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section;

(B) a projection of expenditures to such plans and issuers resulting from this section; and

(C) any impact on premiums resulting from this section.

SEC. 110. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR SECONDARY CONSULTATIONS.

(a) INPATIENT CARE.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically necessary and appropriate following—

(A) a mastectomy;

(B) a lumpectomy; or

(C) a lymph node dissection for the treatment of breast cancer.

(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not modify the terms and conditions of coverage based on the determination by a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnosis. Such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which the attending physician certifies in writing that services necessary for such a secondary consultation are not sufficiently available from specialists operating under the plan or coverage with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that coverage is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no additional cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan or issuer.

(2) EXCEPTION.—Nothing in paragraph (1) shall be construed as requiring the provision of secondary consultations where the patient determines not to seek such a consultation.

(d) PROHIBITION ON PENALTIES OR INCENTIVES.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(1) penalize or otherwise reduce or limit the reimbursement of a provider or specialist

because the provider or specialist provided care to a participant, beneficiary, or enrollee in accordance with this section;

(2) provide financial or other incentives to a physician or specialist to induce the physician or specialist to keep the length of inpatient stays of patients following a mastectomy, lumpectomy, or a lymph node dissection for the treatment of breast cancer below certain limits or to limit referrals for secondary consultations; or

(3) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refrain from referring a participant, beneficiary, or enrollee for a secondary consultation that would otherwise be covered by the plan or coverage involved under subsection (c).

SEC. 111. PROHIBITION OF DISCRIMINATION AGAINST PROVIDERS BASED ON LICENSURE.

(a) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall not discriminate with respect to participation or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification.

(b) CONSTRUCTION.—Subsection (a) shall not be construed—

(1) as requiring the coverage under a group health plan or health insurance coverage, of a particular benefit or service or to prohibit a plan or issuer from including providers only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer;

(2) to override any State licensure or scope-of-practice law; or

(3) as requiring a plan or issuer that offers network coverage to include for participation every willing provider who meets the terms and conditions of the plan or coverage.

SEC. 112. GENERALLY APPLICABLE PROVISION.

Notwithstanding section 102, in the case of a group health plan, and a health insurance issuer that offers health insurance coverage, that provides benefits under 2 or more coverage options, the requirements of this subpart shall apply separately with respect to each coverage option.

Subtitle B—Right to Information About Plans and Providers

SEC. 121. HEALTH PLAN INFORMATION.

(a) REQUIREMENT.—

(1) DISCLOSURE.—

(A) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for the disclosure of the information described in subsection (b) to participants, beneficiaries, and enrollees—

(i) at the time of the initial enrollment of the participant, beneficiary, or enrollee under the plan or coverage;

(ii) on an annual basis after enrollment—

(I) in conjunction with the election period of the plan or coverage if the plan or coverage has such an election period; or

(II) in the case of a plan or coverage that does not have an election period, in conjunction with the beginning of the plan or coverage year; and

(iii) in the case of any material reduction to the benefits or information described in paragraphs (1), (2) and (3) of subsection (b), in the form of a summary notice provided not later than the date on which the reduction takes effect.

(B) PARTICIPANTS, BENEFICIARIES, OR ENROLLEES.—The disclosure required under subparagraph (A) shall be provided—

(i)(I) jointly to each participant and beneficiary who reside at the same address; or

(II) in the case of a beneficiary who does not reside at the same address as the participant, separately to the participant and such beneficiary; and

(ii) to each enrollee.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent a group health plan sponsor and health insurance issuer from entering into an agreement under which either the plan sponsor or the issuer agrees to assume responsibility for compliance with the requirements of this section, in whole or in part, and the party delegating such responsibility is released from liability for compliance with the requirements that are assumed by the other party, to the extent the party delegating such responsibility did not cause such noncompliance.

(3) PROVISION OF INFORMATION.—Information shall be provided to participants, beneficiaries, and enrollees under this section at the last known address maintained by the plan or issuer with respect to such participants, beneficiaries, or enrollees, to the extent that such information is provided to participants, beneficiaries, or enrollees via the United States Postal Service or other private delivery service.

(b) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each option available under the group health plan or health insurance coverage the following:

(1) BENEFITS.—A description of the covered benefits, including—

(A) any in- and out-of-network benefits;

(B) specific preventative services covered under the plan or coverage if such services are covered;

(C) any benefit limitations, including any annual or lifetime benefit limits and any monetary limits or limits on the number of visits, days, or services, and any specific coverage exclusions; and

(D) any definition of medical necessity used in making coverage determinations by the plan, issuer, or claims administrator.

(2) COST SHARING.—A description of any cost-sharing requirements, including—

(A) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing above any reasonable and customary charges, for which the participant, beneficiary, or enrollee will be responsible under each option available under the plan;

(B) any maximum out-of-pocket expense for which the participant, beneficiary, or enrollee may be liable;

(C) any cost-sharing requirements for out-of-network benefits or services received from nonparticipating providers; and

(D) any additional cost-sharing or charges for benefits and services that are furnished without meeting applicable plan or coverage requirements, such as prior authorization or precertification.

(3) SERVICE AREA.—A description of the plan or issuer's service area, including the provision of any out-of-area coverage.

(4) PARTICIPATING PROVIDERS.—A directory of participating providers (to the extent a plan or issuer provides coverage through a network of providers) that includes, at a minimum, the name, address, and telephone number of each participating provider, and information about how to inquire whether a participating provider is currently accepting new patients.

(5) CHOICE OF PRIMARY CARE PROVIDER.—A description of any requirements and procedures to be used by participants, beneficiaries, and enrollees in selecting, accessing, or changing their primary care provider, including providers both within and outside of the network (if the plan or issuer permits out-of-network services), and the right to select a pediatrician as a primary care provider under section 104 for a participant, beneficiary, or enrollee who is a child if such section applies.

(6) PREAUTHORIZATION REQUIREMENTS.—A description of the requirements and procedures to be used to obtain preauthorization for health services, if such preauthorization is required.

(7) EXPERIMENTAL AND INVESTIGATIONAL TREATMENTS.—A description of the process for determining whether a particular item, service, or treatment is considered experimental or investigational, and the circumstances under which such treatments are covered by the plan or issuer.

(8) SPECIALTY CARE.—A description of the requirements and procedures to be used by participants, beneficiaries, and enrollees in accessing specialty care and obtaining referrals to participating and nonparticipating specialists, including the right to timely coverage for access to specialists care under section 105 if such section applies.

(9) CLINICAL TRIALS.—A description the circumstances and conditions under which participation in clinical trials is covered under the terms and conditions of the plan or coverage, and the right to obtain coverage for approved cancer clinical trials under section 109 if such section applies.

(10) PRESCRIPTION DRUGS.—To the extent the plan or issuer provides coverage for prescription drugs, a statement of whether such coverage is limited to drugs included in a formulary, a description of any provisions and cost-sharing required for obtaining on- and off-formulary medications, and a description of the rights of participants, beneficiaries, and enrollees in obtaining access to access to prescription drugs under section 107 if such section applies.

(11) EMERGENCY SERVICES.—A summary of the rules and procedures for accessing emergency services, including the right of a participant, beneficiary, or enrollee to obtain emergency services under the prudent layperson standard under section 101, if such section applies, and any educational information that the plan or issuer may provide regarding the appropriate use of emergency services.

(12) CLAIMS AND APPEALS.—A description of the plan or issuer's rules and procedures pertaining to claims and appeals, a description of the rights of participants, beneficiaries, or enrollees under sections 503, 503A and 503B of the Employee Retirement Income Security Act of 1974 (or sections 2707(b) and 2753(b) of the Public Health Service with respect to non-Federal governmental plans and individual health insurance coverage) in obtaining covered benefits, filing a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 502 of the Employee Retirement Income Security Act of 1974.

(13) ADVANCE DIRECTIVES AND ORGAN DONATION.—A description of procedures for advance directives and organ donation decisions if the plan or issuer maintains such procedures.

(14) INFORMATION ON PLANS AND ISSUERS.—The name, mailing address, and telephone number or numbers of the plan administrator and the issuer to be used by participants, beneficiaries, and enrollees seeking information about plan or coverage benefits and services, payment of a claim, or authorization for services and treatment. The name of the designated decision-maker (or decision-makers) appointed under section 502(n)(2) of the Employee Retirement Income Security Act of 1974 for purposes of making final determinations under section 503A of

such Act and approving coverage pursuant to the written determination of an independent medical reviewer under section 503B of such Act. Notice of whether the benefits under the plan are provided under a contract or policy of insurance issued by an issuer, or whether benefits are provided directly by the plan sponsor who bears the insurance risk.

(15) TRANSLATION SERVICES.—A summary description of any translation or interpretation services (including the availability of printed information in languages other than English, audio tapes, or information in Braille) that are available for non-English speakers and participants, beneficiaries, and enrollees with communication disabilities and a description of how to access these items or services.

(16) ACCREDITATION INFORMATION.—Any information that is made public by accrediting organizations in the process of accreditation if the plan or issuer is accredited, or any additional quality indicators (such as the results of enrollee satisfaction surveys) that the plan or issuer makes public or makes available to participants, beneficiaries, and enrollees.

(17) NOTICE OF REQUIREMENTS.—A description of any rights of participants, beneficiaries, and enrollees that are established by this Act (excluding those described in paragraphs (1) through (16)) if such rights apply. The description required under this paragraph may be combined with the notices required under sections 711(d), 713(b), or 606(a)(1) of the Employee Retirement Income Security Act of 1974, and with any other notice provision that the Secretary determines may be combined.

(18) COMPENSATION METHODS.—A summary description of the methods (including capitation, fee-for-service, salary, withholds, bonuses, bundled payments, per diem, or a combination thereof) used for compensating participating health care professionals (including primary care providers and specialists) and facilities in connection with the provision of health care under the plan or coverage. The requirement of this paragraph shall not be construed as requiring plans or issuers to provide information concerning proprietary payment methodology.

(19) DISENROLLMENT.—Information relating to the disenrollment of a participant, beneficiary, or enrollee.

(20) AVAILABILITY OF ADDITIONAL INFORMATION.—A statement that the information described in subsection (c), and instructions on obtaining such information (including telephone numbers and, if available, Internet websites), shall be made available upon request.

(c) ADDITIONAL INFORMATION.—The informational materials to be provided upon the request of a participant, beneficiary, or enrollees shall include for each option available under a group health plan or health insurance coverage the following:

(1) STATUS OF PROVIDERS.—The State licensure status of the plan or issuer's participating health care professionals and participating health care facilities, and, if available, the education, training, specialty qualifications or certifications of such professionals.

(2) PRESCRIPTION DRUGS.—Information about whether a specific prescription medication is included in the formulary of the plan or issuer, if the plan or issuer uses a defined formulary.

(3) EXTERNAL APPEALS INFORMATION.—Aggregate information on the number and outcomes of external medical reviews, relative to the sample size (such as the number of covered lives) determined for the plan or issuer's book of business.

(d) MANNER OF DISCLOSURE.—The information described in this section shall be disclosed in an accessible medium and format that is calculated to be understood by the average participant.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from—

(1) distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants, beneficiaries, and enrollees in the selection of a health plan; and

(2) complying with the provisions of this section by providing information in brochures, through the Internet or other electronic media, or through other similar means, so long as participants, beneficiaries, and enrollees are provided with an opportunity to request that informational materials be provided in printed form.

(f) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements on group health plans and health insurance issuers under this section with the requirements imposed under part 1, to reduce duplication with respect to any information that is required to be provided under any such requirements.

(g) SECRETARIAL ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The Secretary of Health and Human Services or the Secretary of Labor (as appropriate) may assess a civil monetary penalty against the administrator of a plan or issuer in connection with the failure of the plan or issuer to comply with the requirements of this section.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—The amount of the penalty to be imposed under paragraph (1) shall not exceed $100 for each day for each participant, beneficiary, or enrollee with respect to which the failure to comply with the requirements of this section occurs.

(B) INCREASE IN AMOUNT.—The amount referred to in subparagraph (A) shall be increased or decreased, for each calendar year that ends after December 31, 2001, by the same percentage as the percentage by which the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2001.

(3) FAILURE DEFINED.—For purposes of this subsection, a plan or issuer shall have failed to comply with the requirements of this section with respect to a participant, beneficiary, or enrollee if the plan or issuer failed or refused to comply with the requirements of this section within 30 days—

(A) of the date described in subsection (a)(1)(A)(i);

(B) of the date described in subsection (a)(1)(A)(ii); or

(C) of the date on which additional information was requested under subsection (c).

(h) CONFORMING AMENDMENTS.—

(1) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a)) is amended by striking ''section 711'' and inserting ''section 711 and section 121 of the Bipartisan Patients' Bill of Rights Act of 2001''.

(2) Section 502(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(b)(3)) is amended by striking ''733(a)(1))'' and inserting ''733(a)(1)), except with respect to the requirements of section 121 of the Bipartisan Patients' Bill of Rights Act of 2001''.

SEC. 122. INFORMATION ABOUT PROVIDERS.

(a) STUDY.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the conduct of a study, and the submission to the Secretary of a report, that includes—

(1) an analysis of information concerning health care professionals that is currently available to patients, consumers, States, and professional societies, nationally and on a State-by-State basis, including patient preferences with respect to information about such professionals and their competencies;

(2) an evaluation of the legal and other barriers to the sharing of information concerning health care professionals; and

(3) recommendations for the disclosure of information on health care professionals, including the competencies and professional qualifications of such practitioners, to better facilitate patient choice, quality improvement, and market competition.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall forward to the appropriate committees of Congress a copy of the report and study conducted under subsection (a).

SEC. 123. STUDY ON THE EFFECT OF PHYSICIAN COMPENSATION METHODS.

(a) STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary shall enter into a contract with the Institute of Medicine for the conduct of a study in accordance with this section, to be submitted to the Secretary and the Secretary of Labor as provided for in paragraph (4).

(2) MATTERS TO BE STUDIED.—The study under paragraph (1) shall include—

(A) a study, including a survey if necessary, of physician compensation arrangements that are utilized in employer-sponsored group health plans (including group health plans sponsored by government and non-government employers) and commercial health insurance products, including—

(i) all types of compensation arrangements, including financial incentive and risk sharing arrangements and arrangements that do not contain such incentives and risk sharing, that reflect the complexity of organizational relationships between health plans and physicians;

(ii) arrangements that are based on factors such as utilization management, cost control, quality improvement, and patient or enrollee satisfaction; and

(iii) arrangements between the plan or issuer and provider, as well as down-stream arrangements between providers and subcontracted providers;

(B) an analysis of the effect of such differing arrangements on physician behavior with respect to the provision of medical care to patients, including whether and how such arrangements affect the quality of patient care and the ability of physicians to provide care that is medically necessary and appropriate.

(3) STUDY DESIGN.—The Secretary shall consult with the Director of the Agency for Healthcare Research and Quality in preparing the scope of work and study design with respect to the contract under paragraph (1).

(4) REPORT.—Not later than 24 months after the date of enactment of this Act, the Secretary shall forward to the appropriate committees of Congress a copy of the report and study conducted under subsection (a).

(b) RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall conduct and support research to develop scientific evidence regarding the effects of differing physician compensation methods on physician behavior with respect to the provision of medical care to patients, particularly issues relating to the quality of patient care

and whether patients receive medically necessary and appropriate care.

(2) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

Subtitle C—Right to Hold Health Plans Accountable

SEC. 131. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after section 503 (29 U.S.C. 1133) the following:

"SEC. 503A. CLAIMS AND INTERNAL APPEALS PROCEDURES FOR GROUP HEALTH PLANS.

''(a) INITIAL CLAIM FOR BENEFITS UNDER GROUP HEALTH PLANS.—

''(1) PROCEDURES.—

''(A) IN GENERAL.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall ensure that procedures are in place for—

''(i) making a determination on an initial claim for benefits by a participant or beneficiary (or authorized representative) regarding payment or coverage for items or services under the terms and conditions of the plan or coverage involved, including any cost-sharing amount that the participant or beneficiary is required to pay with respect to such claim for benefits; and

''(ii) notifying a participant or beneficiary (or authorized representative) and the treating health care professional involved regarding a determination on an initial claim for benefits made under the terms and conditions of the plan or coverage, including any cost-sharing amounts that the participant or beneficiary may be required to make with respect to such claim for benefits, and of the right of the participant or beneficiary to an internal appeal under subsection (b).

''(B) ACCESS TO INFORMATION.—With respect to an initial claim for benefits, the participant or beneficiary (or authorized representative) and the treating health care professional (if any) shall provide the plan or issuer with access to information requested by the plan or issuer that is necessary to make a determination relating to the claim, not later than 5 business days after the date on which the claim is filed or to meet the applicable timelines under clauses (ii) and (iii) of paragraph (2)(A).

''(C) ORAL REQUESTS.—In the case of a claim for benefits involving an expedited or concurrent determination, a participant or beneficiary (or authorized representative) may make an initial claim for benefits orally, but a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, may require that the participant or beneficiary (or authorized representative) provide written confirmation of such request in a timely manner.

''(2) TIMELINE FOR MAKING DETERMINATIONS.—

''(A) PRIOR AUTHORIZATION DETERMINATION.—

''(i) IN GENERAL.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a prior authorization determination on a claim for benefits is made within 14 business days from the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the request for prior authorization, but in no case shall such determination be made later than 28 business days after the receipt of the claim for benefits.

''(ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i), a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures for expediting a prior authorization determination on a claim for benefits described in such clause when a request for such an expedited determination is made by a participant or beneficiary (or authorized representative) at any time during the process for making a determination and the treating health care professional substantiates, with the request, that a determination under the procedures described in clause (i) would seriously jeopardize the life or health of the participant or beneficiary. Such determination shall be made within 72 hours after a request is received by the plan or issuer under this clause.

''(iii) CONCURRENT DETERMINATIONS.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a concurrent determination on a claim for benefits that results in a discontinuation of inpatient care is made within 24 hours after the receipt of the claim for benefits.

''(B) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a retrospective determination on a claim for benefits is made within 30 business days of the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the claim, but in no case shall such determination be made later than 60 business days after the receipt of the claim for benefits.

''(3) NOTICE OF A DENIAL OF A CLAIM FOR BENEFITS.—Written notice of a denial made under an initial claim for benefits shall be issued to the participant or beneficiary (or authorized representative) and the treating health care professional not later than 2 business days after the determination (or within the 72-hour or 24-hour period referred to in clauses (ii) and (iii) of paragraph (2)(A) if applicable).

''(4) REQUIREMENTS OF NOTICE OF DETERMINATIONS.—The written notice of a denial of a claim for benefits determination under paragraph (3) shall include—

''(A) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and instruction on obtaining a more complete description written in a manner calculated to be understood by the average participant);

''(B) the procedures for obtaining additional information concerning the determination; and

''(C) notification of the right to appeal the determination and instructions on how to initiate an appeal in accordance with subsection (b).

''(b) INTERNAL APPEAL OF A DENIAL OF A CLAIM FOR BENEFITS.—

''(1) RIGHT TO INTERNAL APPEAL.—

''(A) IN GENERAL.—A participant or beneficiary (or authorized representative) may appeal any denial of a claim for benefits under subsection (a) under the procedures described in this subsection.

''(B) TIME FOR APPEAL.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall ensure that a participant or beneficiary (or authorized representative) has a period of not less than 60 days beginning on the date of a denial of a claim for benefits under subsection (a) in which to appeal such denial under this subsection.

''(C) FAILURE TO ACT.—The failure of a plan or issuer to issue a determination on a claim for benefits under subsection (a) within the applicable timeline established for such a determination under such subsection shall be treated as a denial of a claim for benefits for purposes of proceeding to internal review under this subsection.

''(D) PLAN WAIVER OF INTERNAL REVIEW.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, may waive the internal review process under this subsection and permit a participant or beneficiary (or authorized representative) to proceed directly to external review under section 503B.

''(2) TIMELINES FOR MAKING DETERMINATIONS.—

''(A) ORAL REQUESTS.—In the case of an appeal of a denial of a claim for benefits under this subsection that involves an expedited or concurrent determination, a participant or beneficiary (or authorized representative) may request such appeal orally, but a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, may require that the participant or beneficiary (or authorized representative) provide written confirmation of such request in a timely manner.

''(B) ACCESS TO INFORMATION.—With respect to an appeal of a denial of a claim for benefits, the participant or beneficiary (or authorized representative) and the treating health care professional (if any) shall provide the plan or issuer with access to information requested by the plan or issuer that is necessary to make a determination relating to the appeal, not later than 5 business days after the date on which the request for the appeal is filed or to meet the applicable timelines under clauses (ii) and (iii) of subparagraph (C).

''(C) PRIOR AUTHORIZATION DETERMINATIONS.—

''(i) IN GENERAL.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a determination on an appeal of a denial of a claim for benefits under this subsection is made within 14 business days after the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the appeal, but in no case shall such determination be made later than 28 business days after the receipt of the request for the appeal.

''(ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i), a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures for expediting a prior authorization determination on an appeal of a denial of a claim for benefits described in clause (i), when a request for such an expedited determination is made by a participant or beneficiary (or authorized representative) at any time during the process for making a determination and the treating health care professional substantiates, with the request, that a determination under the procedures described in clause (i) would seriously jeopardize the life or health of the participant or beneficiary. Such determination shall be made not later than 72 hours after the request for such appeal is received by the plan or issuer under this clause.

''(iii) CONCURRENT DETERMINATIONS.—A group health plan, or health insurance issuer

that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a concurrent determination on an appeal of a denial of a claim for benefits that results in a discontinuation of inpatient care is made within 24 hours after the receipt of the request for appeal.

''(B) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a retrospective determination on an appeal of a claim for benefits is made within 30 business days of the date on which the plan or issuer receives necessary information that is reasonably required by the plan or issuer to make a determination on the appeal, but in no case shall such determination be made later than 60 business days after the receipt of the request for the appeal.

''(3) CONDUCT OF REVIEW.—

''(A) IN GENERAL.—A review of a denial of a claim for benefits under this subsection shall be conducted by an individual with appropriate expertise who was not directly involved in the initial determination.

''(B) REVIEW OF MEDICAL DECISIONS BY PHYSICIANS.—A review of an appeal of a denial of a claim for benefits that is based on a lack of medical necessity and appropriateness, or based on an experimental or investigational treatment, or requires an evaluation of medical facts, shall be made by a physician with appropriate expertise, including age-appropriate expertise, who was not involved in the initial determination.

''(4) NOTICE OF DETERMINATION.—

''(A) IN GENERAL.—Written notice of a determination made under an internal appeal of a denial of a claim for benefits shall be issued to the participant or beneficiary (or authorized representative) and the treating health care professional not later than 2 business days after the completion of the review (or within the 72-hour or 24-hour period referred to in paragraph (2) if applicable).

''(B) FINAL DETERMINATION.—The decision by a plan or issuer under this subsection shall be treated as the final determination of the plan or issuer on a denial of a claim for benefits. The failure of a plan or issuer to issue a determination on an appeal of a denial of a claim for benefits under this subsection within the applicable timeline established for such a determination shall be treated as a final determination on an appeal of a denial of a claim for benefits for purposes of proceeding to external review under section 503B.

''(C) REQUIREMENTS OF NOTICE.—With respect to a determination made under this subsection, the notice described in subparagraph (A) shall include—

''(i) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and instruction on obtaining a more complete description written in a manner calculated to be understood by the average participant);

''(ii) the procedures for obtaining additional information concerning the determination; and

''(iii) notification of the right to an independent external review under section 503B and instructions on how to initiate such a review.

''(c) DEFINITIONS.—The definitions contained in section 503B(i) shall apply for purposes of this section.

''SEC. 503B. INDEPENDENT EXTERNAL APPEALS PROCEDURES FOR GROUP HEALTH PLANS.

''(a) RIGHT TO EXTERNAL APPEAL.—A group health plan, and a health insurance issuer that offers health insurance coverage in connection with a group health plan, shall provide in accordance with this section participants and beneficiaries (or authorized representatives) with access to an independent external review for any denial of a claim for benefits.

''(b) INITIATION OF THE INDEPENDENT EXTERNAL REVIEW PROCESS.—

''(1) TIME TO FILE.—A request for an independent external review under this section shall be filed with the plan or issuer not later than 60 business days after the date on which the participant or beneficiary receives notice of the denial under section 503A(b)(4) or the date on which the internal review is waived by the plan or issuer under section 503A(b)(1)(D).

''(2) FILING OF REQUEST.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, a group health plan, and a health insurance issuer that offers health insurance coverage in connection with a group health plan, may—

''(i) except as provided in subparagraph (B)(i), require that a request for review be in writing;

''(ii) limit the filing of such a request to the participant or beneficiary involved (or an authorized representative);

''(iii) except if waived by the plan or issuer under section 503A(b)(1)(D), condition access to an independent external review under this section upon a final determination of a denial of a claim for benefits under the internal review procedure under section 503A;

''(iv) except as provided in subparagraph (B)(ii), require payment of a filing fee to the plan or issuer of a sum that does not exceed $50; and

''(v) require that a request for review include the consent of the participant or beneficiary (or authorized representative) for the release of medical information or records of the participant or beneficiary to the qualified external review entity for purposes of conducting external review activities.

''(B) REQUIREMENTS AND EXCEPTION RELATING TO GENERAL RULE.—

''(i) ORAL REQUESTS PERMITTED IN EXPEDITED OR CONCURRENT CASES.—In the case of an expedited or concurrent external review as provided for under subsection (e), the request may be made orally. In such case a written confirmation of such request shall be made in a timely manner. Such written confirmation shall be treated as a consent for purposes of subparagraph (A)(v).

''(ii) EXCEPTION TO FILING FEE REQUIREMENT.—

''(I) INDIGENCY.—Payment of a filing fee shall not be required under subparagraph (A)(iv) where there is a certification (in a form and manner specified in guidelines established by the Secretary) that the participant or beneficiary is indigent (as defined in such guidelines). In establishing guidelines under this subclause, the Secretary shall ensure that the guidelines relating to indigency are consistent with the poverty guidelines used by the Secretary of Health and Human Services under title XIX of the Social Security Act.

''(II) FEE NOT REQUIRED.—Payment of a filing fee shall not be required under subparagraph (A)(iv) if the plan or issuer waives the internal appeals process under section 503A(b)(1)(D).

''(III) REFUNDING OF FEE.—The filing fee paid under subparagraph (A)(iv) shall be refunded if the determination under the independent external review is to reverse the denial which is the subject of the review.

''(IV) INCREASE IN AMOUNT.—The amount referred to in subclause (I) shall be increased or decreased, for each calendar year that ends after December 31, 2002, by the same percentage as the percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2002.

''(c) REFERRAL TO QUALIFIED EXTERNAL REVIEW ENTITY UPON REQUEST.—

''(1) IN GENERAL.—Upon the filing of a request for independent external review with the group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, the plan or issuer shall refer such request to a qualified external review entity selected in accordance with this section.

''(2) ACCESS TO PLAN OR ISSUER AND HEALTH PROFESSIONAL INFORMATION.—With respect to an independent external review conducted under this section, the participant or beneficiary (or authorized representative), the plan or issuer, and the treating health care professional (if any) shall provide the external review entity with access to information requested by the external review entity that is necessary to conduct a review under this section, as determined by the entity, not later than 5 business days after the date on which a request is referred to the qualified external review entity under paragraph (1), or earlier as determined appropriate by the entity to meet the applicable timelines under clauses (ii) and (iii) of subsection (e)(1)(A).

''(3) SCREENING OF REQUESTS BY QUALIFIED EXTERNAL REVIEW ENTITIES.—

''(A) IN GENERAL.—With respect to a request referred to a qualified external review entity under paragraph (1) relating to a denial of a claim for benefits, the entity shall refer such request for the conduct of an independent medical review unless the entity determines that—

''(i) any of the conditions described in subsection (b)(2)(A) have not been met;

''(ii) the thresholds described in subparagraph (B) have not been met;

''(iii) the denial of the claim for benefits does not involve a medically reviewable decision under subsection (d)(2);

''(iv) the denial of the claim for benefits relates to a decision regarding whether an individual is a participant or beneficiary who is enrolled under the terms of the plan or coverage (including the applicability of any waiting period under the plan or coverage); or

''(v) the denial of the claim for benefits is a decision as to the application of cost-sharing requirements or the application of a specific exclusion or express limitation on the amount, duration, or scope of coverage of items or services under the terms and conditions of the plan or coverage unless the decision is a denial described in subsection (d)(2); Upon making a determination that any of clauses (i) through (v) applies with respect to the request, the entity shall determine that the denial of a claim for benefits involved is not eligible for independent medical review under subsection (d), and shall provide notice in accordance with subparagraph (D).

''(B) THRESHOLDS.—

''(i) IN GENERAL.—The thresholds described in this subparagraph are that—

''(I) the total amount payable under the plan or coverage for the item or service that was the subject of such denial exceeds $100; or

''(II) a physician has asserted in writing that there is a significant risk of placing the life, health, or development of the participant or beneficiary in jeopardy if the denial of the claim for benefits is sustained.

''(ii) THRESHOLDS NOT APPLIED.—The thresholds described in this subparagraph shall not apply if the plan or issuer involved

waives the internal appeals process with respect to the denial of a claim for benefits involved under section 503A(b)(1)(D).

''(C) PROCESS FOR MAKING DETERMINATIONS.—

''(i) NO DEFERENCE TO PRIOR DETERMINATIONS.—In making determinations under subparagraph (A), there shall be no deference given to determinations made by the plan or issuer under section 503A or the recommendation of a treating health care professional (if any).

''(ii) USE OF APPROPRIATE PERSONNEL.—A qualified external review entity shall use appropriately qualified personnel to make determinations under this section.

''(D) NOTICES AND GENERAL TIMELINES FOR DETERMINATION.—

''(i) NOTICE IN CASE OF DENIAL OF REFERRAL.—If the entity under this paragraph does not make a referral to an independent medical reviewer, the entity shall provide notice to the plan or issuer, the participant or beneficiary (or authorized representative) filing the request, and the treating health care professional (if any) that the denial is not subject to independent medical review. Such notice—

''(I) shall be written (and, in addition, may be provided orally) in a manner calculated to be understood by an average participant;

''(II) shall include the reasons for the determination; and

''(III) include any relevant terms and conditions of the plan or coverage.

''(ii) GENERAL TIMELINE FOR DETERMINATIONS.—Upon receipt of information under paragraph (2), the qualified external review entity, and if required the independent medical reviewer, shall make a determination within the overall timeline that is applicable to the case under review as described in subsection (e), except that if the entity determines that a referral to an independent medical reviewer is not required, the entity shall provide notice of such determination to the participant or beneficiary (or authorized representative) within 2 business days of such determination.

''(d) INDEPENDENT MEDICAL REVIEW.—

''(1) IN GENERAL.—If a qualified external review entity determines under subsection (c) that a denial of a claim for benefits is eligible for independent medical review, the entity shall refer the denial involved to an independent medical reviewer for the conduct of an independent medical review under this subsection.

''(2) MEDICALLY REVIEWABLE DECISIONS.—A denial described in this paragraph is one for which the item or service that is the subject of the denial would be a covered benefit under the terms and conditions of the plan or coverage but for one (or more) of the following determinations:

''(A) DENIALS BASED ON MEDICAL NECESSITY AND APPROPRIATENESS.—The basis of the determination is that the item or service is not medically necessary and appropriate.

''(B) DENIALS BASED ON EXPERIMENTAL OR INVESTIGATIONAL TREATMENT.—The basis of the determination is that the item or service is experimental or investigational.

''(C) DENIALS OTHERWISE BASED ON AN EVALUATION OF MEDICAL FACTS.—A determination that the item or service or condition is not covered but an evaluation of the medical facts by a health care professional in the specific case involved is necessary to determine whether the item or service or condition is required to be provided under the terms and conditions of the plan or coverage.

''(3) INDEPENDENT MEDICAL REVIEW DETERMINATION.—

''(A) IN GENERAL.—An independent medical reviewer under this section shall make a new independent determination with respect to—

''(i) whether the item or service or condition that is the subject of the denial is covered under the terms and conditions of the plan or coverage; and

''(ii) based upon an affirmative determination under clause (i), whether or not the denial of a claim for a benefit that is the subject of the review should be upheld or reversed.

''(B) STANDARD FOR DETERMINATION.—The independent medical reviewer's determination relating to the medical necessity and appropriateness, or the experimental or investigation nature, or the evaluation of the medical facts of the item, service, or condition shall be based on the medical condition of the participant or beneficiary (including the medical records of the participant or beneficiary) and the valid, relevant scientific evidence and clinical evidence, including peer-reviewed medical literature or findings and including expert consensus.

''(C) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require that a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, provide coverage for items or services that are specifically excluded or expressly limited under the plan or coverage and that are not covered regardless of any determination relating to medical necessity and appropriateness, experimental or investigational nature of the treatment, or an evaluation of the medical facts in the case involved.

''(D) EVIDENCE AND INFORMATION TO BE USED IN MEDICAL REVIEWS.—In making a determination under this subsection, the independent medical reviewer shall also consider appropriate and available evidence and information, including the following:

''(i) The determination made by the plan or issuer with respect to the claim upon internal review and the evidence or guidelines used by the plan or issuer in reaching such determination.

''(ii) The recommendation of the treating health care professional and the evidence, guidelines, and rationale used by the treating health care professional in reaching such recommendation.

''(iii) Additional evidence or information obtained by the reviewer or submitted by the plan, issuer, participant or beneficiary (or an authorized representative), or treating health care professional.

''(iv) The plan or coverage document.

''(E) INDEPENDENT DETERMINATION.—In making the determination, the independent medical reviewer shall—

''(i) consider the claim under review without deference to the determinations made by the plan or issuer under section 503A or the recommendation of the treating health care professional (if any); and

''(ii) consider, but not be bound by the definition used by the plan or issuer of 'medically necessary and appropriate', or 'experimental or investigational', or other equivalent terms that are used by the plan or issuer to describe medical necessity and appropriateness or experimental or investigational nature of the treatment.

''(F) DETERMINATION OF INDEPENDENT MEDICAL REVIEWER.—An independent medical reviewer shall, in accordance with the deadlines described in subsection (e), prepare a written determination to uphold or reverse the denial under review and, in the case of a reversal, the timeframe within which the plan or issuer shall authorize coverage to comply with the determination. Such written determination shall include the specific reasons of the reviewer for such determination, including a summary of the clinical or scientific-evidence based rationale used in making the determination. The reviewer may provide the plan or issuer and the treating health care professional with additional recommendations in connection with such a determination, but any such recommendations shall not be treated as part of the determination.

''(e) TIMELINES AND NOTIFICATIONS.—

''(1) TIMELINES FOR INDEPENDENT MEDICAL REVIEW.—

''(A) PRIOR AUTHORIZATION DETERMINATION.—

''(i) IN GENERAL.—The independent medical reviewer (or reviewers) shall make a determination on a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) not later than 14 business days after the receipt of information under subsection (c)(2) if the review involves a prior authorization of items or services.

''(ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i), the independent medical reviewer (or reviewers) shall make an expedited determination on a denial of a claim for benefits described in clause (i), when a request for such an expedited determination is made by a participant or beneficiary (or authorized representative) at any time during the process for making a determination, and the treating health care professional substantiates, with the request, that a determination under the timeline described in clause (i) would seriously jeopardize the life or health of the participant or beneficiary. Such determination shall be made not later than 72 hours after the receipt of information under subsection (c)(2).

''(iii) CONCURRENT DETERMINATION.—Notwithstanding clause (i), a review described in such subclause shall be completed not later than 24 hours after the receipt of information under subsection (c)(2) if the review involves a discontinuation of inpatient care.

''(B) RETROSPECTIVE DETERMINATION.—The independent medical reviewer (or reviewers) shall complete a review in the case of a retrospective determination on an appeal of a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) not later than 30 business days after the receipt of information under subsection (c)(2).

''(2) NOTIFICATION OF DETERMINATION.—The external review entity shall ensure that the plan or issuer, the participant or beneficiary (or authorized representative) and the treating health care professional (if any) receives a copy of the written determination of the independent medical reviewer prepared under subsection (d)(3)(F). Nothing in this paragraph shall be construed as preventing an entity or reviewer from providing an initial oral notice of the reviewer's determination.

''(3) FORM OF NOTICES.—Determinations and notices under this subsection shall be written in a manner calculated to be understood by an average participant.

''(4) TERMINATION OF EXTERNAL REVIEW PROCESS IF APPROVAL OF A CLAIM FOR BENEFITS DURING PROCESS.—

''(A) IN GENERAL.—If a plan or issuer—

''(i) reverses a determination on a denial of a claim for benefits that is the subject of an external review under this section and authorizes coverage for the claim or provides payment of the claim; and

''(ii) provides notice of such reversal to the participant or beneficiary (or authorized representative) and the treating health care professional (if any), and the external review entity responsible for such review,

the external review process shall be terminated with respect to such denial and any filing fee paid under subsection (b)(2)(A)(iv) shall be refunded.

''(B) TREATMENT OF TERMINATION.—An authorization of coverage under subparagraph (A) by the plan or issuer shall be treated as

a written determination to reverse a denial under section (d)(3)(F) for purposes of liability under section 502(n)(1)(B).

''(f) COMPLIANCE.—

''(1) APPLICATION OF DETERMINATIONS.—

''(A) EXTERNAL REVIEW DETERMINATIONS BINDING ON PLAN.—The determinations of an external review entity and an independent medical reviewer under this section shall be binding upon the plan or issuer involved.

''(B) COMPLIANCE WITH DETERMINATION.—If the determination of an independent medical reviewer is to reverse the denial, the plan or issuer, upon the receipt of such determination, shall authorize coverage to comply with the medical reviewer's determination in accordance with the timeframe established by the medical reviewer under subsection (d)(3)(F).

''(2) FAILURE TO COMPLY.—If a plan or issuer fails to comply with the timeframe established under paragraph (1)(B) with respect to a participant or beneficiary, where such failure to comply is caused by the plan or issuer, the participant or beneficiary may obtain the items or services involved (in a manner consistent with the determination of the independent external reviewer) from any provider regardless of whether such provider is a participating provider under the plan or coverage.

''(3) REIMBURSEMENT.—

''(A) IN GENERAL.—Where a participant or beneficiary obtains items or services in accordance with paragraph (2), the plan or issuer involved shall provide for reimbursement of the costs of such items or services. Such reimbursement shall be made to the treating health care professional or to the participant or beneficiary (in the case of a participant or beneficiary who pays for the costs of such items or services).

''(B) AMOUNT.—The plan or issuer shall fully reimburse a professional, participant or beneficiary under subparagraph (A) for the total costs of the items or services provided (regardless of any plan limitations that may apply to the coverage of such items or services) so long as—

''(i) the items or services would have been covered under the terms of the plan or coverage if provided by the plan or issuer; and

''(ii) the items or services were provided in a manner consistent with the determination of the independent medical reviewer.

''(4) FAILURE TO REIMBURSE.—Where a plan or issuer fails to provide reimbursement to a professional, participant or beneficiary in accordance with this subsection, the professional, participant or beneficiary may commence a civil action (or utilize other remedies available under law) to recover only the amount of any such reimbursement that is unpaid and any necessary legal costs or expenses (including attorneys' fees) incurred in recovering such reimbursement.

''(g) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—

''(1) IN GENERAL.—In referring a denial to 1 or more individuals to conduct independent medical review under subsection (c), the qualified external review entity shall ensure that—

''(A) each independent medical reviewer meets the qualifications described in paragraphs (2) and (3);

''(B) with respect to each review at least 1 such reviewer meets the requirements described in paragraphs (4) and (5); and

''(C) compensation provided by the entity to the reviewer is consistent with paragraph (6).

''(2) LICENSURE AND EXPERTISE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each independent medical reviewer shall be a physician (who may be an allopathic or osteopathic physician) or health care professional who—

''(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

''(ii) typically treats the diagnosis or condition or provides the type of treatment under review.

''(B) PHYSICIAN REVIEW.—In referring a denial for independent medical review under subsection (c), the qualified external review entity shall ensure that, in the case of the review of treatment that is recommended or provided by a physician, such referral may be made only to a physician for such independent medical review.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each independent medical reviewer in a case shall—

''(i) not be a related party (as defined in paragraph (7));

''(ii) not have a material familial, financial, or professional relationship with such a party; and

''(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

''(B) EXCEPTION.—Nothing in this subparagraph (A) shall be construed to—

''(i) prohibit an individual, solely on the basis of affiliation with the plan or issuer, from serving as an independent medical reviewer if—

''(I) a non-affiliated individual is not reasonably available;

''(II) the affiliated individual is not involved in the provision of items or services in the case under review;

''(III) the fact of such an affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative) and neither party objects; and

''(IV) the affiliated individual is not an employee of the plan or issuer and does not provide services exclusively or primarily to or on behalf of the plan or issuer;

''(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer if the affiliation is disclosed to the plan or issuer and the participant or beneficiary (or authorized representative), and neither party objects; or

''(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

''(4) PRACTICING HEALTH CARE PROFESSIONAL IN SAME FIELD.—

''(A) IN GENERAL.—The requirement of this paragraph with respect to a reviewer in a case involving treatment, or the provision of items or services, by—

''(i) a physician, is that the reviewer be a practicing physician of the same or similar specialty as a physician who typically treats the diagnosis or condition or provides such treatment in the case under review; or

''(ii) a health care professional (other than a physician), is that the reviewer be a practicing physician or, if determined appropriate by the qualified external review entity, a health care professional (other than a physician), of the same or similar specialty as the health care professional who typically treats the diagnosis or condition or provides the treatment in the case under review.

''(B) PRACTICING DEFINED.—For purposes of this paragraph, the term 'practicing' means, with respect to an individual who is a physician or other health care professional that the individual provides health care services to individual patients on average at least 1 day per week.

''(5) AGE-APPROPRIATE EXPERTISE.—The independent medical reviewer shall have expertise under paragraph (2) that is age-appropriate to the participant or beneficiary involved.

''(6) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by a qualified external review entity to an independent medical reviewer in connection with a review under this section shall—

''(A) not exceed a reasonable level; and

''(B) not be contingent on the decision rendered by the reviewer.

''(7) RELATED PARTY DEFINED.—For purposes of this section, the term 'related party' means, with respect to a denial of a claim under a plan or coverage relating to a participant or beneficiary, any of the following:

''(A) The plan, plan sponsor, or issuer involved, or any fiduciary, officer, director, or employee of such plan, plan sponsor, or issuer.

''(B) The participant or beneficiary (or authorized representative).

''(C) The health care professional that provides the items of services involved in the denial.

''(D) The institution at which the items or services (or treatment) involved in the denial are provided.

''(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

''(F) Any other party determined under any regulations to have a substantial interest in the denial involved.

''(h) QUALIFIED EXTERNAL REVIEW ENTITIES.—

''(1) SELECTION OF QUALIFIED EXTERNAL REVIEW ENTITIES.—

''(A) LIMITATION ON PLAN OR ISSUER SELECTION.—The Secretary shall implement procedures with respect to the selection of qualified external review entities by a plan or issuer to assure that the selection process among qualified external review entities will not create any incentives for external review entities to make a decision in a biased manner.

''(B) STATE AUTHORITY WITH RESPECT TO QUALIFIED EXTERNAL REVIEW ENTITIES FOR HEALTH INSURANCE ISSUERS.—With respect to health insurance issuers offering health insurance coverage in a State, the State may provide for the designation or selection of qualified external review entities in a manner determined by the State to assure an unbiased determination in conducting external review activities. In conducting reviews under this section, an entity designated or selected under this subparagraph shall comply with provisions of this section.

''(2) CONTRACT WITH QUALIFIED EXTERNAL REVIEW ENTITY.—Except as provided in paragraph (1)(B), the external review process of a plan or issuer under this section shall be conducted under a contract between the plan or issuer and 1 or more qualified external review entities (as defined in paragraph (4)(A)).

''(3) TERMS AND CONDITIONS OF CONTRACT.—The terms and conditions of a contract under paragraph (2) shall—

''(A) be consistent with the standards the Secretary shall establish to assure there is no real or apparent conflict of interest in the conduct of external review activities; and

''(B) provide that the costs of the external review process shall be borne by the plan or issuer.

Subparagraph (B) shall not be construed as applying to the imposition of a filing fee under subsection (b)(2)(A)(iv) or costs incurred by the participant or beneficiary (or authorized representative) or treating health care professional (if any) in support of the review, including the provision of additional evidence or information.

''(4) QUALIFICATIONS.—

''(A) IN GENERAL.—In this section, the term 'qualified external review entity' means, in relation to a plan or issuer, an entity that is

initially certified (and periodically recertified) under subparagraph (C) as meeting the following requirements:

''(i) The entity has (directly or through contracts or other arrangements) sufficient medical, legal, and other expertise and sufficient staffing to carry out duties of a qualified external review entity under this section on a timely basis, including making determinations under subsection (b)(2)(A) and providing for independent medical reviews under subsection (d).

''(ii) The entity is not a plan or issuer or an affiliate or a subsidiary of a plan or issuer, and is not an affiliate or subsidiary of a professional or trade association of plans or issuers or of health care providers.

''(iii) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

''(iv) The entity has provided assurances that it will provide information in a timely manner under subparagraph (D).

''(v) The entity meets such other requirements as the Secretary provides by regulation.

''(B) INDEPENDENCE REQUIREMENTS.—

''(i) IN GENERAL.—Subject to clause (ii), an entity meets the independence requirements of this subparagraph with respect to any case if the entity—

''(I) is not a related party (as defined in subsection (g)(7));

''(II) does not have a material familial, financial, or professional relationship with such a party; and

''(III) does not otherwise have a conflict of interest with such a party (as determined under regulations).

''(ii) EXCEPTION FOR REASONABLE COMPENSATION.—Nothing in clause (i) shall be construed to prohibit receipt by a qualified external review entity of compensation from a plan or issuer for the conduct of external review activities under this section if the compensation is provided consistent with clause (iii).

''(iii) LIMITATIONS ON ENTITY COMPENSATION.—Compensation provided by a plan or issuer to a qualified external review entity in connection with reviews under this section shall—

''(I) not exceed a reasonable level; and

''(II) not be contingent on the decision rendered by the entity or by any independent medical reviewer.

''(C) CERTIFICATION AND RECERTIFICATION PROCESS.—

''(i) IN GENERAL.—The initial certification and recertification of a qualified external review entity shall be made—

''(I) under a process that is recognized or approved by the Secretary; or

''(II) by a qualified private standard-setting organization that is approved by the Secretary under clause (iii).

''(ii) PROCESS.—The Secretary shall not recognize or approve a process under clause (i)(I) unless the process applies standards (as promulgated in regulations) that ensure that a qualified external review entity—

''(I) will carry out (and has carried out, in the case of recertification) the responsibilities of such an entity in accordance with this section, including meeting applicable deadlines;

''(II) will meet (and has met, in the case of recertification) appropriate indicators of fiscal integrity;

''(III) will maintain (and has maintained, in the case of recertification) appropriate confidentiality with respect to individually identifiable health information obtained in the course of conducting external review activities; and

''(IV) in the case recertification, shall review the matters described in clause (iv).

''(iii) APPROVAL OF QUALIFIED PRIVATE STANDARD-SETTING ORGANIZATIONS.—For purposes of clause (i)(II), the Secretary may approve a qualified private standard-setting organization if the Secretary finds that the organization only certifies (or recertifies) external review entities that meet at least the standards required for the certification (or recertification) of external review entities under clause (ii).

''(iv) CONSIDERATIONS IN RECERTIFICATIONS.—In conducting recertifications of a qualified external review entity under this paragraph, the Secretary or organization conducting the recertification shall review compliance of the entity with the requirements for conducting external review activities under this section, including the following:

''(I) Provision of information under subparagraph (D).

''(II) Adherence to applicable deadlines (both by the entity and by independent medical reviewers it refers cases to).

''(III) Compliance with limitations on compensation (with respect to both the entity and independent medical reviewers it refers cases to).

''(IV) Compliance with applicable independence requirements.

''(v) PERIOD OF CERTIFICATION OR RECERTIFICATION.—A certification or recertification provided under this paragraph shall extend for a period not to exceed 5 years.

''(vi) REVOCATION.—A certification or recertification under this paragraph may be revoked by the Secretary or by the organization providing such certification upon a showing of cause.

''(D) PROVISION OF INFORMATION.—

''(i) IN GENERAL.—A qualified external review entity shall provide to the Secretary, in such manner and at such times as the Secretary may require, such information (relating to the denials which have been referred to the entity for the conduct of external review under this section) as the Secretary determines appropriate to assure compliance with the independence and other requirements of this section to monitor and assess the quality of its external review activities and lack of bias in making determinations. Such information shall include information described in clause (ii) but shall not include individually identifiable medical information.

''(ii) INFORMATION TO BE INCLUDED.—The information described in this subclause with respect to an entity is as follows:

''(I) The number and types of denials for which a request for review has been received by the entity.

''(II) The disposition by the entity of such denials, including the number referred to a independent medical reviewer and the reasons for such dispositions (including the application of exclusions), on a plan or issuer-specific basis and on a health care specialty-specific basis.

''(III) The length of time in making determinations with respect to such denials.

''(IV) Updated information on the information required to be submitted as a condition of certification with respect to the entity's performance of external review activities.

''(iii) INFORMATION TO BE PROVIDED TO CERTIFYING ORGANIZATION.—

''(I) IN GENERAL.—In the case of a qualified external review entity which is certified (or recertified) under this subsection by a qualified private standard-setting organization, at the request of the organization, the entity shall provide the organization with the information provided to the Secretary under clause (i).

''(II) ADDITIONAL INFORMATION.—Nothing in this subparagraph shall be construed as preventing such an organization from requiring additional information as a condition of certification or recertification of an entity.

''(iv) USE OF INFORMATION.—

''(I) IN GENERAL.—Information provided under this subparagraph may be used by the Secretary and qualified private standard-setting organizations to conduct oversight of qualified external review entities, including recertification of such entities, and shall be made available to the public in an appropriate manner.

''(II) REPORT TO CONGRESS.—Not later than 2 years after the date on which the Bipartisan Patients' Bill of Rights Act of 2001 takes effect under section 501 of such Act, and every 2 years thereafter, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the appropriate committees of Congress, a report that contains—

''(aa) a summary of the information provided to the Secretary under clause (ii);

''(bb) a description of the effect that the appeals process established under this section and section 503A had on the access of individuals to health insurance and health care;

''(cc) a description of the effect on health care costs associated with the implementation of the appeals process described in item (bb); and

''(dd) a description of the quality and consistency of determinations by qualified external review entities.

''(III) RECOMMENDATIONS.—The Secretary may from time to time submit recommendations to Congress with respect to proposed modifications to the appeals process based on the reports submitted under subclause (II).

''(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes professional services to such entity (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States or of any State (or political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

''(i) DEFINITIONS.—In this section:

''(1) AUTHORIZED REPRESENTATIVE.—The term 'authorized representative' means, with respect to a participant or beneficiary—

''(A) a person to whom a participant or beneficiary has given express written consent to represent the participant or beneficiary in any proceeding under this section;

''(B) a person authorized by law to provide substituted consent for the participant or beneficiary; or

''(C) a family member of the participant or beneficiary (or the estate of the participant or beneficiary) or the participant's or beneficiary's treating health care professional when the participant or beneficiary is unable to provide consent.

''(2) CLAIM FOR BENEFITS.—The term 'claim for benefits' means any request by a participant or beneficiary (or authorized representative) for benefits (including requests that are subject to authorization of coverage or utilization review), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage offered by a health insurance issuer in connection with a group health plan.

''(3) GROUP HEALTH PLAN.—The term 'group health plan' shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(4) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(5) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning given such term in section 733(b)(2).

''(6) PRIOR AUTHORIZATION DETERMINATION.—The term 'prior authorization determination' means a determination by the group health plan or health insurance issuer offering health insurance coverage in connection with a group health plan prior to the provision of the items and services as a condition of coverage of the items and services under the terms and conditions of the plan or coverage.

''(7) TREATING HEALTH CARE PROFESSIONAL.—The term 'treating health care professional' with respect to a group health plan, health insurance issuer or provider sponsored organization means a physician (medical doctor or doctor of osteopathy) or other health care practitioner who is acting within the scope of his or her State licensure or certification for the delivery of health care services and who is primarily responsible for delivering those services to the participant or beneficiary.

''(8) UTILIZATION REVIEW.—The term 'utilization review' with respect to a group health plan or health insurance coverage means procedures used in the determination of coverage for a participant or beneficiary, such as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of health care services, procedures or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 503 the following:

''Sec. 503A. Claims and internal appeals procedures for group health plans.
''Sec. 503B. Independent external appeals procedures for group health plans.''.

SEC. 132. ENFORCEMENT.

Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following:

''(8) The Secretary may assess a civil penalty against any plan of up to $10,000 for the plan's failure or refusal to comply with any deadline applicable under section 503B or any determination under such section, except that in any case in which coverage was not approved by the plan in accordance with the determination of an independent external reviewer, the Secretary shall assess a civil penalty of $10,000 against the plan and the plan shall pay such penalty to the participant or beneficiary involved.''.

Subtitle D—Remedies

SEC. 141. AVAILABILITY OF COURT REMEDIES.

(a) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n) CAUSE OF ACTION RELATING TO DENIAL OF A CLAIM FOR HEALTH BENEFITS.—

''(1) IN GENERAL.—

''(A) FAILURE TO COMPLY WITH EXTERNAL MEDICAL REVIEW.—With respect to an action commenced by a participant or beneficiary (or the estate of the participant or beneficiary) in connection with a claim for benefits under a group health plan, if—

''(i) a designated decision-maker described in paragraph (2) fails to exercise ordinary care in approving coverage pursuant to the written determination of an independent medical reviewer under section 503B(d) that reverses a denial of the claim for benefits; and

''(ii) the failure described in clause (i) is the proximate cause of substantial harm (as defined in paragraph (13)(G)) to the participant or beneficiary;

such designated decision-maker shall be liable to the participant or beneficiary (or the estate) for economic and noneconomic damages in connection with such failure and such injury or death (subject to paragraph (5)).

''(B) WRONGFUL DETERMINATION RESULTING IN DELAY IN PROVIDING BENEFITS.—With respect to an action commenced by a participant or beneficiary (or the estate of the participant or beneficiary) in connection with a claim for benefits under a group health plan, if—

''(i) a designated decision-maker described in paragraph (2)—

''(I) fails to exercise ordinary care in making a determination denying the claim for benefits under section 503A(a) (relating to an initial claim for benefits); or

''(II) fails to exercise ordinary care in making a determination denying the claim for benefits under section 503A(b) (relating to an internal appeal);

''(ii) the denial described in clause (i) is reversed by an independent medical reviewer under section 503B(d), or the coverage for the benefit involved is approved after the denial is referred to the independent medical reviewer but prior to the determination of the reviewer under such section; and

''(iii) the delay attributable to the failure described in clause (i) is the proximate cause of substantial harm to, or the wrongful death of, the participant or beneficiary;

such designated decision-maker shall be liable to the participant or beneficiary (or the estate) for economic and noneconomic damages in connection with such failure and such injury or death (subject to paragraph (5)).

''(C) RELIEF FROM LIABILITY FOR EMPLOYER OR OTHER PLAN SPONSOR BY MEANS OF DESIGNATED DECISIONMAKER.—

''(i) IN GENERAL.—Notwithstanding the direct participation (as defined in paragraph (3)(C)(i)) of an employer or plan sponsor, in any case in which there is deemed to be a designated decisionmaker under clause (ii) that meets the requirements of paragraph (2)(A) for an employer or other plan sponsor—

''(I) all liability of such employer or plan sponsor (and any employee thereof acting within the scope of employment) under this subsection in connection with any participant or beneficiary shall be transferred to, and assumed by, the designated decisionmaker, and

''(II) with respect to such liability, the designated decisionmaker shall be substituted for the employer or plan sponsor (or employee) in the action and may not raise any defense that the employer or plan sponsor (or employee) could not raise if such a decisionmaker were not so deemed.

''(ii) AUTOMATIC DESIGNATION.—A health insurance issuer shall be deemed to be a designated decisionmaker for purposes of clause (i) with respect to the participants and beneficiaries of an employer or plan sponsor, whether or not the employer or plan sponsor makes such a designation, and shall be deemed to have assumed unconditionally all liability of the employer or plan sponsor under such designation in accordance with paragraph (2), unless the employer or plan sponsor affirmatively enters into a contract to prevent the service of the designated decisionmaker. The deeming of a designated decisionmaker under this clause shall not affect the liability of the appointing employer or plan sponsor for the failure of the employer or plan sponsor to comply with any other requirement of this title.

''(D) PREVENTION OF DUPLICATION OF ACTION WITH ACTION UNDER STATE LAW.—No action may be brought under this subsection based upon facts and circumstances if a cause of action under State law is brought based upon the same facts and circumstances.

''(E) APPLICATION TO CERTAIN PLANS.—

''(i) IN GENERAL.—Notwithstanding any other provision of this subsection, no group health plan described in clause (ii) shall be liable under this paragraph for the performance of, or the failure to perform, any nonmedically reviewable duty under the plan.

''(ii) DEFINITION.—A group health plan described in this clause is—

''(I) a group health plan that is self-insured and self administered by an employer (including an employee of such an employer acting within the scope of employment); or

''(II) a multiemployer plan as defined in section 3(37)(A) (including an employee of a contributing employer or of the plan, or a fiduciary of the plan, acting within the scope of employment or fiduciary responsibility) that is self-insured and self-administered.

''(2) REQUIREMENTS FOR DESIGNATED DECISIONMAKERS OF GROUP HEALTH PLANS.—

''(A) IN GENERAL.—For purposes of this subsection and section 514(c)(3), a designated decisionmaker meets the requirements of this subparagraph with respect to any participant or beneficiary if—

''(i) such designation is in such form as may be prescribed in regulations of the Secretary,

''(ii) the designated decisionmaker—

''(I) meets the requirements of subparagraph (B),

''(II) assumes unconditionally all liability of the employer or plan sponsor involved (and any employee thereof acting within the scope of employment) either arising under this subsection or arising in a cause of action permitted under section 514(c) in connection with actions (and failures to act) of the employer or plan sponsor (or employee) occurring during the period in which the designation under paragraph (1)(C) or section 514(c)(3) is in effect relating to such participant and beneficiary,

''(III) agrees to be substituted for the employer or plan sponsor (or employee) in the action and not to raise any defense with respect to such liability that the employer or plan sponsor (or employee) may not raise, and

''(IV) where subparagraph (B)(ii) applies, assumes unconditionally the exclusive authority under the group health plan to make medically reviewable decisions under the plan with respect to such participant or beneficiary, and

''(iii) the designated decisionmaker and the participants and beneficiaries for whom the decisionmaker has assumed liability are identified in the written instrument required under section 402(a) and as required under section 121 of the Bipartisan Patients' Bill of Rights Act of 2001.

Any liability assumed by a designated decisionmaker pursuant to this subsection shall be in addition to any liability that it may otherwise have under applicable law.

''(B) QUALIFICATIONS FOR DESIGNATED DECISIONMAKERS.—

''(i) IN GENERAL.—Subject to clause (ii), an entity is qualified under this subparagraph to serve as a designated decisionmaker with respect to a group health plan if the entity has the ability to assume the liability described in subparagraph (A) with respect to participants and beneficiaries under such plan, including requirements relating to the financial obligation for timely satisfying the assumed liability, and maintains with the plan sponsor and the Secretary certification of such ability. Such certification shall be provided to the plan sponsor or named fiduciary and to the Secretary upon designation under paragraph (1)(C) or section 514(c)(3)(B) and not less frequently than annually thereafter, or if such designation constitutes a multiyear arrangement, in conjunction with the renewal of the arrangement.

''(ii) SPECIAL QUALIFICATION IN THE CASE OF CERTAIN REVIEWABLE DECISIONS.—In the case of a group health plan that provides benefits consisting of medical care to a participant or beneficiary only through health insurance coverage offered by a single health insurance issuer, such issuer is the only entity that may be qualified under this subparagraph to serve as a designated decisionmaker with respect to such participant or beneficiary, and shall serve as the designated decisionmaker unless the employer or other plan sponsor acts affirmatively to prevent such service.

''(C) REQUIREMENTS RELATING TO FINANCIAL OBLIGATIONS.—For purposes of subparagraph (B)(ii), the requirements relating to the financial obligation of an entity for liability shall include—

''(i) coverage of such entity under an insurance policy or other arrangement, secured and maintained by such entity, to effectively insure such entity against losses arising from professional liability claims, including those arising from its service as a designated decisionmaker under this paragraph; or

''(ii) evidence of minimum capital and surplus levels that are maintained by such entity to cover any losses as a result of liability arising from its service as a designated decisionmaker under this paragraph.

The appropriate amounts of liability insurance and minimum capital and surplus levels for purposes of clauses (i) and (ii) shall be determined by an actuary using sound actuarial principles and accounting practices pursuant to established guidelines of the American Academy of Actuaries and in accordance with such regulations as the Secretary may prescribe and shall be maintained throughout the term for which the designation is in effect. The provisions of this subparagraph shall not apply in the case of a designated decisionmaker that is a group health plan, plan sponsor, or health insurance issuer and that is regulated under Federal law or a State solvency law.

''(D) LIMITATION ON APPOINTMENT OF TREATING PHYSICIANS.—A treating physician who directly delivered the care, treatment, or provided the patient service that is the subject of a cause of action by a participant or beneficiary under this subsection or section 514(c) may not be designated as a designated decisionmaker under this subsection with respect to such participant or beneficiary.

''(3) EXCLUSION OF EMPLOYERS AND OTHER PLAN SPONSORS.—

''(A) CAUSES OF ACTION AGAINST EMPLOYERS AND PLAN SPONSORS PRECLUDED.—Subject to subparagraph (B), paragraph (1) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan (or against an employee of such an employer or sponsor acting within the scope of employment).

''(B) CERTAIN CAUSES OF ACTION PERMITTED.—Notwithstanding subparagraph (A), a cause of action may arise, subject to the requirements and limitations of paragraph (1), against an employer or other plan sponsor (or against an employee of such an employer or sponsor acting within the scope of employment) to the extent there was direct participation by the employer or other plan sponsor (or employee) in the decision of the plan under section 503A upon consideration of a claim for benefits or under section 103 of such Act upon review of a denial of a claim for benefits.

''(C) DIRECT PARTICIPATION.—

''(i) IN GENERAL.—For purposes of subparagraph (B), the term 'direct participation' means, in connection with a decision described in paragraph (1), the actual making of such decision or the actual exercise of control in making such decision.

''(ii) RULES OF CONSTRUCTION.—For purposes of clause (i), the employer or plan sponsor (or employee) shall not be construed to be engaged in direct participation because of any form of decisionmaking or other conduct that is merely collateral or precedent to the decision described in paragraph (1) on a particular claim for benefits of a participant or beneficiary, including (but not limited to)—

''(I) any participation by the employer or other plan sponsor (or employee) in the selection of the group health plan or health insurance coverage involved or the third party administrator or other agent;

''(II) any engagement by the employer or other plan sponsor (or employee) in any cost-benefit analysis undertaken in connection with the selection of, or continued maintenance of, the plan or coverage involved;

''(III) any participation by the employer or other plan sponsor (or employee) in the process of creating, continuing, modifying, or terminating the plan or any benefit under the plan, if such process was not substantially focused solely on the particular situation of the participant or beneficiary referred to in paragraph (1); and

''(IV) any participation by the employer or other plan sponsor (or employee) in the design of any benefit under the plan, including the amount of copayment and limits connected with such benefit.

''(iv) IRRELEVANCE OF CERTAIN COLLATERAL EFFORTS MADE BY EMPLOYER OR PLAN SPONSOR.—For purposes of this subparagraph, an employer or plan sponsor shall not be treated as engaged in direct participation in a decision with respect to any claim for benefits or denial thereof in the case of any particular participant or beneficiary solely by reason of—

''(I) any efforts that may have been made by the employer or plan sponsor to advocate for authorization of coverage for that or any other participant or beneficiary (or any group of participants or beneficiaries), or

''(II) any provision that may have been made by the employer or plan sponsor for benefits which are not covered under the terms and conditions of the plan for that or any other participant or beneficiary (or any group of participants or beneficiaries).

''(4) REQUIREMENT OF EXHAUSTION OF INDEPENDENT MEDICAL REVIEW.—

''(A) IN GENERAL.—Paragraph (1) shall apply only if a final determination denying a claim for benefits under section 503A has been referred for independent medical review under section 503B(d) of such Act and a written determination by an independent medical reviewer to reverse such final determination has been issued with respect to such review or where the coverage for the benefit involved is approved after the denial is referred to the independent medical reviewer but prior to the determination of the reviewer under such section.

''(B) EXCEPTION TO EXHAUSTION FOR NEEDED CARE.—A participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 503A or 503B (as required under subparagraph (A)) if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under sections 503A or 503B in such case, or that are made in such case while an action under this subparagraph is pending, shall be given due consideration by the court in any action under this subsection in such case. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available under—

''(i) paragraph (1), with respect to a participant or beneficiary, unless the requirements of subparagraph (A) are met; or

''(ii) subsection (q) unless the requirements of such subsection are met.

''(C) LATE MANIFESTATION OF INJURY.—

''(i) IN GENERAL.—A participant or beneficiary shall not be precluded from pursuing a review under section 503B regarding an injury that such participant or beneficiary has experienced if the external review entity first determines that the injury of such participant or beneficiary is a late manifestation of an earlier injury.

''(ii) DEFINITION.—In this subparagraph, the term 'late manifestation of an earlier injury' means an injury sustained by the participant or beneficiary which was not known, and should not have been known, by such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied.

''(D) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under this subsection in connection with such claim.

''(E) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 503A shall be admissible in any Federal court proceeding and shall be presented to the trier of fact.

''(F) FAILURE TO REVIEW.—

''(i) IN GENERAL.—If the external review entity fails to make a determination within the time required under section 503B, a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 503B.

''(ii) EXPEDITED DETERMINATION.—If the external review entity fails to make a determination within the time required under section 503B, a participant or beneficiary may bring an action under this subsection and the filing of such an action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 503B.

''(5) LIMITATIONS ON RECOVERY OF DAMAGES.—

''(A) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—The aggregate amount of liability for noneconomic loss in an action under paragraph (1) may not exceed the greater of—

''(i) $750,000; or

''(ii) an amount equal to 3 times the amount awarded for economic loss.

''(B) INCREASE IN AMOUNT.—The amount referred to in subparagraph (A)(i) shall be increased or decreased, for each calendar year that ends after December 31, 2002, by the same percentage as the percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2002.

''(C) SEVERAL LIABILITY.—In the case of any action commenced pursuant to paragraph (1), the designated decision-maker shall be liable only for the amount of noneconomic damages attributable to such designated decision-maker in direct proportion to such decision-maker's share of fault or responsibility for the injury suffered by the participant or beneficiary. In all such cases, the liability of a designated decision-maker for noneconomic damages shall be several and not joint.

''(D) TREATMENT OF COLLATERAL SOURCE PAYMENTS.—

''(i) IN GENERAL.—In the case of any action commenced pursuant to paragraph (1), the total amount of damages received by a participant or beneficiary under such action shall be reduced, in accordance with clause (ii), by any other payment that has been, or will be, made to such participant or beneficiary, pursuant to an order or judgment of another court, to compensate such participant or beneficiary for the injury that was the subject of such action.

''(ii) AMOUNT OF REDUCTION.—The amount by which an award of damages to a participant or beneficiary for an injury shall be reduced under clause (i) shall be—

''(I) the total amount of any payments (other than such award) that have been made or that will be made to such participant or beneficiary to pay costs of or compensate such participant or beneficiary for the injury that was the subject of the action; less

''(II) the amount paid by such participant or beneficiary (or by the spouse, parent, or legal guardian of such participant or beneficiary) to secure the payments described in subclause (I).

''(iii) DETERMINATION OF AMOUNTS FROM COLLATERAL SOURCES.—The reduction required under clause (ii) shall be determined by the court in a pretrial proceeding. At the subsequent trial no evidence shall be admitted as to the amount of any charge, payments, or damage for which a participant or beneficiary—

''(I) has received payment from a collateral source or the obligation for which has been assured by a third party; or

''(II) is, or with reasonable certainty, will be eligible to receive from a collateral source which will, with reasonable certainty, be assumed by a third party.

''(E) PROHIBITION OF AWARD OF PUNITIVE DAMAGES.—Notwithstanding any other provision of law, in the case of any action commenced pursuant to paragraph (1), the court may not award any punitive, exemplary, or similar damages against a defendant.

''(6) AFFIRMATIVE DEFENSES.—In the case of any cause of action under paragraph (1), it shall be an affirmative defense that—

''(A) the designated decision-maker of a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, involved did not receive from the participant or beneficiary (or authorized representative) or the treating health care professional (if any), the information requested by the plan or issuer regarding the medical condition of the participant or beneficiary that was necessary to make a determination on a claim for benefits under section 503A or a final determination on a claim for benefits under section 503A;

''(B) the participant or beneficiary (or authorized representative)—

''(i) was in possession of facts that were sufficient to enable the participant or beneficiary (or authorized representative) to know that an expedited review under sections 503A or 503B would have prevented the harm that is the subject of the action; and

''(ii) failed to notify the plan or issuer of the need for such an expedited review; or

''(C) the qualified external review entity or an independent medical reviewer failed to meet the timelines applicable under section 503B, or a period of time elapsing after coverage has been authorized.

Nothing in this paragraph shall be construed to limit the application of any other affirmative defense that may be applicable to the cause of action involved.

''(7) WAIVER OF INTERNAL REVIEW.—In the case of any cause of action under paragraph (1), the waiver or nonwaiver of internal review under section 503A by the group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall not be used in determining liability.

''(8) LIMITATIONS ON ACTIONS.—Paragraph (1) shall not apply in connection with any action that is commenced more than 3 years after the date on which the failure described in paragraph (1) occurred.

''(9) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan's administration or determination of a claim for benefits (as such term is defined in section 503A and notwithstanding the definition contained in paragraph (13)(B)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.

''(10) CONSTRUCTION.—Nothing in this subsection shall be construed as authorizing a cause of action under paragraph (1) for the failure of a group health plan or health insurance issuer to provide an item or service that is specifically excluded under the plan or coverage.

''(11) PREVIOUSLY PROVIDED SERVICES.—

''(A) IN GENERAL.—Except as provided in this paragraph, a cause of action shall not arise under paragraph (1) where the denial involved relates to an item or service that has already been fully provided to the participant or beneficiary under the plan or coverage and the claim relates solely to the subsequent denial of payment for the provision of such item or service.

''(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

''(i) prohibit a cause of action under paragraph (1) where the nonpayment involved results in the participant or beneficiary being unable to receive further items or services that are directly related to the item or service involved in the denial referred to in subparagraph (A) or that are part of a continuing treatment or series of procedures;

''(ii) prohibit a cause of action under paragraph (1) relating to quality of care; or

''(iii) limit liability that otherwise would arise from the provision of the item or services or the performance of a medical procedure.

''(12) EXEMPTION FROM PERSONAL LIABILITY FOR INDIVIDUAL MEMBERS OF BOARDS OF DIRECTORS, JOINT BOARDS OF TRUSTEES, ETC.—Any individual who is—

''(A) a member of a board of directors of an employer or plan sponsor; or

''(B) a member of an association, committee, employee organization, joint board of trustees, or other similar group of representatives of the entities that are the plan sponsor of plan maintained by two or more employers and one or more employee organizations;

shall not be personally liable under this subsection for conduct that is within the scope of employment of the individuals unless the individual acts in a fraudulent manner for personal enrichment.

''(13) DEFINITIONS.—In this subsection:

''(A) AUTHORIZED REPRESENTATIVE.—The term 'authorized representative' has the meaning given such term in section 503A.

''(B) CLAIM FOR BENEFITS.—Except as provided for in paragraph (9), the term 'claim for benefits' shall have the meaning given such term in section 503A, except that such term shall only include claims for which prior authorization is required.

''(C) GROUP HEALTH PLAN.—The term 'group health plan' shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(D) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(E) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning given such term in section 733(b)(2).

''(F) ORDINARY CARE.—The term 'ordinary care' means the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in making a determination on a claim for benefits of a similar character.

''(G) SUBSTANTIAL HARM.—The term 'substantial harm' means the loss of life, loss or significant impairment of limb or bodily function, significant mental illness or disease, significant disfigurement, or severe and chronic physical pain.''.

(b) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR FAILURE TO PROVIDE A PLAN BENEFIT NOT ELIGIBLE FOR MEDICAL REVIEW.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsection (a), is further amended by adding at the end the following:

''(o) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR FAILURE TO PROVIDE A PLAN BENEFIT NOT ELIGIBLE FOR MEDICAL REVIEW.—In connection with any action maintained under subsection (a)(1)(B), the court, in its discretion, may assess a civil penalty against the designated decision-maker (as designated pursuant to section 502(n)(2)) of a group health plan or a health insurance issuer (that offers health insurance coverage in connection with a group health plan) of not to exceed $100,000 where—

''(1) in its final determination under section 503A, the designated decision-maker fails to provide, or authorize coverage of, a benefit to which a participant or beneficiary is entitled under the terms and conditions of the plan;

''(2) the participant or beneficiary has appealed such determination under section 503B and such determination is not subject to independent medical review as determined by a qualified external review entity under section 503B;

''(3) the plan has failed to exercise ordinary care in making a final determination under section 503A denying a claim for benefits under the plan; and

''(4) that denial is the proximate cause of substantial harm (as defined in subsection (n)(10)(G)) the participant or beneficiary.''.

(c) LIMITATION ON CERTAIN CLASS ACTION LITIGATION.—

(1) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsections (a) and (c), is further amended by adding at the end the following:

''(p) LIMITATION ON CLASS ACTION LITIGATION.—

''(1) CLAIMS UNDER THIS SECTION.—

''(A) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by another class, derivative claimant, or group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms 'group health plan' and 'health insurance coverage' have the meanings given such terms in section 733.

''(B) EFFECTIVE DATE.—This paragraph shall apply to all civil actions that are filed on or after the date of enactment of the Bipartisan Patient Protection Act. This paragraph shall apply to civil actions that are pending and have not been finally determined by judgment or settlement prior to such date of enactment.

''(2) NO APPLICATION OF RICO.—

''(A) IN GENERAL.—Any action that seeks relief under 1964(c) of title 18, United States Code, concerning the manner in which any person has marketed, provided information concerning, established, administered, or otherwise operated a group health plan, or health insurance coverage in connection with a group health plan. Any such action shall only be brought under the Employee Retirement Income Security Act of 1974. In this paragraph, the terms 'group health plan' and 'health insurance issuer' shall have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

''(B) EFFECTIVE DATE.—Subparagraph (A) shall apply to civil actions that are pending and have not been finally determined by judgment or settlement prior to the date of enactment of the Bipartisan Patient Protection Act and all actions commenced on or after such date.''.

(d) CONFORMING AMENDMENT.—Section 502(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(1)(A)) is amended by inserting ''or (n)'' after ''subsection (c)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to acts and omissions (from which a cause of action arises) occurring on or after October 1, 2002.

Subtitle E—State Flexibility

SEC. 151. PREEMPTION; STATE FLEXIBILITY; CONSTRUCTION.

(a) LIMITATION ON PREEMPTION OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

(1) IN GENERAL.—Subject to paragraph (2)—

(A) subtitles A and B of shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers (in connection with group health plans or individual health insurance coverage) and to non-Federal governmental plans except to the extent that such standard or requirement prevents the application of a requirement of such subtitles; and

(B) the amendments made by subtitle C shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual health insurance coverage and to non-Federal governmental plans except to the extent that such standard or requirement prevents the application of a requirement of such amendments.

(2) CONTINUED PREEMPTION WITH RESPECT TO GROUP HEALTH PLANS.—Nothing in this title shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to group health plans.

(b) CONTINUED APPLICATION OF CERTAIN STATE LAWS.—

(1) REQUIREMENTS FOR CONTINUED APPLICATION.—

(A) GENERAL RULE.—With respect to a State law described in subparagraph (B), in applying the requirements of subtitles A and B to health insurance issuers under sections 2707 and 2753 (as applicable) of the Public Health Service Act (as added by title II), or health insurance issuers in connection with group health plans under section 714 of the Employee Retirement Income Security Act of 1974 (as added by title III), subject to subsection (a)(2)—

(i) the State law shall not be treated as being superseded under subsection (a); and

(ii) the State law shall apply in lieu of the patient protection requirements otherwise applicable under such subtitles with respect to health insurance issuers (in connection with group health plans or individual health insurance coverage) and non-Federal governmental plans.

(B) STATE LAW DESCRIBED.—A State law described in this subparagraph is a State law that imposes, with respect to health insurance issuers (in connection with group health plans or individual health insurance coverage) and to non-Federal governmental plans, a requirement that is approved by the Secretary (through a certification under subsection (c)(4)) as being consistent with a patient protection requirement (as defined in paragraph (3)).

(2) LIMITATION.—In the case of a group health plan covered under title I of the Employee Retirement Income Security Act of 1974, paragraph (1) shall be construed to apply only with respect to the health insurance coverage (if any) offered in connection with the plan.

(3) PATIENT PROTECTION REQUIREMENT DEFINED.—For purposes of this section, the term ''patient protection requirement'' means any one or more requirements under the following:

(A) Section 101 (relating to access to emergency care).

(B) Section 102 (relating to consumer choice option) with respect to non-Federal governmental plans only.

(C) Section 103 (relating to patient access to obstetrical and gynecological care).

(D) Section 104 (relating to access to pediatric care).

(E) Section 105 (relating to timely access to specialists).

(F) Section 106 (relating to continuity of care), but only insofar as a replacement issuer assumes the obligation for continuity of care.

(G) Section 108 (relating to access to needed prescription drugs).

(H) Section 109 (relating to coverage for individuals participating in approved clinical trials).

(I) Section 110 (relating to required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations).

(J) A prohibition under—

(i) section 107 (relating to prohibition of interference with certain medical communications); and

(ii) section 111 (relating to prohibition of discrimination against providers based on licensure).

(K) An informational requirement under section 121.

(c) DETERMINATIONS WITH RESPECT TO CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of the continued application of certain State laws under subsection (b)(1), a State may, on or after May 1, 2002, submit to the Board established under subsection (d) a certification that the State law involved is consistent with those patient protections requirements (as defined in subsection (b)(3)) that are covered under the law for which the State is seeking a certification. Such certification shall be accompanied by such information as may be required to permit the Board to make the determination described in paragraph (3), as applicable.

(2) ACTION BY BOARD.—

(A) IN GENERAL.—The Board shall promptly review a certification submitted under paragraph (1) with respect to a State law to make the determination required under paragraph (3) with respect to the certification.

(B) APPROVAL DEADLINES.—

(i) INITIAL REVIEW.—Not later than 60 days after the date on which the Board receives a certification under paragraph (1), the Board shall—

(I) notify the State involved that specified additional information is needed to make the determination described in paragraph (3); or

(II) submit a recommendation to the Secretary concerning the approval or disapproval (and the reasons therefore) of the certification.

(ii) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Board under clause (i)(I) that specified additional information is needed to make the determination described in paragraph (3), the Board shall make the submission required under clause (i)(II) within 60 days after the date on which such specified additional information is requested by the Board.

(3) DETERMINATION.—The Board shall recommend that the Secretary approve or disapprove a certification submitted under paragraph (1)(A). The Board shall recommend the approval of a certification under this subparagraph unless the Board finds that there is no reasonable basis or evidence for such approval.

(4) REVIEW BY SECRETARY.—

(A) IN GENERAL.—The recommendation by the Board to approve or disapprove a certification submitted by a State under paragraph (1) is considered to be approved by the Secretary unless the Secretary notifies the State in writing, within 30 days after the date on which the Board submits its recommendation to the Secretary under paragraph (2) concerning such certification, that the certification is approved or disapproved (and the reasons for the approval or disapproval).

(B) DEFERENCE TO STATES.—The recommendation of the Board to approve a certification submitted under paragraph (1) shall be approved by the Secretary unless

the Secretary finds that there is no reasonable basis or there is insufficient evidence for approving the certification.

(C) NOTICE.—

(i) STATE NOTIFICATION.—The Secretary shall provide a State with written notice of the determination of the Secretary to approve or disapprove the certification submitted by the State under paragraph (1) within 30 days after the date on which the Board submits its recommendation to the Secretary under paragraph (2) concerning such certification.

(ii) PUBLIC NOTIFICATION.—The Secretary shall publish each notice provided under clause (i) in the Federal Register and as otherwise determined appropriate by the Secretary (including the Internet) to inform the general public. The Secretary shall annually publish (in accordance with the preceding sentence) the status of all States with respect to certifications.

(5) STATE CHALLENGE.—A State that has a certification disapproved by the Secretary under paragraph (4) may challenge such disapproval in the appropriate United States district court. The court shall make a de novo determination with respect to a challenge brought under this paragraph.

(6) TERMINATION OF CERTIFICATION.—

(A) IN GENERAL.—The Secretary, not more frequently than once every 5 years, may request that a State with respect to which a certification has been approved under paragraph (4), submit an assurance to the Secretary that with respect to a certification, the State law involved has not been—

(i) repealed; or

(ii) modified to such an extent that such law is no longer consistent with a patient protection requirement under this title.

(B) TERMINATION.—If a State fails to submit an assurance to the Secretary under subparagraph (A) within the 60-day period beginning on the date on which the Secretary makes a request for such an assurance, the certification applicable to the State under this section shall terminate.

(7) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a State from submitting more than one certification under paragraph (1).

(8) PETITIONS BY PLANS OR ISSUERS.—

(A) PETITION PROCESS.—Effective on the date on which the provisions of this Act become effective, as provided for in section 501, a group health plan or health insurance issuer may submit a petition to the Secretary for a determination as to whether or not a standard or requirement under a State law applicable to the plan or issuer, that is not the subject of a certification under subsection (c), is superseded under subsection (a)(1) because such standard or requirement prevents the application of a requirement of this title.

(B) APPROVAL.—The Secretary shall issue a determination with respect to a petition submitted under subparagraph (A) within the 60-day period beginning on the date on which such petition is submitted.

(d) PATIENTS' PROTECTION BOARD.—

(1) ESTABLISHMENT OF BOARD.—

(A) IN GENERAL.—There is hereby established in the Department of Health and Human Services a Patients' Protection Board. Consistent with the requirements of sections 5 and 10 of the Federal Advisory Committee Act, the Board shall carry out the duties described in paragraph (2).

(B) COMPOSITION.—The Board shall be composed of 13 members appointed by the Secretary with balanced representation from among individuals who represent consumers, employers, health professionals, health insurance issuers, and officials of State government. Members shall first be appointed to the Board not later than May 1, 2002.

(C) TERMS.—The terms of the members of the Board shall be for 3 years except that for the members first appointed the Secretary shall designate staggered terms of 3 years for 2 members, 2 years for 2 members, and 1 year for 1 member. A vacancy on the Board shall be filled in the same manner in which the original appointment was made and a member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(2) DUTIES.—

(A) REVIEW OF CERTIFICATIONS SUBMITTED.—The Board shall review certifications submitted under subsection (c) and make recommendations to the Secretary of Health and Human Services as provided for in such subsection.

(B) ANNUAL CONGRESSIONAL REPORTS.—

(i) IN GENERAL.—The Board shall submit to Congress an annual report on its activities. Each such report shall include the findings of the Board as to—

(I) the States that have failed to obtain a certification under subsection (c); and

(II) whether the enforcement role of the Federal Government with respect to health insurance has substantially expanded.

(ii) INITIAL REPORT.—The first annual report under clause (i) shall focus specifically on the development by the Board of criteria for the evaluation of State laws and any other activities of the Board during its first year of operation.

(e) DEFINITIONS.—For purposes of this section:

(1) BOARD.—The term ''Board'' means the Patients' Protection Board established under subsection (d).

(2) STATE, STATE LAW.—The terms ''State'' and ''State law'' shall have the meanings given such terms in section 2723(d) of the Public Health Service Act (42 U.S.C. 300gg–23(d)).

Subtitle F—Miscellaneous Provisions

SEC. 161. DEFINITIONS.

(a) INCORPORATION OF GENERAL DEFINITIONS.—Except as otherwise provided, the provisions of section 2791 of the Public Health Service Act shall apply for purposes of this title in the same manner as they apply for purposes of title XXVII of such Act.

(b) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Health and Human Services, in consultation with the Secretary of Labor.

(c) ADDITIONAL DEFINITIONS.—For purposes of this title:

(1) ENROLLEE.—The term ''enrollee'' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

(2) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification.

(3) HEALTH CARE PROVIDER.—The term ''health care provider'' includes a physician or other health care professional, as well as an institutional or other facility or agency that provides health care services and that is licensed, accredited, or certified to provide health care items and services under applicable State law.

(4) NETWORK.—The term ''network'' means, with respect to a group health plan or health insurance issuer offering health insurance coverage, the participating health care professionals and providers through whom the plan or issuer provides health care items and services to participants, beneficiaries, or enrollees.

(5) NONPARTICIPATING.—The term ''nonparticipating'' means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that is not a participating health care provider with respect to such items and services.

(6) PARTICIPATING.—The term ''participating'' means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage offered by a health insurance issuer, a health care provider that furnishes such items and services under a contract or other arrangement with the plan or issuer.

(7) PRIOR AUTHORIZATION.—The term ''prior authorization'' means the process of obtaining prior approval from a health insurance issuer or group health plan for the provision or coverage of medical services.

(8) TERMS AND CONDITIONS.—The term ''terms and conditions'' includes, with respect to a group health plan or health insurance coverage, requirements imposed under this title with respect to the plan or coverage.

TITLE II—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

SEC. 201. APPLICATION TO CERTAIN HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

''SEC. 2707. PATIENT PROTECTION STANDARDS AND ACCOUNTABILITY.

''(a) IN GENERAL.—Each health insurance issuer shall comply with the patient protection requirements under title I of the Bipartisan Patients' Bill of Rights Act of 2001 with respect to non-Federal governmental group health insurance coverage offered by such issuers, and such requirements shall be deemed to be incorporated into this section.

''(b) ACCOUNTABILITY.—The provisions of sections 503 through 503B of the Employee Retirement Income Security Act of 1974 (as in effect as of the day after the date of enactment of the Bipartisan Patients' Bill of Rights Act of 2001) shall apply to non-Federal governmental group health insurance coverage offered by health insurance issuers with respect to an enrollee in the same manner as they apply to health insurance coverage offered by a health insurance issuer for a participant or beneficiary in connection with a group health plan and the requirements referred to in such sections shall be deemed to be incorporated into this section. For purposes of this subsection, references in such sections 503 through 503B to the Secretary shall be deemed to be references to the Secretary of Health and Human Services.''.

(b) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of such Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting ''(other than section 2707)'' after ''requirements of such subparts''.

SEC. 202. APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.

Part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended—

(1) by redesignating the first subpart 3 (relating to other requirements) as subpart 2; and

(2) by inserting after section 2752 the following:

''SEC. 2753. PATIENT PROTECTION STANDARDS AND ACCOUNTABILITY.

''(a) IN GENERAL.—Each health insurance issuer shall comply with the patient protection requirements under subtitles A and B of title I of the Bipartisan Patients' Bill of Rights Act of 2001 with respect to individual health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this section.''.

''(b) ACCOUNTABILITY.—The provisions of sections 503 through 503B of the Employee Retirement Income Security Act of 1974 (as in effect as of the day after the date of enactment of the Bipartisan Patients' Bill of Rights Act of 2001) shall apply to health insurance coverage offered by a health insurance issuer in the individual market with respect to an enrollee in the same manner as they apply to health insurance coverage offered by a health insurance issuer for a participant or beneficiary in connection with a group health plan and the requirements referred to in such sections shall be deemed to be incorporated into this section. For purposes of this subsection, references in such sections 503 through 503B to the Secretary shall be deemed to be references to the Secretary of Health and Human Services.''.

SEC. 203. LIMITATION ON AUTHORITY OF THE SECRETARY OF HEALTH AND HUMAN SERVICES WITH RESPECT TO NON-FEDERAL GOVERNMENTAL PLANS.

Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22(b)) is amended—

(1) in paragraph (1), by striking ''only—'' and all that follows through the period and inserting ''only as provided under subsection (a)(2).''; and

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''any non-Federal governmental plan that is a group health plan and''; and

(B) in subparagraph (B), by striking ''by—'' and all that follows through the period and inserting ''by a health insurance issuer, the issuer is liable for such penalty.''.

SEC. 204. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Part C of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–91 et seq.) is amended by adding at the end the following:

''SEC. 2793. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

''(a) AGREEMENT WITH STATES.—A State may enter into an agreement with the Secretary for the delegation to the State of some or all of the Secretary's authority under this title to enforce the requirements applicable under title I of the Bipartisan Patients's Bill of Rights Act of 2001 to health insurance issuers in connection with non-Federal governmental plans and individual health insurance coverage.

''(b) DELEGATIONS.—Any department, agency, or instrumentality of a State to which authority is delegated pursuant to an agreement entered into under this section may, if authorized under State law and to the extent consistent with such agreement, exercise the powers of the Secretary under this title which relate to such authority.''.

TITLE III—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is further amended by adding at the end the following new section:

''SEC. 714. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall comply with the requirements of title I of the Bipartisan Patients' Bill of Rights Act of 2001 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this subsection.

''(b) PLAN SATISFACTION OF CERTAIN REQUIREMENTS.—

''(1) SATISFACTION OF CERTAIN REQUIREMENTS THROUGH INSURANCE.—For purposes of subsection (a), insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the following requirements of title I of the Bipartisan Patients' Bill of Rights Act of 2001 with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not cause such failure by the issuer:

''(A) Section 101 (relating to access to emergency care).

''(B) Section 102 (relating to consumer choice option).

''(C) Section 103 (relating to patient access to obstetrical and gynecological care).

''(D) Section 104 (relating to access to pediatric care).

''(E) Section 105 (relating to timely access to specialists).

''(F) Section 106 (relating to continuity of care), but only insofar as a replacement issuer assumes the obligation for continuity of care.

''(G) Section 108 (relating to access to needed prescription drugs).

''(H) Section 109 (relating to coverage for individuals participating in approved clinical trials).

''(I) Section 110 (relating to required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations).

''(J) Section 121 (relating to the provision of information).

''(2) APPLICATION TO PROHIBITIONS.—Pursuant to rules of the Secretary, if a health insurance issuer offering health insurance coverage in connection with a group health plan takes an action in violation of any of the following sections of the Bipartisan Patients' Bill of Rights Act of 2001, the group health plan shall not be liable for such violation unless the plan caused such violation:

''(A) Section 107 (relating to prohibition of interference with certain medical communications).

''(B) Section 111 (relating to prohibition of discrimination against providers based on licensure).

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to affect or modify the responsibilities of the fiduciaries of a group health plan under part 4 of subtitle B.

''(4) TREATMENT OF CONSISTENT STATE LAWS.—For purposes of applying this subsection, a health insurance issuer offering coverage in connection with a group health plan (and such group health plan) shall be deemed to be in compliance with one or more of the patient protection requirements of the Bipartisan Patients' Bill of Rights Act of 2001 (as defined in section 151(b)(3) of such Act) that are otherwise applicable to such issuer (or plan) under this section where—

''(A) the issuer (or plan) is in compliance with a State law, with respect to the patient protection requirements involved, that has been certified in accordance with section 151(c) of such Act; or

''(B) the issuer (or plan) is in compliance with a State law, with respect to the patient protection requirements involved, that has been determined by the Secretary as not preventing the application of the patient protection requirements involved, in accordance with section 151(c)(8)(B) of such Act.

''(c) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements on group health plans and health insurance issuers under this section with the requirements imposed under the other provisions of this title.''.

(b) SATISFACTION OF ERISA CLAIMS PROCEDURE REQUIREMENT.—Section 503 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1133) is amended—

(1) by inserting ''(a)'' after ''SEC. 503.''; and

(2) by adding at the end the following:

''(b) In the case of a group health plan (as defined in section 733) compliance with the requirements of subtitle A of title I of the Bipartisan Patients' Bill of Rights Act of 2001, and compliance with regulations promulgated by the Secretary, in the case of a claims denial shall be deemed compliance with subsection (a) with respect to such claims denial.''.

(c) ENFORCEMENT.—Section 502(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(b)(3)) is amended—

(1) by striking ''The Secretary'' and inserting ''(A) The Secretary''; and

(2) by adding at the end the following:

''(B) A participant, beneficiary, plan fiduciary, or the Secretary may not bring an action to enforce the requirements of section 714 against a health insurance issuer offering coverage in connection with a group health plan (or such group health plan) where the patient protection requirements of the Bipartisan Patients' Bill of Rights Act of 2001 (as defined in section 151(b)(3) of such Act) otherwise applicable to such issuer (or plan) under section 714 do not apply because the issuer (or plan) is in compliance with a State law, with respect to the patient protection requirements involved, that has been certified or a determination made in accordance with section 151 of such Act.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 714''.

(2) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following new item:

''Sec. 714. Patient protection standards.''.

(3) Section 502(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(b)(3)) is amended by inserting ''(other than section 135(b))'' after ''part 7''.

SEC. 302. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following:

''(c) RESPONSIBILITY OF STATE WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

''(1) AGREEMENT WITH STATES.—A State may enter into an agreement with the Secretary for the delegation to the State of some or all of the Secretary's authority under sections 502, 503A, 503B, or 504 to enforce the requirements applicable under title I of the Bipartisan Patients's Bill of Rights Act of 2001 to health insurance issuers in connection with a group health plan.

''(2) DELEGATIONS.—Any department, agency, or instrumentality of a State to which authority is delegated pursuant to an agreement entered into under this subsection may, if authorized under State law and to the extent consistent with such agreement, exercise the powers of the Secretary under this title which relate to such authority.''.

TITLE IV—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 401. APPLICATION TO GROUP HEALTH PLANS UNDER THE INTERNAL REVENUE CODE OF 1986.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

''Sec. 9813. Standard relating to patients' bill of rights.'';

and

(2) by inserting after section 9812 the following:

''SEC. 9813. STANDARD RELATING TO PATIENTS' BILL OF RIGHTS.

''A group health plan shall comply with the requirements of title I of the Bipartisan Patients' Bill of Rights Act of 2001 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this section.''.

SEC. 402. CONFORMING ENFORCEMENT FOR WOMEN'S HEALTH AND CANCER RIGHTS.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986, as amended by section 401, is further amended—

(1) in the table of sections, by inserting after the item relating to section 9813 the following new item:

''Sec. 9814. Standard relating to women's health and cancer rights.'';

and

(2) by inserting after section 9813 the following:

''SEC. 9814. STANDARD RELATING TO WOMEN'S HEALTH AND CANCER RIGHTS.

''The provisions of section 713 of the Employee Retirement Income Security Act of 1974 (as in effect as of the date of the enactment of this section) shall apply to group health plans as if included in this subchapter.''.

TITLE V—EFFECTIVE DATE; SEVERABILITY

SEC. 501. EFFECTIVE DATE AND RELATED RULES.

Except as otherwise provided in this Act, the provisions of this Act, including the amendments made by title I, shall apply on the later of—

(1) plan years beginning on or after January 1, 2003; or

(2) plan years beginning on or after 18 months after the date on which the Secretary of Health and Human Services and the Secretary of Labor issue final regulations, subject to the notice and comment period required under subchapter 2 of chapter 5 of title 5, United States Code, necessary to carry out the amendments made by this Act.

SEC. 502. SEVERABILITY.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), 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 the provisions of such to any person or circumstance shall not be affected thereby.

(b) DEPENDENCE OF REMEDIES ON APPEALS.—If any provision of section 131, or the amendments made by such section, or the application of such section or amendments to any person or circumstance is held to be unconstitutional, sections 141 and 143, and the amendments made by such sections, shall be deemed to be null and void and shall be given no force or effect.

(c) REMEDIES.—If any provision of section 141, or the amendments made by such section, or the application of such section or amendments to any person or circumstance is held to be unconstitutional, the remainder of such section, and the amendments made by such section shall be deemed to be null and void and shall be given no force or effect.

SEC. 503. ANNUAL REVIEW.

(a) IN GENERAL.—Not later than 24 months after the effective date referred to in section 501, and annually thereafter for each of the succeeding 4 calendar years (or until a repeal is effective under subsection (b)), the Secretary of Health and Human Services shall request that the Institute of Medicine of the National Academy of Sciences prepare and submit to the appropriate committees of Congress a report concerning the impact of this Act, and the amendments made by this Act, on the number of individuals in the United States with health insurance coverage.

(b) LIMITATION WITH RESPECT TO CERTAIN PLANS.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 141 and the amendments made by such section shall be repealed effective on the date that is 12 month after the date on which the report is submitted, and the submission of any further reports under subsection (a) shall not be required.

(c) FUNDING.—From funds appropriated to the Department of Health and Human Services for fiscal years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study of the National Academy of Sciences under this section.

SA 857. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; which was ordered to lie on the table; as follows:

On page 179, after line 14, add the following:

SEC. . IMMUNITY FOR HEALTH CARE PROFESSIONALS.

Section 6(6) of the Volunteer Protection Act of 1997 (42 U.S.C. 14505(6)) is amended by adding at the end the following flush sentence:

''Such term includes a health care professional (as defined in section 151 of the Bipartisan Patient Protection Act) who is providing pro bono medical services and who meets the requirements of subparagraphs (A) and (B) with respect to the provision of such services including compensation from any source.''

SA 858. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources; as follows:

On page 11, line 4, strike ''and''.

On page 11, line 10, strike ''decision'' and insert ''decision; and''.

On page 11, between lines 10 and 11, insert the following:

(5) subject to full compliance with all Federal and State environmental laws (including regulations) and hydrologic variability, and consistent with water rights in existence on the date of enactment of this Act, the record of decision—

(A) anticipates that implementation of joint point diversion, operational flexibility, interagency cooperation, and the environmental water account will occur and likely result in an increase to south-of-Delta Central Valley Project agricultural water service contractors of—

(i) 15 percent of contract totals in normal water years (totaling approximately 65 to 70 percent of contract totals); and

(ii) lesser amounts in dry years; and

(B) does not amend or otherwise affect any legal right of, or remedy available to, any Central Valley Project contractor.

On page 14, strike lines 4 through 23.

On page 14, line 24, strike ''(3)'' and insert ''(2)''.

On page 15, line 5, strike ''(4)'' and insert ''(3)''.

SA 859. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources; as follows:

On page 29, strike line 4 and insert the following:

(C) REPORTS.—The Secretary, in cooperation with the Federal agencies and State agencies, shall submit to the authorizing committees a report on each project identified in this subsection that includes, for each such project—

(i) a project description;

(ii) the results of all feasibility and operational studies carried out for the project;

(iii) the results of all final environmental impact studies and reports completed concerning the project;

(iv) a finding of consistency with the record of decision by the Bay-Delta Program Policy Group;

(v) a finding of consistency, made by the Independent Science Panel described in the record of decision, with attainment of the objectives of the ecosystem restoration program;

(vi) an identification of the quantity of water that the project would allocate to fish, wildlife, and habitat to support the attainment of those objectives;

(vii) a cost-benefit analysis;

(viii) a description of the benefits and beneficiaries of the project;

(ix) a cost allocation plan that is consistent with the requirement in the record of decision that beneficiaries pay the full cost of the project (including mitigation costs); and

(x) a financing and repayment plan that specifies the contribution of each project beneficiary.

(D) SUBMISSION DEADLINES.—

(i) IN GENERAL.—A report under subparagraph (C) shall be submitted for certain projects identified in the record of decision as follows:

(I) For enlargement of Shasta Dam, not later than January 1, 2004.

(II) For new in-Delta storage, not later than January 2, 2002.

(III) For enlargement of Los Vaqueros Reservoir, not later than December 1, 2003.

(ii) FAILURE TO MEET DEADLINES.—If a report described in clause (i) is not submitted by the applicable deadline described in that

clause, the Secretary shall immediately submit to the authorizing committees an explanation of the failure to submit the report that includes—

(I) a revised timeline for submission of the report; and

(II) if determined to be appropriate for inclusion by the Secretary—

(aa) a partial interim report; or

(bb) a determination by the Secretary that the project appears to be infeasible, based on preliminary findings and information contained in the report.

(E) COST SHARING.—

Beginning on page 30, strike line 9 and all that follows through page 32, line 18, and insert the following:

(3) ACQUISITION OF WATER AND LAND.—There are authorized to be appropriated such sums as are necessary to pay the Federal share of the cost of carrying out 1 or more projects or activities to acquire water or land for the ecosystem restoration program and the environmental water account, as provided in the record of decision.

On page 32, line 19, strike ''(5)'' and insert ''(4)''.

SA 860. Mr. REID (for Mr. KENNEDY (for himself and Mr. GREGG)) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 22, lines 13 and 14, strike ''REVIEW OF MEDICAL DECISIONS BY PHYSICIANS'' and insert ''PEER REVIEW OF MEDICAL DECISIONS BY HEALTH CARE PROFESSIONALS''.

On page 22, strike lines 18 through 22, and insert the following: ''evaluation of medical facts—

''(A) shall be made by a physician (allopathic or osteopathic); or

''(B) in a claim for benefits provided by a non-physician health professional, shall be made by reviewer (or reviewers) including at least one practicing non-physician health professional of the same or similar specialty;

''with appropriate expertise (including, in the case of a child, appropriate pediatric expertise) and acting within the appropriate scope of practice within the State in which the service is provided or rendered, who was not involved in the initial determination.''.

On page 52, line 4, after ''who'' insert the following: '', acting within the appropriate scope of practice within the State in which the service is provided or rendered,''.

On page 52, strike lines 7 through 17, and insert the following:

''(ii) by a non-physician health care professional, a reviewer (or reviewers) shall include at least one practicing non-physician health care professional of the same or similar specialty as the non-physician health care professional who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diagnosis, or provides the type of treatment under review.''.

On page 93, line 18, insert before the semicolon the following: '', such as a qualified nongovernmental research entity to which the National Cancer Institute has awarded a center support grant''.

On page 94, line 13, strike ''scientific'' and insert ''ethical''.

On page 100, line 13, strike ''104(b)(3)(C)'' and insert ''104(d)(3)(C)''.

On page 142, line 1, strike ''person'' and insert ''plan, plan sponsor or issuer''.

On page 154, line 11, strike ''(5)'' and insert ''(9)''.

On page 174, line 5, strike ''determined without regard to'' and insert ''excluding''.

On page 174, line 8, strike the period and insert a semicolon.

On page 174, line 9, strike ''For'' and insert ''but shall apply not later than 1 year after the general effective date. For''.

On page 173, between lines 4 and 5, insert the following:

SEC. 304. SENSE OF THE SENATE CONCERNING THE IMPORTANCE OF CERTAIN UNPAID SERVICES.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the court should consider the loss of a non-wage earning spouse or parent as an economic loss for the purposes of this section. Furthermore, the court should define the compensation for the loss not as minimum services, but, rather, in terms that fully compensate for the true and whole replacement cost to the family.

At the end of subtitle A of title I, insert the following:

SEC. ___. HEALTH CARE CONSUMER ASSISTANCE FUND.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall establish a fund, to be known as the ''Health Care Consumer Assistance Fund'', to be used to award grants to eligible States to carry out consumer assistance activities (including programs established by States prior to the enactment of this Act) designed to provide information, assistance, and referrals to consumers of health insurance products.

(2) STATE ELIGIBILITY.—To be eligible to receive a grant under this subsection a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a State plan that describes—

(A) the manner in which the State will ensure that the health care consumer assistance office (established under paragraph (4)) will educate and assist health care consumers in accessing needed care;

(B) the manner in which the State will coordinate and distinguish the services provided by the health care consumer assistance office with the services provided by Federal, State and local health-related ombudsman, information, protection and advocacy, insurance, and fraud and abuse programs;

(C) the manner in which the State will provide information, outreach, and services to underserved, minority populations with limited English proficiency and populations residing in rural areas;

(D) the manner in which the State will oversee the health care consumer assistance office, its activities, product materials and evaluate program effectiveness;

(E) the manner in which the State will ensure that funds made available under this section will be used to supplement, and not supplant, any other Federal, State, or local funds expended to provide services for programs described under this section and those described in subparagraphs (C) and (D);

(F) the manner in which the State will ensure that health care consumer office personnel have the professional background and training to carry out the activities of the office; and

(G) the manner in which the State will ensure that consumers have direct access to consumer assistance personnel during regular business hours.

(3) AMOUNT OF GRANT.—

(A) IN GENERAL.—From amounts appropriated under subsection (b) for a fiscal year, the Secretary shall award a grant to a State in an amount that bears the same ratio to such amounts as the number of individuals within the State covered under a group health plan or under health insurance coverage offered by a health insurance issuer bears to the total number of individuals so covered in all States (as determined by the Secretary). Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subparagraph.

(B) MINIMUM AMOUNT.—In no case shall the amount provided to a State under a grant under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) NON-FEDERAL CONTRIBUTIONS.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

(4) PROVISION OF FUNDS FOR ESTABLISHMENT OF OFFICE.—

(A) IN GENERAL.—From amounts provided under a grant under this subsection, a State shall, directly or through a contract with an independent, nonprofit entity with demonstrated experience in serving the needs of health care consumers, provide for the establishment and operation of a State health care consumer assistance office.

(B) ELIGIBILITY OF ENTITY.—To be eligible to enter into a contract under subparagraph (A), an entity shall demonstrate that it has the technical, organizational, and professional capacity to deliver the services described in subsection (b) to all public and private health insurance participants, beneficiaries, enrollees, or prospective enrollees.

(C) EXISTING STATE ENTITY.—Nothing in this section shall prevent the funding of an existing health care consumer assistance program that otherwise meets the requirement of this section.

(b) USE OF FUNDS.—

(1) BY STATE.—A State shall use amounts provided under a grant awarded under this section to carry out consumer assistance activities directly or by contract with an independent, non-profit organization. An eligible entity may use some reasonable amount of such grant to ensure the adequate training of personnel carrying out such activities. To receive amounts under this subsection, an eligible entity shall provide consumer assistance services, including—

(A) the operation of a toll-free telephone hotline to respond to consumer requests;

(B) the dissemination of appropriate educational materials on available health insurance products and on how best to access health care and the rights and responsibilities of health care consumers;

(C) the provision of education on effective methods to promptly and efficiently resolve questions, problems, and grievances;

(D) the coordination of educational and outreach efforts with health plans, health care providers, payers, and governmental agencies;

(E) referrals to appropriate private and public entities to resolve questions, problems and grievances; and

(F) the provision of information and assistance, including acting as an authorized representative, regarding internal, external, or administrative grievances or appeals procedures in nonlitigative settings to appeal the denial, termination, or reduction of health care services, or the refusal to pay for such services, under a group health plan or health insurance coverage offered by a health insurance issuer.

(2) CONFIDENTIALITY AND ACCESS TO INFORMATION.—

(A) STATE ENTITY.—With respect to a State that directly establishes a health care consumer assistance office, such office shall establish and implement procedures and protocols in accordance with applicable Federal and State laws.

(B) CONTRACT ENTITY.—With respect to a State that, through contract, establishes a health care consumer assistance office, such office shall establish and implement procedures and protocols, consistent with applicable Federal and State laws, to ensure the confidentiality of all information shared by a participant, beneficiary, enrollee, or their personal representative and their health care providers, group health plans, or health insurance insurers with the office and to ensure that no such information is used by the office, or released or disclosed to State agencies or outside persons or entities without the prior written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) of the individual or personal representative. The office may, consistent with applicable Federal and State confidentiality laws, collect, use or disclose aggregate information that is not individually identifiable (as defined in section 164.501 of title 45, Code of Federal Regulations). The office shall provide a written description of the policies and procedures of the office with respect to the manner in which health information may be used or disclosed to carry out consumer assistance activities. The office shall provide health care providers, group health plans, or health insurance issuers with a written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) to allow the office to obtain medical information relevant to the matter before the office.

(3) AVAILABILITY OF SERVICES.—The health care consumer assistance office of a State shall not discriminate in the provision of information, referrals, and services regardless of the source of the individual's health insurance coverage or prospective coverage, including individuals covered under a group health plan or health insurance coverage offered by a health insurance issuer, the medicare or medicaid programs under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 and 1396 et seq.), or under any other Federal or State health care program.

(4) DESIGNATION OF RESPONSIBILITIES.—

(A) WITHIN EXISTING STATE ENTITY.—If the health care consumer assistance office of a State is located within an existing State regulatory agency or office of an elected State official, the State shall ensure that—

(i) there is a separate delineation of the funding, activities, and responsibilities of the office as compared to the other funding, activities, and responsibilities of the agency; and

(ii) the office establishes and implements procedures and protocols to ensure the confidentiality of all information shared by a participant, beneficiary, or enrollee or their personal representative and their health care providers, group health plans, or health insurance issuers with the office and to ensure that no information is disclosed to the State agency or office without the written authorization of the individual or their personal representative in accordance with paragraph (2).

(B) CONTRACT ENTITY.—In the case of an entity that enters into a contract with a State under subsection (a)(3), the entity shall provide assurances that the entity has no conflict of interest in carrying out the activities of the office and that the entity is independent of group health plans, health insurance issuers, providers, payers, and regulators of health care.

(5) SUBCONTRACTS.—The health care consumer assistance office of a State may carry out activities and provide services through contracts entered into with 1 or more nonprofit entities so long as the office can demonstrate that all of the requirements of this section are complied with by the office.

(6) TERM.—A contract entered into under this subsection shall be for a term of 3 years.

(c) REPORT.—Not later than 1 year after the Secretary first awards grants under this section, and annually thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the activities funded under this section and the effectiveness of such activities in resolving health care-related problems and grievances.

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

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on S. 1006, the Renewable Fuels for Energy Security Act of 2001.

The hearing, chaired by Senator TIM JOHNSON, will take place on Friday, July 6, at 9:30 a.m., at the Minnehaha County Administration Building, 415 N. Dakota Avenue, 2nd Floor, County Commission Meeting Room, Sioux Falls, SD.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224–6689.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a legislative hearing on provisions to protect energy supply and security (title I of S. 388, the National Energy Security Act of 2001); oil and gas production (title III and title V of S. 388; and title X of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001); drilling moratoriums on the Outer Continental Shelf (S. 901, the Coastal States Protection Act; S. 1086, the COAST Anti-Drilling Act; and S. 771, a bill to permanently prohibit the conduct of offshore drilling on the Outer Continental Shelf of the State of Florida, and for other purposes); energy regulatory reviews and studies; and S. 900, the Consumer Energy Commission Act of 2001.

The hearing will take place on Thursday, July 12, 2001, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Mary Katherine Ishee, U.S. Senate, Washington, DC 20510–6150.

For further information, please contact Mary Katherine Ishee at (202) 224–7865.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to energy efficiency, including S. 352, the Energy Emergency Response Act of 2001; title XIII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; sections 602–606 of S. 388, the National Energy Security Act of 2001; S. 95, the Federal Energy Bank Act; S.J. Res. 15, providing for congressional disapproval of the rule submitted by the Department of Energy relating to the postponement of the effective date of energy conservation standards for central air conditioners.

The hearing will take place on Friday, July 13, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510.

For further information, please call Deborah Estes at 202/224–5360.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to reducing the demand for petroleum products in the light duty vehicle sector, including titles III and XII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; title VII of S. 388, the National Energy Security Act of 2001; S. 883, the Energy Independence Act of 2001; S. 1053, Hydrogen Future Act of 2001; and S. 1006, Renewable Fuels for Energy Security Act of 2001.

The hearing will take place on Tuesday, July 17, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224–6689.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to energy and

scientific research, development, technology deployment, education, and training, including sections 107, 114, 115, 607, title II, and subtitle B of title IV of S. 388, the National Energy Security Act of 2001; titles VIII, XI and Division E of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; sections 111, 121, 122, 123, 125, 127, 204, 205, title IV and title V of S. 472, the Nuclear Energy Electricity Supply Assurance Act of 2001; and S. 90, the Department of Energy Nanoscale Science and Engineering Research Act; S. 193, the Department of Energy Advanced Scientific Computing Act; S. 242, the Department of Energy University Nuclear Science and Engineering Act; S. 259, the National Laboratories Partnership Improvement Act of 2001; and S. 636, a bill to direct the Secretary of Energy to establish a decommissioning pilot program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas.

The hearing will take place on Wednesday, July 18, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Robert Simon, U.S. Senate, Washington, DC 20510.

For further information, please call Robert M. Simon at 202–224–4103.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a legislative hearing to receive testimony on proposals related to removing barriers to distributed generation, renewable energy, and other advanced technologies in electricity generation and transmission, including section 301 and title VI of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; sections 110, 111, 112, 710, and 711 of S. 388, the National Energy Security Act of 2001; and S. 933, the Combined Heat and Power Advancement Act of 2001. In addition, the hearing will consider proposals relating to the hydroelectric relicensing procedures of the Federal Energy Regulatory Commission, including title VII of S. 388, title VII of S. 597; and S. 71, the Hydroelectric Licensing Process Improvement Act of 2001.

The hearing will take place on Thursday, July 19, 2001, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510–6150.

For further information, please contact Deborah Estes at (202) 224–5360 or Mary Katherine Ishee at (202) 224–7865.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on proposals related to global climate change and measures to mitigate greenhouse gas emission, including S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; S. 388, the National Energy Security Act of 2001; and S. 820, the Forest Resources for the Environment and the Economy Act.

The hearing will take place on Tuesday, July 24, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224–6689.

SUBCOMMITTEE ON WATER AND POWER

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on S. 976, the California Ecosystem, Water Supply, and Water Quality Enhancement Act of 2001.

The hearing will take place on July 19 at 2:30 p.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Patty Beneke, U.S. Senate, Washington, DC 20510.

For further information, please call Patty Beneke at 202/224–5451.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Krisann Kleibacker, a fellow in Senator DASCHLE's office, be granted the privilege of the floor during debate on S. 1052.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: No. 166, Nos. 169 through 181, including the nominations on the Secretary's desk; that the nominations be confirmed en bloc, the motions to reconsider be laid on the table en bloc, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations were considered and confirmed as follows:

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. Michael A. Hamel, 0000.

DEPARTMENT OF THE INTERIOR

Neal A. McCaleb, of Oklahoma, to be an Assistant Secretary of the Interior.

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brig. Gen. Dale W. Meyerrose, 0000.
Brig. Gen. Wilbert D. Pearson, Jr., 0000.

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Tex W. Tanberg, Jr., 0000.

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. John A. Van Alstyne, 0000.

The following named officers for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. James P. Collins, 0000.

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Edward L. Correa, Jr., 0000.

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. James C. Riley, 0000.

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. William S. Wallace, 0000.

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Benjamin S. Griffin, 0000.

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Leon J. LaPorte, 0000.

MARINE CORPS

The following named officer for appointment in the United states Marine Corps to

the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601;

To be lieutenant general

Maj. Gen. Edward Hanlon, Jr., 0000.

NAVY

The following named officer for appointment as Chief of the Bureau of Medicine and Surgery and Surgeon General and for appointment to the grade indicated under title 10, U.S.C., sections 601 and 5137:

To be vice admiral

Rear Adm. Michael L. Cowan, 0000.

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be Vice Admiral

Vice Adm. Patricia A. Tracey, 0000.

AIR FORCE

PN536 Air Force nominations (59) beginning STEVEN L ADAMS, and ending JANNETTE YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001

ARMY

PN29 Army nominations (108) beginning KEITH S * ALBERTSON, and ending ROBERT K ZUEHLKE, which nominations were received by the Senate and appeared in the Congressional Record of January 3, 2001

PN434 Army nominations (169) beginning ERIC D * ADAMS, and ending DAVID S. ZUMBRO, which nominations were received by the Senate and appeared in the Congressional Record of May 21, 2001

PN435 Army nominations (8) beginning GREGGORY R. CLUFF, and ending STEVEN W. VINSON, which nominations were received by the Senate and appeared in the Congressional Record of May 21, 2001

PN485 Army nominations (16) beginning GILL P BECK, and ending MARGO D SHERIDAN, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2001

PN486 Army nominations (179) beginning CYNTHIA J ABBADINI, and ending THOMAS R * YARBER, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2001

PN517 Army nominations (3) beginning JAMES E. GELETA, and ending GARY S OWENS, which nominations were received by the Senate and appeared in the Congressional Record of June 12, 2001

PN518 Army nominations (6) beginning FLOYD E BELL, JR., and ending STEVEN N. WICKSTROM, which nominations were received by the Senate and appeared in the Congressional Record of June 12, 2001

PN537 Army nominations (11) beginning ROBERT E. ELLIOTT, and ending PETER G SMITH, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001

PN538 Army nominations (9) beginning BRUCE M. BENNETT, and ending GRANT E. ZACHARY,JR., which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001

MARINE CORPS

PN519 Marine Corps nomination of Donald E. Gray, Jr., which was received by the Senate and appeared in the Congressional Record of June 12, 2001

PN520 Marine Corps nominations (1291) beginning JESSICA L ACOSTA, and ending JOSEPH J ZWILLER, which nominations were received by the Senate and appeared in the Congressional Record of June 1, 2001

NAVY

PN438 Navy nomination of Charlie C Biles, which was received by the Senate and appeared in the Congressional Record of May 21, 2001

PN439 Navy nominations (235) beginning JAMES W ADKISSON, III and ending MIKE ZIMMERMAN, which nominations were received by the Senate and appeared in the Congressional Record of May 21, 2001

PN487 Navy nomination of William J Diehl, which was received by the Senate and appeared in the Congressional Record of June 5, 2001

PN521 Navy nomination of Christopher M Rodrigues, which was received by the Senate and appeared in the Congressional Record of June 12, 2001

PN522 Navy nominations (19) beginning ROGER T BANKS, and ending CARL ZEIGLER, which nominations were received by the Senate and appeared in the Congressional Record of June 12, 2001

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORGANIZATION OF THE SENATE

Mr. DASCHLE. Madam President, I now ask unanimous consent that the Senate proceed to S. Res. 120, the organizing resolution submitted earlier today by myself and Senator LOTT.

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

The legislative clerk read as follows:

A resolution (S. Res. 120) relative to the organization of the Senate during the remainder of the 107th Congress.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Madam President, I ask unanimous consent that three letters with reference to the resolution be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 29, 2001.

DEAR COLLEAGUE: We write as Chairman and Ranking Republican Member of the Judiciary Committee to inform you of a change in Committee practice with respect to nominations. The ''blue slips'' that the Committee has traditionally sent to home State Senators to ask their views on nominees to be U.S. Attorneys, U.S. Marshals and federal judges, will be treated as public information.

We both believe that such openness in the confirmation process will benefit the Judiciary Committee and the Senate as a whole. Further, it is our intention that this policy of openness with regard to ''blue slips'' and the blue slip process continue in the future, regardless of who is Chairman or which party is in the majority in the Senate.

Therefore, we write to inform you that the Chairman of the Judiciary Committee, with the full support of the former Chairman and Ranking Republican Member, is exercising his authority to declare that the blue slip process shall no longer be designated or treated as Committee confidential.

Sincerely,

PATRICK J. LEAHY,
Chairman.
ORRIN G. HATCH,
Ranking Republican Member.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 29, 2001.

DEAR COLLEAGUE: We are cognizant of the important constitutional role of the Senate in connection with Supreme Court nominations. We write as Chairman and Ranking Republican Member on the Judiciary Committee to inform you that we are prepared to examine carefully and assess such presidential nominations.

The Judiciary Committee's traditional practice has been to report Supreme Court nominees to the Senate once the Committee has completed its considerations. This has been true even in cases where Supreme Court nominees were opposed by a majority of the Judiciary Committee.

We both recognize and have every intention of following the practices and precedents of the Committee and the Senate when considering Supreme Court nominees.

Sincerly,

PATRICK J. LEAHY,
Chairman.
ORRIN G. HATCH,
Ranking Republican Member.

U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC, June 29, 2001.

DEAR COLLEAGUE: On June 29, 2001, the Senate passed the organizing resolution which states, in part, that subject to the authority of the Standing Rules of the Senate, any agreements entered into regarding committee funding and space prior to June 5, 2001, between the chairman and ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the chairman and ranking member.

In the assignment of office space to Senate committees, pursuant to Rule XXV of the Standing Rules of the Senate, it is the practice of the Committee on Rules and Administration to assign all such space to the chairman of each committee. Further, the Rules Committee does not traditionally intervene in the internal space allocation decisions of the committees and therefore is not a party to any agreements between the chairman and ranking member regarding space allocations. It is the intent of the Committee on Rules and Administration to continue such practice.

Sincerely,

CHRISTOPHER J. DODD,
Chairman.
MITCH MCCONNELL,
Ranking Member.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. 120) was agreed to, as follows:

S. RES. 120

Resolved, That the Majority Party of the Senate for the 107th Congress shall have a one seat majority on every committee of the Senate, except that the Select Committee on Ethics shall continue to be composed equally of members from both parties. No Senator shall lose his or her current committee assignments by virtue of this resolution.

SEC. 2 Notwithstanding the provisions of Rule XXV the Majority and Minority Leaders of the Senate are hereby authorized to appoint their members of the committees consistent with this resolution.

SEC. 3 Subject to the authority of the Standing Rules of the Senate, any agreements entered into regarding committee

funding and space prior to June 5, 2001, between the Chairman and Ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the Chairman and Ranking member.

SEC. 4 The provisions of this resolution shall cease to be effective, except for Sec. 3, if the ratio in the full Senate on the date of adoption of this resolution changes.

Mr. DASCHLE. Madam President, the resolution we have just adopted is one that provides for the reorganization of the U.S. Senate.

This is a unique time of transition for the Senate, and I understand that it is a difficult time for many of my Republican colleagues.

If there is one thing that supercedes the status of any Senator or any party, it is our desire to do the work we were sent here to do. That, of course, requires getting the Senate organized to do it.

By passing this resolution, our colleagues can retake their rightful places on committees, committees can take action on legislation, and importantly, we can move forward with Presidential nominations.

This organizing resolution is the result of thorough bipartisan negotiations over the last several weeks.

Many people deserve credit. First and foremost, I thank Senator LOTT. Senator LOTT and I have been through many challenges together. Each of those challenges has strengthened our friendship, and our working relationship, and this is no exception.

I also thank Senators MCCONNELL, DOMENICI, GRAMM, HATCH, and SPECTER. Their good faith in the negotiating process, and their patience as the process played out, were instrumental in helping us reach this point.

This resolution provides for a one-seat margin on Senate committees, which is consistent with Senate precedent.

It clarifies that—subject to the standing rules of the Senate—the agreements on funding and space that were made between chairmen and ranking members early in this Congress will remain in effect for the duration of this Congress.

This resolution also makes it clear that all of these provisions will sunset if the ratio in the Senate changes during this Congress.

I especially commend Senator LEAHY. Senator LEAHY, in his typically fair and wise way, played a critical role in solving the most difficult questions we faced in these negotiations: those involving Supreme Court and other Presidential nominees.

Together, he and Senator HATCH were able to find a truly constructive solution to the way in which we handle ''blue slips,'' and the way in which we consider nominees to the Supreme Court.

On the subject of blue slips, Senators LEAHY and HATCH have agreed that these forms—traditionally sent to home-state Senators to ask their views on nominees to be U.S. Attorneys, U.S. Marshals, and federal judges—will now be treated as public information.

I share their belief that this new policy of openness will benefit not only the Judiciary Committee, but the Senate as a whole. I also share their hope that this policy will continue in the future, regardless of which party is in the majority.

In the course of our negotiations, a number of our Republican colleagues also raised concerns about how Democrats would deal with potential Supreme Court nominations, should that need arise.

A second letter to which Senators LEAHY and HATCH agreed says clearly that all nominees to the Supreme Court will receive full and fair consideration.

This is the same position I stated publicly many times during our negotiations, and I intend to see that the Senate lives up to this commitment.

It has been the traditional practice of the Judiciary Committee to report Supreme Court nominees to the Senate floor once the committee has completed its consideration. This has been true even for a number of nominees that were defeated in the Judiciary Committee.

Now, Senators LEAHY and HATCH have put in writing their intention that consideration of Supreme Court nominees will follow the practices and precedents of the Judiciary Committee and the Senate.

In reaching this agreement, we have avoided an unwise and unwarranted change to the Standing Rules of the Senate and a sweeping revision to the Senate's constitutional responsibility to review Supreme Court nominees.

In sum, this is a good, balanced, resolution—one that will enable us to run this Senate in a spirit of fairness.

In a letter to Thomas Jefferson, James Madison explained that the Constitution's Framers considered the Senate to be the great ''anchor'' of the Government.

For 212 years, that anchor has held steady. The Senate has withstood Civil War and constitutional crises. In each generation, it has been buffeted by the winds and tides of political and social change.

Today I believe we are proving that this great anchor of democracy can withstand the forces of unprecedented internal changes as well.

I am confident that this resolution is the right way to keep the Senate working. I am appreciative of the support given by all our colleagues today as we now adopt it.

If I may, I will say one other thing about this particular resolution. There is a member of my staff whose name is Mark Childress; our colleagues know him. I am indebted to him for many reasons, as I am to all of my staff. But no one deserves more credit and more praise for the job done in reaching this successful conclusion than Mark Childress. Publicly, I acknowledge his contribution, his incredible work and effort. I thank him from the bottom of my heart for what he has done to make this possible.

Mr. LOTT. Madam President, I ask unanimous consent to insert in the RECORD a memo from the Congressional Reference Service. As this memo makes clear, the Senate has a long record of allowing the Supreme Court nominees of the President to be given a vote on the floor of the Senate. No matter what the vote in committee on a Supreme Court nominee, it is the precedent of the Senate that the individual nominated is given a vote by the whole Senate.

The letter inserted in the RECORD as a part of the agreement accompanying the organization resolution refers to the ''traditional'' practice of reporting Supreme Court nominees for a vote on the floor. This memo from CRS shows that since 1881, there is only one case where the nominee was not given a floor vote. In that case, there was no opening on the Court for the nominee to fill and thus the nominee was withdrawn. So this precedent is even purer than the ''99 and 44/100ths'' soap test.

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

CONGRESSIONAL RESEARCH SERVICE

Washington DC, June 28, 2001.

Senate Consideration of Supreme Court Nominations since 1880

Hon. TRENT LOTT,

Senate Republican Leader,

This memorandum is in response to your request, made during our telephone conversation earlier today, for a short written answer to the specific question, ''Is it the case that since 1880 all Supreme Court nominations, irrespective of Judiciary Committee recommendation, have received consideration by, and a vote of, the full Senate?''

Research by CRS has found that from President James A. Garfield's nomination of Stanley Matthews on March 14, 1881 to the present, every person nominated to the Supreme Court except one has received Senate consideration and a vote on his or her nomination. Nonetheless, it should be noted, during the time frame of 1880 to the present, there also have been two other instances, besides the already mentioned exception, in which Supreme Court nominations failed to receive consideration; in both cases, however, the individuals in question were renominated shortly thereafter, with one receiving Senate confirmation and the other Senate rejection.

The one instance when the Senate did not consider and vote on an individual nominated to be a Supreme Court Justice involved President Lyndon B. Johnson's nomination of federal appellate judge Homer Thornberry in 1968. Judge Thornberry was nominated to be an Associate Justice on June 26, 1968, the same day on which President Johnson nominated then-Associate Justice Abe Fortas to be Chief Justice. Judge Thornberry was nominated to fill the Associate Justice vacancy that was to be created upon Justice Fortas's confirmation as Chief Justice. However, after being favorably reported by the Judiciary Committee, the Fortas nomination failed to gain Senate confirmation. On October 1, 1968, the fourth day of Senate consideration of the Fortas nomination, a motion to close debate on the nomination failed by a 45–43 vote. Three days later, on October 4, 1968, President Johnson withdrew both the Fortas and Thornberry nominations.

Prior to Senate action on the Fortas nomination, the Judiciary Committee held hearings simultaneously on Fortas and Thornberry, but upon conclusion of the hearings

reported out only the Fortas nomination. One detailed history of the Fortas nomination reported that it was apparent ''that the committee would take no action on Thornberry until the Fortas nomination was settled.''

As noted in the second paragraph of this memorandum, there also have been two instances in which Supreme Court nominations failed to receive Senate consideration, only to be followed by the individuals in question being re-nominated shortly thereafter and then receiving Senate consideration. The earlier of these instances involved President Rutherford B. Haye's nomination of Stanley Matthews on January 26, 1881 in the final days of the 46th Congress. According to one historical account, the nomination did not enjoy majority support in the Senate Judiciary Committee and was not reported out by the Committee or considered by the full Senate before the end of the Congress. However, Matthews was renominated by Hayes's successor, President Garfield, on March 14, 1881. Although the second nomination was reported with an adverse recommendation by the Judiciary Committee, it was considered by the full Senate and confirmed on May 12, 1881 by a vote of 24–23.

A second instance in which a Supreme Court nomination failed to receive Senate consideration, only to have the individual in question be re-nominated, involved Grover Cleveland's nomination of William B. Hornblower in 1893. Hornblower was first nominated on September 19, 1893, with no record of any Judiciary Committee action or Senate consideration of the nomination indicated in Journal of the Executive Proceedings of the Senate volume for that (the 53rd) Congress. Hornblower was re-nominated by President Cleveland on December 6, 1893. After his second nomination was reported adversely by the Judiciary Committee on January 8, 1894, Hornblower was rejected by the Senate on January 15, 1894 by a 24–30 vote.

I trust the above information is responsive to your request. If I may be of further assistance please contact me at 7–7162.

DENIS STEVEN RUTKUS
Specialist in American
National Government

CHANGING THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO ''COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP''

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 123, submitted earlier today by Senators KERRY and BOND.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 123) amending the Standing Rules of the Senate to change the name of the Committee on Small Business to the ''Committee on Small Business and Entrepreneurship.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. KERRY. Madam President, I would like to take a few minutes to explain the historic importance of the Resolution I am putting forward with Senator BOND to change the name of the Senate Committee on Small Business to the Senate Committee on Small Business and Entrepreneurship. This is the first piece of legislation I am putting forward as the new Chairman of the Small Business Committee. I am pleased that it is a bipartisan Resolution, continuing the tradition of the Committee.

I would like to thank Senator BOND for cosponsoring this Resolution, and the Majority Leader and Republican Leader for their cooperation and support in bringing it to the floor of the Senate so quickly.

As many of my colleagues may know, the needs and circumstances of today's entrepreneurial companies differ from those of traditional small businesses. For instance, entrepreneurial companies are much more likely to depend on investment capital rather than loan capital. Additionally, although they represent less than five percent of all businesses, entrepreneurial companies create a substantial number of all new jobs and are responsible for developing a significant portion of technological innovations, both of which have substantial benefits for our economy.

Taken together, an unshakable determination to grow and improved productivity lie at the heart of what distinguishes fast growth or entrepreneurial companies from more traditional, albeit successful, small businesses. Early on, it is often impossible to distinguish a small business from an entrepreneurial company. Only when a company starts to grow fast and make fundamental changes in a market do the differences come into play. Policies that support entrepreneurship become critical during this phase of the business cycle. Our public policies can only play a significant role during this critical phase if we understand the needs of entrepreneurial companies and are prepared to respond appropriately.

I believe that adding ''Entrepreneurship'' to the Committee on Small Business's name will more accurately reflect the Committee's valuable role in helping to foster and promote economic development by including entrepreneurial companies and the spirit of entrepreneurship in the United States.

I urge my colleagues to support this Resolution. Thank you.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 123) was agreed to.

(The resolution is located in today's RECORD under ''Statements on Submitted Resolutions.'')

COMPLIMENTING SENATORS

Mr. DASCHLE. Madam President, let me just say this before I make my final comments. Senator KENNEDY is on the floor and I want to acknowledge, as I did just now upstairs and as I did a couple of weeks ago as we completed our work on the education bill, a historic and landmark piece of legislation, how grateful I am, once again, to the senior Senator from Massachusetts, the chairman of the Health, Education, and Labor Committee.

I have said privately and publicly that I believe he is one of the most historic figures our Chamber has ever had the pleasure of witnessing. We saw, again, the leadership and the remarkable ability that he has to legislate over the course of the last couple of weeks. I didn't think that what he had to endure in the education bill could have been any harder. In many respects, I think the last 2 weeks were harder. It was harder reaching a consensus. We had very difficult and contentious issues to confront, amendments to consider. In all of it, he, once again, took his responsibilities as we would expect of him—with fairness, with courtesy, and with a display of empathy for all Members, the likes of which you just do not see on the Senate floor.

So on behalf of all of our caucus, I daresay on behalf of the Senate, I thank Senator KENNEDY, our chairman, for the work he has done.

I also acknowledge and thank our colleague from North Carolina, Senator JOHN EDWARDS. Senator EDWARDS has done a remarkable job. In a very short period of time, he has demonstrated his capabilities for senatorial leadership. He came to the Senate without the experience of public service, but in a very brief period of time he has demonstrated his enormous ability to adjust and adapt to Senate ways. He has become a true leader. I am grateful to him for his extraordinary contribution to this bill.

Let me also thank Senator JOHN MCCAIN. This bill is truly bipartisan in many ways, but it is personified in that bipartisanship with the role played by Senator MCCAIN, not unlike other bills in which he has participated. I will mention especially the campaign finance reform bill.

Senator MCCAIN has been the key in bringing about the bipartisan consensus that we reached again today. On a vote of 59–36, we showed the bipartisanship that can be displayed even as we take on these contentious and difficult issues. That would not have been possible were it not for his effort.

Let me thank, as well, Senator JUDD GREGG and many of our colleagues on the Republican side for their participation. They fought a hard fight; they made a good case; they argued their amendments extremely well; and they were prepared to bring this debate to closure tonight. I am grateful to them for their willingness to do so.

Finally, I thank Senator HARRY REID. He wasn't officially a part of the committee, but Senator REID has made a contribution once again to this bill, as he has on so many other bills, that cannot be replicated. This would not have happened were it not for his remarkable—and I would say incredible—efforts on the Senate floor each and

every day. He is a dear friend. He is someone unlike anyone I think we have seen in recent times. He cares deeply for this body and has worked diligently to bring about a successful conclusion to this bill. We thank him.

Having thanked our colleagues, let me also thank our staff —our floor staff, my personal staff, the leadership staff, the staff of the committee. Were it not for them, we simply could not have done our work. I am extraordinarily grateful to them as well.

ORDERS FOR MONDAY, JULY 9, 2001

Mr. DASCHLE. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 12 noon, Monday, July 9. I further ask consent that on Monday, July 9, immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 1 p.m., with Senators permitted to speak for up to 10 minutes each, with the following exceptions: Senator DURBIN, or his designee, from 12 to 12:30 p.m.; Senator THOMAS, or his designee, 12:30 p.m. to 1 p.m.

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

PROGRAM

Mr. DASCHLE. Madam President, on Monday, July 9, the Senate will convene at 12 noon. We will convene at that time for a period for morning business until 1 p.m. At 1 p.m., the Senate will begin consideration of the supplemental appropriations bill under a previous order which calls for all listed amendments to be offered on Monday prior to 6 p.m. There will be no rollcall votes on Monday, July 9, and there will be no rollcall votes before 2:15 p.m. on Tuesday, July 10.

ORDER FOR PRINTING OF S. 1052

Mr. DASCHLE. Madam President, I ask unanimous consent that S. 1052, as passed by the Senate, be printed.

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

ORDER FOR ADJOURNMENT

Mr. DASCHLE. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 176, following the conclusion of the remarks of Senator Kennedy.

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

The distinguished senior Senator from Massachusetts.

PASSAGE OF THE BIPARTISAN PATIENT PROTECTION ACT

Mr. KENNEDY. Madam President, I want to take a brief moment to thank some very special people who were absolutely instrumental in bringing us to the point of the passage of the legislation which gives so much hope—and should give so much hope—to millions of American families who now are going to be treated by the doctors in whom they have confidence, by the health care staff from whom they are going to get true recommendations, and not have judgments and decisions overridden by their HMOs. We have not finished the job, but this is a giant step forward.

I want to, as others have done—I feel strongly about it —first thank some special Members of this body. We just heard our leader, Senator DASCHLE. I can remember when Senator DASCHLE was asked after he assumed the leadership role as the majority leader in the Senate, what was going to be his first priority, and he mentioned the Patients' Bill of Rights. For 5 years—for 5 years—we have waited for this moment this evening. For 5 years we have waited, and in the short time he has assumed the leadership of the Senate, in a closely divided Senate, he has been able to develop the broad support evidenced in vote after vote, bipartisan in such important public policy areas.

I thank my good friend, JOHN EDWARDS, whose leadership at critical times during this debate and during very important moments was absolutely indispensable and essential. He was extremely effective in his quiet and soft spoken way, but with a steeliness and a strength that is reflected in his great passion on so many of the issues which are in his soul. He has made an enormous difference in making sure we reached this point tonight.

I thank JOHN MCCAIN. Senator MCCAIN, as he has said many times, traveled this country as a Presidential candidate and saw the importance of this legislation. He came back and wanted to know how he could play a role in making sure it came to fruition. He was willing, as he has on so many issues, to take on tough challenges and stay the course, but he has been an absolutely extraordinary leader on this issue, as on many others. It has been a great pleasure to work with him closely on this matter.

As has been mentioned, JOHN EDWARDS has provided extraordinary leadership on this issue. He was indispensable in so many different aspects of the development of the legislation, likely all of those that deal with accountability. We know the importance of the relationship between accountability and patient protections in this bill. He was always a steadying force, a strong force, a tireless voice for patients and has made an extraordinary mark on this legislation for which we are grateful. This has been a historic team, and I am grateful for them.

I have great appreciation for HARRY REID. I listened the other evening when my good friend, Senator BYRD, mentioned that he had been a deputy leader. He said Senator REID was really one of the best. Having been a deputy leader myself many years ago, it truly can be said he is the best I have seen in all the time I have been in the Senate. He is a tireless worker and always there to find common ground.

He has this incredible ability to say no and make you feel good, which is very difficult but challenging at best for anyone to do, and he does it on a regular basis, repeatedly, and still Members of this body know he is a selfless devotee to this institution and to the issues in which he is involved. He has made such an extraordinary difference in this legislation as well.

I want to thank some other Senators. I see chairing tonight my good friend, and becoming a better friend, DEBBIE STABENOW. All of us, as we have been working on this legislation, know this has been such a motivating force in her public life experience. She has been an extraordinary resource and supporter for this legislation. No one in this body cares more deeply about this issue than Senator STABENOW. She reminds us all of that wonderful child, Jessica, of whom she has spoken. She continues to be a presence in this Senate on this issue.

I thank a number of our colleagues who were involved, and I will not be able to mention them all, but I think of Senator SNOWE and Senator DEWINE who worked across the aisle to fashion a very important amendment that helped clarify some important provisions that we had not felt needed further clarification, but they pointed out the reasons for it and were constructive in working through it.

I thank my friend, Dr. FRIST, who has been the chairman of our Public Health Subcommittee and with whom I have worked on many different issues. We differed on this issue, but we worked closely on many other issues. I have great respect for him.

I thank JUDD GREGG who has been a worthy adversary as well as an ally on different public policy issues this year. I enjoy working with him.

Some Senators I had not expected to be as involved as they have been and yet were enormously helpful are Senator NELSON, Senator LANDRIEU, Senator LINCOLN, and Senator BAYH. Senator JEFFORDS spent a lot of time on this issue previously and worked with us and knows the issue carefully.

I have listened to him in small meetings, including at the White House with the President, explaining the importance of this legislation enormously effectively as he does. He has been a wonderful help generally. We didn't always agree on some of these issues, but nonetheless I value both his friendship and his views.

Senator BREAUX has been very much involved with health policy issues and was very involved in this.

TOM HARKIN has been a champion on the Patients' Bill of Rights from the

beginning. He has been there every time we needed a strong voice. He knows this issue. He speaks passionately about it. He understands the significance and the importance not only in the areas of disability protections and health standards and medical necessity, but he also understands the nuances and the standards which were used and how that impacts broad numbers of our populations. He was absolutely invaluable throughout this process.

I thank particularly the staff members. These issues are complex. It is difficult to always be able to anticipate the interrelationship between these issues, the importance of what we are doing and how it affects other legislation we have passed, what the impact will be with States and local communities, the impact with the business community, consumers, and others. We have been enormously well served across the board by the staff who have worked tirelessly on this issue just as they did on the education issue. There are an incredible number of very capable men and women who have devoted an extraordinary amount of time and effort and who have made an extraordinary mark on this legislation.

I thank all of them: For Senator MCCAIN, Sonya Sotak, Jean Bumpus, Cassandra Wood and Mark Busee; for Senator EDWARDS, Jeff Lane, Miles Lackey, Kyle Kinner, Hunter Pruett, and Lisa Zeidner. I want to thank the staff of Senator DASCHLE and Senator REID, all of the floor staff and the clerks, including Marty Paone, Lula Davis, Gary Myrick, and also in particular Elizabeth Hargrave and Deborah Adler. I thank them very much. Senator DASCHLE has mentioned Mark Childress and Mark Patterson. They are leaders of a very capable and able team that works very closely with Senator DASCHLE. They are not only fiercely loyal and committed to him but they are enormous sources of help and assistance to all Members in our caucus. We are all very grateful to all of them. For Senator GREGG, Stephanie Monroe, and Steve Irrigarry, and Kim Monk.

Now to my own staff, to whom I am incredibly grateful. No one has worked longer or harder, has been more committed or with greater success in terms of legislative achievement than David Nexon, the head of my health care team. Dave has been an invaluable resource. I always remember a story from when I interviewed him for the job and asked him to write an essay about health care. I still remember his strong commitment in that essay to universal coverage, comprehensive coverage, quality at a price people can afford. He has never let up on that ideal. It is one of the reasons I admire him so much. I am incredibly grateful to him.

I will mention others in no particular order. I thank Michael Myers who is our chief of staff for our whole committee and takes on the broad responsibilities in health, education, and all the matters of that committee. Michael and I go back a long time, initially working together on refugee issues. He was so resourceful and effective and helpful in our efforts in that cause. And now, he has been good enough to stay the course with me and has just been an extraordinary leader for our committee. I am grateful to him for his friendship and leadership on the committee.

I thank Jeff Teitz who is a master of many complicated aspects of the bill. If you have a complex issue that needs to be mastered, call Jeff Teitz.

Sarah Bianchi is full of energy and intelligence and has had a distinguished career in working with former Vice President Gore. She has been a great addition to our team.

Jerry Wesevich, I thank him so much for his steady presence. I mentioned a little while ago that this is Jerry's last day working in the Senate. He will be working for the legal service programs down in Texas and New Mexico. This is a person, like so many others on the Hill, strongly committed to improving our society, and I regret losing him. I know though that he will be involved in making a better community.

Janie Oates is the master of all trades and knows every TRIO program, every program that reaches out to the most needy people in our country and society, and has been enormously helpful to me in this endeavor as well.

I also thank Stacey Sachs who was here day in and day out and always seemed to have the answer. I remember the debate over the questions on the standard of medical necessity and the points being made about the standard we used in the Federal employers health plan. Stacey knew, yes, that was true but in the appeal provision a different standard was used. She knew the details of it, which was a key point. She is an extraordinary reservoir of good common sense and knowledge.

Jim Manley has been a great help and a good friend and has helped so much in terms of being able to communicate these issues and this whole policy area effectively. Jim has been tireless. Elizabeth Field, Marty Walsh, so many others worked not just here on the floor but outside, as well, in terms of working with the various groups and helping to bring what is happening at the grass roots here to the Senate floor. Amelia Dungan and Jackie Gran. I thank David Bowen very much. He is a great master in understanding so much of the new research and what is happening in the outer edges of biomedical research. We had debate on some of those issues, and we will have more later. These are complex ethical issues and questions. Dave is a master of all of them. Beth Cameron and Paul Kim also deserve thanks. Paul joined our staff and has been enormously valuable and helpful, as he was in the House of Representatives.

Thanks also goes out to our many dedicated interns, Dan Muñoz, Madhu Chugh, Tarak Shah, Nina Dutta, Nicole Salazar-Austin, Abby Moncrieff, Eddie Santos, Kent Mitchell, Haris Hardaway, Nirav Shah, Charita Sinha, Les Chun and Wyley Proctor. Their energy and dedication certainly helped us along the way.

I appreciate our Presiding Officer and our Senate staff for their patience this evening while we make sure that the history of tonight will include so many who did so much to make tonight a very important step toward helping our fellow American citizens get better quality health care.

ADJOURNMENT UNTIL MONDAY, JULY 9, 2001

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 12 noon, Monday, July 9, 2001.

Thereupon, the Senate, at 8:59 p.m., adjourned until Monday, July 9, 2001, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate June 29, 2001:

DEPARTMENT OF THE TREASURY

HENRIETTA HOLSMAN FORE, OF NEVADA, TO BE DIRECTOR OF THE MINT FOR A TERM OF FIVE YEARS, VICE JAY JOHNSON, RESIGNED.

NATIONAL TRANSPORTATION SAFETY BOARD

MARION BLAKEY, OF MISSISSIPPI, TO BE CHAIRMAN OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM OF TWO YEARS, VICE JAMES E. HALL, TERM EXPIRED.

MARION BLAKEY, OF MISSISSIPPI, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM EXPIRING DECEMBER 31, 2005, VICE JOHN ARTHUR HAMMERSCHMIDT, TERM EXPIRED.

DEPARTMENT OF STATE

JIM NICHOLSON, OF COLORADO, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HOLY SEE.

CHARLOTTE L. BEERS, OF TEXAS, TO BE UNDER SECRETARY OF STATE FOR PUBLIC DIPLOMACY, VICE EVELYN SIMONOWITZ LIEBERMAN.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

DENNIS L. SCHORNACK, OF MICHIGAN, TO BE COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE THOMAS L. BALDINI.

INTERNATIONAL MONETARY FUND

RANDAL QUARLES, OF UTAH, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF TWO YEARS, VICE KARIN LISSAKERS, RESIGNED.

DEPARTMENT OF EDUCATION

CAROL D'AMICO, OF INDIANA, TO BE ASSISTANT SECRETARY FOR VOCATIONAL AND ADULT EDUCATION, DEPARTMENT OF EDUCATION, VICE PATRICIA WENTWORTH MCNEIL, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

CARL R. BAGWELL, 0000
JAMES E. CROALL JR., 0000
ALLEN M. HARRELL, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVAL RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be captain

MARK M ABRAMS, 0000
JOSE A ACOSTA, 0000
MARTINEZ M F ALLAN, 0000
THOMAS P ALLAN, 0000
SANDRA A ALMEIDA, 0000
PETER E AMATO, 0000
DERYK L ANDERSON, 0000

STEVEN R ANDERSON, 0000
SUSAN N W ANDERSON, 0000
ULYSSES J ARRETTEIG II, 0000
JOAN R ATCHISON, 0000
JAMES A BACKSTROM JR., 0000
BRUCE A BARRON, 0000
JOHN M BARRY, 0000
MARK R BATEMAN, 0000
JOHN A BATLLE III, 0000
SUSAN R BAZEMORE, 0000
THOMAS E BEEMAN, 0000
RICHARD W BERG, 0000
BLAIR A BERGEN, 0000
BRUCE A BIERMANN, 0000
RICHARD J BOEHME, 0000
EDWARD BOLGIANO, 0000
KERRY F BOMAN, 0000
BRUCE B BOSWELL, 0000
THOMAS L BOWERS, 0000
DORIS J BRAUNBECK, 0000
WILLIAM J BRENNAN, 0000
DALE R BRUDER, 0000
MARIA D BURKE, 0000
VICTORIA A CALLIHAN, 0000
SALVATORE R CAMPO JR., 0000
LIONEL M CANDELARIA, 0000
LAURIE J CANTWELL, 0000
JOHN M CASTELLANO, 0000
KATHERINE B CHRISTIE, 0000
MARK M CHUNG, 0000
WARREN G CLARK, 0000
JOHN V CONTE JR., 0000
DAVID J COUGHLIN, 0000
AMY L COUNTS, 0000
MICHAEL C CRISMALI, 0000
STEVE CROSSLAND, 0000
PATRICIA L C CROWLEY, 0000
JEROME D DAVIS, 0000
DANIEL E DEATON, 0000
FRANCIS X DELVECCHIO, 0000
CYNTHIA A DICOLA, 0000
JODY W DONEHOO, 0000
JANET R DONOVAN, 0000
DANIEL R ECKSTROM, 0000
DONALD W EDGERLY, 0000
STANTON D ERNEST, 0000
BRIAN L ERNST, 0000
GERRY D EZELL, 0000
JOANN K FETGATTER, 0000
RICHARD I FREDERICK, 0000
PAMELA J FREEMAN, 0000
TERRY C GANZEL, 0000
MICHAEL C GARCIA, 0000
WILLIAM S GARNER JR., 0000
ROBERT L GEDEON JR., 0000
JAMES T GILL, 0000
NEIL F GITIN, 0000
SHERRI M GOLDMAN, 0000
RICHARD L HAMILTON, 0000
MAUREEN A HARDENLOZIER, 0000
KATHLEEN A HASS, 0000
GERALD B HAYES, 0000
MICHAEL W S HAYES, 0000
DONNA M HENDEL, 0000
BARBARA L HENK, 0000
LEE C HENWOOD, 0000
CARL J HICKS, 0000
JAMES HOHENSTEIN, 0000
ERIC S HOLMBOE, 0000
GARY R HOROWITZ, 0000
JERRY G HOWELL, 0000
MICHAEL F HUGHES, 0000
ROBERT M HULLANDER, 0000
DAVID J HURTT, 0000
JAMES M JAEGER, 0000
JOSEPH J JANKIEWICZ, 0000
CHRISTOPHER W JENNISON, 0000
DEBORAH A JETTER, 0000
JAMES M JOCHUM, 0000
STANLEY H JOHNSON, 0000
STEPHEN H JOHNSON, 0000
DONNA L KAHN, 0000
ROBERT B KERR, 0000
REBECCA D KILLOREN, 0000
EDWARD C KLEITSCH JR., 0000
NIR KOSSOVSKY, 0000
MARYJO KOTACKA, 0000
PAMELA N LANPHERE, 0000
MARK A LIBERMAN, 0000
FRANK P LIERSEMANN JR., 0000
MARIAN L MACDONALD, 0000
DARLENE S MARKO, 0000
JOHN M MARMOLEJO, 0000
JOHN H MASTALSKI, 0000
MARTIN L MATHIESEN, 0000
FREDERIC E MATTHEWS, 0000
PAMELA W MCCLUNE, 0000
HARRY C MCDONALD, 0000
KATHLEEN A MCGOWAN, 0000
JOSEPH N MECCA, 0000
STEVEN M MILLER, 0000
DAVID J MISISCO, 0000
ALEXANDER MOLDANADO, 0000
PATRICIA W MONTGOMERY, 0000
CATHY A MORENO, 0000
LELAND J MORRISON, 0000
EDWARD V OHANLAN, 0000
CHIKARA OHTAKE, 0000
JOHN H OLDERSHAW, 0000
GUILLERMO OLIVOS, 0000
FRANK W J OSTRANDER, 0000
PAUL M OVERVOLD, 0000
KAYE K OWEN, 0000
ANGELA S PALOMO, 0000
JEFFREY D PARADEE, 0000
DENNIS J PATIN, 0000
PHILIP M PAYNE III, 0000
JULIE A PEARSON, 0000
MARK W PEDERSEN, 0000
MICHAEL L POTTER, 0000
SCOTT M POTTINGER, 0000
MICHAEL J PRICE, 0000
CHRISTOPHER A PROCTOR, 0000
LEE R RAS, 0000
JAMES H REES, 0000
EDWARD J REGAN, 0000
JOHN K REZEN, 0000
WILLIAM F ROOS JR., 0000
JULIAN F ROSE, 0000
GLENN ROSS, 0000
KENNETH M SAMPLE, 0000
TIMOTHY P SCEVIOUR, 0000
MICHAEL R SCHESSER, 0000
SCOTT R SCHOEM, 0000
DEAN T SCOW, 0000
JOHN T SENKO, 0000
MICHAEL F SHANNON, 0000
WILLIAM H SIMPSON, 0000
GAIL A SMITH, 0000
SCOTT D SORENSEN, 0000
SCOTT L STAFFORD, 0000
KEITH R STEPHENSON, 0000
CHARLES E STEWART JR., 0000
DOROTHY M A STUNDON, 0000
RAYMOND F SULLIVAN, 0000
FLOYD K SUMIDA, 0000
BRIAN C SVAZAS, 0000
WILLIAM B SWEENEY, 0000
DAVID N TAFT, 0000
KATHLEEN K THOMPSON, 0000
THOMAS M THOMPSON, 0000
KATHLEEN G THORP, 0000
JIM W TISHER, 0000
PETER P TONG, 0000
VIRGINIA M TORSCH, 0000
DANIEL J TRAUB, 0000
JAMES A TURNER, 0000
VICTORIA K TYSON, 0000
JACK K UNANGST JR., 0000
JOSEPH J VELLING, 0000
STEVEN D VILLEGAS, 0000
GARY M VOLZ, 0000
JONATHAN G VUKOVICH, 0000
MARY E WALKER, 0000
BRIAN T WALSH, 0000
SCOTT A WEIKERT, 0000
THOMAS E WELKE, 0000
LARRY T WEST, 0000
HARRY T WHELAN, 0000
PAUL R WHELAN, 0000
VALERIE J WHITE, 0000
GAYLE S WILBUR, 0000
BRENDA L WILLIAMS, 0000
JOHN M S WILLIAMS, 0000
SONESEERE A WILSON, 0000
KENNETH A WINGLER, 0000
FRANK E WITTER, 0000
DOUGLAS A WOLFE, 0000
ELISABETH S WOLFE, 0000
KEITH N WOLFE, 0000
JUVANN M WOLFF, 0000
VANCE A WORMWOOD, 0000
DAVID P YOUNG, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTIONS 531 AND 5582:

To be commander

MICHAEL J. NYILIS, 0000
ROLFE K. WHITE, 0000

To be lieutenant commander

CHARLES F. CHIAPPETTI, 0000
CHRISTOPHER D. CONNOR, 0000
VINCENT F. GIARDINO JR., 0000
DANIEL M. JAFFER, 0000
NEVANA I. KOICHEFF, 0000
EDWARD G. KORMAN, 0000
MICHAEL R. LIGON, 0000
KEITH L. MAYBERRY, 0000
ROBERT K. MCBRIDE, 0000
DAVID L. MCKAY, 0000
RONALD D. PARKER, 0000
EFFIE R. PETRIE, 0000
TIMOTHY L. PHILLIPS, 0000
JACQUELINE PRUITT, 0000

To be lieutenant

ALLEN D. ADKINS, 0000
DENNIS A ALBA JR., 0000
ERNESTO C. ANDRADA JR., 0000
BRADLEY A. APPLEMAN, 0000
PRISCILLA A. BARLETT, 0000
OSCAR A. BARROW, 0000
AMY L. BECKER, 0000
NATHAN B. BEGLEY, 0000
ROBERT E. BELK, 0000
ARTHUR R. BLUM, 0000
DEWUAN L. BOOKER, 0000
RICHARD A. BORDEN, 0000
ROBERT W. BOSHONEK, 0000
RALPH L. BOWERS, 0000
WILLIAM L. BRECKINRIDGE, 0000
GREGORY K. BROTHERTON, 0000
CHARLES J. BUSTAMANTE II, 0000
DAVID J. CAMPANELLA, 0000
ANDREW J. CAMPBELL, 0000
ABRAXAS J. CATALANOTTE, 0000
JULIE A. CONRARDY, 0000
COREY A. COOK, 0000
GEORGE E. CORREA, 0000
DANIEL R. CROUCH, 0000
JANET E. CUFFLEY, 0000
ESKINDER DAGNACHEW, 0000
MARK D. DAY, 0000
TOM S. DEJARNETTE, 0000
BYRON A. DIVINS, 0000
JEANETTE C. DUDA, 0000
TODD M. FRIEDMAN, 0000
DAVID C. GARCIA, 0000
ELLEN J. GARSIDE, 0000
CLARENCE A. GIVENS, 0000
JENNIFER A. GORNOWICH, 0000
BRUCE A. GRAGERT, 0000
DAVID L. GRAY, 0000
DANIEL M. GRIMSBO, 0000
JAMES H. HALE JR., 0000
JAMES K. HANSEN, 0000
SCOTT A. HARDY, 0000
NEIL A. HARMON, 0000
KIMBERLY D. HINSON, 0000
BERTRAM C. HODGE, 0000
DAMEN O. HOFHEINZ, 0000
DEREK J. HOWE, 0000
JEFFREY L. HUFF, 0000
TODD C. HUNTLEY, 0000
JOHN J. ISAACSON, 0000
NANCY J. JOHNSON, 0000
SARA J. JOHNSON, 0000
STEPHEN O. JOHNSON, 0000
TYLER P. JONES, 0000
QUENTIN J. JURIN, 0000
SEAN E. KARLS, 0000
JOHN G. KASPALA, 0000
STEVEN D. KELLEY, 0000
JOSEPH KEMP, 0000
JOHN A. KING, 0000
JASON E. KLINGENBERG, 0000
PETER R. KOEBLER, 0000
SCOTT M. KOSNICK, 0000
PAUL A. LANGLOIS, 0000
MARGARET A. LARREA, 0000
KENNETH B. LAWRENCE, 0000
BRENDAN J. LEARY, 0000
BRIAN E. LEGERE, 0000
DAVID M. LEVY, 0000
RACHEL M. LEWIS, 0000
DANIEL W. LOYD, 0000
LORRAINE A. LUCIANO, 0000
CHRISTINE L. LUSTER, 0000
MICHAEL D. MAXWELL, 0000
JOSHUA H. MCKAY, 0000
REBECCA A. MCKNIGHT, 0000
JEFFERY T. MENNA, 0000
ELIZABETH MEYDENBAUER, 0000
KENNETH H. MILLER, 0000
JOAQUIN J. MOLINA, 0000
THOMAS A. I. MONEYMAKER, 0000
JASON S. MORTON, 0000
MICHAEL MULLEN, 0000
STEPHEN R. NEVAREZ, 0000
KENNETH J. OAKES, 0000
JONATHAN G. ODOM, 0000
MATTHEW W. OLSTAD, 0000
CARLOS L. ORTIZ, 0000
DANIEL P. PAPP, 0000
ROBERT J. PASSERELLO, 0000
DAVID C. PECK, 0000
JON D. PEPPETTI, 0000
JACQUELINE L. PIERRE, 0000
JEFFREY S. POWELL, 0000
RYAN M. RASMUSSEN, 0000
WARREN A. RECORD, 0000
DAVID L. RICHMAN, 0000
GABRIELA. RODRIGUEZ, 0000
TIMOTHY A. ROGERS, 0000
MARK D. ROMAN, 0000
JOSEPH ROMERO, 0000
JENNIFER L. ROPER, 0000
MICHAEL D. ROSENTHAL, 0000
JAMES R. SANDERS, 0000
DAVID C. SASSER, 0000
BETH A. SAULS, 0000
THOMAS P. SCARRY, 0000
TORSTEN SCHMIDT, 0000
OWEN M. SCHOOLSKY, 0000
ANNA M. SCHWARZ, 0000
RANDALL E. SCOTT, 0000
CARL C. SMART, 0000
NEIL T. SMITH, 0000
WENDY L. SNYDER, 0000
ANGELA Y. STANLEY, 0000
ANDREW J. STRICKLER, 0000
FRANK H. STUBBS III, 0000
COLLIN C. SULLIVAN, 0000
MARY C. SUTTON, 0000
DAVID E. TAMBELLINI, 0000
REBECCA L. TAYLOR, 0000
SAMUEL E. B. TAYLOR, 0000
RONALD E. THACKER, 0000
ROBERT A. TURNBULL, 0000
TAMERA K. TUTTLE, 0000
CHRISTOPHER VANAVERY, 0000
RICHARD C. WHEELER II, 0000
MONICA R. WILLIAMS, 0000
BRETT A. WISE, 0000
DIANNA WOLFSON, 0000
ROBERT B. WOOD, 0000
HOLLY A. YUDISKY, 0000
TIMOTHY J. ZINCK, 0000
CHRISTINE M. ZOHLEN, 0000

To be lieutenant (junior grade)

FRANCISCO J. ALSINA, 0000
ROBERT H. ARMBRESTER, 0000
TIMOTHY G. BELLOTT, 0000
SHAWN D. BLICKLEY, 0000

BRENT M. BOGART, 0000
VINCENT BOURGEOIS, 0000
SYNEEDA P. BREWER, 0000
TIMOTHY J. BURKE, 0000
BRYCE D. BUTLER, 0000
ADRIAN T. CALDER, 0000
CHRISTOPHER D. CHUHRAN, 0000
DAVID COLON, 0000
STEVE M. CURRY, 0000
ROBERT S. DAMSKY, 0000
TYUS S. FEW III, 0000
MITCHELL E. FILDES, 0000
JAMES B. FILLIUS, 0000
STEVEN L. FULTON, 0000
CHRISTOPHER S. GARVIN, 0000
RICHARD M. GENSLEY, 0000
MATTHEW G. GRANT, 0000
JACOB R. GUTIERREZ, 0000
REGINALD F. HALL, 0000
SCOTT D. HARVEY, 0000
ANDREAS HEPPNER, 0000
ROBERT L. HOLMES, 0000
TAMMY K. JANSEN, 0000
CAMELLIA G. KOZLOSKI, 0000
CHRISTOPHER J. KUBACIK, 0000
HAROLD D. LEDBETTER, 0000
JEFFREY S. LOCK, 0000
AARON M. LOWE, 0000
SUZANNE R. MEYER, 0000
MICHAEL S. MILLIKEN, 0000
TIMOTHY B. MOORE, 0000
TIMOTHY D. MULLER, 0000
CHRISTOPHER S. MUSSELMAN, 0000
RAMIRO E. ORELLANO, 0000
BARRY R. PARKER, 0000
STEPHEN H. PITMAN, 0000
ERNESTO A. RAYMUNDO, 0000
KENNETH W. RYKER III, 0000
ROBERT S. SCOTT, 0000
KEVIN S. SEIBEL, 0000
PHILLIP M. STEVENS, 0000
CHRISTOPHER M. SULLIVAN, 0000
JENNIFER L. TETATZIN, 0000
KADIATOU F. TRAORE, 0000
SCOTT E. VANVOORHEES, 0000
RICHARD D. VTIPIL, 0000
MICHELE A. WAARA, 0000
EDWARD M. WEILER, 0000
GERARD J. WHITE, 0000
GHISLAINE WILLIAMS, 0000
DORSEY G. WISOTZKI, 0000
GEOFFREY W. YOUNG, 0000
RYAN S. YUSKO, 0000

ENVIRONMENTAL PROTECTION AGENCY

JUDITH ELIZABETH AYRES, OF CALIFORNIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE WILLIAM A. NITZE, RESIGNED.

DEPARTMENT OF STATE

GEORGE MC DADE STAPLES, OF KENTUCKY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CAMEROON, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF EQUATORIAL GUINEA.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. GORDON S. HOLDER, 0000

CONFIRMATION

Executive nominations confirmed by the Senate June 29, 2001:

DEPARTMENT OF THE INTERIOR

NEAL A. MCCALEB, OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. MICHAEL A. HAMEL, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. DALE W. MEYERROSE, 0000
BRIG. GEN. WILBERT D. PEARSON JR., 0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. REX W. TANBERG JR., 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JOHN A. VAN ALSTYNE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. JAMES P. COLLINS, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. EDWARD L. CORREA JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. JAMES C. RILEY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. WILLIAM S. WALLACE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. BENJAMIN S. GRIFFIN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. LEON J. LAPORTE, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. EDWARD HANLON JR., 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF THE BUREAU OF MEDICINE AND SURGERY AND SURGEON GENERAL AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5137:

To be vice admiral

REAR ADM. MICHAEL L. COWAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be Vice Admiral

VICE ADM. PATRICIA A. TRACEY, 0000

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING STEVEN L ADAMS, AND ENDING JANNETTE YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 18, 2001.

IN THE ARMY

ARMY NOMINATIONS BEGINNING KEITH S * ALBERTSON, AND ENDING ROBERT K ZUEHLKE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 3, 2001.

ARMY NOMINATIONS BEGINNING ERIC D * ADAMS, AND ENDING DAVID S ZUMBRO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 21, 2001.

ARMY NOMINATIONS BEGINNING GREGGORY R. CLUFF, AND ENDING STEVEN W. VINSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 21, 2001.

ARMY NOMINATIONS BEGINNING GILL P BECK, AND ENDING MARGO D SHERIDAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2001.

ARMY NOMINATIONS BEGINNING CYNTHIA J ABBADINI, AND ENDING THOMAS R * YARBER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2001.

ARMY NOMINATIONS BEGINNING JAMES E. GELETA, AND ENDING GARY S. OWENS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 12, 2001.

ARMY NOMINATIONS BEGINNING FLOYD E. BELL JR., AND ENDING STEVEN N . WICKSTROM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 12, 2001.

ARMY NOMINATIONS BEGINNING ROBERT E ELLIOTT, AND ENDING PETER G SMITH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 18, 2001.

ARMY NOMINATIONS BEGINNING BRUCE M. BENNETT, AND ENDING GRANT E. ZACHARY JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 18, 2001.

IN THE MARINE CORPS

MARINE CORPS NOMINATION OF DONALD E. GRAY JR.

MARINE CORPS NOMINATIONS BEGINNING JESSICA L ACOSTA, AND ENDING JOSEPH J ZWILLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 12, 2001.

NAVY

NAVY NOMINATION OF CHARLIE C. BILES.

NAVY NOMINATIONS BEGINNING JAMES W ADKISSON III, AND ENDING MIKE ZIMMERMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 21, 2001.

NAVY NOMINATION OF WILLIAM J. DIEHL.

NAVY NOMINATION OF CHRISTOPHER M. RODRIGUES.

NAVY NOMINATIONS BEGINNING ROGER T BANKS, AND ENDING CARL ZEIGLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 12, 2001.