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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 8, 2005, at 2 p.m.

Senate

MONDAY, FEBRUARY 7, 2005

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Almighty God, source of all life, today we offer You ourselves, thanking You for the opportunity to serve You and country. Forgive us for being silent when we should speak, for being useless when we could be useful. Watch over and protect our Nation's military. Give our warriors courage as they face the foe and skill in performing their duty. Bless our lawmakers. Give them steadfast hearts which no unworthy thought can drag downward and no tribulation can wear out. Teach them to serve You as You deserve, to give and not count the cost, to toil and not seek for rest, to labor and not ask for any reward except that of knowing that they are doing Your will.

Use each of us to build a world fit to live in. We pray in Your wonderful name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we have a period of morning business until 3 this afternoon, and at 3 we will begin consideration of S. 5, the class action fairness bill. The agreement reached last week provides for debate only and requires amendments to be limited to the subject matter of the bill. I encourage Members to make their opening statements today so that we may begin the amendment process early tomorrow.

I thank the Democratic leader for his cooperation as we begin the class action legislation. We have a short list of possible amendments from the other side. I hope we can lock in an exclusive list at the earliest time to facilitate management of the bill. I don't want to encourage amendments, but I would forewarn all Senators, if they intend to offer an amendment to the class action bill they should notify their respective chairmen just as soon as possible and notify the cloakrooms as well.

In addition to beginning the debate on the class action bill today, we will also consider a resolution relating to the recent elections in Iraq. That resolution has been circulated, and we expect to have a rollcall vote on the resolution at 5:30 this afternoon. We hope to have that agreement locked in shortly, and we will alert Members accordingly when consent is granted for that vote.

I also would announce that the Homeland and Governmental Affairs Committee is expected to report the nomination of Michael Chertoff to be Secretary of Homeland Security. Clearly we will want to schedule that important nomination for floor action as soon as possible.

I yield the floor. I will have a few minutes on leader time shortly but would be happy to turn to the Democratic leader.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

REPUBLICAN NATIONAL COMMITTEE LETTER

Mr. REID. Mr. President, when President Bush was elected, he said that he wanted to be a uniter and not a divider. We took him at his word. The last 4 years have not worked out well. There has not been much unity in Washington, but a lot of divisive matters come before us and the tone has not been good.

The day after this last election when the President was reelected he called

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

me when I was in Las Vegas and we had a very pleasant meeting on the telephone. He said he wanted to get along. He wanted to set a better tone in Washington.

This past Wednesday, the State of the Union Message was given. The President said the same thing there—he wanted to get along, to cooperate.

Today, the newspaper of Capitol Hill, ''Rollcall,'' has a front page story: ''RNC Turns Up Heat on Reid.'' It is a big story. It says among other things that they are sending out a 13-page research document, the RNC, the Republican National Committee, ''a 13-page research document today to roughly 1 million people . . . detailing Reid's . . .''—what they don't like about me, saying what they want to do is just like they did to Daschle.

I don't think the President of the United States can say one thing and then do something else and get away with it. Is this how he wants to be a uniter, not divider? He cannot distance himself from the Republican National Committee. The Republican National Committee is his committee. He picks the chairman. He picks everybody there. He raises the money for it. It is the President's organization. He can't say one thing to the American people and to the Democratic leader of the Senate and then send out scurrilous letters saying that I am a bad guy, in great detail. I mean, is President George Bush a man of his word? Is what he is telling the American people just a charade?

Last Wednesday, just a few days ago, as I have mentioned, he said that he was going to reach out to the Democrats. This is a strange way to reach out.

Mr. President, I call upon you to repudiate this document, to tell the Republican National Committee don't mail it. Tell them not to send it. We haven't dealt with one piece of legislation here on the Senate floor, yet they are sending out, to a million people, what they think is to have REID roughed up a little bit.

What politics is all about, what government is all about, is honesty, integrity—not phoniness. Why didn't he stand and tell the American people last Wednesday that one of the first items of business we were going to do in Washington is send out a hit piece on the Democratic leader? If he is honest with the American people, why doesn't he just call it the way it is? It is going to be politics as usual, directed from 16th and Pennsylvania Avenue. Honesty, integrity and truth—if those are the watch words of this President, he will repudiate what his Republican National Committee is doing.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 300 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Rhode Island is recognized.

IN HONOR OF STANLEY KIMMITT

Mr. REED. Madam President, I rise to commemorate the life and accomplishments of Stan Kimmitt, former Secretary of the Senate Majority and Secretary of the Senate, retired Army colonel and loving husband and father. On December 7, 2004, the Senate and the Washington community lost a devoted friend, one whose work honored the institution of the Senate and the value of bi-partisanship.

Throughout his careers in the military, political and corporate worlds, Stan Kimmit dedicated his life to public service and democratic ideals. He first served our Nation in WW II and Korea, then as Majority Leader Mike Mansfield's senior staff member for 11 years and later for 5 years as Secretary of the Senate and finally as a consultant.

Stan was born on April 5, 1918 in Lewistown, MT. His father was a wheat farmer until drought destroyed the family's crop in the early 1920s. The family moved to Great Falls, MT, where Stan spent the remainder of his childhood. He enrolled at the University of Montana where he took an Asian history class taught by a man who would be very influential in his life, a man named Mike Mansfield.

In June of 1941, Stan was drafted out of college and began what would become a 24-year Army career. He was sent to Europe where he was a combat commander and fought in the Battle of the Bulge. He crossed the bridge at Remagen and was part of the first U.S. division to occupy Berlin. Stan entered the Korean War as a first lieutenant, where he served as an artillery officer at Pork Chop Hill. After completing his bachelor's degree at Utah State University, he went back to the Army to serve in Europe. The Army later assigned him to serve as secretary of the Army office of legislative liaison to the Senate, his first of three terms in this post. During his assignment to the Senate, he renewed his connection to the Senate Majority Leader from Montana, Senator Mike Mansfield.

By the time Stan retired from the Army in 1966 as a colonel, he was decorated with the Silver Star, the Legion of Merit, the Bronze Star for Valor with Three Oak Leaf Clusters and was inducted into the Field Artillery Officer Candidate School Hall of Fame.

He approached his career in the Senate in the same manner with which he approached his commitment to the Army, with integrity, with fairness, and with an enormous deal of respect for the institution. Stan was always troubled by the partisanship in Washington because he thought of the institution as a family. He honored the principles of the party, but always knew that it was part of a bigger picture. He was grateful for the opportunity to have served Senator Mansfield but, above all, Stan was grateful to have served in the United States Senate.

Even after many years in Washington, true to his roots, Stan always considered himself ''a gopher-shooting Montana boy at heart.'' I had the privilege of knowing Stan through his sons Robert, Jay and Mark, they were contemporaries of mine at West Point.

They established extraordinary careers in their own capacity. Bob Kimmitt was former Ambassador to Germany under President Bush. Jay Kimmitt served this institution as a member of the Appropriations staff. Mark Kimmitt is today a general officer to the U.S. Army.

Stan had a large family. He leaves behind his wife Eunice, his 5 children, his 12 grandchildren, and 1 great-grandchild. I extend my deepest condolences to his friends and his family. Stan Kimmitt served this Nation with distinction; the Senate shall miss such a devoted friend and such a humble servant.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

CLASS ACTION FAIRNESS ACT

Mr. FRIST. Madam President, in about 40 minutes or so we will be formally bringing to the floor S. 5, the Class Action Fairness Act. There will be opening statements over the course of the afternoon. We will not be submitting amendments specifically on the bill today or voting on the bill this afternoon, but I would like to take a few minutes and introduce my strong support on this important bill, a bill we have worked on for several years now in a bipartisan way. It is important, I believe, to put the debate in context.

This particular bill gives us the first opportunity to take a major step forward on this floor to halt lawsuit abuses that occur across the country. Every 2 seconds a lawsuit is filed in America—every 2 seconds. In 2002, that added up to 16.3 million lawsuits filed in State courts.

In the past decade, litigation has skyrocketed, creating the most expensive litigation system in the world. In 2003, the tort system cost an incredible $246 billion. In other words, that is approximately $845 for every man, woman, and child.

At the current rate of increase, it is estimated that the per capita cost of the tort system will go up to $1,000 per person by 2006. That is $4,000 for a family of four. Nationally, the tort system costs more than the entire economic output of my own State of Tennessee.

The result of this runaway litigation? Clogged courts, wasted taxpayers' dollars, restrained competitiveness, and unjust settlements that award huge attorney fees at the expense of injured victims who often get a coupon or nothing at all.

Businesses spend millions of dollars each year defending themselves against lawsuits, many of them frivolous.

Home Depot is now one of America's largest and most successful companies, but Bernie Marcus, who cofounded Home Depot back in 1978, says his business could never have gotten off the ground in the current legal climate. That is thousands of jobs that would have never been created, millions of products never sold, and prices that would never have been introduced for the benefit of consumers.

Contrary to popular perception, small businesses, which are the engine of economic growth in our country, are the ones which are hardest hit by the lawsuit industry—not the large corporations. Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the business tort costs.

Let me repeat: Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the tort costs.

They spend a staggering $88 billion a year on legal fees—$88 billion that could be used to hire more workers, create more jobs, expand their businesses, or develop new products and services.

Many small businesses can't afford the legal burden, so they close up shop and jobs are lost—and the economy overall suffers.

Clearly, it is time for reform. We simply cannot afford the status quo. The cost of doing business in America keeps going up while respect for our legal system goes down.

That is why today, as a first step, we are tackling class action. We should consider focusing on other areas of lawsuit abuse, including medical liability, asbestos, and bankruptcy—and in due time we will do just that. But we are beginning with class action to help those injured by negligence who often receive little or nothing while their attorneys pocket millions.

Class action serves an important purpose in our justice system. We all know that. Class action lawsuits allow plaintiffs whose injuries are not big enough to justify the legal expense individually to combine their claims into one suit against a common defendant. This is an important and valuable tool to keep unscrupulous companies honest and to compensate legitimate victims.

But the system has gotten off track. Opportunistic attorneys are distorting the process to generate excessive attorney fees at the expense of the injured plaintiffs. Take, for example, a case in my home State involving faulty plastic pipes.

Throughout the 1970s and the 1980s, 6 million to 10 million new homes and apartments were fitted with the plastic piping. PB pipes, as they are known, were generally considered cheaper and more durable than either copper or galvanized steel systems. They were especially popular in the Sun Belt where we were experiencing a huge housing boom. Before long, however, the pipes and the fittings began to fail, causing leaks and property damage.

A class action suit was filed on behalf of the homeowners who were stuck with these defective pipes. After extensive litigation, the lawyers reached a deal. The homeowners were eligible to receive less than 10 percent of the total settlement fund—less than 10 percent. Meanwhile, the plaintiffs' attorneys negotiated for themselves a $45 million payday—the equivalent of $2,000 per hour. This is just one of many examples of consumers getting a fraction of the total settlement, while the lawyers got millions.

In fact, the Class Action Fairness Act enumerates a consumer class action bill of rights which will put an end to these unfair compensation packages. Under the Class Action Fairness Act, lawyers' fees for coupon settlements must be based either on the value of the coupons that are actually redeemed or the hours actually billed in prosecuting the class action. The consumer provisions will also require settlement deals to be written in plain English so plaintiffs know what is being negotiated and can make informed decisions about how to proceed.

Second, the bill before the Senate will help end the phenomenon of forum shopping. Aggressive trial lawyers have found there are a few counties that are what is known as lawsuit friendly. These elected State court judges are quick to certify a class action and juries are known to grant extravagant damage awards.

The same defendant can face copycat cases in different States, each granting a different result. These counties may have little or no geographic relationship to the plaintiffs or the defendant, but the trial lawyers know that simply the threat of suing in these counties can lead to large cash settlements. One study estimates that virtually every sector of the U.S. economy is on trial in only three State courts.

The Class Action Fairness Act moves those large nationwide cases that genuinely impact the interstate commerce to the Federal courts where they belong. These are commonsense reforms that will bring fairness back to the system.

For these reasons, the Class Action Fairness Act enjoys strong bipartisan support. It was reported out of the Senate Judiciary Committee with a bipartisan majority. I am confident if we continue working together to pass a clean bill without amendment, it will pass the House of Representatives quickly and be ready for the President's signature. Class action is an important tool of justice, but it is a tool that has been badly abused. Class Action Fairness Act will bring rationality to the system which will benefit the truly injured, keep America competitive, and restore the public respect for the law.

I yield the floor.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mrs. BOXER. Madam President, may I ask what is the order at the current time?

The PRESIDING OFFICER. Morning business, with Senators permitted to speak for up to 10 minutes each.

Mrs. BOXER. Does one have to ask unanimous consent to go past the 10 minutes?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. I ask unanimous consent I be able to speak for up to 20 minutes as in morning business.

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

CLASS ACTION LAWSUITS

Mrs. BOXER. Madam President, Senator FRIST came to the Senate to make some opening remarks about the class action bill that will be before the Senate. There will be a very good debate on this bill. I will make a couple of points.

The Senator said every 2 seconds a lawsuit is filed. I have no reason to doubt his number, but I wonder if he has looked at who is filing the lawsuits. The last time I looked, it was mostly one business suing another business. So before we come to the Senate and say we have to do something about the class action lawsuits, saying every 2 seconds a lawsuit is filed gives the wrong impression. We are going to get the exact numbers, but I make that point.

What we will find among colleagues, regardless of party, we all want to make sure these lawsuits are fair and that they are heard in a fair way. It appears when a class action lawsuit winds up in a Federal court, the judge, on many occasions, if not most occasions, refuses to hear it because the plaintiffs come from so many different States. I will give an example of what these lawsuits are about.

When we talk about lawyers, we talk about fees, we talk about costs the lawyers have, or the time they have. We are overlooking the main point, which is: what are these class action lawsuits about? I will talk about a couple of these lawsuits because we need to put a human face on what they are.

Rob Sanders of Maryland explained how his daughter was killed, as were other children, by a deployed airbag in a Chrysler minivan. For years, consumers have pursued class action cases against Chrysler to force the company to replace existing airbags in such vehicles with others that deploy less rapidly and do not pose a safety risk to

the car's occupant. As someone who is small in stature, I can say the automobile companies make these airbags to protect people who are much larger and much heavier, and much taller than appropriate for children. We have seen children killed by these airbags.

We all want airbags that work, regardless of our weight, our height, or stature. A class action was blocked in a Louisiana Federal court because the judge threw up his hands. But in Oklahoma—as we all know, that is a conservative State—the State court is proceeding to look at this even though the company has been working for years to block it. We are talking about life and death. We are talking about real victims.

Let's talk about the ability to make a living. Georgie Hartwig of Washington State is a former Wal-Mart employee who was cheated out of overtime pay. This is a common practice, unfortunately, at many of the company stores. Her class action case is being heard in State court. Three Federal courts have refused to hear such Wal-Mart cases, whereas five State courts have allowed them.

I am hopeful as we move this bill forward, we will ensure that at least some court will hear these important cases. They involve real people. I am sure Georgie Hartwig of Washington State and her colleagues at Wal-Mart have to raise a family and pay the rent. If we have a system that simply shuts the courthouse door, be it a State courthouse or a Federal courthouse, we are not fulfilling our job to make sure people get justice, they get it expeditiously, and it is done fairly.

Shelly Toliver is a firefighter from Connecticut. These are the people we are talking about here—Americans. Shelly Toliver, a firefighter from Connecticut, described how she brought a State class action suit against Credit Acceptance Corporation of Michigan for cheating her and other consumers out of their vehicles in violation of Connecticut law, destroying their credit ratings in the process. We all know what it is to get a bad credit rating by mistake. It is terrible. Ultimately, the class members had their purported debt to the company wiped out and their bad ratings cleared because they were able to get their case heard.

It goes on and on. I hope as we get through this bill we will be honest with the American people regarding whose rights are at stake. We are supposed to be here for the rights of the men and women of this country, the families of this country. The corporations, which are rather faceless, I support when they do the right thing, but when they do not do the right thing, when they wrong a firefighter, if an automobile company does not do what they should to protect children, there ought to be justice. That is all we are saying.

Are there abuses? Yes. Should we resolve them? Yes. I am very happy to do that. It is true, we have abuses everywhere. We should fix those abuses.

We have to be careful we are being sincere. There is one colleague who has been very strong on capping pain and suffering, but when it happened in his own family, he went for the gold. So let's be careful. The American people are watching. If we say we ought to cap pain and suffering for our constituents—forget about it, one size fits all. This is not class action, but these are other kinds of cases this Republican Senate is coming after: one size fits all. Let's cap it it is killing us; it is killing the country.

I go to the supermarket every week. No one comes up to me and says, please, please, do something about the filing of lawsuits when their child died in a hospital. What they will say to me is, make sure there is fairness for victims.

Let's get together and do the things that have to be done so that the people who get the benefit are our constituents. Do not close the courthouse door to firefighters, moms and dads, who are working for justice in their lives.

AN INCOMPLETE BUDGET

Mrs. BOXER. The President has sent down his budget. We are going through it now to see what it means for our State. But this is quite a budget. This is a budget that does not include the costs of the war in Iraq. This is a budget that does not include the costs of the war in Afghanistan. This is a budget that does not show the true costs of making the tax cuts permanent. This is a budget that does not show the costs of what I call anti-Social Security, going into personal accounts, which is an enormous multitrillion dollar cost.

So you have a document which is, on its face, incomplete. That is the best way I can put it: incomplete. Other people might use another word for it, but I will be charitable and say it is incomplete. Why can't the President show the true costs? Because he could not hold up his head if he put the true costs in there. We would be looking at deficits that are ruinous. The truth is, the deficits are ruinous.

When President Bush took over, he had a surplus as far as the eye could see. He turned it into a deficit in 15 minutes. He said the tax cuts would be so great that we would have economic growth and we would suddenly have a balanced budget. It did not happen.

Let me tell you what else is not in this budget. Where is the money from the Iraqi oil that was supposed to be coming our way? On March 27, 2003, not that long ago, this is what Paul Wolfowitz, the Assistant Secretary of Defense said, in congressional testimony, sworn to tell the truth:

> The oil revenues of Iraq could bring between $50 and $100 billion over the course of the next two or three years. . . . We're dealing with a country that can really finance its own reconstruction, and relatively soon.

Let me repeat that. A Bush administration spokesperson, very high up in the Defense Department, said:

> The oil revenues of Iraq could bring between $50 and $100 billion over the course of the next two or three years. . . . We're dealing with a country that can really finance its own reconstruction, and relatively soon.

Well, here it is, folks, it is 3 years later, and not a penny of revenue is coming into our budget to help us, and the whole cost of the Iraq war is outside the budget—a disaster.

Here is another claim, by White House spokesman Ari Fleischer:

> Iraq, unlike Afghanistan, is a rather wealthy country. Iraq has tremendous resources that belong to the Iraqi people. And so there are a variety of means that Iraq has to be able to shoulder much of the burden for their own reconstruction.

Where is the revenue in our budget? Not a dime, not one slim dime. They are not even talking about making these costs into loans against future oil revenues. And in the meantime, what are the American people told by this President and his budget? What are the veterans told? Oh, we are cutting back on veterans health care. Can you imagine? We are almost at 11,000 wounded, and this President's budget says, You are going to have to pay more for your pharmaceuticals, $250 to join, and you have to pay more. Let me tell you, a lot of us are going to stop that. Let me tell you, a lot of us are not going to let that happen.

The people coming home from Iraq, half of them are very seriously wounded—thousands and thousands. Some estimates are that a third of them need mental health care. And this budget cuts veterans health. Wrong. That is not going to happen. It is unacceptable. I think it is unacceptable to the American people.

I ask my constituents if they believe we ought to be doing more for veterans or less for the veterans or the same as we did last year. I know—and I have not taken a scientific poll—they would say: Senator, you give them what they need.

The President says to the Iraqi people: As long as it takes. Whatever it is. Whatever it costs. I want to say to the veterans: Whatever it takes, however long it takes for you to get on your feet, we will be there.

We have the President eliminating a program where the Federal Government gives States funding to incarcerate illegal immigrants who have committed crimes—cut, gone, finito, finished—eliminating $300 million. We call it SCAAP. How can a President, at this time in our history, where we are guarding our borders, where we are concerned about who is coming in, lay all of that on the border States? This is wrong. It is unacceptable.

How about this: The Bush budget slices law enforcement grants to States from $2.8 billion to $1.5 billion, while the President claims he is increasing homeland defense.

I have a message for the President, in a nice, respectful way: It is our local law enforcement people who are protecting our citizens in every capacity. They are the bottom line of homeland defense.

There is a special and important program to assist police departments to improve technology and their ability to communicate with other agencies through COPS technology grants. Do you know what happens if there is an emergency in one area? What we have found out is, our police departments, our fire departments, our first responders do not have the equipment they need. They do not have the communications equipment. They cannot talk to each other.

The Senate, in a bipartisan way, passed authorizing legislation to say we need to help connect these departments with one another. Because suppose something happens on a railroad track, and one sheriff sees it, and there is a disaster, and he needs to get on the line immediately to all the other agencies in the area; they cannot do it right now. They need to move toward the ability to do this. It seems shocking that we have not done that already in America, but that is the truth. What does the President do? He cuts that program. He eliminates it.

Now, the President also creates a new program. He wants to extend the No Child Left Behind to high school. Well, how about fully funding his first No Child Left Behind? I wrote the part with Senator ENSIGN that deals with afterschool programs. It has been frozen for 3 years. There are millions of kids who want to get into afterschool programs.

We know it works. Law enforcement loves the program. The teachers love the program because the kids get to do their homework. They stay out of trouble. The FBI loves the program. The FBI has told us the vast majority of juvenile crime occurs right after school until the parents come home. We did not need the FBI to tell us that. We kind of figured that out. But this is key.

So here we are with a new program to extend No Child Left Behind to high school kids when we have not fully funded the afterschool program and many of the other programs that were promised to our people in the first No Child Left Behind. That is $1.4 billion, folks. This is not small change. This is $1.4 billion for this new program. There are no revenues in there from Iraqi oil.

This is also the first administration not to back a polluter-pay fee. When polluters cause these superfunds, where we have toxics all over the ground seeping into the water, it costs a lot of money to clean it up. This is the first administration, Republican or Democratic, not to support this polluter-pay fee. That would bring billions in over 5 years.

There are ways for us to pay for things the American people need. I am looking forward to getting into more of the fine print of this particular budget. I used to be on the Budget Committee. I can tell you, I loved being on the Budget Committee because it was a way to look at the big picture. When I went on the Commerce Committee, I had to give up the Budget Committee. It was a sad decision for me. But I look forward to hearing from KENT CONRAD and I look forward to hearing from the Republican chairman, who was PETE DOMENICI, and I am not sure if it has changed or not. Because I want to hear their take on this budget.

But we see new initiatives in this budget that obviously are not paid for when we are shorting probably 150 programs, according to the President. We see nothing in here about getting any revenues from the Iraqi oil that were promised to us: $50 to $100 billion over the course of the next 2 or 3 years we were told by this administration in 2003. I believe in holding people accountable when they say things. I think it is important. That is what they said, and we do not see any evidence of any of this in this budget.

So we have the budget to deal with. We have the class action lawsuit legislation, which I hope we can do in a way to protect the important lawsuits that need to be heard and need to be resolved. Because if they are heard and they are resolved, our people will be safer, our people will be stronger, our people will feel they have been given justice.

We have the Social Security, what I call, repeal. Not a penny has been put into this budget to reflect any of that.

I understand my time is up. There is no one on the floor so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will proceed to the consideration of S. 5, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Mr. SPECTER. Mr. President, I was about to note that the hour of 3 o'clock has arrived. According to the previous order, the Senate is to take up the legislation on class action. This is legislation which has been crafted over a considerable period of time. It had some difficulty in achieving 60 votes for so-called cloture to cut off debate so that the Senate would take up the issue. It had been negotiated among a number of Senators in the past to get the requisite 60 votes, and it is represented that if the bill is passed in its current form in the Senate, it will be agreeable to the House of Representatives. When I choose my words carefully—that has been represented; you never know until it gets to the other body and see what they do—but that has been the expectation.

When the issue was negotiated, there were a number of Senators who were satisfied with the structure of the bill. But all 100 Senators had not assented, agreed to it, including this Senator. We customarily are not all involved in negotiations as to the bill so that there is obviously latitude, when the matter comes before the Senate, for individual Senators to exercise their right to either offer amendments or to join in amendments which are offered.

I support class action reform. I do so essentially to prevent judge shopping to States and even counties where courts and judges have a prejudicial predisposition on cases. Regrettably, the history has been that there are some States in the United States and even some counties where there is forum shopping, which means that lawyers will look to that particular State, that particular county to get an advantage.

Diversity jurisdiction was established in the United States so that if there was litigation between citizens of different States, there was a certain amount in controversy, a jurisdictional amount—that amount has risen over the years; when I started the practice of law it was $3,000, now it is $75,000—the diversity jurisdiction of the Federal courts was established to see to it that if a litigant from California, illustratively, came to Pennsylvania and might be in the State court, that there would be perhaps some predisposition on the part of State court judges to look more favorably upon the local litigant. And the Federal courts were viewed as being more impartial. And that thread remains to this day.

The legislation will leave in State courts, if the matter is predominantly a State court issue, where there are some two-thirds of the class in that State. If there is one-third or less, then the matter would go to the Federal court. And if it is between one-third and two-thirds, then it will be up to the discretion of the Federal judge on a series of standards which have been worked out through the leadership of Senator FEINSTEIN of California.

The bill came before the Judiciary Committee last Thursday. And it was my request of the Judiciary Committee members at that time that amendments not be offered because if you have controversial amendments offered in committee, they are customarily taken up again on the Senate floor. And the majority leader, Senator FRIST, had asked me in my capacity as

chairman of the committee to get the bill out last Thursday so that it could come to the floor today.

As is well-known publicly, the class action legislation is a priority of the President's. It has been the intention of the majority leader to put the matter on the agenda at an early time—obviously, February 7 is an early date—and reserve sufficient time so that Senators have a full opportunity to offer amendments, and we can move through to completion of the bill.

There is an amendment which has been discussed involving a proposal by the Senator from New Mexico, Mr. BINGAMAN, which would make certain that substantive rights which are now present in State courts would be retained after the enactment of this legislation. State courts use State law, and that is substantive law, in certifying class actions. And while I have stated my support for moving cases to the Federal court for the reasons I have already said, I have made a claim in the past and repeated it in the Judiciary Committee meeting last Thursday that in moving the cases to the Federal courts, I do not want to see changes in the substance of the rights of consumers or other class action litigants; that the objective which I think we ought to obtain is that the same substantive rights would remain; that this bill should not be a vehicle for modification of substantive rights, but this bill should provide the reform which will take the cases out of State courts, where there has been a record of prejudice to defendants, and take them to the Federal courts where, in the historical tradition of diversity litigation, to take them to the Federal courts where there is a better opportunity for an objective determination.

When this bill was in committee in the past, I had a concern about certain of the provisions as to mass actions. The advocates of reform legislation were concerned that mass actions might be tried in the State courts altogether and provide a procedural context where there could not be a fair or appropriate adjudication. That is a highly complex subject, and it may be the matter of some concern as we move forward on this bill.

It is my hope that we will not have so-called extraneous amendments, that we will focus on issues of class action related to this subject matter so that we can have a full debate on the subject. Senators may have an opportunity to offer their amendments and the determination of the Senate can be made as to what ought to be done on this very important litigation matter.

I seek recognition today to open debate on the Class Action Fairness Act of 2005. This bill embodies a carefully balanced legislative solution that responds to abuses of the class action litigation device in our State courts.

A key provision in the bill amends the Federal diversity jurisdiction statute to allow Federal courts to hear large multi-party, multi-State class action disputes. Existing law prevents national lawsuits from seeing the inside of a Federal courtroom by virtue of a glitch in the way that courts have interpreted the Federal diversity jurisdiction statute—a statute that the Congress passed back in 1789.

Let me illustrate this fundamental problem by looking at two hypothetical cases. In the first case, you have a resident of, say, my State of Pennsylvania, slip and fall while filling up her car at a New Jersey gas station. The plaintiff sprains her ankle, misses work, and has medical bills. And her damages total $76,000. Under the existing diversity jurisdiction statute, if a plaintiff and a defendant hail from two different States, and if the amount in controversy exceeds $75,000, as in this example, then the case can be brought in Federal district court.

Diversity jurisdiction for Federal court exists because the Framers of our Constitution wanted to encourage interstate commerce, and they wanted cases affecting interstate commerce to be adjudicated in our Federal courts. They knew that State judges can sometimes play favorites, and that if out of State defendants were unable to access the neutral forum of a Federal court, that could have a chilling effect on interstate commerce.

But to understand how diversity jurisdiction has been misused, let's look at a second case in the class action context. Let's assume there are 1,000 plaintiffs who form a class. Let's also say they claim $100 million in damages against 300 different plumbing operations from around the country alleging that the defendants overcharged for plumbing services. And let's assume further that while these plaintiffs are spread across all 50 States, at least one of the 1 plaintiffs and one of the defendants reside in the same State. Although there is little doubt that this hypothetical lawsuit affects interstate commerce, especially given the number of parties spread throughout the country, this case would stay in State court.

In 1806, the Supreme Court in Strawbridge v. Curtis interpreted the diversity jurisdiction statute to require what is known today as ''complete diversity''. In other words, for diversity jurisdiction to exist, all of the named plaintiffs must be citizens of different States from all of the defendants. While the complete diversity rule makes sense in the context of a relatively smaller lawsuit, it has been used to defeat Federal jurisdiction for large interstate class actions lawsuits.

Throughout the years, the Judiciary Committee has received compelling evidence showing that certain plaintiffs' lawyers avoid Federal jurisdiction by simply naming a defendant in a complaint—such as a local pharmacy—to match the citizenship of a local plaintiff. This is done despite the fact that the real defendant and vast majority of plaintiffs hail from different States.

It is this awkward result that the bill seeks to fix. Section 4 of S. 5 amends the current diversity statute to allow larger interstate class actions to be heard in Federal court by granting original jurisdiction in those class actions where any member of a proposed class is a citizen of a different state from any defendant. To be eligible for Federal jurisdiction, the class action must cover at least 100 plaintiffs and involve an aggregate amount in controversy of at least $5 million.

While this provision represents the general rule, the bill contains certain exceptions that balance a state's interest in adjudicating local disputes. First, if two-thirds or more of the class members are from the primary defendant's home State, the lawsuit will remain in State court. Conversely, class actions filed in the home State of the primary defendant are subject to Federal jurisdiction if less than one-third of the proposed class members are citizens of that State. For cases brought in a defendant's home State in which between one-third and two-thirds of the class members are citizens of the forum State, a Federal district court judge is given discretion to exercise jurisdiction based on consideration of enumerated factors. This three-tiered test is known as the Home State Exception and represents a provision championed by Senator FEINSTEIN during committee markup on the bill in the 108th Congress.

Second, the bill contains the Local Controversy Exception—a provision that enables State courts to adjudicate truly local disputes involving principal injuries concentrated within the forum State. To fall within this exception, a class action must meet the following four criteria: 1, the class must be primarily local, meaning that two-thirds of the class members reside in the forum State; 2, the lawsuit must be brought against at least one real instate defendant whose alleged conduct is central to the class claims and from whom the class seeks significant relief; 3, the principal injuries caused by the defendants conduct must have occurred within the forum state; and 4, no other similar class actions have been filed against any of the defendants in the preceding 3 years. This exception is intended to ensure that State courts can continue adjudicating truly local controversies involving defendants that are out-of-State corporations.

I believe that modifying the current diversity jurisdiction statute is a sensible solution towards minimizing the class action abuses that we have witnessed throughout the years. Since the 105th Congress, this body has received evidence showing an extraordinary concentration of large interstate class action lawsuits in a handful of our State courts—certain county courts to be precise.

The evidence further shows that these courts operate in a manner that deprives the rights of truly injured individual plaintiffs and defendants. In

many cases, courts approve settlements that primarily benefit the class counsel, rather than the injured class members. Indeed, it has become all too common for certain State courts to approve proposed settlements where class members receive little or nothing of value, such as a meaningless coupon, while their attorneys receive substantial fees. In addition, multiple class action lawsuits asserting the same claims on behalf of the same plaintiffs are routinely filed in different State courts, thus creating judicial inefficiencies and encouraging collusive settlement behavior.

Unfortunately, the injuries caused by these abuses are not confined to the parties who are named in the class action complaint. Rather, they extend to everyday consumers who unwittingly get dragged into these lawsuits as unnamed class members simply because they purchased a cell phone, bought a box of cereal, drove a car fitted with a certain brand of tires, or rented a video. What we are really talking about here is a system that impacts the vast majority of people who live in this country.

The time has now come for its full consideration of class action reform by the Senate. The bill maintains strong bipartisan support in this Chamber and has brought many members from both sides of the aisle together. Indeed, just last week, the Judiciary Committee reported this bill favorably to the floor on a strong bipartisan vote of 13–5. In this regard, I would like to applaud my colleagues Senators GRASSLEY, HATCH, CARPER, and KOHL for their tireless efforts in building consensus throughout this body.

S. 5 balances State and Federal interests in adjudicating disputes. This said, we must not lose sight of the fact that we be mindful of the substantive rights of individual plaintiffs caught in this balancing act—rights that guarantee a citizen access to jury trials for injuries sustained at the hands of wrongdoers. In the coming days, I anticipate amendments and thoughtful arguments from my colleagues relating to this issue. As such, I look forward to the debate and the Senate's full consideration of this important legislation.

PHILADELPHIA EAGLES

Mr. President, I note the presence of my distinguished colleague, the ranking member, the first Democrat ever elected in the State of Vermont.

Mr. LEAHY. Only.

Mr. SPECTER. Before yielding, let me make one other comment; that is my congratulations to the New England Patriots. As a long-standing Philadelphia Eagle fan, going back to the days of Franklin Field, as those in Philadelphia would understand, where the Eagles played in the confines of the ballpark of the University of Pennsylvania and the features were Jimmy Brown running for the Cleveland Browns, tackled most of the time by Chuck Bednarik of the Philadelphia Eagles, in the great championship game of 1960, which the Eagles won 17 to 13. The glory days were recounted again in the New York Times. You have to go back to 1960 to find glory days for Philadelphia football. But it is recounted how Chuck Bednarik tackled Jim Taylor, the great running back of the Green Bay Packers, and sat on him until time had expired, and the Eagles also won 17 to 13.

Franklin Field seated a few over 60,000. It is now reputed that about 900,000 people were there; 900,000 people claim to have been there to have seen that game. I was there and am prepared to say so in open court and even take an affidavit on it.

It was a thrilling game yesterday. I was in Jacksonville. It was reported by one of the local firms that there were some 60,000 Eagle fans in Jacksonville who did not have tickets. And when you moved through the city, the green was everywhere, with ''5'' for Donovan McNabb and 81 for Terrell Owens. Owens had a spectacular game, recovering from an ankle injury in a very short period of time, catching nine passes, six in the second half, taking one high over his shoulder and doing a 270-degree pirouette, a 30-yard gain. But to the credit of Coach Bill Belichick and Quarterback Tom Brady, New England is an outstanding team.

We take great pride in what the Philadelphia Eagles have done and what Donovan McNabb has done. He had a high number of completions yesterday, but too many of them went to the Patriots, with some three interceptions—too many picked off.

They coined the phrase in Brooklyn decades ago: Wait til next year. Wait til next year. But for this year, my congratulations to the New England Patriots. My congratulations also to a fighting group of Philadelphia Eagles. Wait until next year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I have been in the Senate for 31 years. This is one of the most enjoyable colloquies I have ever had.

I hope that the Philadelphia Eagles and actually all of their fans recognize what a great fan they have in the distinguished senior Senator from Pennsylvania. We all know him as one of the most knowledgeable and best lawyers ever to serve in the Senate in either party. But we saw another side of him today. Anybody who can recount effortlessly—I say for those reading the RECORD, it was without a single note—the history of the Eagles and give a play by play recounting, this recounting was a tour de force of the first order. For Eagles fans, I want you to know his legal expertise is every bit as good.

I grew up with a different sport—baseball—in Vermont, where my home is only a couple hours' drive from Fenway Park. The distinguished Presiding Officer knows what that is like because he is even closer. We all will wait for next year and the Red Sox.

As a child growing up, my father, who had some interest in politics, used to say there will be a day when Vermont will actually elect a Democrat to the U.S. Senate. Everybody told him this would never happen in his lifetime. I am delighted that it did.

I was thinking about my father today. It was 21 years ago today that he left this Earth. He got to see this one and only Democrat, and he got to be there twice on election night and twice to see me sworn into this body, which even after six times is still one of those moments one will never forget.

We waited in Vermont from 1918—my father was 18 years old when the Red Sox won the championship—until this past year. There was some celebration. I might mention that I thought maybe there was some inspiration from Paul McCartney, who performed in the halftime show. I was very disgusted with the halftime show last year—at something nobody even noticed until the next day, when people talked about it on Web sites. The photographs of Miss Jackson became the most visited Web site in America, which gives you some idea of what our priorities are. What I found disgusting at that halftime show was Kid Rock ripping a hole in the American flag and wearing it as some kind of a poncho and then throwing it on the ground at the end of his song. I found that to be very offensive.

I would hope that some of the keepers of morality in this country, who have had a wonderful time sending out fundraising letters based on something nobody really saw until the next day and spending just as much time trying to sell patriotism to everybody, would say how disgusted they are at the actions of a rock singer who would so desecrate the American flag—to the roaring cheers of too many people in the audience. I thought that was outrageous. Perhaps we needed somebody from the United Kingdom to come over here and give us a rousing halftime show, which it was. Actually, the game got better after that. Maybe that is in the eyes of the beholder, too. But I appreciate what the Senator from Pennsylvania said.

I also note that in my 31 years here, it is the first time I heard the unanimous consent request Senator SPECTER made. Perhaps it was made before. I have to think that when future historians go back into the RECORD and find that Senators actually did that, they would probably applaud that we know what the RECORD is.

I recall my days in law school having a summer job and researching the CONGRESSIONAL RECORD for the then-Federal Power Commission, which later became the Department of Energy, and trying to figure out what was actually said and what was not said, what order it was said in, and why some Senators appeared to have said the same thing twice. When I came to the Senate, I must admit some of the Senators—no longer with us, God rest their souls—would tend to say the same thing

twice, but that was not intentional on their part, or at least they were unaware of it. But I commend the Senator from Pennsylvania for making a unanimous consent request that actually will make sense for those who read the RECORD.

Mr. SPECTER. If the Senator will yield, Senator LEAHY and I are very concerned about the RECORD, having been former district attorneys. We are very concerned about the RECORD. We know that every word we say is going to be in black and white and be there for a long time, so we like it to be accurate.

Mr. LEAHY. I thank my friend.

Mr. SPECTER. I thank my colleague for his kind comments. It is not inappropriate to note that on Monday afternoons, when we are not going to be taking up amendments but having opening statements, this is a little time on the Senate floor for banter and colloquy. Perhaps those who see C–SPAN might pause a moment or two longer to hear about Paul McCartney or the Patriots or about the Eagles. I was waiting in an elevator to go to my seat yesterday at around 5 o'clock, and an enormous group came and preempted about 100 fans, including this fan, who were waiting to go up so that Paul McCartney and a small group could be escorted in. He looked good for an oldtime Beatle.

Mr. LEAHY. I might say, I worked with Sir Paul and his wife on the issue of landmines and landmine removal. I must admit that he has aged better than some of us who were Beatle fans when he first started. He has his own hair, among other things.

The Senator is correct to say that sometimes on Monday afternoon, we digress. I give fair warning to the Senator from New Hampshire, now presiding, that one of these digressions in about 3 or 4 weeks when the maple syrup crop comes in, I will be extolling the virtues of Vermont maple syrup being the finest in the world. I will also compliment those from our neighboring States who do a pretty good job with their maple syrup.

Mr. LEAHY. Today, we are considering the first of several bills that I am afraid are advanced not with an interest of what is best for the American consumer but advanced by corporate special interests to dramatically limit the public's access to their courts. I am going to oppose this so-called Class Action Fairness Act for a very simple reason: it is not fair.

This legislation would make it harder for citizens to protect themselves against violations of State civil rights or consumer, health, or environmental protection laws—things we take seriously in my own State and most others do in theirs. It will make it harder because these cases will be forced out of the local State courts. Aside from being convenient, State courts have experience with the legal and factual issues involved in these important cases. This legislation sweeps these cases into Federal courts, erects new barriers to lawsuits, and places new burdens on the plaintiffs.

Let me give you an example. In the case of legal rights it would take from the citizens of my own State, this legislation would deprive Vermonters the right to band together to seek relief in their State courts—even if the harm occurred in Vermont and the principal defendant has a substantial presence in Vermont. That is a highhanded override of the rights of the American people. You have to ask who it would benefit. Obviously, it benefits the wealthy and powerful special interests.

This legislation also overrides the laws and legislatures in our State governments. I find it interesting that many colleagues who have spoken over and over again on how we have to stand up for the rights of our States are so willing, when some of their corporate backers come up with legislation like this, to simply slam the door on their own States. Indeed, the National Conference of State Legislatures wrote to us last week to note that this bill ''undermines our system of federalism, disrespects our State court system, and clearly preempts carefully crafted State judicial processes which have been in place for decades regarding the treatment of class action lawsuits.''

I ask unanimous consent that that letter be printed in the RECORD.

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

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, February 2, 2005.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the National Conference of State Legislatures (NCSL), I am urging you to oppose passage of S. 5, the ''Class Action Fairness Act of 2005.'' This legislation will federalize class actions involving only state law claims. S. 5 undermines our system of federalism, disrespects our state court system, and clearly preempts carefully crafted state judicial processes which have been in place for decades regarding the treatment of class action lawsuits. The overall tenor of S. 5 sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.

S. 5 amends the Federal Rules of Civil Procedure to grant federal district courts original diversity jurisdiction over *any* class action lawsuit where the amount in controversy exceeds $5,000,000 or where any plaintiff is a citizen of a different state than any defendant, or in other words, any class action lawsuit. The effect of S. 5 on state legislatures is that state laws in the areas of consumer protection and antitrust which were passed to protect the citizens of a particular state against fraudulent or illegal activities will almost never be heard in state courts. Ironically, state courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in these cases. The impact of S. 5 is that state processes will be preempted by federal ones which aren't necessarily better.

NCSL opposes the passage of federal legislation, such as S. 5 which preempts established state authority. State courts have traditionally and correctly been the repository for most class action lawsuits because state laws, not federal ones, are at issue. Congress should proceed cautiously before permitting the federal government to interfere with the authority of states to set their own laws and procedures in their own courts.

NCSL urges Congress to remember that state policy choices should not be overridden without a showing of compelling national need. We should await evidence demonstrating that states have broadly overreached or are unable to address the problems themselves. There must be evidence of harm to interests of national scope that require a federal response, and even with such evidence, federal preemption should be limited to remedying specific problems with tailored solutions, something that S. 5 does not do.

I urge you to oppose this legislation. Please contact Susan Parnas Frederick at the National Conference of State Legislatures at 202–624–3566 or susan.frederick@ncsl.org for further information.

Sincerely,
Senator MICHAEL BALBONI,
New York State Senate, Chair, NCSL Law and Criminal Justice Committee.

Mr. LEAHY. Here the National Conference of State Legislatures is saying to us: Why are you being so heavy-handed that you feel the 100 Members of the Senate can just wipe out the legislatures of all 50 States on matters of their States' laws?

Fourteen State Attorneys General wrote to our Senate leaders today to express their collective view that ''despite improvements over similar legislation considered in prior years, [they] believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their State courts.''

Again, they are saying: What gives you such wisdom in the U.S. Senate that you can completely throw out 50 States and say, We know far better than they could ever know in their years and decades of experience? The letter urges passage of amendments to be offered by Senators BINGAMAN, PRYOR, and KENNEDY. This letter is signed by the Attorneys General from New York, Oklahoma, California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Mexico, Oregon, Vermont, and West Virginia. I ask unanimous consent that it be printed in the RECORD.

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

STATE OF NEW YORK, OFFICE OF THE ATTORNEY GENERAL, THE CAPITOL,
Albany, NY, February 7, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont and West Virginia, we are writing in opposition to S. 5, the so-called ''Class Action Fairness Act,'' which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in

prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important ''private attorney general'' supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL–CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. Class actions should not be ''federalized''

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a ''citizen'' of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

2. Clarification is needed that S. 5 does not apply to state Attorney General actions

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's parens patriae authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the Attorneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator PRYOR will be offering an amendment on this issue, and we urge that it be adopted.

3. Many multi-State class actions cannot be brought in federal court

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one state's law with sufficient ties to the underlying claims in the case, or by ensuring that a federal judge does not deny certification on the sole ground that the laws of more than one state would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

4. Civil rights and labor cases should be exempted

Proponents of S. 5 point to allegedly ''collusive'' consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received ''coupons'' towards the purchase of other goods sold by defendants. Accordingly, this ''reform'' should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

5. The notification provisions are misguided

S. 5 requires that federal and state regulators, and in many cases state Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against ''collusive'' settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-state defendants over whom subpoena authority may in some circumstances be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York; W.A. Drew Edmondson, Attorney General of the State of Oklahoma; Bill Lockyer, Attorney General of the State of California; Lisa Madigan, Attorney General of the State of Illinois; Tom Miller, Attorney General of the State of Iowa. Gregory D. Stumbo, Attorney General of the State of Kentucky; G. Steven Rowe, Attorney General of the State of Maine.

J. Joseph Curran, Jr., Attorney General of the State of Maryland; Tom Reilly, Attorney General of the State of Massachusetts; Mike Hatch, Attorney General of the State of Minnesota; Patricia A. Madrid, Attorney General of the State of New Mexico; Hardy Myers, Attorney General of the State of Oregon; William H. Sorrell, Attorney General of the State of Vermont; Darrell McGraw, Attorney General of the State of West Virginia.

Mr. LEAHY. I know class action issues have been raised by Senators KOHL, FEINSTEIN, SCHUMER, DODD, CARPER, LANDRIEU, and others. While I may disagree with them on some parts of this, I do so respectfully because I know how hard they have worked.

In the last Congress, they were able to negotiate some procedural improvements. They reined in some of the worst aspects of previous class action bills. One improvement was to restrict the use of worthless coupon settlements. I strongly support this improvement, which is a targeted provision that goes after a real class action abuse, not one that is just made up by special interests.

Unfortunately, there are other aspects that fail to achieve their intended goals. For example, two narrow exceptions have been negotiated to allow a few local controversies to remain in State court. But the exceptions to removal to Federal court touch on only a thin sliver of the class action cases this bill would affect—only when plaintiffs and primary defendants are from the same State—and even then it will do more harm than good with the complicated formula that will cause costly and time-consuming litigation. So this just increases the cost and increases the litigation.

Another provision seeks to reduce the delay plaintiffs can experience when a case is removed to Federal court by setting a time limit for appeals of remand orders. But no measure

is included in the bill to set a timeline for the district court to rule on the actual remand motion. What this means in layman's terms is a party can pluck one of these class actions out of State court and put it in Federal court, and if the Federal court rules against you on a remand, you have a right to appeal. But what do you do if they never rule? The case could sit there year after year and with no resolution. Litigants could die. People who have been harmed could die. People could move away, and nothing happens.

Senator FEINGOLD is going to offer an amendment to set a reasonable time limit for the district court to rule on remand orders. It does nothing to change the bill. It says you cannot pocket veto a case by sticking it away in a federal court docket somewhere. You have to rule one way or the other. We should all embrace that commonsense improvement.

I am also concerned that this bill will deny justice to consumers and others in class actions that involve multiple State laws. The recent trend in Federal courts is not to certify class actions if multiple State laws are involved. This bill, therefore, could force nationwide class actions to Federal court. Once they are removed to Federal court, you have a Catch-22. They have to be dismissed because they involve too many State laws.

If this legislation is really about transferring class actions to Federal court instead of being a pro-business vehicle for simply dismissing legitimate class actions, then the supporters of this legislation should want to solve this real Catch-22 problem. Senator BINGAMAN has an amendment to do just that. He is a former attorney general. He understands this. I look forward to debating this issue on the Senate floor.

Of course, the legislation covers more than just class actions. Individual personal injury actions, consolidated by State courts for efficiency purposes, are not class actions. Despite the fact that a similar provision was unanimously struck from the bill during the markup of class actions legislation in the Judiciary Committee last Congress, despite the fact that every single Republican, every single Democrat voted to strike this provision, now mass torts are again included in the bill. Again, that makes no sense. Federalizing these individual cases will delay and possibly deny justice for victims suffering real physical injuries. It will be a boon to the makers of Vioxx, but certainly will not help those who took Vioxx.

Mass tort cases are not class actions. They have not been analyzed under rule 23's standards or State law equivalents to rule 23. They are an important means by which groups of injured people have long been able to pursue remedies against those who have harmed them.

Mass tort cases address injuries to citizens' health from dangerous medical products, injuries to their property and their health from environmental disasters, and injuries to their rights and liberties from widespread mistreatment in the workplace. There are entirely different procedural vehicles to reach justice in class actions. They should not be lumped in with class actions. Senator DURBIN has an amendment that would leave mass tort actions in State courts where they belong.

I am old enough to remember the civil rights battles of the 1950s and 1960s and the impact of class actions in vindicating basic rights through our courts. The landmark Supreme Court decision in Brown v. Board of Education was the culmination of appeals from four class action cases—three from Federal court decisions in Kansas, South Carolina, and Virginia, and one from a decision by the State supreme court of Delaware.

Only the supreme court of Delaware—the State court, not the Federal court—got the case right by deciding for the African-American plaintiffs. The State court justices understood they were constrained by the existing Supreme Court law but, nonetheless, held that the segregated schools of Delaware violated the 14th amendment. Before any Federal court did so, a State court rejected separate and unequal schools.

Today we take that for granted, but it was not because those cases went into Federal court that the civil rights of African Americans were determined; it was because they were in State court. Indeed, many civil rights advocates, including the Lawyers' Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, the Mexican American Legal Defense and Education Fund, and the National Asian Pacific Legal Consortium, have written to Senators in opposition to this legislation and in support of Senator KENNEDY's amendment to exempt civil rights and wage and hour cases from the bill. I am proud to cosponsor his amendment, and I look forward to the debate on it.

The legislation has also been criticized by nearly all the State Attorneys General in this country. I understand that at least 43 of the 50 State Attorneys General have expressed concern that S. 5 could limit their powers to investigate and bring actions in their State courts against defendants who cause harm to their citizens because in certain instances they file suit as the class representative for the consumers of their State.

I expect Senator PRYOR, a distinguished former State attorney general himself, to bring this issue to the floor with a clarifying amendment.

Some special interest groups are distorting the state of class action litigation by relying on a few anecdotes in an ends-oriented attempt to impede plaintiffs from bringing class action cases. We should take steps to correct actual problems as they occur. Simply transferring most suits into Federal court will not correct the real problems faced by plaintiffs and defendants.

In fact, this Congress and past Congresses have federalized so many criminal cases that used to be in State courts and dumped them into the Federal courts that it is increasingly difficult to even get a civil case heard in Federal court. So many things are handled by local prosecutors, such as Senator SPECTER and myself when we were prosecutors, by local law enforcement, but because they are interesting matters, we have succumbed to the temptation to federalize case after case that State authorities have always handled very well. These criminal cases are now in the Federal courts, and the Federal courts are overloaded with them. Now we are going to transfer a whole lot more cases into Federal courts.

Defrauded investors, deceived consumers, victims of defective products and environmental torts, and thousands of other ordinary people have been able to rely on class action lawsuits in our State court system, and there they have sought and received justice. We all know that without consolidating procedures such as class actions, it might be impossible for victims to obtain effective legal representation.

Companies tend to pay their defense lawyers by the hour. They are well paid. Plaintiffs' lawyers in class actions tend to work without pay for the possibility of obtaining a portion of the proceeds, if they are successful. It may well prove uneconomical for counsel to take on cases against governmental or corporate defendants if they must do so on an individual basis. It may be that individual claims are simply too small to be pursued.

Sometimes that is what the cheaters count on; it is how they get away with their schemes. Cheating thousands of people just a little is still cheating, or millions of people just a little creates millions of dollars for one person with nothing to stop them from doing it. Class actions allow the little guys to band together to afford a competent lawyer to redress wrongdoing.

Whether those regular citizens are getting together to force manufacturers to recall or correct dangerous products, or to clean up after devastating environmental harms that endanger their children or their neighborhoods, or to vindicate the basic civil rights to which they are entitled, they are using class actions. Why make it more difficult or costly for them to right those wrongs?

As the New York Times noted in an editorial last week opposing this bill, the real objective of this legislation is ''to dilute the impact of strong State laws protecting consumers and the environment and to make it harder for Americans to win redress in court when harmed by bad corporate behavior.''

We have very strong environmental laws in Vermont, and we are very

proud of them. Now we see this Congress about to say to the Vermont Legislature: We can apply much lesser standards; we will just take it away from any enforcement you already have.

I ask unanimous consent that the New York Times editorial be printed in the RECORD.

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

[From the New York Times, Feb. 2, 2005]

CLASS-ACTION LAWSUITS

Tort reform is in the eye of the beholder. In the name of reforming the nation's civil justice system, and with scant public debate, President Bush and Congressional Republicans are racing to reward wealthy business supporters by changing the rules for class-action lawsuits. Their real objective is to dilute the impact of strong state laws protecting consumers and the environment and to make it harder for Americans to win redress in court when they are harmed by bad corporate behavior.

The proposed legislation, the so-called Class Action Fairness Act, will be taken up by the Senate Judiciary Committee on Thursday, with a vote by the full chamber expected as early as next week. Under the bill's sweeping provisions, nearly all major class-action lawsuits would be moved from state courts to already stretched federal courts. New procedural hurdles and backlogs would be destined to delay or deny justice in many cases, and to discourage plaintiffs and plaintiffs' lawyers from pursuing legitimate claims in the first place.

The proposed lunge to federal courts is so extreme that cases would be removed to federal courts even when a vast majority of the plaintiffs were from one state, the claimed injuries occurred in the state and involved possible violations of state law, and the principal defendant had a headquarters elsewhere but did substantial business in the state.

In a revealing but disappointing move last year, the measure's proponents rejected a balanced compromise that would have broadened federal jurisdiction while preserving the role of state courts in cases that are more local than national in flavor. Despite some useful provisions aimed at genuine abuses, the bill would reduce the accountability of corporations that violate laws protecting employees, consumers and the environment.

The measure died in the Senate at the close of the last session. But with President Bush now actively campaigning for its passage, the juggernaut may be unstoppable, particularly since some key Democrats, like Senators Charles Schumer of New York and Christopher Dodd of Connecticut, switched sides last year to back the bill in exchange for some modest revisions. The new Judiciary Committee chairman, Senator Arlen Specter, should at least be willing to entertain a handful of improving amendments. The most crucial would fix the bill's Catch-22: plaintiffs filing class-action suits could be refused a hearing in state court if they came from several different states, and then bounced out of federal court because their complaint called for applying the laws of multiple states.

The ability of ordinary citizens with similar injuries to band together to take on powerful corporate interests by utilizing the mechanism of class-action lawsuits is one of the shining aspects of the nation's civil justice system. That reality tends to be overlooked amid all the overwrought spinning by the president and others who are trying to drum up concern about a litigation ''crisis'' and to pressure Congress to usurp proper state authority and weaken important protections for ordinary Americans.

Mr. LEAHY. This so-called Class Action Fairness Act falls short of the expectation set forth by its title. It will leave many injured parties who have valid claims with no avenue for relief, and that is anything but fair to ordinary Americans who look to us to represent them in the Senate.

I seem to have a touch of laryngitis which is an occupational hazard for Senators. I will not speak further, but I will come back to this issue in the future. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

UNANIMOUS CONSENT AGREEMENT—S. RES. 38

Mr. SPECTER. Mr. President, I ask unanimous consent that at 5 p.m. today the Senate proceed to the consideration of a resolution regarding the Iraqi elections, which is at the desk; provided further, that there be 30 minutes for debate equally divided between the leaders or their designees, and that there be no amendments to the resolution or preamble. I further ask unanimous consent that at 5:30 p.m., the Senate proceed to a vote on the adoption of the resolution, and that following that vote, the preamble be agreed to, without intervening action or debate.

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

Mr. SPECTER. Mr. President, I further ask unanimous consent that following the comments of the distinguished Senator from Utah I be recognized to speak briefly on the asbestos reform issue.

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

Mr. SPECTER. I shall be off the floor for a few moments while Senator HATCH speaks, but I will return shortly after he completes his remarks.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be included as a cosponsor of S. Res. 38.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate my two colleagues and their remarks on this very important bill. I rise to express my strong support for S. 5, the Class Action Fairness Act of 2004. This bipartisan bill represents a carefully crafted legislative solution in response to the rampant abuses of the class action litigation device currently in our State courts.

The American public will benefit from a system that fairly compensates these injured people by those who are injured by unsafe or defective products. No one disputes this. We all want a system of compensation, but we must make sure the system is fair, reasonable, and equitable.

As well, this legislation helps protect against unfair recoveries because, in the end, the public pays when defendant companies are forced to pay excessive claims and sometimes must increase prices, decrease employment, or even become bankrupt or go out of business. We ought to all understand that we all pay for that, and that is why it is important we get the laws right and that we correct injustices and distortions of the law.

Before I begin discussing the legislation, I commend the distinguished majority leader, Dr. FRIST, for bringing this bill up so early in the Congress. I also commend President Bush for recognizing the importance of this issue in his State of the Union Address. Senators GRASSLEY, KOHL, and CARPER also deserve recognition for all the time and effort they have devoted to this particular bill over the last several Congresses, and without their tireless work, we would not have the bipartisan compromise bill that we have in S. 5.

Finally, I must recognize Chairman SPECTER for placing this bill on the Judiciary Committee agenda and reporting this legislation last week.

Over the past decade, it has become painfully obvious that class action abuses have reached troublesome proportions in our civil justice system.

It has become equally clear that the true victims of this epidemic have been everyday consumers who represent the silent majority of unnamed class members. It has become too common an occurrence for plaintiff class members not to be adequately informed of their rights or of the terms and practical implications of a proposed class action settlement.

Making matters worse, judges too often approve settlements that primarily benefit class counsel, the personal injury lawyers, rather than the class members—in other words, the victims.

Efforts to reform our class action system are nothing new to the Senate. The Senate Judiciary Committee conducted hearings in the 105th, 106th, and 107th Congresses, reporting a similar bill from the committee in the 106th on a bipartisan basis. Since then, we continue to receive substantive evidence demonstrating the drastically increasing injustice caused by class action abuses.

After working extensively with numerous legislative proposals throughout the various Congresses, we are now on the verge of taking final action on a balanced bill that I would like to spend a little bit of time explaining further.

When I say a balanced bill, I refer specifically to the operation of the bill's grant of Federal jurisdiction over interstate class actions. This key provision is located in section 4 of the bill and corrects a flaw in the current application of the Federal diversity jurisdiction statute that now prevents most interstate class actions from being adjudicated in Federal courts.

Specifically, section 4 of the bill grants the Federal district courts original jurisdiction to hear interstate class actions if, one, any member of the proposed class is a citizen of a different

State from any defendant; two, the amount in controversy exceeds $5 million; and, three, the class action lawsuit involves a class of 100 or more members.

Although I believe the three conditions I have noted are more than sufficient to achieve the right balance between Federal and State interests, S. 5 goes a step further by incorporating two additional provisions to accommodate the States' interests in adjudicating local disputes.

First, pursuant to an amendment offered by Senator FEINSTEIN during a markup last Congress, Federal jurisdiction would not extend to any case in which two-thirds or more of the proposed class members and the primary defendants are residents of the State where the action was filed.

This exception keeps in the State courts those class actions that are prosecuted by a locally dominated plaintiffs' class with grievances against local defendants. In other words, a locally dominated lawyer-judge set of relationships that seems to be continually resulting in unjust treatment in the courts.

Similarly, the Feinstein amendment also provides that Federal courts may, based on a number of carefully proscribed factors, decline to exercise jurisdiction in middle tier cases in which two-thirds of the proposed class members and the primary defendants are residents of the same State.

To be sure, as part of the recent compromise reached last November with Senators SCHUMER, DODD, and LANDRIEU, we further modified the Feinstein amendment by adding an additional factor for the Federal courts to consider for the middle tier of cases specifically whether there is a substantial nexus between the claims and the court selected by the plaintiffs.

I will refer to the Feinstein chart. That chart makes it very clear, in my eyes, that tier I, two-thirds or more of the proposed class members, are in-State versus in-State primary defendants. That would stay in State court.

Tier II, between one-third and two-thirds of the proposed class members are in-State versus in-State primary defendants, and one can go to either State or Federal court, subject to the judge's discretion.

Tier III, where there is one-third or fewer of the proposed class members in-State versus in-State primary defendants, those cases go to Federal court.

Although I believe the three conditions I noted are more than sufficient to achieve the right balance between Federal and State interests, section 5 goes a step further by incorporating these additional principles to accommodate States' interests in adjudicating local disputes.

The second point I was making is that States' interests in adjudicating local disputes on behalf of their citizens are further preserved through a newly created exception to Federal jurisdiction for truly local controversies. This provision, which we negotiated on a bipartisan basis last November with the three new Democratic sponsors of this bill, keeps in the State courts those class action lawsuits that satisfy the following four criteria which I will discuss in greater detail so there is no confusion on this issue.

Criterion 1, the proposed class must be primarily local, where more than two-thirds of the class members are citizens of the State where the suit was filed. This formulation resembles the two-thirds test in the Feinstein amendment I just discussed and essentially requires a large majority of the injured claimants reside within the State.

Criterion 2, the class action must be brought against at least one real defendant. The local defendant cannot be peripheral. Rather, the lawsuit must be brought against at least one defendant with a significant basis of liability and from whom significant relief is sought. This provision essentially precludes personal injury lawyers from evading Federal jurisdiction by simply naming a local defendant such as Hilda Bankston, who was unmercifully dragged into scores of class action lawsuits simply because her small family-operated pharmacy sold the diet drug phen-phen. That was the only reason she was brought in, but the real reason was because she was a pigeon sitting in the State and they used her as a device to bring all of these suits by many people who had nothing to do with the State, nothing to do with her.

Criterion 3, the principal injuries must have occurred locally. In other words, the total extent of the injuries complained of must be concentrated within the forum State. By way of an example, a nationwide drug lawsuit involving injuries spread throughout the country would certainly not qualify for this criteria. On the other hand, this criteria would be satisfied by a class action lawsuit involving a factory explosion affecting a confined geographic area.

Criterion 4, no other similar class actions can have been filed during the preceding 3 years. This criterion is intended to ensure that the exception does not apply to those class actions that are likely to be filed in multiple States based on the same or similar factual allegations against any of the same defendants.

When applying all four criteria, the local controversy exception will enable State courts to hear local class actions alleging principal injuries confined to the forum State and where the lawsuit involved litigants who predominately reside within that State. I refer to the local controversy provision chart.

As my colleagues can see, that chart for these tier III people keeps truly local claims in State court. With regard to plaintiffs, if two-thirds or more of the proposed class members are in the State and with regard to the defendants at least one in-State defendant from whom significant relief is sought—not the Hilda Bankston who was ruined by these false suits—and alleged conduct forms a significant basis of claims, and the nature of the claim's principal injuries were incurred in the State as a result of the alleged significant conduct, then those cases can be heard in State court.

I was interested in the comments of the distinguished Senator from Vermont about justice and injustice. The injustices are all on the side of those who do not want this bill because they are protecting personal injury lawyers rather than the individual claimants.

The individual claimants will have a right to go to court. It just may be that they have to go to Federal court rather than State court.

Given the addition of Senator FEINSTEIN's three-tiered jurisdictional test and agreed-upon local controversy exception, I find it puzzling that some have represented this bill will somehow move all class actions into Federal court. We just heard some comments like that. Nothing could be further from the truth.

I urge these colleagues to read section 4 of the bill. If they cannot find comfort in this language, I urge them to look at studies showing that the bill will do nothing of the sort. If they are still skeptical, I urge them to talk to the cosponsors of the bill, including our Democratic partners, for a completely candid assessment on whether the legislation will move all class actions into Federal court. It simply will not.

These actions will be able to be brought, but there will not be the same ability to forum shop into favorable jurisdictions that act outside the law and allow unjust verdicts such as we have today.

I think the answer is perfectly clear. This bill moves to Federal court larger interstate class actions while keeping in State court local matters that are more suited for the States. Although I have focused on two provisions in S. 5, I think it is important to note that this bill contains many other changes we included so that we could build a bipartisan consensus.

After we fell one vote shy of invoking cloture the year before last, three Democratic Senators who voted against proceeding on the bill presented us with a detailed list of issues they wanted resolved before they could support class action reform legislation. After extensive discussions in November of 2003, we responded to each and every concern raised by these Senators and made the appropriate changes that are now embodied in S. 5.

As my colleagues will see, the points we have made show each Democratic concern that was raised and how we addressed those concerns.

S. 5 is a modest bill that will help to put an end to class action abuses occurring in some of our State courts. Contrary to the arguments from the bill's opponents, S. 5 does not sweep

into Federal court every conceivable class action. The bill more than adequately accommodates the States' interests in adjudicating local disputes.

I might add that the argument we are going to deprive consumers from their day in court is pure bunk. The fact is, under certain circumstances, they will have a right to be in State court or have a right, through the judge, to be in State or Federal court, and under certain circumstances that are much more fair to all litigants concerned, they will have to go to Federal court.

There is nothing wrong with going to Federal court. In fact, when I practiced law we loved to have cases that went to Federal court because people thought they were more important cases. Frankly, in most cases they were. When these cases are important, they will be tried in Federal court as well.

One thing we are concerned about, we think we have a better chance of having real justice in these cases in Federal court than to have the Hilda Bankstons of this world put out of business under what are false pretenses and manipulation of the Federal judicial system.

This legislation has been crafted and drafted through close bipartisan cooperation with several Members on the other side of the aisle, and as a result now commands a simple majority of support of this body. Despite this support, we are still faced with the obstructive tactics from a small minority that will do anything to appease the powerful and well-funded personal injury trial bar. I find this unfortunate and hope these colleagues can look beyond these special interests and do what is right for the country's ailing civil justice system.

I have always belonged to the trial bar and I think most trial lawyers are people of dedication and decency who want to do what is right, but we have seen in recent years a real subversion of the law by some trial lawyers who are interested only in money. In many respects, they are not worried about clients but worried about their own compensation system. The fact is, we need to do what is right for our country's ailing civil justice system.

The Class Action Fairness Act addresses an abuse of the class action system that has grown substantially in the past few years. I am referring to the gaming of the judicial system by unscrupulous lawyers to evade Federal diversity jurisdiction. In some cases, the filing and settling of class action lawsuits has become a virtual wheel of fortune with every spin of the wheel potentially worth millions of dollars. However, class members do not benefit from these spins of the wheel. Rather, it is the class counsels who receive millions of dollars in attorneys' fees who are the real winners of this gaming situation and of the game.

It is the sad but true fact that the most class members can expect to receive, which is an ironic twist, is a coupon good for the future purchase of the very product that was the basis of their claim to begin with.

Again, under the current tort system, it is the class action lawyers who are the real beneficiaries. They are the ones who walk away from a class action with millions in their pockets while the class members walk away with little or nothing at all but these coupons. Before I turn to some specific examples of class action lawyers gaming the system to the detriment of their clients, let me explain just how this game works.

It starts with a few class action attorneys sitting around a table, thinking of an idea for a class action lawsuit. While this idea may come from any numbers of sources, it is usually formulated and solidified after an examination of the deepest pockets in the corporate world. Naturally, they want to make money.

Once an idea for a class action is formed, it is time to find a lead or named plaintiff. The named plaintiff will inevitably be someone who is a citizen of the same State as the defendant. Why? This keeps the case in State court.

Why is this essential to winning the game? Because if the suit is in State court, the class counsels can file multiple class actions, alleging similar claims against similar defendants in multiple districts. They do this in search of a judge willing to quickly certify the class.

And because the State courts do not have a method of consolidating identical claims like we have in the Federal system, all of those claims remain pending in the various State courts around the country. The filing of multiple class actions in multiple districts gives the class counsel tremendous leverage to play hard ball with the defendant companies. By bringing class action upon class action against a company, the company is left with no other option but to settle. The alternative is to be bled dry by legal fees and face the uncertainty that one of the many courts will destroy the company by delivering a jackpot award against it.

While I suppose the class counsel would like to think of it as a game of hardball, to companies it must feel a lot like execution; and it must feel a lot like what it really is: extortion.

The real kicker is this: in some cases, many believe the only interests served by these settlements are those of the class counsel. Again, they will walk away with hundreds of thousands and sometimes millions of dollars. And what do the class members recover? Perhaps a worthless coupon.

There you have it, a successful gaming of the State tort system by the class action lawyers.

This is an intolerable practice and one that the Class A Action Fairness Act will curb.

I used to be a plaintiff's attorney. I was a defense lawyer as well. I am in no way indicting the actions of all plaintiff attorneys or class action attorneys. In many cases, plaintiff attorneys play a vital role in protecting the legitimate interests of injured consumers.

For example, I supported the efforts of the Castano group of plaintiff attorneys in the class action case against cigarette companies.

Despite the fine efforts of many, many plaintiffs' lawyers, the actions of a powerful minority of plaintiffs' attorneys have created the situation we need to remedy with this situation.

To demonstrate how class action lawyers have manipulated the tort system to their benefit, let us take a spin at the wheel and see what we come up with.

Spin the wheel again and we come to the 2003 Cook County, Illinois court-approved settlement of Degradi v. KB Holdings, Inc.

This class action alleged that KB Toys, one of the largest toy retailers in the country, manipulated toy prices to lead customers to believe that they were paying discounted prices. Specifically, the suit alleged that certain products contained an inflated reference price that was marked through in red with a lower selling price next to it.

To settle the suit, the company agreed to hold what amounted to a week long sale with a thirty percent discount on selected products. However, the company was not obligated under the terms of the settlement to advertise the discount. As a result, many of the class members eligible to receive the discount were not aware of it until long after the sale was over.

How did the game turn out for the class counsel? They won a whopping $1 million in attorneys' fees. And according to an independent analyst, KB Toys actually stood to benefit from the settlement because they were able to drive traffic into the store on the days of the discount.

All told, this was not a bad spin at the wheel for all parties concerned. That is, all parties except for the class members—in other words the people who were allegedly injured.

If you spin the wheel again you land on the in re Microsoft Litigation Settlement.

The wheel has landed on in re Microsoft Litigation Settlement.

Microsoft has been involved in multiple antitrust class action alleging that the computer giant used its control of certain programs to price gouge its customers. Ten of the class actions have been settled, including the suit brought in Johnson County, KS.

Under the terms of the settlement, class members who purchased Microsoft hardware will receive a $5 or $10 voucher toward the future purchase of particular computer hardware or software products.

If these settlement terms some like something less than a big victory for the consumers, wait until you hear about the onerous process they have to

endure in order to redeem the vouchers.

First, to even receive a voucher, a class member must first download a form from a website established for the purpose of handling the settlements, fill it out and mail it in. Then, to redeem the voucher itself, the class member must mail in the voucher with a photocopy of the original receipt and UPC code.

So the class members got some hard to redeem $5 and $10 coupons. Who then came out the big winners in the game? You guessed it, once again it was the class counsel. In these cases, they have received a mind-boggling sum in attorney's fees to the tune of hundreds of millions of dollars.

With a spin of the wheel, we come to Ramsey v. Nestle Waters North America.

This class action is better known as the Poland Springs Water class action. Let me refer to this Poland Spring Chart—this blue section which has $1.35 million on it.

The Ramsey suit alleged that Poland Spring water does not come from a spring deep in the woods of Maine as was advertised. Under the terms of the settlement approved by the Kane County, IL State court, the named plaintiff received $12,000 while the class members received discounts or free Poland Spring water of the next 5 years. The company, which denied any wrongdoing, agreed to enhance its quality control and make approximately $2.75 million in contributions to charities.

So in this round of the game, the class members got some free water. What about the class counsel? They were sitting pretty at the end of the game with $1.35 million in attorney's fees.

As Roger Parloff put it in the Forbes magazine article entitled ''Springtime for Poland,'' the settlement was ''pretty standard: next to undetectable benefits for us—some discount coupons and whatnot and $1.35 million cash for the plaintiffs' attorneys.''

That is right. Class action settlements have become so abusive that it is now standard and accepted practice for class counsel to receive millions of dollars for getting class members a bottle of water.

Now we come to the Register.com settlement, approved by the New York County, New York State Supreme Court, and affirmed by the New York Superior Court in 2003.

Register.com is the second largest domain registration company for the Internet. Those wishing to register a domain name through the company may do so for a $35 fee. But if the main name is registered, the company holds the Internet address and redirects the link to a ''Coming Soon'' page featuring promotional advertisements for Register.com and other companies until the domain nameholder develops a Web site of its own.

Michael Zurakov, serving as lead plaintiff for the class action, claimed that upon developing his own Web site, Register.com delayed in switching over the purchased domain name to him and continued to redirect the link to the promotional ''Coming Soon'' page for several months to sell advertisements. When the class counsel moved to certify the class, it was estimated that the class was comprised of approximately 3 million members.

Under the terms of the court-approved settlement, class members received $5 coupons to use. Each one got a $5 coupon to use with Register.com, assuming that the class member registered with the company again. Meanwhile, the lawyers received $642,500 in attorney fees—lawyer fees.

To quote an article appearing in Domains Magazine, ''The munificence of this reward may reflect that fact that the claim, while perhaps not utterly without a shred of merit, was not exactly the most compelling ever heard.''

However weak the suit, the class counsel had a good day at the game, taking home winnings of $642,500, especially compared to the $5 coupons each class member, so-called, got. That was the right to redeem, if they went to Register.com, and registered a name.

Cases such as this only further encourage the filing of frivolous claims by opportunistic class action counsel who are solely motivated by quick settlements that benefit only them.

Let me go to the Ameritech settlement for $16 million. This is a settlement approved by the notorious Madison County, IL, State court, one of the most abusive settlements I have ever seen.

You need to know about Madison County. Madison County is where a lot of these class actions go so they can make demand letters and get settlements as defense cases. Madison County has judges who seem to be in the pockets of the trial lawyers in Madison County who become cocounsel in these cases, and, of course, have an instant entree to the courts, and almost a guaranteed, outrageous award every time they go into court. Most of the time they don't go to court. You will find in the end very few actual cases are filed. But the demand letters are made. And these companies are so frightened over Madison County, because they know they are going to get killed if they go to court, that they almost automatically settle as a result of the demand letters. They settle for what it would cost them to defend these types of cases rather than go through the jackpot justice problem of getting slammed in a jurisdiction where apparently justice is not a measured factor.

Here we have the Ameritech settlement approved by the Madison County, IL, State court. This is one of the most abusive settlements I have ever seen.

Two suits were filed in Madison County, IL, by the same firm on behalf of customers in Michigan, Ohio, and Wisconsin, alleging that Ameritech wrongly charged customers for a wire maintenance program without informing them that the service was optional.

The settlement didn't provide customers with refunds for wrongful charges. Instead, it gave each class member a $5 pay phone card that could only be used at pay phones owned by SBC, the parent company of Ameritech, to make local and limited long distance calls within the State. Many of the class members complained that the cards were worthless to them because there were no SBC pay phones in the area. Other class members complained that the cards were worthless to them either because they did not use pay phones or because the cards contained so many restrictions that they were essentially unusable.

This was not exactly a sweetheart deal for these consumers. But how did the class action counsel come out in this round of the game?

They had a good spin of the wheel by any measure, winning $16 million in lawyer fees, while the class of people, alleged consumers who were supposedly abused, really got nothing.

We can no longer sit idly by and allow abusive settlements to continue. What will S. 5 do to help curb the gaming of our tort system?

First, the bill gives the Federal courts diversity jurisdiction over large, national class actions with at least 100 class members seeking an amount-in-controversy of $5 million.

They can still bring their suit, but it will be in Federal court where it is much more likely that justice will occur, fairness will occur, and decent treatment will occur.

As a result of the provision, large and national class actions may either be originally filed or removed to Federal court, a forum that is better equipped to handle these kinds of cases—and to do so fairly. They are not going to be deprived of their rights. They are just going to have to make their cases, and they are not going to be able to go to Madison County where they will have an automatic win absolutely guaranteed in the eyes of most companies which will be outrageous in nature as a general rule—or an automatic settlement for defense costs—which is as close to distortion as you can get because the companies can't afford to go to court in that particular jurisdiction with the judges the way they are, the attorneys the way they are, and all in cahoots the way they are.

Second, S. 5 contains provisions for the review and approval of proposed coupon settlements before a Federal court. It doesn't mean you can't have coupon settlements, but you are sure going to have to get the judge's approval. So these phoney coupons are going to be much fewer and much more far in between.

The bill provides that a Federal judge cannot approve a proposed coupon settlement until conducting a hearing with a written finding that the terms of the settlement are fair, reasonable, and equitable to the class members.

You would think that would be something every court in the land would want to do, but, unfortunately, we have had far too many of these class actions where that hasn't been the case, or where counsel are the ones who are basically mistreated in the end.

Our courts will no longer be used as a rubberstamp for proposed settlements. This provision ensures that the true beneficiaries of a settlement are the class members and not the lawyers who drew up the settlement.

It doesn't cost any more money to go to Federal court than it does State court. It isn't a tremendous inconvenience; it is just that you can expect the Federal judges not to be judges who are sustained by financial support by the local lawyers.

Third, this legislation requires that attorneys' fee awards be based on the actual recovery of the class members in coupon settlements. In other words, contingency fees must be based on the value of coupons actually redeemed by class members. This will give the attorneys an incentive to ensure the class members actually get something in the settlement they can use.

If you are going to get bottles of water, then the attorneys can get fees based upon how many bottles of water are gotten. I don't think many lawsuits would be brought on that basis anymore. Or, if you are going to get a coupon, they can get fees based upon how many coupons are redeemed. Or, in the case of the SBC coupons, they can get fees only to the extent that those coupons are viable and can be utilized, and how many of them are actually requested.

Practically speaking, class counsel will no longer look for a quick and hefty attorney fee settlement for themselves in which the class members recover relatively worthless coupons.

The time has come for us to put an end to this unfair system. I have heard many of my colleagues on both sides of the aisle decry the state of the current tort system. I ask my colleagues to recognize this bill as the opportunity that it is, an opportunity to end the abuses of the current tort system, or at least to make a start to ending the abuses of the current tort system and restoring confidence in our justice system.

Real good lawyers, the honest lawyers, if they bring class action lawsuits, will bring suits of viability, suits that mean something, suits that are deserving of the awards that are given, not suits just for the benefit of the lawyers involved. We have spent literally years now negotiating the provisions of this delicate compromise bill. The time has come to pass it.

I might add, this bill has evolved over a number of Congresses. We have negotiated with virtually everybody who has wanted to negotiate on this bill. We have made change after change after change. It is not a major change in our law, but it certainly will bring greater justice in our law and greater fairness and greater treatment in our law.

The fact is, we need this bill to remain intact. The House has indicated they will take this bill, if we pass it in its current form, and it will become law. There will be some attempts with amendments that may have merit that I may even like, but this bill is a result of a huge series of compromises that have taken years to achieve. We know if any amendment is added to this bill, it is very unlikely the House will take it. We are faced with the proposition of the need to vote down all amendments on this bill.

The distinguished Presiding Officer has a number of amendments he would like to add to this bill, as a distinguished former supreme court justice from the State of Texas, that would improve this bill. But he knows if we are going to pass this bill, we cannot take any amendments, including his. If we are going to take other amendments, we will have to take his. The fact is, we urge all amendments be voted down so we can pass this bill and, hopefully, get it to the House and get it passed so justice can occur.

Any Member who stands in the Senate and says consumers are going to be hurt by this bill, that we are not allowing suits to be brought, has not read the bill or is deliberately distorting what is going on. The fact is, suits can be brought, legitimate suits can be brought, there will be awards that will be made in legitimate cases, as they should be, and we all will be better off as a country if we get the tort system so that it does justice, rather than jackpot justice for a few, and in a number of instances I have been citing, for lawyers only. Unfortunately, we have people gaming this system to such a degree that this bill needs to pass. We need to straighten out the mess.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I congratulate my distinguished colleague, Senator HATCH, for the outstanding work he has done on so much legislation during his tenure as chairman of the Judiciary Committee, including the class action bill, as he has spoken of in some detail.

ASBESTOS REFORM

Mr. SPECTER. Mr. President, I have sought recognition to talk about asbestos reform, which is legislation that Senator HATCH had shepherded, along with Senator LEAHY and Senator FRIST, with substantial contributions by Senator Daschle, as well.

Today, I am going to submit for the record a bill which is a discussion draft. I had intended to submit this legislation late last week, but I was asked by the majority leader to defer for a week so that further consideration could be given today by the majority leader and by members of the Judiciary Committee, including the Presiding Officer.

We have reached a critical stage in the analysis and presentation of this legislation. It has had a long history. In July of 2003, more than 19 months ago, the Judiciary Committee passed out a bill, which all agreed had a great many problems, but it was passed out of committee largely along party lines. I voted for it, in order to move the bill along.

As it is generally known, I then enlisted the aid of a senior Federal judge, Judge Edward R. Becker, who recently was the chief judge of the Court of Appeals for the Third Circuit, to undertake discussions, called mediation, and for 2 days in August of 2003, Judge Becker and I sat in his chambers with the so-called stakeholders representatives of the manufacturers, representatives of labor, AFL–CIO, representatives of the insurance industry, and representatives of the trial lawyers. That has been followed by some 39 separate meetings which have been convened in my conference room.

In addition to numerous discussions Judge Becker has held with interested parties and which I have held with interested parties, we have come to a point in our work where we have found agreement among the parties on many items. We have found the stakeholders very close together on other items.

As might be expected, it has been necessary to make judgments, which is the responsibility of this Senator and which I have done in collaboration with many other Senators, about what this bill represents, which in my considered judgment is an equitable bill.

In early January, I circulated a discussion draft which had certain blanks until we had a hearing, which was held on January 11. I have also had an eye to trying to get the bill completed so that the majority leader could take it up at an early date. If that is not done, and the bill languishes into the season where we take up the appropriations bills, it simply will not be taken up. The asbestos issue is a crisis in the United States today. There is general agreement on that, with some 74 companies having gone into bankruptcy, and with thousands of asbestos victims suffering from mesothelioma, which is a deadly disease, and other deadly diseases and not collecting because their employers have gone bankrupt.

We have found other very difficult issues on so-called ''mixed dust.'' We held a hearing last week, and I think we have worked through the scientific evidence on that proposal so that we are now in a position to know when someone comes forward with a claim, whether it is from asbestos, which has already been covered under the trust fund, or whether it is from silica, which would be a separate cause of action.

The essential provisions of this legislation create a trust fund. In order to collect from the trust fund, victims—people exposed to asbestos—must establish certain levels of disability.

There is a graduated scale as to compensation. The offset to the right of victims to give up their right to jury trial is the assurance that if this fund proves to be insufficient, people can go back to the jury trial system. There had been a great deal of discussion as to what was an adequate amount for the trust fund.

The manufacturers and insurers made an offer of $140 billion. There were discussions last fall between Senator FRIST and Senator Daschle where there was agreement to that proposal as to the total amount, although there had not been and has not been any agreement by the AFL–CIO or by labor. After a lot of consideration, it is my judgment that is an equitable figure. It is impossible to say what the total claims will be, what the total sum will be that is required because we do not know how many claims there will be. But if that figure should prove insufficient, then victims—claimants—have a right to go back to the jury trial system.

There had been some disagreement as to how much money should be in at the start, with manufacturers and insurers wanting $40 billion in the first 5 years, and labor wanting $60 billion. After considerable inquiry, I was satisfied that the fund would have the ability to borrow at least $20 billion extra, so that the $60 billion total looked to by labor would be realized. Again, not to the satisfaction of all the parties, that is what the bill provides.

The manufacturers and the insurers were looking for a 7½ year period where they would be assured there would be no other claims made. After extensive consideration, it was my judgment that there were certainly reasonable assurances that the fund would last for at least 7½ years, but that if the fund was to fall short, that ought to be a burden not met by the claimants, but they ought to have their right to reversion to a jury trial.

There was a consideration as to what would happen on startup, with the manufacturers and insurers wanting a very lengthy period of time. The bill strikes a compromise, with 270 days to start up the bill on exigent claims—that is, very serious claims involving mesothelioma—and 18 months on other claims. Labor and the trial lawyers felt there ought to be access to the courts continuously until the fund was started. The reality is, there are many delays, and a 270-day delay, while nobody likes any delays, is not an excessive delay under our litigation system in the United States. So that compromise and that adjustment was made.

As to the pending cases, labor and the trial lawyers wanted an exclusion on mesothelioma in cases which had been filed. This bill provides that the requests of manufacturers and insurers had a very solid basis, that if they were going to put up a very substantial trust fund, that all of the cases ought to go into the trust fund, and that is the structure of the bill unless the case is to a jury or unless there has been a settlement with a particular individual.

We have worked through the problems of the Federal Employees Liability Act, where we are very near a solution. I talked to Judge Becker earlier today, and he has talked to the parties there, and they are very close to resolving that issue. But in any event, there has been an agreement that if there is not a way to reconcile all of those issues, then there will be an arbitration clause in the bill which will solve that issue.

There had been a consideration as to the issue on medical screening, with the manufacturers and the insurers objecting to medical screening. After considerable consideration, it was decided that medical screening ought to be provided in the bill, although it ought to be provided in a very tightened-up process so it would not bring into the litigation system people who did not have bona fide claims, that it would not increase the litigation inappropriately. Where you have substantial motivation for the trial lawyers to go out and find clients and bring claims, that is one thing. But if that is absent because of the reduction in attorneys' fees, then it seemed to me that these are people who do not ordinarily get physical examinations on an annual basis, as Senators might, and that it was fair to have medical screening, but it has been done on a tightened basis, and it was considered that was a fair approach here.

When it came to what is called level seven, where we have smokers involved with reduced compensation, it was generally agreed we were not looking to have a smokers bill, so that if the claims exceeded 115 percent of the estimate by the CBO, the Congressional Budget Office, those cases would go back to the judicial system where the defendants are said to win most of those cases.

We have come to agreement on many contentious issues. The administrative provisions have been agreed to with the Department of Labor. We have agreed to a provision that if you have a 40-year-old mesothelioma victim with dependent children, the administrator shall have authority to give him more and to give somebody, illustratively, in their eighties with no dependents less, as long as the fund remains neutral.

We have come to agreement on judicial review. We have come to agreement on what courts will handle the cases if there was a reversion. There had been a request by the manufacturers and insurers to have all the cases go to Federal courts. Labor and the trial lawyers wanted the cases to go wherever the plaintiff chose to bring them. We have come to agreement that they would go to the Federal courts with the exception of the State courts where the individual lived as to venue or where the matter occurred.

We have on a consensus basis agreed to tighten up the penalties on violation of environment, safety requirements, and health requirements. Labor wanted a provision as to transparency, and after a lot of analysis, we have worked that through.

In the course of these extensive negotiations, there have been, I would estimate, some 150 to 250 legislative changes on modification. So we have come to a point where we now have this bill to be submitted for discussion purposes again. I had wanted to introduce this bill on a number of occasions. As I said, for the record, 2 or 3 weeks ago, Senator LEAHY wanted additional time to study it. I have worked closely with Senator FEINSTEIN and met with her and with her staff. As enumerated in the course of my written statements, some 27 Senators have participated in this process. It is very, very complicated. I do not think the Congress has ever tackled a more complicated legislative issue. In fact, I think the Congress has never tackled a legislative issue as complicated as this, certainly not during the 24 years-plus tenure of which I have had.

As it has been commented about publicly, this issue brings together four of the most powerful if not the most powerful groups in Washington: the manufacturers; labor, with the AFL–CIO; the trial lawyers; and the insurance companies. Each has pressed very hard for advantage, which you would expect them to make their press.

As I say, this bill, numbering some 291 pages, contains many agreements. On those issues where we could not structure and forge agreements, the judgments have been made. I take the responsibility for the judgments which have been made here.

I submit that it is an equitable bill. I am not in concrete on any of these provisions. I am willing to discuss them. I am willing to talk about them further. But the basic approach of a trust fund is central to a resolution of this very difficult issue if we are to resolve it. If you press on one part of a balloon, the air goes to another part of the balloon, and while insurers and manufacturers may not like screening, labor does not like the limitation on the fund, and every time you turn, there is an issue where someone wants something more.

I believe that this bill, the structure of this bill, although not necessarily the particulars, is the last best chance.

I have taken over the responsibility as chair of the Judiciary Committee, and we have an agenda which is gigantic. In order to work in our first hearing on January 11, we had to work it around the hearings on White House Counsel Gonzales. And last week we spent all of the week on that issue. Last week the committee took up the issue of class action which is now on the floor. This Thursday we have hearings on bankruptcy because the majority leader wants to move forward. We have in the offing judicial nominations, and we have the prospect of a

Supreme Court nominee. So the Judiciary Committee calendar is absolutely jammed.

If this cannot provide the framework for a resolution of this issue, considering the 20 months of very laborious effort put in by Judge Becker and by some 27 Senators and 39 separate conferences, I do not know what would be fruitful for the Judiciary Committee for the Senate to do next.

I have sought recognition to introduce a discussion draft of the Fairness in Asbestos Injury Resolution Act of 2005, FAIR Act, the successor to S. 1125 and S. 2290, the FAIR Acts of 2003 and 2004. My colleagues Senator FRIST, Senator HATCH and Senator LEAHY deserve enormous credit for the drafting of these acts and for the development of this legislation. There is a will in the Senate to enact legislation that should put an end to the ongoing rash of bankruptcies, growing monthly; diverting resources from those who are truly sick; endangering jobs and pensions; and creating the worst litigation crisis in the history of the American judicial system. The FAIR Act is still alive. The Senate plainly wants a more rational asbestos claims system, and I believe that this legislation offers a realistic prospect of accomplishing that result.

This legislation provides substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve, with finality, asbestos claims. For more than two decades, a solution to the asbestos crisis has eluded Congress and the courts. Seventy-four companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated. According to the RAND Institute for Civil Justice, ''about two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill.'' According to RAND, the number of claims continues to rise, with over 600,000 claims filed already and 300,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today and most are users of the product, not its manufacturers. These companies span 85 percent of the U.S. economy and nearly every U.S. industry, and include automakers, shipbuilders, textile mills, retailers, insurers, shipbuilders, electric utilities and virtually any company involved in manufacturing or construction in the last thirty years.

Asbestos leaves many victims in its wake. First and foremost, the sick and their families have suffered. But the flawed asbestos litigation system not only hurts the sick and their chance at receiving fair compensation, but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are also jeopardized by the tide of asbestos cases. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. According to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and $200 million in lost wages. Employees' retirement funds have shrunken by 25 percent.

In July 2003, the Judiciary Committee knowingly voted out S. 1125, a bill with many problems, largely along party lines, in an effort to move the legislation. S. 1125 created the basic structure of the legislation, and made a huge stride in working out the medical criteria. However, the bill floundered on other issues. In August, at my request, Judge Edward R. Becker, a Federal judge for 33 years, convened in his chambers in Philadelphia for 2 days the so-called stakeholders—manufacturers, labor, AFL–CIO, insurers and trial lawyers—to determine if some common ground could be found. Until the preceding May, Judge Becker had been the chief judge of the Third Circuit Court of Appeals and wrote the opinion in the asbestos class action suit which was affirmed by the U.S. Supreme Court.

From September 2003 through January 2005, there have been 37 stakeholder meetings in my conference room, with Judge Becker as a pro-bono mediator, usually attended by 25 to 40 representatives and sometimes over 75 present. Judge Becker and I have sought an equitable bill which took into account, to the maximum extent possible, the concerns of the stakeholders and to get their input on drafting of the bill. After analysis and deliberation, we found we could accommodate many of the competing interests.

This process commenced with the blessing of Chairman HATCH and Ranking Member LEAHY of the Judiciary Committee. This extended process allowed the stakeholders an extraordinary ''hearing'' process and really amounted to the longest ''mark-up'' in Senate history although not in the customary framework. We have had the cooperation of many Senators. Senators HATCH and LEAHY have had representatives at all the meetings. The majority leader, Senator HATCH and Senator LEAHY have addressed this ''working group'' at our meetings. Senator HATCH and Senator LEAHY's representatives have been active participants at every meeting, as well as the members of the staffs of Senators FEINSTEIN, CARPER, CORNYN, DEWINE, BEN NELSON, BAUCUS, BIDEN, CHAMBLISS, CRAIG, DODD, DURBIN, FEINGOLD, GRAHAM, GRASSLEY, KENNEDY, KOHL, KYL, LANDRIEU, LEVIN, LINCOLN, MURRAY, PRYOR, SCHUMER, SESSIONS, SNOWE, STABENOW, and VOINOVICH.

The concept of a trust fund is an outstanding idea. Senator HATCH deserves great credit for moving the legislation in the direction of a trust fund with a schedule of payments analogous to worker's compensation so the cases would not have to go through the litigation process. Under this proposal, the Federal Government would establish a national trust fund privately financed by asbestos defendant companies and insurers. No taxpayer money would be involved. Asbestos victims would simply submit their claims to the fund. Claimants would be fairly compensated if they meet medical criteria for certain illnesses and show past asbestos exposure. The Trust Fund would guarantee compensation for impaired victims.

Through the series of meetings with Judge Becker, we have wrestled with and have been able to solve a number of very complex issues. The size of the trust fund was always a principal issue of dispute, starting at $108 billion. The manufacturers/insurers raised their offer to $140 billion. Last October, Majority Leader FRIST and then-Democratic Leader Daschle agreed to $140 billion. When Senator FRIST and Senator Daschle, in an adversarial context, agreed to the adequacy of the $140 billion figure, it is difficult to exceed it even though the AFL–CIO did not contemporaneously agree.

It is not possible to say definitely what figure would be adequate because it depends on the uncertainty of how many claims will be filed. There is support for the adequacy of the $140 billion figure from reputable projections. But they are, admittedly, only projections.

The real safety valve, if the fund is unable to pay claims, is for the injured to have the ability to go back to court if the system is not operational and able to pay exigent health claims within 9 months after enactment, and all other valid claims within 18 months of enactment.

The claimants object to any hiatus between access to the courts and an operating system; but the reality is that court delays are customarily longer than the delay structured in this system. The defendants and insurers object saying it is too short a time frame, but they have the power to expedite the process by promptly paying their assessments. I am confident that there will be no problem in administering the system and processing the claims. Conversations have been held with the leaders of the Manville Trust and the RAND Institute study and they persuade me that the volume of claims can be efficiently administered by the fund administrator using a technique developed by the Manville Trust and other similar claims facilities that have processed asbestos claims for many years. The Manville Trust has processed as many as 150,000 claims per year. The number of exigent claims anticipated in the first 9 months of the fund is vastly smaller and even the total number of claims anticipated in the first 18 months is significantly less that which the Manville Trust has handled in a comparable period. Additionally, the bill provides the administrator with the option to contract out

the exigent claims to a claims facility for expedited processing under the standards of the fund on a voluntary basis. The short time frame will prod the system to become operative at an early date. The bill sends the claims back to the fund as soon as it is certified operational with a credit for any payment of the scheduled amount.

Similarly, the defendants seek a commitment that the legislation will bar return to the courts for at least 7½ years. It is hard to see how the substantial fund would be expended in a lesser period. Here again, the legislation gives the defendant substantial assurances that the system will last at least 7½ years. If it collapses, the claimants should not bear the burden, but should reclaim their constitutional right to a jury trial.

The claimants sought $60 billion in startup contributions within 5 years and the defendants countered with a maximum of $40 billion. The fund's borrowing power should enable it to borrow at least the balance of $20 billion because of the defendants continuing substantial financial commitments. Here again, the bill meets the standard of substantial assurances, albeit not perfect certainty, that $60 billion will be in hand within the first 5 years.

A key issue for the claimant has been that of workers' compensation subrogation. This issue is important because the value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. While the precise picture is different from State to State, in general, workers' compensation laws give employers, and their insurance carriers, subrogation rights against third-party tortfeasors and a lien on the injured employee's recovery from a third-part tortfeasor. This is a big deal because workers' compensation covers the employee's medical costs.

I closely examined and considered including a proposal that would have called for a so-called workers' compensation ''holiday.'' Such a proposal would have provided for a ''holiday'' from worker's compensation payments during the period of receipt of payments from trust fund except to the extent that the compensation would exceed them, with a waiver of past and future subrogation. However, as each State has different workers' compensation laws and I concluded that such a proposal may go beyond the practice in a number of States leaving some claimants with a significantly reduced award.

Furthermore, while not undisputed like some other matters on this legislation, there is some significant basis in the assertion by claimants that the award values in the bill were designed with the concept in mind that there would be no liens or rights of subrogation against the claimants based on workers' compensation awards and health insurance payments.

Therefore, in the final analysis, I have determined that to be fair to victims, claimants should be allowed to retain and receive the full value of both their fund awards and workers' compensation payments. It is important that the bill must extinguish any liens or rights of subrogation that other parties might otherwise assert against the claimants based on workers' compensation awards and health insurance payments.

Another key issue for the claimants has been the legislation's treatment of asbestos disease claims under the Federal Employers' Liability Act, FELA, the workers' compensation system for rail workers. Earlier versions of the bill would have preempted FELA claims for asbestos-related diseases, limiting victim's recovery to compensation under a national asbestos trust fund. Rail labor asserts that such an approach is unfair to rail workers, since for all other workers, the bill maintains workers' compensation rights. Alternative approaches to dealing with the FELA issue have been proposed, including providing for a supplemental payment, in addition to awards under the bill, to provide compensation to rail workers for work-related asbestos diseases. The AFL–CIO's affiliates who represent workers in the rail industry have been engaged in discussions with industry on this issue, and will continue to work to see if a fair resolution can be reached. I have included in the bill language that would call for binding arbitration between the parties if they do not arrive at a solution 30 days post enactment.

In these marathon discussions, plus the January hearing, I understand the deep concerns expressed by the stakeholder representatives on more concessions for their clients. On the state of the 20 year record, this choice is not between this bill and one which would give their clients more concessions. The choice is between this bill and the continuation of the present chaotic system which leaves uncompensated thousands of victims suffering from deadly diseases and litigation driving more companies into bankruptcy.

We considered at length the manufacturers/insurers objections to medical screening, but concluded such a provision was necessary as an offset to the reduced role of claimant's attorney. With the previous potential of a substantial contingent fee, claimants' attorneys identified those damaged by exposure to asbestos. Absent that motivation, it is reasonable to have routine examinations for people who would not be expected to go for such checkups on their own; so as a matter of basic fairness, such screening is provided. By establishing a program with rigorous standards, as we have done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard.

The legislation has closely examined the issues of so-called ''leakage'' in the fund and has provided all asbestos claims pending on the date of enactment, except for non-consolidated cases actually on trial, and except cases subject to a verdict or final order or final judgment, will be brought into the asbestos trust fund. Furthermore, only written settlement agreements, executed prior to date of enactment, between a defendant and a specifically identifiable plaintiff will be preserved outside of the fund; the settlement agreement must contain an express obligation by the settling defendant to make a future monetary payment to the individual plaintiff, but gives the plaintiff 60 days to fulfill all conditions of the settlement agreement.

I have also included in the legislation language which is designed to ensure prompt judicial review of a variety of regulatory actions and to ensure that any constitutional uncertainties with regard to the legislation are resolved as quickly as possible. Specifically, it provides that any action challenging the constitutionality of any provision of the act must be brought in the United States District Court for the District of Columbia. The bill also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section is to be filed within 60 days after the date of enactment or 60 days after the final action of the administrator or the commission giving rise to the action, whichever is later. The district court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Claimants also expressed the need for assurances that the manufacturers payment into the fund. Therefore, the legislation I am introducing also requires enhanced ''transparency'' of the payments by the defendants and insurers into the fund. The proposal provides that 20 days after the end of such 60-day period, the administrator shall publish in the Federal Register a list of such submissions, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person may submit to the administrator information on the identity of any other person that may have obligations under the fund. In addition, there are enhanced notice and disclosure requirements included in the draft. It also provides that within 60 days after the date of enactment, any person who, acting in good faith, has knowledge that such person or such person's affiliated group would result in placement in the top tiers, shall submit to the administrator, 1, either the name of such person or such person's ultimate parent; and, 2, the likely tier to which such person or affiliated group may be assigned under this act.

As I have mentioned previously, this legislation deals with a number of very complex issues, one of them being that of ''mixed-dust.'' I held a hearing in the Judiciary Committee in this issue on Feb. 2, 2005. The manufacturers fear that many asbestos claims will be ''repackaged'' as silica claims in the tort

system. Evidence deduced at the hearing reflects that this has been happening in a large number of jurisdictions. If a claim is due to asbestos exposure at all, the program should be the exclusive means of compensation. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims but that workers with genuine silica exposure disease ought to be able to pursue their claims in the tort system. The problem is that with those claims where the point of demarcation is unclear. Silica/asbestos defendants are worried that they will find themselves in court with the burden of proving that the plaintiff's injury is due to asbestos rather than silica. This legislation makes clear that pure silica claims are not preempted, but claims involving asbestos disease are preempted. A claimant must establish by a preponderance of evidence that their functional impairment was caused by exposure to silica, and asbestos exposure was not a significant contributing factor. Although this does impose the burden on the claimant, this is no different than the burden the plaintiff or any party advancing a position has in producing medical evidence in any case that the physician will state that a disease was caused by some condition or exposure or that it was not caused by some condition or exposure.

Another very complicated issue I have addressed in my legislation, at the request of the claimants, is that of providing for award adjustments for exceptional mesothelioma cases based on age and the number of dependents of the claimant. For example, a mesothelioma victim who is 40 years old with two kids will be able to get an upwards adjustment in his award amount as compared to a 80-year-old mesothelioma victim with no dependents. The impact of such adjustments to the fund will remain revenue-neutral.

What I have introduced is a complicated bill, but one that is both integrated and comprehensive and reflective of a remarkable will to enact legislation. If this bill is rejected, I do not see the agenda of this Senate Judiciary Committee revisiting the issue because of other business and the futility in doing so. I cannot conceive of more strenuous effort being directed to this subject that has been done in the past 2 years. This is the last best chance.

I remain confident that we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this nightmare chapter in American legal, economic and social history. If we can summon the legislative will in a bipartisan spirit, it can be done.

I ask unanimous consent to print in the RECORD a 291-page discussion draft.

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

S.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2005'' or the ''FAIR Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims alleging damage or injury to tangible property, or claims for benefits under a workers' compensation law or veterans' benefits program.

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease, disabling asbestosis disease, mesothelioma, lung cancer I, lung cancer II, lung cancer III, and other cancers.

(8) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(9) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(10) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(11) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(12) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(13) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(14) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(15) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that acquires assets, and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(16) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(17) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Administrator such sums as are necessary for the administrative expenses of the Office, including the sums necessary for conducting the studies provided for in section 121(e).

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may

be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with non-governmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY.—Any person may designate any record submitted under this section as a confidential commercial or financial record for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential. Information on reserves and asbestos-related liabilities submitted by any participant for the purpose of the allocation of payments under subtitles A and B of title II shall be deemed to be confidential financial records.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 8 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years, as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(A) pro bono services for legal assistance available to those claimants; and

(B) any limitations on attorneys fees for claims filed under this title.

(e) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in paragraph (2) of an award made under this Act on such claim.

(2) APPLICABLE PERCENTAGE LIMITATIONS.—

(A) IN GENERAL.—The percentage limitation under paragraph (1) shall be—

(i) 10 percent for the filing of an initial claim; and

(ii) 20 percent with respect to any claim under administrative appellate review, which shall include the work for the initial claim.

(B) EXCEPTIONS.—The Administrator may by rule adopt a lower or higher percentage limitation for particular classes of cases if the Administrator finds that—

(i) the percentage limitation otherwise applicable under this paragraph would result in unreasonable compensation to claimants' representatives in such cases; and

(ii) in the case of a lower percentage limitation, the limitation would not unduly limit the availability of representatives to claimants.

(3) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under title I and the operation of the Fund under title II, including procedures for the expediting of exigent health claims.

(b) INTERIM PERSONNEL.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration may make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of exigent health claims.

(2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A claim shall qualify for treatment as an exigent health claim if the claimant is living and the claimant provides—

(A) documentation that a physician has diagnosed the claimant as having mesothelioma; or

(B) a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.

(3) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of exigent health claims, the Administrator may contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants who prefer the short form process to the full administrative procedures under this Act.

(d) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that the illness in question was caused by exposure to asbestos.

(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending as of the date of enactment of this Act, other than a claim for which a verdict or final order or final judgment has been entered by a court before the date of enactment of this Act, shall be subject to a stay.

(2) PURSUAL OF EXIGENT HEALTH CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 9 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and procedures are in place to review and pay exigent health claims at a reasonable rate, each person that has filed an exigent health claim stayed under paragraph (1)(A), or with such a claim arising after the date of enactment of this Act, may pursue that claim in a Federal district court or State court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or State

court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134. If the Administrator subsequently certifies to Congress that the Fund has become operational and the procedures are in place to review and pay asbestos claims at a reasonable rate, any claim in a civil action in Federal or State court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(3) PURSUAL OF ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 18 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with an asbestos claim stayed under paragraph (1), or with an asbestos claim arising after the date of enactment of this Act, may pursue that claim in the Federal district court or State court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure arose.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134. If the Administrator subsequently certifies to Congress that the Fund has become operational and the procedures are in place to review and pay asbestos claims at a reasonable rate, any claim in a civil action in Federal or State court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(4) SUNSET.—This subsection shall have no effect after the date the Administrator certifies to Congress that the Fund is operational and paying claims at a reasonable rate, except that any case that has been filed or revived pursuant to this subsection in a Federal or State court may, at the option of the claimant, remain in that court.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if an individual fails to file a claim with the Office under this section within 4 years after the date on which the individual first—

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EXCEPTION.—The statute of limitations in paragraph (1) does not apply to the progression of non-malignant diseases once the initial claim has been filed.

(3) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is pending—

(i) in a Federal or State court and for which a verdict or final order or final judgment has not been entered by a court before such date; or

(ii) with a trust established under title 11, United States Code,

such claimant shall file a claim under this section within 4 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Except as provided in subparagraph (C), any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(C) EXCEPTION.—Any amounts paid or to be paid for a prior claim for a non-malignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claim for a malignant disease (Levels VI through X), unless the malignancy was diagnosed, or the asbestos claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, before the date on which the non-malignancy claim was compensated.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a complete employment history of the claimant, accompanied by social security records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location

of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim, including any claim under a workers' compensation law, brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise;

(8) for any claimant who has made a claim for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury under a workers' compensation law, a certification that the claimant has notified the workers' compensation insurer or self-insured employer of the claim made under this Act; and

(9) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, Malignant Level VIII, or Malignant Level IX, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under this Act satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which he or she believes relevant.

(d) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (c).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(e) REPRESENTATION.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—At a minimum, the Administrator shall prescribe procedures to randomly assign claims for evaluation by an independent certified B-reader of x-rays submitted in support of a claim, the cost of which shall be borne by the Office.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, Malignant Level VIII,

Malignant Level IX, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—The Administrator may require the performance of blood tests or any other appropriate medical test where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, Malignant Level VII, Malignant Level VIII, Malignant Level IX, or as an exceptional medical claim, the cost of which shall be borne by the Office.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term ''DLCO'' means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the non-malignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through X, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through X, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) GENERAL EXPOSURE REQUIREMENTS.—In order to establish exposure to asbestos, a claimant shall present meaningful and credible evidence—

(A) by an affidavit of the claimant;

(B) by an affidavit of a coworker or family member, if the claimant is deceased and such evidence is found in proceedings under this title to be reasonably reliable;

(C) by invoices, construction, or similar records; or

(D) any other credible evidence.

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level X (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(f) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—The Administrator shall prescribe rules identifying specific industries, occupations within those industries, and time periods for which substantial occupational exposure (as defined under section 121(a)) shall be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation during such time periods. The Administrator may provide evidence to rebut this presumption.

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent, or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—

(A) IN GENERAL.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption.

(C) REQUEST FOR REFERRAL TO PHYSICIANS PANEL.—A claimant filing a claim with respect to Level VI under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—All claims filed relating to Level VII under this paragraph shall be referred to a Physicians Panel for a determination of whether the claimant

qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification;

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(9) MALIGNANT LEVEL IX.—

(A) IN GENERAL.—To receive Level IX compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) evidence of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) evidence of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos; or

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level IX under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(10) MALIGNANT LEVEL X.—To receive Level X compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under section 121(f) for a determination of eligibility.

(e) INSTITUTE OF MEDICINE STUDY.—

(1) IN GENERAL.—Not later than 2 years after date of enactment of this Act, the Institute of Medicine of the National Academy of Sciences shall complete a study of the causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Administrator and the Physicians Panels may consider the results of the report for purposes of determining whether asbestos exposure is a substantial contributing factor under section 121(d)(6)(B).

(2) SUBSEQUENT STUDIES.—If the Administrator has evidence that there have been advancements in science that would require additional study, the Administrator may request that the Institute of Medicine conduct a subsequent study to determine if asbestos exposure is a cause of other cancers.

(f) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(D) CT SCAN.—A claimant may submit a CT Scan in addition to an x-ray.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—A Libby, Montana claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$35,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis.	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer One ..	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000

Level	Scheduled Condition or Disease	Scheduled Value
VIII	Lung Cancer With Pleural Disease.	smokers, $275,000; ex-smokers, $700,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis.	smokers, $575,000; ex-smokers, $950,000; non-smokers, $1,075,000
X	Mesothelioma	$1,075,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) REVIEW AND AWARD.—Level VII cancers shall be individually reviewed for eligibility, and awards shall be in accordance with the schedule set forth in paragraph (1).

(4) LEVEL X ADJUSTMENTS.—

(A) IN GENERAL.—If the Administrator determines that the impact of all adjustments under this paragraph on the Fund is revenue neutral, the Administrator may—

(i) increase awards for Level X claimants who are less than 51 years of age with dependent children; and

(ii) decrease awards for Level X claimants who are at least 65 years of age.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(5) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who filed a timely asbestos claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, before the date of enactment of this Act, or who would be eligible to bring such a claim but for section 403 of this Act, may be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—The Administrator shall promulgate regulations relating to special adjustments under this paragraph, including regulations establishing eligibility requirements and the procedures to be used in applying for a special adjustment and establishing time limits for administrative actions under this paragraph.

(C) ELIGIBILITY.—To be eligible for a special adjustment, the claimant shall apply for such an adjustment and demonstrate to the Administrator's satisfaction that—

(i) the claimant's asbestos-related condition was the result of occupational exposure to asbestos in the course of the claimant's employment by a common carrier by rail;

(ii) the claimant qualifies for an award under this section for disease Levels II through X;

(iii) the claimant has a total or partial disability as a result of the claimant's asbestos-related condition under the workers' compensation law that would apply if the claimant's occupational exposure had occurred outside the railroad industry; and

(iv) after taking into consideration any benefits that the claimant has received, or is entitled to receive, for occupational disability under the Railroad Retirement Act (45 U.S.C. 201 et seq.) and any applicable workers' compensation law, the claimant's total compensation after receiving an award under this section would be less than the amount that would be received by a similarly situated claimant who—

(I) did not work in the railroad industry; and

(II) did work in an industry covered by applicable workers' compensation laws.

(D) AMOUNT.—A special adjustment under this paragraph shall be the difference between—

(i) the claimant's total compensation after receiving an award under this section, as determined under subparagraph (C)(iv); and

(ii) the amount that would be received by a similarly situated claimant who—

(I) did not work in the railroad industry;

(II) did work in an industry covered by applicable workers' compensation laws; and

(III) filed an application for benefits as of the date that the claimant commenced an action under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or applied for an award under this Act, whichever is earlier.

(E) EXCEPTION.—Nothing in this Act should in any manner be construed to impact or affect the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act. This Act is intended to deal solely with asbestos claims and not with any other rights possessed by an employee of the railroad industry.

(6) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(7) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation.

(b) EXCLUSIONS.—In no case shall statutory benefits under workers' compensation laws and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 133 shall not be considered a

form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

(2) person on account of worker's compensation payments.

(b) NO EFFECT ON CLAIMS.—The payment of an award to an asbestos claimant under section 133 shall not affect any claim of an asbestos claimant against—

(1) an insurance carrier with respect to insurance; or

(2) against any person with respect to worker's compensation.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(3) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(e). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days of the effective date of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review under section 303.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provision of this Act, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that—

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the required determination, or if an order confirming the plan is not entered within 9 months after the effective date of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described in section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described in section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, less—

(i) all allowable administrative expenses;

(ii) allowable priority claims under section 507 of title 11, United States Code; and

(iii) allowable secured claims.

(5) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims reduced to a verdict or final order or final judgment, within the meaning of section 403(d)(1), by a court before the date of enactment of this Act) shall be transferred to the Fund not later than 6 months after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Employers' Liability Act (45 U.S.C. 51 et seq.), as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsection (d), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL.—After an initial hardship adjustment is granted under this paragraph, a defendant participant may renew its hardship adjustment by demonstrating that it remains justified.

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Administrator any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount

of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant; and

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote. For purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A).

(5) ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f) and (g) of this section) fail in any year to raise at least $3,000,000,000 net of any adjustments under subsection (d), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment net of any adjustments under subsection (d), the Administrator may assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 120 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2); and

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier

within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier.

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I, a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2), and a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B); and

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated.

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier and of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(e), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment set forth in subsection (h) net of any adjustments under subsection (d) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment net of any adjustments under subsection (d) in any given year, the Administrator may impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment net of any adjustments under subsection (d), as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(2) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during

any applicable payment year, any amount by which aggregate insurer payments fall below the level required in paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000.

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments pursuant to section 212 shall also be liable for payments to the Fund as a defendant participant pursuant to section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—

(i) IN GENERAL.—Whenever the Commission requires payments by a runoff entity that has assumed asbestos-related liabilities from a Lloyd's syndicate or names that are members of such a syndicate, the Commission shall not require payments from such syndicates and names to the extent that the runoff entity makes its required payments. In addition, such syndicates and names shall be required to make payments to the Fund in the amount of any adjustment granted to the runoff entity for severe financial hardship or exceptional circumstances.

(ii) INCLUDED RUNOFF ENTITIES.—Subject to clause (i), a runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but adjustments shall not reduce the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and (3)(C).

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AUTHORITY OF ADMINISTRATOR.—During the period between the date of enactment of this Act and the date when the Commission issues its final determinations of payments, the Administrator shall have the authority to require insurer participants to make interim payments to the Fund to assure adequate funding by insurer participants during such period.

(2) AMOUNT OF INTERIM PAYMENTS.—During any applicable year, the Administrator may require insurer participants to make aggregate interim payments not to exceed the annual aggregate amount specified in subsection (a)(3)(C).

(3) ALLOCATION OF PAYMENTS.—Interim payments shall be allocated among individual insurer participants on an equitable basis as determined by the Administrator. All payments required under this subparagraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established in subsection (a)(3)(D).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under

this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection is limited solely to amounts available in the Asbestos Injury Claims Resolution Fund established under this section.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level X.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $50,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated

groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $50,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries, including those provided in subsection (c), and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) MESOTHELIOMA RESEARCH AND TREATMENT CENTERS.—

(1) IN GENERAL.—The Administrator shall provide $1,000,000 from the Fund for each of fiscal years 2005 through 2009 for each of up to 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Centers shall—

(A) be chosen by the Director of the National Institutes of Health;

(B) be chosen through competitive peer review;

(C) be geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(D) be closely associated with Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(E) be engaged in research to provide mechanisms for detection and prevention of mesothelioma, particularly in the areas of pain management and cures;

(F) be engaged in public education about mesothelioma and prevention, screening, and treatment;

(G) be participants in the National Mesothelioma Registry; and

(H) be coordinated in their research and treatment efforts with other Centers and institutions involved in exemplary mesothelioma research.

(d) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with each participant's relative annual liability under this subtitle and subtitle B for those 5 years.

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

(e) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Administrator may bring a civil action in the United States District Court for the District of Columbia, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to furnish any information requested by or to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2005.''.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt regulations establishing a medical screening program for individuals at high risk of disability resulting from an asbestos-related disease. In promulgating such regulations, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The regulations promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the type of asbestos fiber to which the individual exposed;

(vi) the intensity and duration of non-occupational exposures; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The regulations promulgated under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and

shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions allowing the Administrator to terminate such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator may make available from the Fund not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(f).

(B) REVIEW.—The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any interlocutory or final judgment, decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL.—Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

(3) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

''(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to

execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, knowingly and willfully—

''(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

''(2) makes any materially false, fictitious, or fraudulent statements or representations; or

''(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2005 shall be fined under this title or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund''.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2005, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2005.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2005); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2005, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2005 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2005 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2005 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2005, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2005, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and ⟦such transfer shall⟧ no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2005. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2005), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence that—

(I) the exposed person's functional impairment was caused by exposure to silica; and

(II) asbestos exposure was not a significant contributing factor; and

(ii) provides the accompanying information described under paragraph (2).

(B) FUNCTIONAL IMPAIRMENT.—For purposes of subparagraph (A), functional impairment shall be deemed not to be caused by exposure to asbestos if the plaintiff proves that the plaintiff would not satisfy the exposure requirements of section 121 with respect to such impairment.

(C) PREEMPTION.—Claims that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 30 days after such date), shall be accompanied by—

(A) admissible evidence, including, at minimum, readable x-ray films and a B-reader's report, together with a history of the exposed person's exposure to asbestos and such other evidence as may be sufficient to establish a prima facie showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos; and

(C) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, including any required court approval of the settlement, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2), the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impanelling and commencement of presentation of evidence, but before its deliberations; and

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except for enforcement of claims for which a verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in

writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except for any action for which a verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except—

(i) as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act; and

(ii) orders to remand removed actions shall be immediately appealable.

(D) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim, including a claim described under paragraph (2), for which, as of the date of enactment of this Act, there had been no verdict or final order or final judgment entered by a court, is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment. The Administrator shall require participants seeking credit under this section to demonstrate that the participant timely pursued all available remedies, including remedies available under this section to obtain dismissal of the claim, and that the participant notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section. The Administrator may require such participant to furnish such further information as is necessary and appropriate to establish eligibility for and the amount of the credits. The Administrator may intervene in any action in which a credit may be due under this section.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term ''early sunset'' means an event causing termination of the program under section 405(f) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
10	70.78
11	68.75
12	67.06
13	65.63
14	64.40
15	63.33
16	62.40
17	61.58
18	60.39
19	59.33
20	58.38
21	57.51
22	56.36
23	55.31
24	56.71
25	58.11
26	59.51

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means, in the event of any early sunset under section 405(f), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 59.64 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 59.64 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 59.64 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode

remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1996, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—No participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a contract specifically providing insurance or reinsurance for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the effective date, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before the effective date, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay only those claimants whose injuries are caused by exposure to asbestos;

(6) a summary of the results of audits conducted under section 115; and

(7) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CLAIMS ANALYSIS.—If the Administrator concludes, on the basis of the annual report submitted under this section, that the Fund is compensating claims for injuries that are not caused by exposure to asbestos and compensating such claims may, currently or in the future, undermine the Fund's ability to compensate persons with injuries that are caused by exposure to asbestos, the Administrator shall include in the report an analysis of the reasons for the situation, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund from compensating claims not caused by exposure to asbestos.

(d) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, on the basis of the information contained in the annual report submitted under this section, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years, the Administrator shall include in the report an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) triggering the termination of this Act under subsection (f) at any time after the date of enactment of this Act; and

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, changes in the timing of payments, or changes in award values).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND COMMISSION.—

(1) IN GENERAL.—If the Administrator recommends changes to this Act under subsection (c), the recommendations and accompanying analysis shall be referred to a special commission consisting of the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of the Treasury, and the Secretary of Commerce, or their designees. The Commission shall hold public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to the Congress in the same manner as set forth in subsection (a).

(2) REFERRAL.—If the Administrator recommends changes to, or termination of, this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Commission. The Commission shall hold public hearings on the Administrator's alternatives and recommendations and then make its own recommendations for reform of the program set forth in titles I and II of this Act. Within 180 days after receiving the Administrator's recommendations, the Commission shall transmit its own recommendations to Congress in the same manner as set forth in subsection (a).

(f) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if the Administrator—

(i) has begun the processing of claims;

(ii) conducts a review of the operations of the Fund similar to a review conducted to prepare an annual report under this section; and

(iii) determines that if any additional claims are resolved, the Fund will not have sufficient resources when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(iii), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by the Administrator by assuming that, instead of a lump-sum payment, such trust had transferred its assets to the Fund on an annual basis, taking into consideration relevant factors, including the most recent projections made by the trust's actuary before the date of enactment of this Act of the amount and timing of future claim payments and administrative and operating expenses.

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) or preempted under section 403(e)(2) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''sunset claims'' means claims as to which this Act has terminated; and

(ii) the term ''sunset claimants'' means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (g) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (g), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (g).

(7) ASBESTOS TRUSTS AND CLASS ACTION TRUST.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(8) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUST.—The amounts determined under paragraph (1)(A)(iii) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(g) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—On and after the date of termination under subsection (f), any individual injured as a result of exposure to asbestos, who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (f), except—

(A) an individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed; and

(B) an individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through IX) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (f), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the effective date of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section—

(A) at no time after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no sunset claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants; and

(B) if a termination takes effect under subsection (f), the exclusive remedy for sunset claims arising from such operations will be a claim against the class action trust to which the Administrator has transferred funds under subsection (f)(8) to pay asbestos claims, if necessary in proportionally reduced amounts.

(h) LEVEL VII CLAIMS.—

(1) MONITORING CLAIMS.—In each fiscal year, the Administrator shall monitor the number of claims of smokers and ex-smokers filed with the Office for Level VII asbestos-related disease and compare such number with the most recent projection of the Congressional Budget Office before the date of enactment of this Act.

(2) ANALYSIS, ESTIMATES, AND ALTERNATIVE ACTIONS.—If the Administrator estimates that in the next fiscal year the number of claims of smokers and ex-smokers filed with the Office over the preceding 3 years may exceed the most recent projection of the Congressional Budget Office before the date of enactment of this Act by 15 percent, the Administrator shall—

(A) conduct an analysis of the reasons for the results of the estimation;

(B) estimate whether that number will exceed the projection by 15 percent or more in subsequent fiscal years; and

(C) provide a range of reasonable alternatives of actions which best serve the interests of claimants and the public that the Administrator, Congress, or other authorities may take to provide for that number not to exceed the projection by 15 percent or more.

(3) SUNSET OF CLAIMS.—If in any fiscal year the Administrator determines that the number of claims of smokers and ex-smokers filed with the Office over the preceding 3 years for Level VII asbestos-related disease exceed the most recent projection of the Congressional Budget Office before the date of enactment of this Act by 15 percent, the Administrator shall take actions from the alternatives described under paragraph (2)(C) to reduce that number to not exceed 15 percent of that projection. If after taking such actions, the Administrator determines that such number will continue to exceed 15 percent of that projection, such claims shall be treated as if this Act had ceased to be effective under subsection (f).

(4) TRANSFER TO CLASS ACTION TRUST.—On the effective date of the sunset of Level VII claims under paragraph (3), the Administrator shall transfer to a class action trust an amount the Administrator determines is sufficient to pay future claims for Level VII asbestos disease arising from the operations of a person with respect to whose liabilities for asbestos claims the class action trust has been established.

(5) NEW CLAIMS FILED AFTER SUNSET.—

(A) VENUE.—If this Act ceases to be effective with respect to Level VII claims of smokers and ex-smokers under paragraph (3)—

(i) any actions shall be brought only in the Federal district court located within—

(I) the State of residence of the claimant; or

(II) the State in which the asbestos exposure occurred; or

(ii) if any defendant cannot be found in the State described in subclause (I) or (II) of clause (i), the claim may be pursued against that defendant only in the Federal district court or the State court located within any State in which the defendant may be found.

(B) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than one Federal district, the trial court shall determine which Federal district is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(C) APPLICABLE LAW.—An action under subparagraph (A) shall be governed by Federal common law, except that where national uniformity is not required the court shall utilize otherwise applicable State law, including statutes, to provide the appropriate rule of Federal common law.

(D) EXCLUSIVE REMEDY.—Notwithstanding any other provision of this section, after the sunset of claims under paragraph (3), the exclusive remedy for actions for Level VII asbestos disease arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established shall be payment from the funds transferred to the class action trust under paragraph (4). No actions for such Level VII asbestos disease claims may be maintained against a person that transferred the assets of any class action trust in accordance with section 203(b)(5), its successors or affiliates.

(E) SUNSET OF ACT.—Notwithstanding subparagraph (A), if this Act terminates as provided in subsection (f), all civil actions for Level VII claims filed after the effective date of such termination shall be governed by subsection (g).

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, other than the funding for personnel and support as provided under this Act; or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related

disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking ''Any'' and inserting ''(1) Except as provided in paragraph (2), any''; and

(2) by adding at the end the following:

''(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.''.

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the ''Fund'').

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 CFR 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action pursuant to section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2005.''.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

''Subtitle B—Ban of Asbestos Containing Products

''SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

''(a) DEFINITIONS.—In this chapter:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ASBESTOS.—The term 'asbestos' includes—

''(A) chrysotile;

''(B) amosite;

''(C) crocidolite;

''(D) tremolite asbestos;

''(E) winchite asbestos;

''(F) richterite asbestos;

''(G) anthophyllite asbestos;

''(H) actinolite asbestos;

''(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

''(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

''(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

''(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

''(B) shall not include—

''(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

''(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

''(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

''(B) provide for implementation of subsections (c) and (d); and

''(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

''(2) TERMS AND CONDITIONS.—An exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

''(3) GOVERNMENTAL USE.—

''(A) IN GENERAL.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is—

''(i) sought by the Secretary of Defense and the Secretary certifies, and provides a copy of that certification to Congress, that—

''(I) use of the asbestos containing product is necessary to the critical functions of the Department;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) use of the asbestos containing product will not result in an unreasonable risk to health or the environment; or

''(ii) sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

''(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

''(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

''(4) SPECIFIC EXEMPTIONS.—The following are exempted:

''(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

''(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

''(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

''(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

''(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

''(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

''(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

''(d) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

''(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''SUBTITLE A—GENERAL PROVISIONS'';

and

(2) by adding at the end of the items relating to title II the following:

''SUBTITLE B—BAN OF ASBESTOS CONTAINING PRODUCTS

''Sec. 221. Ban of asbestos containing products.''.

Mr. SPECTER. It would be my request to my colleagues that the matter be examined and studied because we are going to have to move forward on it one way or another, if it is to be taken up at an early date. I have set a very demanding schedule on the work of those who have been in the drafting process. So I ask consideration of my colleagues to consider this matter at an early opportunity.

I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Florida.

VISIT TO THE SENATE BY THE VICE PRESIDENT OF THE ARGENTINE REPUBLIC

Mr. NELSON of Florida. Mr. President, it is a privilege for me today to call to the attention of the Senate the very good relations the United States has with the country of Argentina.

We are honored to have as our guest the Vice President of Argentina, Daniel Scioli, who, in his capacity, has the privilege of the floor because, as under the Argentine Constitution, so, too, under our Constitution, the Vice President of the country is also the President of the Argentine Senate. Since we have parliamentarians of the various parliaments of the world who have the privilege of the floor, it is my privilege to bring Daniel Scioli, a personal friend, to see the greatest deliberative body in the world, the United States Senate.

Argentina has had quite an economic revival. Under Vice President Scioli and President Kirchner, they have had an economic turnaround in the course of the last couple of years, particularly evident within the last year because we have seen a number of their economic problems start to come under control. We have seen a lessening of their inflation. We have seen them attempting to deal with their debt that is owed to international institutions as well as to other countries. As a matter of fact, there are very significant negotiations going on now with Argentine bondholders that are held around the world as to whether there will be some kind of forgiveness. Of course, you can imagine the bondholders are resisting that enormously. But we do know this: For Argentina to increase its economic capacity as the leader that Argentina is in Latin America, as it is very reflective of an elected government and elected democracy, it is clearly in the interest of the United States that Argentina does well.

We see that the Kirchner administration has benefited from the results of that economic revival, for President Kirchner and, no doubt, Vice President Scioli, in fact, are very high in popularity in the polls in Argentina.

It is interesting that another country in Latin America that has had tremendous economic problems—Peru, under President Toledo—likewise, is coming up in their economy, but President Toledo does not enjoy the high standing in the polls in his country of Peru that the Kirchner administration is enjoying in the polls in Argentina. I think, over the course of time, we will see President Toledo begin to rise in the polls, but he has had a very tough time.

The Vice President and I just had a discussion about a number of topics that are of mutual interest to our country. On his border with Brazil and with Paraguay, the Argentine-Paraguay-Brazilian border, called the triborder area, there is a city called Ciudad del Este, a place about which we are concerned because there is a lot of money laundering, there is a lot of fundraising for Muslim charities, there are a lot of knockoff goods that are being sold, contraband being sold. So those conditions are ripe for terrorists to infiltrate, and it is our hope that these countries in the triborder region, the three major countries, will continue to cooperate with us.

I can tell you that Argentina has clearly cooperated with us. In the recent trip I took with Senator DODD and Senator CHAFEE where we visited these areas, we were quite encouraged with the cooperation on terrorism getting a foothold in that region. We have seen terrorism move from the Middle East. We have seen it in Europe. We have seen it move into Africa. Our concern now is that terrorism is moving into Latin America.

Another topic of enormous mutual interest to our two countries is the question of the direction that Venezuela will take and the direction that President Chavez is taking it.

In a recent meeting with President Chavez with these other Senators, he was very friendly. He said that he was, in fact, clamping down on the FARC and the ELN, the guerrillas in Colombia coming across into Venezuela. He said, in fact, he had just returned nine FARC members to President Uribe of Colombia, and then, lo and behold, we find evidence to the contrary shortly thereafter.

I have spoken with Vice President Scioli, as well as President Kirchner of Argentina, to intercede to see if there is any common ground with the President of Venezuela because Venezuela and the United States have a mutual interest. They sell half of their daily production of oil to us. We import 15 percent of our daily consumption of oil from Venezuela. Who knows, it could be a leader just like the leader from Argentina who is visiting with us today who could be the intermediary to help improve the relations if President Chavez is sincere.

Mr. President, I wish to welcome our distinguished guest from Argentina, who has now become a personal friend of mine and my wife Grace, to this cradle of our democracy, this great deliberative body. Earlier today, he visited with our Vice President, Vice President CHENEY. We are now glad to have him come and see the body over which the Vice President of the United States sits as the President of the Senate.

Welcome, Mr. Vice President.

I thank the Chair for this opportunity. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

COMMENDING THE PEOPLE OF IRAQ ON DEMOCRATIC ELECTIONS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. Res. 38, which the clerk will report.

The assistant bill clerk read as follows:

A resolution (S. Res. 38) commending the People of Iraq on the January 30, 2005, national elections.

The PRESIDING OFFICER. The time until 5:30 will be equally divided between the leaders or their designees.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I will be speaking as the designee of Senator REID, the Democratic leader.

I rise to speak to the resolution congratulating the people of Iraq for their historic elections which took place on January 30.

The Iraqi elections were an important step forward and a tribute to the courage of the Iraqi people. It was actually incredible to see them go to the polls literally as they heard explosions in the streets. The images that we saw were quite moving.

The election is only the first step in a long road filled with potentially lethal potholes, and the next months are going to be very critical.

If the elections are to be a true turning point in the history of Iraq, then it is critical, and I believe the administration fully understands, that the administration act with the urgency that is needed in several key areas to sustain this very positive momentum.

In my view, the first priority is to build Iraqi capacity. The election, hopefully, strengthened the political legitimacy of the Iraqi government, but it did nothing to build its governing capacity.

The Iraqi government is no more capable today than it was the day before the elections of providing law and order, defeating the insurgents, or delivering basic services like water, gasoline, and electricity.

We have squandered 2 years developing these capabilities, and now it is time to move into high gear, especially in training Iraqi forces that are able to operate independently and effectively. Our ability to draw down responsibly in Iraq depends on that happening.

Second, we must promote political power sharing. Because many Sunni Arabs stayed home or, quite frankly, were scared away, understandably I might add, from the polls, they may feel even more alienated and continue to support the insurgency.

I am encouraged by conciliatory statements by some Sunni-affiliated organizations that suggest they are willing to work with the new government in drafting Iraq's permanent constitution. We all should remember this election was primarily about electing people who are going to be the people who write the constitution. In a sense, it is a little bit like our Constitutional Convention that took place in Philadelphia. These folks are going to write

a constitution, then they are going to present it to the Iraqi people essentially in a referendum at the end of this year, next fall. If the Sunni Arabs are not in on the deal, it is not likely to be accepted.

We must use our influence with the Shi'a and the Kurds to reach out to those who were left out, that is the Sunni Arabs, who are willing to participate in the writing of that constitution. They also have to be well represented in the cabinet of this transitional government.

Finally, just as the international community appointed a first-rate representative to the independent Iraqi election commission, so, too, should it consider similar assistance as Iraqis begin to grapple with the complexities of drafting a constitution.

Thirdly, we have to make Iraq the world's problem, not just our own. Secretary Rice said before the Senate Foreign Relations Committee ''the time for diplomacy is now.'' The proof will be the administration's efforts and success in getting more help to train Iraqi security forces and to build Iraq's infrastructure. The administration has to make a diplomatic full court press.

Our allies claim to be concerned about the plight of the Iraqi people. Well, now is their chance to prove it. The Europeans have to get over it. George Bush has been elected for the next 4 years. The fact is, they must get involved and stop shirking their responsibility. We also must help the Iraqi government develop positive relations with its neighbors and regional states. Our Presidential elections are over, the American people have spoken, and it is time for our allies to get over their past differences with the Bush administration and act in their own self-interest to promote a stable, unified, representative Iraq.

A week ago, several of my colleagues from both sides of the aisle had the chance to visit with President Chirac. I think it is fair to say we sensed a new willingness to work with us if France is given a seat at the table.

Similarly, Chancellor Schroeder, during Secretary Rice's visit last week, offered additional German assistance to train Iraqi security forces, build Iraqi ministries, and support Iraqi civil institutions.

We must not squander yet another opportunity to bring our key allies into the effort.

Last April, I called for the creation of a board of directors—a contact group—consisting of the major powers, the Iraqi government, and key regional countries to support Iraq's transition. It would meet on a monthly basis to coordinate diplomatic, political, economic, and security support for Iraq.

I urge the administration to reconsider creating a contact group. The President could use his forthcoming visit to Europe to launch the effort.

A broader group which includes other nations on the U.N. Security Council, the G–8, and the multinational force can meet on a regular, but more infrequent basis to discuss ways to support the contact group's efforts.

Fourth, we must show reconstruction results. More than a year ago, the administration told Congress it urgently needed $18.4 billion for Iraq's reconstruction.

Congress delivered but the administration has not: Less than 20 percent of that money has been spent. Electricity production in Iraq has fallen to below the level it was under Saddam. Lines for gasoline stretch for miles. Oil production is lagging behind targets.

The administration must develop a plan to spend the money efficiently, with clear benchmarks. We should emphasize small-scale, Iraqi-run projects that deliver quick benefits to the Iraqi people—at least 40 percent of whom are unemployed and on giving our military commanders more flexibility to spend money directly on reconstruction.

Finally, I know that I do not need to remind my colleagues that we must support our military.

Our troops in Iraq must be equipped and trained for the mission in Iraq. The troop rotation schedule must not degrade readiness or diminish retention.

Above all, the administration must do what it has consistently failed to do in Iraq: Level with the American people.

A week ago Sunday was a good day for democracy, but there are many hard days and more sacrifice ahead. The President must make that clear if he is to sustain the support of the American people.

Mr. KENNEDY. Mr. President, I support this resolution, and I join in commending the people of Iraq for the inspiring step they have taken toward self-government and a democratic future.

We all share the goal of spreading freedom and democracy and ending tyranny around the globe. There is no disagreement about these goals, and the importance of these ideals. America has been a beacon of democracy and freedom for more than two centuries.

When America is at its best, our deeds match our words. But many of us feel we haven't done that in Iraq. We care about our country. Stephen Decatur famously said, ''My country, right or wrong.'' But others through the years have said it better—''our country right or wrong. When right, to be kept right. When wrong, to be set right.''

We've paid a high price for the invasion of Iraq. Saddam is gone, but there were no weapons of mass destruction. The cakewalk the administration predicted became a quagmire instead. We shifted our focus away from the real threat to our national security—Osama bin Laden. We shattered our alliances and lost our respect in the world. More than 1,400 American soldiers have given their lives. 150,000 of our soldiers are tied down in Iraq. Our military has been stretched to the breaking point, with other threats ever-present. The families of our military, and our guard and reserves are suffering. The American occupation has fueled the insurgency.

We are all moved by the bravery of the Iraqi people who voted in the recent election, and we honor the courageous men and women of our Armed Forces who continue to risk their lives for a better future for the Iraqi people.

The election is an opening, if we are wise enough to seize it, to demonstrate to the Iraqi people that we have no long-term designs on their country.

I hope the administration's decision to withdraw 15,000 American troops from Iraq is a down-payment on a more enlightened policy, and that the administration will seize this opening.

Our men and women in uniform deserve more. We need to redouble our efforts to train the Iraqi security forces before the election of a permanent Iraqi government at the end of the year, so that a stable and free Iraq will be established and our troops can come home with dignity and honor.

I congratulate the Iraqi people and the men and women of our Armed Forces who made this election possible, and I urge my colleagues to support this resolution.

Mr. REID. Mr. President, first, let me express my appreciation to the ranking member of the Foreign Relations Committee. Senator BIDEN is someone who has knowledge of foreign affairs that is astounding. Having served on that committee when I was in the House of Representatives, I know it is a great committee. It is so important to the success or failure of what happens in this country in relation to our foreign neighbors. I feel so relieved, knowing he is there, leading us on this most important committee. I appreciate his statement today.

The resolution now before the Senate commends the Iraqi people for their courage during the election on January 30. I think it is important that we express our admiration for the Iraqi citizens. That is what this resolution does. Millions cast their votes on that day. They turned out at the polls in spite of threats to voters, candidates, election workers, and in spite of acts of violence by those seeking to undermine the election process. The acts of violence took place. Approximately 40 Iraqis were killed that day, and a number of American soldiers.

I think we should express our gratitude to our troops in Iraq. They are the ones who have allowed this election to go forward. The U.S. military was central to the success of the election on election day. Without them and the overwhelming security they provided, there would not have been an election.

The Iraqi Independent Election Commission and the United Nations also did a good job. They also should be commended. They took the daunting task of trying to hold a free and fair election in the most dangerous conditions.

But no one should underestimate the challenges that lie ahead, as outlined

by Senator BIDEN. The election was only one step in Iraq's long march toward peace and stability. With the violence unending and the insurgency showing no signs of weakness, the President needs to spell out a clear and understandable plan for success in Iraq. In his State of the Union Address, the President said only that U.S. troops will remain until Iraq becomes a representative democracy that can defend itself and is at peace with its neighbors. This is not a strategy for success; it is an open-ended commitment with no end or plan in sight. Our troops and the American people deserve better than that.

It was only yesterday that the Pentagon, through its Secretary, Mr. Rumsfeld, when pressed for details about the insurgency and about the plan for going forward in Iraq, said only that there is an assessment taking place. This is not leadership.

The President needs to level with the American people. Once and for all he needs to spell out his plan, No. 1, to crush the insurgency, No. 2, to build Iraq's capacity to defend itself and deliver basic services to its people, No. 3, to get the reconstruction process back on track, and, No. 4, to increase political participation by all parties, especially the moderates, and finally, No. 5, to increase international involvement. These are five concrete steps that must take place. Much more is being done, for example, to enlist the international community's help in the training of Iraqi security forces and in the development of the Iraqi political and economic systems.

Will the President finally reach out to the other nations to take some of the burden off our forces and off the U.S. taxpayers? The proof will be in the President's actions, not in his rhetoric. As the administration continues on month by month, without a firm course or direction, the situation in Iraq grows more complex and more dangerous. The President's own National Intelligence Council concluded that Iraq is now a magnet for international terrorism. We have to do better—for our troops, for the American people, and for success in Iraq.

I, again, compliment the people of Iraq for a successful election.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, it has been 1 week since 8 million Iraqis cast their historic vote for freedom. Already a new sense of optimism is infusing the Iraqi people. I refer my colleagues to a story in the Washington Post this morning on this rising tide of civic pride.

A young pharmacy owner tells the paper:

> You can feel the situation is changed. People seem to linger on the street longer. You can feel the momentum, the sense of optimism.

A Baghdad bakery store manager said that he, too:

> . . . feels very optimistic things will change for the better because of the strong turnout in elections that reinforced our faith.

The Post reports car stereos and storefront speakers proudly blare the anthem, ''My Homeland,'' which was banned by Saddam Hussein. Neighbors have more trust for one another after years and years of forced fear and suspicion.

Most encouragingly, Iraqi police officers and national guardsmen are getting better tips and better information on the terrorist insurgents who are widely regarded by the Iraqi people as criminals.

History is not going to soon forget that extraordinary sight of 8 million Iraqis risking their lives for freedom. Amidst those terrorist threats and bomb blasts, Iraqi voters streamed to over 5,000 polling stations across the country to cast their ballots. Families brought their young sons and daughters so they, too, could be witnesses to history.

We also cannot forget the Iraqis who voted in over a dozen countries besides Iraq, including the United States. In fact, in my own hometown of Nashville, TN, we saw thousands of Iraqis voting in their first election in years. Election officials say they will have the total vote count by Thursday of this week. Whatever the outcome, January 30, 2005, marked the beginning of a new era in Iraq and the beginning of changes that will reverberate throughout the region.

In the words of the President: The world heard ''the voice of freedom from the center of the Middle East.''

As we know, many Sunnis in the Baghdad region did not vote out of fear—probably it was more a mistaken belief that their actions would in some way delegitimize the electoral process.

Over the last several days we have heard encouraging reports that Sunni leaders want to play an active role in the drafting of the constitution; that they want to be a part of the process and not separate from it, not isolated from it. Equally inspiring is the news that Shiite leaders are reaching out to the Sunnis and other minorities, reaching out to include them in the process. They, too, want the Sunni Iraqis to be part of that constitutional process, a part of the new, free, and democratic Iraq.

What we saw on the 30th mirrors what many in Iraq told me and my colleagues who went to Iraq, now several weeks ago. They were right. Before we went over, and actually after we came back, you would hear again and again the doubts about the elections. Many watchers were humbled by the transformative power of these elections, similar to what we saw in Afghanistan last October.

The effect these elections can have on a people and on a government and on a nation is so powerful, and we saw it played out recently in these elections.

We saw it in the Ukraine, we saw it in the Palestinian Authority and, as I mentioned, in October in Afghanistan and now in Iraq. We hope to see it in the broader Middle East in the months and years ahead.

Once oppressed by a brutal dictatorship, the Iraqis are inspiring people all over the world with their courage and determination. They now stand as a great, bright hope in a land that was too long shrouded by tyranny and by violence.

We still have a long road and a hard road ahead. We all recognize that. No one should expect the violence to end, but the election and its ripple effects confirm that the Iraqi people are on the right path; and it renews our confidence in the human desire for liberty and for self-determination.

The United States joins the President in his praise of the Iraqi people by the resolution we are about to pass here in the Senate. In a few moments, we will pass a resolution that expresses our support for the Iraqis as they move forward toward a free and full democracy that respects the rule of law and the rights of all its citizens.

I want to give my personal thanks and thanks on behalf of all our colleagues to Senators LUGAR, DOLE, and the Democratic leader, HARRY REID, for all their leadership on this particular resolution.

The Senate and the American people stand shoulder to shoulder with the Iraqis as they continue their remarkable journey toward freedom and democracy. Last Sunday's elections were the first of many momentous steps to come.

Mr. President, 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 resolution. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Montana (Mr. BURNS), the Senator from Ohio (Mr. DEWINE), the Senator from Nevada (Mr. ENSIGN), the Senator from Texas (Mrs. HUTCHISON), the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Louisiana (Mr. VITTER) and the Senator from Montana (Mr. BURNS) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA), is necessarily absent.

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—93

Alexander	Bingaman	Cantwell
Allard	Bond	Carper
Allen	Boxer	Chafee
Baucus	Brownback	Chambliss
Bayh	Bunning	Clinton
Bennett	Burr	Coburn
Biden	Byrd	Cochran

Coleman	Inhofe	Obama
Collins	Inouye	Pryor
Conrad	Isakson	Reed
Cornyn	Jeffords	Reid
Corzine	Johnson	Roberts
Craig	Kennedy	Rockefeller
Crapo	Kerry	Salazar
Dayton	Kohl	Santorum
DeMint	Kyl	Sarbanes
Dodd	Landrieu	Schumer
Dole	Lautenberg	Sessions
Domenici	Leahy	Shelby
Dorgan	Levin	Smith
Durbin	Lieberman	Snowe
Enzi	Lincoln	Specter
Feingold	Lott	Stabenow
Feinstein	Lugar	Stevens
Frist	Martinez	Sununu
Graham	McCain	Talent
Grassley	McConnell	Thomas
Gregg	Mikulski	Thune
Hagel	Murray	Voinovich
Harkin	Nelson (FL)	Warner
Hatch	Nelson (NE)	Wyden

NOT VOTING—7

Akaka	Ensign	Vitter
Burns	Hutchison	
DeWine	Murkowski	

The resolution (S. 38) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 38

Whereas on January 30, 2005, Iraq held its first democratic elections in nearly half a century;

Whereas after more than 3 decades of enduring harsh repression and lack of freedom, millions cast ballots on January 30, 2005, to determine the future of their country in an election widely recognized as a success by the international community;

Whereas the hard work, contributions, vision, and sacrifices of the Interim Iraqi Government in undertaking major political, economic, social, and legal reforms and, in conjunction with the efforts of the Iraqi Independent Electoral Commission, in ensuring that Iraq held nationwide elections on January 30, and in not being intimidated by terrorist and insurgent forces resulted in the successful elections of January 30;

Whereas on January 30, President George W. Bush stated that the election in Iraq was a ''milestone'' in Iraq's history and that the ''world is hearing the voice of freedom from the center of the Middle East'';

Whereas the January 30 election is another step in the process of developing a free and democratic Iraq;

Whereas the people of Iraq cast votes to freely choose the 275-member Transitional National Assembly that will serve as the national legislature of Iraq for a transition period, name a Presidency Council, and select a Prime Minister;

Whereas the Transitional National Assembly will draft the permanent constitution of Iraq;

Whereas the election establishes a credible process for governing Iraq under a mandate from the majority of the people of Iraq for a new Iraq in which all communities are represented, minority rights are respected, and violence is not tolerated;

Whereas an estimated 14,300,000 Iraqis were registered to vote at more than 5,000 polling stations across Iraq and in 14 other countries;

Whereas, with 256 political entities composed of 18,900 Iraqi candidates standing for election in 20 different elections (the national election, 18 provincial elections, and Kurdistan Regional government election), voter turnout demonstrated widespread enthusiasm for self-determination;

Whereas Iraqi security forces joined with United States and Coalition forces in providing security for the elections;

Whereas despite these efforts, many Sunni Iraqis in some provinces did not vote because of fear and intimidation;

Whereas the United Nations Electoral Assistance Division and other nongovernmental organizations provided technical support and assistance to the Independent Electoral Commission of Iraq and the Iraqi Interim Government;

Whereas the people of Iraq will again exercise their popular will through a national referendum in October 2005, when the Transitional National Assembly presents a draft constitution for Iraq;

Whereas national elections based on that constitution are then to be held in December 2005 to choose an Iraqi government in a manner prescribed by the constitution;

Whereas it is in the interest of Iraq, the Middle East, the United States, and the international community that Iraq successfully transitions to a functioning democratic state, as this may serve as a catalyst for peace and stability in the region; and

Whereas the Iraqi government needs assistance from the broader international community to further develop governing capacity, train effective security forces who can defeat the terrorists and insurgents and maintain law and order, improve economic conditions, and maintain essential services, such as the delivery of electricity, gasoline, and water: Now, therefore, be it

Resolved, That the Senate—

(1) commends the people of Iraq on the successful nationwide elections held in Iraq on January 30, 2005, and recognizes the elections as another step in developing a free and democratic Iraq;

(2) recognizes the desire for freedom and liberty of all individuals who served as candidates, campaign workers, United Nations and Iraqi election officials, and voters in the January 30, 2005, elections in Iraq and congratulates the new members of the Transitional National Assembly and the leaders of the provincial and regional governments;

(3) urges the new leadership of Iraq to move forward with drafting the constitution, upholding the law, and holding a referendum on the new constitution in October 2005;

(4) encourages participation of all groups and communities in the drafting of a new constitution and the formation of a permanent government for Iraq;

(5) recognizes and honors the sacrifices made for freedom and liberty in Iraq by the people of Iraq;

(6) commends the Iraqi security forces, and the U.S. armed forces and Coalition forces, who ensured the elections could be conducted in a relatively safe, secure, and credible manner;

(7) condemns and deplores all acts of violence and intimidation against the people of Iraq by members of the former Iraqi regime, insurgents, and other extremists and terrorists;

(8) supports the establishment of a fully democratic Iraqi government that respects the rule of law, promotes ethnic and religious tolerance, respects the rights of women and all minorities, provides security and stability for the people of Iraq, and has the capacity to maintain basic services such as the delivery of sufficient electricity, gasoline, and water;

(9) believes that it is in the interest of the people of Iraq, the Middle East, the United States, and the international community that Iraq transitions to a fully democratic state, and that doing so may serve as a catalyst for peace and stability in the region;

(10) calls on the international community, particularly Arab states, countries with predominantly Muslim populations, and all North Atlantic Treaty Organization member states, to provide military and police personnel to train and assist Iraqi security forces and to otherwise assist in the political and economic development of Iraq;

(11) encourages the newly-elected transitional government of Iraq to ensure that all Iraqis, including members of the Sunni religious community, are represented in the Constitution-writing process and in the new Iraqi cabinet to improve the prospects for national unity and consensus; and

(12) looks forward to welcoming Iraq into the world community of democratic nations.

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes.

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

HONORING OUR ARMED FORCES SERGEANT JAVIER MARIN, JR.

Mr. GRASSLEY. Mr. President, I rise today to honor a fallen Army soldier, SGT Javier Marin, Jr., of the A Company, 2nd Battalion, 2nd Infantry Regiment, 1st Infantry Division. Sergeant Marin died on the 24th of January, 2005, in Mohammed Sacran, Iraq, when his military vehicle overturned into a nearby canal. He had just turned 29 years old on the 21st of January. Sergeant Marin is survived by his mother, Leslie Marin, and his sister, Evalina Marin, who live in Storm Lake, IA, as well as his father, Javier Marin, Sr., and many more family members and friends.

This simple tribute does not do justice to the immense courage and patriotism exemplified by SGT Javier Marin, Jr. In times of war and conflict such as this, it is often difficult to appreciate the gravity of a single loss in the midst of the increasing numbers of those who have given their lives. However, it is important that we take the time to reflect upon the lives of each of the men and women who have made the ultimate sacrifice for the peace and freedom of the United States and the world. Today we honor the life of Sergeant Marin as we contemplate the ideals of liberty and democracy for which he fought and sacrificed. SGT Javier Marin, Jr., and all the men and women who have lost their lives in service to their country will have our eternal gratitude. My prayers are with Javier's family and friends and my most heart-felt appreciation goes to the late SGT Javier Marin, Jr.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate

crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On January 11, 2005, a popular 21-year-old gay man from Tucson was found unconscious and bleeding from the head. Mark Fontes had been struck in the back of the head with what appeared to be a baseball bat. Although an investigation into the attack is still underway, the motivation for this vicious beating appears to be the victim's sexual orientation.

I believe that the 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 is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RUSSIA

Mr. FEINGOLD. Mr. President, over the past several years, we have witnessed a disturbing erosion in Russia's democracy. Checks and balances, essential to the functioning of any democracy, have been undermined in Russia through the elimination of the independent media, the weakening of the judiciary, and the decline of a political opposition and citizen participation.

In his inauguration speech, President Bush spoke about the ''force of human freedom'' and stated that it is the policy of the United States ''to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.''

But, the President has been unable to capitalize on his friendship with President Putin to prevent a backsliding in Russia's democracy. While President Putin speaks about his commitment to move down the path of democracy, his actions demonstrate otherwise.

From 2000 until the present day, President Putin has tightened his grip on Russia, increasing the authoritarian nature of the Russian state. While many Russian experts understand that President Putin inherited a state mired in corruption and political violence, and dominated by powerful, unaccountable oligarchs, they have called Putin's approach to establishing security ''flawed and unfair.'' A Washington Post article in March 2004 described how fear was creeping back into Russia, reminiscent of the Soviet Union. A week before the Russian Presidential election in 2004, the article states:

> Scholars, journalists, reformist politicians, human rights activists and even business moguls describe an atmosphere of anxiety that has left them wary of crossing the Kremlin.

The imprisonment of Mikhail Khodorkovsky, Russia's richest man and an oil tycoon, the disappearances of critics of Putin, as well as the flawed parliamentary elections in 2003, have been disturbing signs for those who care about democracy in Russia.

The U.S. State Department in its Country Report on Human Rights Practices for 2003 raise concerns over human rights abuses committed by the Government of Russia in Chechnya, as well as by Chechen rebels, the failure of the 2003 parliamentary elections to meet international standards, the impunity of law enforcement officials responsible for abuses, poor prison conditions, and a weakening of freedom of expression and the independence and freedom of some media. In the global survey, ''Freedom in the World,'' published by Freedom House in December 2004, Russia was downgraded to ''Not Free,'' the only country to register a negative category change in 2004.

On all fronts, Russia's democracy appears to be weakening. In January 2002, the last significant independent Moscow TV station was shut down, many believe due to government pressure. Furthermore, radio and print media have increasingly been restricted. It was widely reported that during the parliamentary elections of 2003, television coverage was heavily biased toward the propresidency party, largely ignoring or criticizing Putin's opponents. In May 2004, the nongovernmental organization, the Committee to Protect Journalists, CPJ, named Russia one of the 10 worst places to be a journalist. CPJ states:

> A shift from blatant pressures to more subtle and covert tactics, such as politicized lawsuits and hostile corporate takeovers by businessmen with close ties to Putin, has allowed the Kremlin to stifle criticism of the president and reports on government corruption and human rights abuses committed by Russian forces in Chechnya.

Furthermore, they note that journalists in Russia's provinces are murdered with impunity.

As President Putin moves from ''managed democracy'' to soft authoritarianism, Freedom House, Human Rights Watch, and others argue that Putin appears to be cracking down on civil society, a vital element of any thriving democracy. In May 2004, Putin used his state-of-the-nation speech to attack nongovernmental organizations, NGOs, accusing them of ''receiving financing from influential foreign foundations and serving dubious groups and commercial interests.'' The very real need to stop terrorist financing through charities or other organizations does not justify targeting legitimate civic groups and NGOs. Following Putin's state-of-the-nation speech, masked intruders ransacked the office of a major human rights organization in Tatarstan that provides legal support for victims of torture. In addition, the state-owned Center TV criticized NGOs, accusing them of being tied to anti-Russian interests. And, in June 2004, Russia's Foreign Minister met with several NGOs and urged them to rebut criticisms of the Council of Europe regarding Russia's human rights policies.

Russia's judicial system is also believed to be far from independent, failing to serve as a counterweight to other branches of government. Human Rights Watch has expressed concern that the government under President Putin has conducted ''selective criminal prosecutions against perceived opponents . . . and scientists working with foreigners on sensitive topics.'' President Putin has proposed establishing executive control over the nomination of members of a key supreme court body that supervises the hiring and dismissal of judges. Furthermore, despite progress in implementing trial by jury, the Putin government appears to have manipulated jury selection in several high-profile cases or otherwise tried to influence jury deliberations.

Chechnya continues to be an area of particular concern. While Russia has the right to combat terrorist threats on its territory, Russian and proxy forces regularly violate basic human rights of Chechen civilians. Disappearances, extrajudicial executions, rape, and torture of detainees all continue with disturbing frequency and with absolute impunity. Russian forces regularly conduct sweeps and cleansing operations, resulting in death, injury and abductions in what many call a . disproportionate use of force. These human rights abuses must end and those responsible should be held accountable.

Since President Putin's reelection in March 2004, he has taken more steps to exert control over the state. In September 2004, following the tragic deaths of 330 people in Beslan, half of whom were children, President Putin undertook a set of political reforms that concentrated power in Moscow and decreased the power of Russia's regions. He proposed that regional governors no longer be popularly elected but instead be appointed by the President and ratified by regional legislatures. Legislation to this effect was introduced in October 2004 and signed into law by President Putin on December 12, 2004. Putin also decided that all Duma deputies be elected on the basis of national party lists, based on the proportion of votes each party gets nationwide. As Human Rights Watch states in its recent World Report 2005:

> The proposals would give the president de facto power to appoint governors, even more sway over the parliament, or State Duma, and increase the executive's influence over the judiciary.

While it is clear that President Putin must act to confront a legitimate threat to security, a marginalization of different regions outside of Moscow may create an even greater political backlash.

President Putin faces a challenging political environment in Russia. However, human rights and political freedoms must not be ignored in an attempt to establish security; their neglect will only lead to greater political

turmoil. The United States must stand by its commitment to democracy in its relations with Russia. If Russia wants to be a member of the community of democracies, it must demonstrate a meaningful commitment to democratic principles.

ADDITIONAL STATEMENTS

WARREN V. HILEMAN

● Mr. OBAMA. Mr. President, I rise to recognize the life and service of Mr. Warren V. Hileman, who passed away recently at the Illinois Veterans Home in Anna.

Last week, the Southern Illinoisan reported that the State believes Mr. Hileman was the last World War I veteran to have lived in Illinois.

He joined the U.S. Army in 1919, and served with the American Expeditionary Force in Siberia from September of 1919 to March 1920. Traveling thousands of miles across Siberia in temperatures that often reached 30 below, Mr. Hileman and the 27th infantry served long after the Armistice was signed in Europe.

In Posolskaya, their unit was involved in a hostile encounter that later won Mr. Hileman the World War I Victory Medal, which he was awarded in January of 2004.

After the war, he came home to Illinois where he worked in a North Chicago veterans hospital. Later, he and his wife moved back down south to Union County, where they spent the rest of their lives.

Warren was only 17 years old when he first landed in Vladivostok, Russia. Perhaps he was anxious about the war ahead of him; perhaps he already missed the home that lay behind. But above all, he was ready and eager to serve this country. At just 17, he was ready to make the ultimate sacrifice in the defense of freedom.

Today, we honor his service and remember a man who returned from war to live over a century on this Earth. Through more wars and depression, through great advances for civil rights and great struggles for freedom, Mr. Hileman was there—a patriot who had proudly written his own page in the story of 20th century America.

It is said that whether a life is long or short, its completeness depends on what it was lived for. And so, while Warren Hileman left us at the age of 103, the true completeness of his life comes from what he lived it for—for his friends, for his family, and for the defense of the country he loved. May his memory serve as a reminder for all of us to keep faith with our Nation's veterans, and may Warren Hileman rest in eternal peace.●

FUTURE BUSINESS LEADERS OF AMERICA—PHI BETA LAMBDA

● Mr. NELSON of Florida. Mr. President, I rise today to recognize the national Future Business Leaders of America—Phi Beta Lambda, FBLA–PBL, and the Florida FBLA–PBL chapter that works to bring business and education together. From its first charter in 1942, this organization has grown to over 250,000 members across the Nation to include students in middle school and young men and women in postsecondary education. The first Florida chapter was founded in 1948 and has become one of the largest and most active State chapters in the country.

The FBLA–PBL creed leads off with a quote that all of us can agree with, ''I believe education is the right of every person.'' FBLA–PBL works to prepare students for careers in business and other business related fields and promotes character, leadership, and a desire to serve in one's community. During the second week of February, its members celebrate national Future Business Leaders of America—Phi Beta Lambda Week. I congratulate them on all they have achieved and wish them continued success.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting nominations which were referred to the Committee on Armed Services.

(The nomination received today is printed at the end of the Senate proceedings.)

BUDGET OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2006—PM 3

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred jointly, pursuant to the order of January 30, 1975 as modified by the order of April 11, 1986; to the Committees on the Budget; and Appropriations:

THE BUDGET MESSAGE OF THE PRESIDENT

Over the previous four years, we have acted to restore economic growth, win the War on Terror, protect the homeland, improve our schools, rally the armies of compassion, and promote ownership. The 2006 Budget will help America continue to meet these goals. In order to sustain our economic expansion, we must continue pro-growth policies and enforce even greater spending restraint across the Federal Government. By holding Federal programs to a firm test of accountability and focusing our resources on top priorities, we are taking the steps necessary to achieve our deficit reduction goals.

Our Nation's most critical challenge since September 11, 2001, has been to protect the American people by fighting and winning the War on Terror. Overseas and at home, our troops and homeland security officials are receiving the funding needed to protect our homeland, bring terrorists to justice, eliminate terrorists safe havens and training camps, and shut down their financing.

In Afghanistan and Iraq, we are helping establish democratic institutions. Together with our coalition partners, we are helping the Afghan and Iraqi people build schools, establish the rule of law, create functioning economies, and protect basic human rights. And while the work is dangerous and difficult, America's efforts are helping promote societies that will serve as beacons of freedom in the Middle East. Free nations are peaceful nations and are far less likely to produce the kind of terrorism that reached our shores just over the three years ago.

To ensure our security at home, the 2006 Budget increases funding for antiterrorism investigations; border security; airport and seaport security; nuclear and radiological detection systems and countermeasures; and improved security for our food supply and drinking water.

This Budget also promotes economic growth and opportunity. We must ensure that America remains the best place in the world to do business by keeping taxes low, promoting new trade agreements with other nations, and protecting American businesses from litigation abuse and overregulation. To make sure the entrepreneurial spirit remains strong, the Budget includes important initiatives to help American businesses and families cope with the rising cost of health care. This Budget funds important reforms in our schools, and promotes homeownership in our communities. In addition, the 2006 Budget supports the development of technology and innovation throughout our economy.

The 2006 Budget also affirms the values of our caring society. It promotes programs that are effectively providing assistance to the most vulnerable among us. We are launching innovative programs such as Cover the Kids, which will expand health insurance coverage for needy children. We are funding global initiatives with unprecedented resources to fight the HIV/AIDS pandemic, respond to natural disasters, and provide humanitarian relief to those in need. The 2006 Budget continues to support domestic programs and policies that fight drug addiction and homelessness and promote strong families and lives of independence. And in all our efforts, we will continue to build working relationships with community organizations, including faith-based organizations, which are doing so much to bring hope to Americans.

In every program, and in every agency, we are measuring success not by

good intentions, or by dollars spent, but rather by results achieved. This Budget takes a hard look at programs that have not succeeded or shown progress despite multiple opportunities to do so. My Administration is pressing for reforms so that every program will achieve its intended results. And where circumstances warrant, the 2006 Budget recommends significant spending reductions or outright elimination of programs that are falling short.

This Budget builds on the spending restraint we have achieved, and will improve the process by which the Congress and the Administration work together to produce a budget that remains within sensible spending limits. In every year of my Administration, we have brought down the growth in nonsecurity related discretionary spending. This year, I propose to go further and reduce this category of spending by about one percent, and to hold the growth in overall discretionary spending, including defense and homeland security spending, to less than the rate of inflation. I look forward to working closely with the Congress to achieve these reductions and reforms. By doing so, we will remain on track to meet our goal to cut the deficit in half by 2009.

Our greatest fiscal challenges are created by the long-term unfunded promises of our entitlement programs. I will be working with the Congress to develop a Social Security reform plan that strengthens Social Security for future generations, protects the benefits of today's retirees and near-retirees, and provides ownership, choice, and the opportunity for today's young workers to build a nest egg for their retirement.

In the past four years, America has faced many challenges, both overseas and at home. We have overcome these challenges not simply with our financial resources, but with the qualities that have always made America great: creativity, resolve, and a caring spirit. America has vast resources, but no resource is as abundant as the strength of the American people. It is this strength that will help us to continue to prosper and meet any challenge that lies before us.

GEORGE W. BUSH.
February 7, 2005.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–604. A communication from the Director of Finance, United States Capitol Historical Society, transmitting, audited financial statements for the Capitol Historical Society covering the year ended January 31, 2004; to the Committee on Rules and Administration.

EC–605. A communication from the Coordinator, Forms Committee, Federal Election Commission, transmitting, revisions to Schedules H1, H2, H3, and H4 of the FEC Form 3X, Report of Receipts and Disbursements for Other than an Authorized Committee, revisions to the instructions for FEC Form 3X and the Explanation and Justification for these revisions; to the Committee on Rules and Administration.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Ms. COLLINS for the Committee on Homeland Security and Governmental Affairs.

*Allen Weinstein, of Maryland, to be Archivist of the United States.

*Michael Chertoff, of New Jersey, to be Secretary of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. SCHUMER:

S. 297. A bill to provide for adjustment of immigration status for certain aliens granted temporary protected status in the United States because of conditions in Montserrat, and for other purposes; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 298. A bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

By Mr. WYDEN:

S. 299. A bill to make information regarding certain investments in the energy sector in Iran available to the public, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. COLLINS (for herself, Mr. FEINGOLD, Mr. LUGAR, Ms. LANDRIEU, Mr. BURNS, Ms. MURKOWSKI, Mr. BOND, Mr. THOMAS, Mr. COCHRAN, Mr. SANTORUM, Mrs. LINCOLN, Mr. JEFFORDS, Mr. CONRAD, and Mr. LEAHY):

S. 300. A bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. GREGG, and Mr. SUNUNU):

S. 301. A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mr. GREGG, Mr. ENZI, Mr. FRIST, and Mr. BINGAMAN):

S. 302. A bill to make improvements in the Foundation for the National Institutes of Health; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JOHNSON:

S. 303. A bill to amend the Social Security Act and the Internal Revenue Code of 1986 to exempt certain employment as a member of a local governing board from social security coverage; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. BIDEN, Mr. KENNEDY, Mr. LEVIN, Mr. KOHL, Mr. CORZINE, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. MIKULSKI, and Mr. AKAKA):

S. 304. A bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals; to the Committee on the Judiciary.

By Mr. CRAIG:

S. 305. A bill to authorize the Secretary of the Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior; to the Committee on Energy and Natural Resources.

By Ms. SNOWE (for herself, Mr. FRIST, Mr. GREGG, Mr. KENNEDY, Mr. ENZI, Mr. JEFFORDS, Mr. DODD, Mr. HARKIN, Ms. COLLINS, Mr. TALENT, Mr. BINGAMAN, Mr. HATCH, Ms. MIKULSKI, Mrs. MURRAY, and Mrs. CLINTON):

S. 306. A bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM:

S. 307. A bill to amend the Farm Security and Rural Investment Act of 2002 to extend national dairy market loss payments; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself, Mr. REID, Mr. LUGAR, Mr. BIDEN, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):

S. Res. 38. A resolution commending the people of Iraq on the January 30, 2005, national elections; considered and agreed to.

By Ms. LANDRIEU (for herself, Mr. ALLEN, Mr. LEVIN, Mr. FRIST, Mr. REID, Mr. ALLARD, Mr. AKAKA, Mr. BROWNBACK, Mr. BAYH, Ms. COLLINS, Mr. BIDEN, Mr. ENSIGN, Mrs. BOXER, Mr. HAGEL, Mr. CORZINE, Mr. LUGAR,

Mr. DAYTON, Mr. MCCAIN, Mr. DODD, Ms. SNOWE, Mr. DURBIN, Mr. SPECTER, Mr. FEINGOLD, Mr. STEVENS, Mrs. FEINSTEIN, Mr. TALENT, Mr. HARKIN, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mr. NELSON of Florida, Mr. PRYOR, and Mr. SCHUMER):

S. Res. 39. A resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation; to the Committee on the Judiciary.

By Ms. LANDRIEU (for herself, Mr. DURBIN, and Mr. SANTORUM):

S. Res. 40. A resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. REED, Mr. CHAFEE, Mr. DODD, and Mr. LIEBERMAN):

S. Res. 41. A resolution congratulating the New England Patriots on their victory in Super Bowl XXXIX; considered and agreed to.

By Mr. LUGAR:

S. Res. 42. A resolution expressing the sense of the Senate on promoting initiatives to develop an HIV vaccine; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 5

At the request of Mr. GRASSLEY, the names of the Senator from Missouri (Mr. BOND) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 5, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 11

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 11, a bill to amend title 10, United States Code, to ensure that the strength of the Armed Forces and the protections and benefits for members of the Armed Forces and their families are adequate for keeping the commitment of the people of the United States to support their service members, and for other purposes.

S. 12

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 12, a bill to combat international terrorism, and for other purposes.

S. 13

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 13, a bill to amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes.

S. 50

At the request of Mr. INOUYE, the names of the Senator from California (Mrs. BOXER) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 50, a bill to authorize and strengthen the National Oceanic and Atmospheric Administration's tsunami detection, forecast, warning, and mitigation program, and for other purposes.

S. 77

At the request of Mr. SESSIONS, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 77, a bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes.

S. 84

At the request of Mr. INOUYE, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 84, a bill to amend the Internal Revenue Code of 1986 to exempt certain sightseeing flights from taxes on air transportation.

S. 98

At the request of Mr. ALLARD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 103

At the request of Mr. TALENT, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 193

At the request of Mr. BROWNBACK, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 193, a bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

S. 196

At the request of Mr. DORGAN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 196, a bill to amend the Internal Revenue Code of 1986 to provide for the taxation of income of controlled foreign corporations attributable to imported property.

S. 211

At the request of Mrs. CLINTON, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2–1–1 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 256

At the request of Mr. GRASSLEY, the names of the Senator from South Carolina (Mr. DEMINT) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

S. 267

At the request of Mr. CRAIG, the names of the Senator from Montana (Mr. BURNS), the Senator from Washington (Ms. CANTWELL), the Senator from South Dakota (Mr. JOHNSON), the Senator from Washington (Mrs. MURRAY) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 294

At the request of Mr. BURNS, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 294, a bill to strengthen the restrictions of the importation from BSE minimal-risk regions of meat, meat by-products, and meat food products from bovines.

S. CON. RES. 4

At the request of Mr. NELSON of Florida, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.

S. RES. 26

At the request of Mr. LUGAR, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Florida (Mr. MARTINEZ), the Senator from Nebraska (Mr. HAGEL), the Senator from New Hampshire (Mr. SUNUNU), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. Res. 26, a resolution commending the people of Iraq on the election held on January 30, 2005, of a 275-member transitional National Assembly and of provincial and regional governments and encouraging further steps toward establishment of a free, democratic, secure, and prosperous Iraq.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 298. A bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

Mr. INOUYE. Mr. President, I rise to introduce legislation to repeal the current 50 percent tax deduction for business meals and entertainment expenses, and to restore the tax deduction to 80 percent gradually over a five-year period. Restoration of this deduction is essential to the livelihood of small and independent businesses as

well as the food service, travel, tourism, and entertainment industries throughout the United States. These industries are being economically harmed as a result of the 50 percent tax deduction.

Small businesses rely heavily on the business meal to conduct business, even more so than larger corporations. The Small Business Administration (SBA) Office of Advocacy, in releasing a study last May, ''The Impact of Tax Expenditure Policies on Incorporated Small Business,'' found that small incorporated businesses benefit more than their larger counterparts from the meal and entertainment tax deduction. According to the study, small firms that take advantage of the business-meal deduction reduce their effective tax rate by 0.75 percent on average, while larger firms only receive a 0.11 percent reduction in their effective tax rate. More importantly, the study strongly suggests that full reinstatement of the business meal and entertainment deduction should be a major policy priority for small businesses.

Small companies often use restaurants as ''conference space'' to conduct meetings or close deals. Meals are their best and sometimes only marketing tool. Certainly, an increase in the meal and entertainment deduction would have a significant impact on a small businesses bottom line. In addition, the effects on the overall economy would be significant.

Accompanying my statement is the National Restaurant Association's, NRA, State-by-State chart reflecting the estimated economic impact of increasing the business meal deductibility from 50 percent to 80 percent. The NRA estimates that an increase to 80 percent would increase business meal sales by $6 billion and create a $13 billion increase to the overall economy.

I urge my colleagues to join me in cosponsoring this important legislation. I ask unanimous consent that the NRA's State-by-State chart and the text of my bill be printed in the RECORD.

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

ESTIMATED IMPACT OF INCREASING BUSINESS MEAL DEDUCTIBILITY FROM 50% TO 80%

State	Increase in business meal spending, 50% to 80% deductibility (in millions)	Total economic impact in the state (in millions)
Alabama	$86	$177
Alaska	19	32
Arizona	128	254
Arkansas	46	92
California	970	2,149
Colorado	131	284
Connecticut	90	168
Delaware	24	43
District of Columbia	34	45
Florida	376	768
Georgia	215	481
Hawaii	44	84
Idaho	25	49
Illinois	315	738
Indiana	136	279
Iowa	54	115
Kansas	53	109
Kentucky	93	187
Louisiana	98	191
Maine	28	54

ESTIMATED IMPACT OF INCREASING BUSINESS MEAL DEDUCTIBILITY FROM 50% TO 80%—Continued

State	Increase in business meal spending, 50% to 80% deductibility (in millions)	Total economic impact in the state (in millions)
Maryland	133	277
Massachusetts	207	411
Michigan	223	435
Minnesota	123	278
Mississippi	49	94
Missouri	133	302
Montana	21	38
Nebraska	37	77
Nevada	77	135
New Hampshire	35	65
New Jersey	196	407
New Mexico	40	75
New York	439	858
North Carolina	196	411
North Dakota	13	24
Ohio	266	581
Oklahoma	74	158
Oregon	86	178
Pennsylvania	272	606
Rhode Island	35	64
South Carolina	98	195
South Dakota	17	33
Tennessee	140	306
Texas	551	1,287
Utah	44	95
Vermont	13	25
Virginia	164	346
Washington	168	342
West Virginia	31	54
Wisconsin	115	249
Wyoming	11	18

Source: National Restaurant Association estimates, 2005.

S. 298

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF REDUCTION IN BUSINESS MEALS AND ENTERTAINMENT TAX DEDUCTION.

(a) IN GENERAL.—Section 274(n)(1) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by striking ''50 percent'' and inserting ''the applicable percentage''.

(b) APPLICABLE PERCENTAGE.—Section 274(n) of the Internal Revenue Code of 1986 is amended by striking paragraph (3) and inserting the following:

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means the percentage determined under the following table:

For taxable years beginning in calendar year—	**The applicable percentage is—**
2005	70
2006 or 2007	75
2008 or thereafter	80.''.

(c) CONFORMING AMENDMENT.—The heading for section 274(n) of the Internal Revenue Code of 1986 is amended by striking ''ONLY 50 PERCENT'' and inserting ''PORTION''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

By Mr. WYDEN:

S. 299. A bill to make information regarding certain investments in the energy sector in Iran available to the public, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. WYDEN. Mr. President, in his inaugural address and again in the state of the union President Bush promised to take on tyranny around the world. There's one corner of the world where tyranny is the currency of the realm, and where one country stands head and shoulders above the rest for its record of brutality towards its own people and hostility toward its neighbors. That country is Iran.

The lifeblood of the Iranian economy is oil. Oil accounts for 80 percent of Iran's export earnings, almost half of the government's budget and nearly one-fifth of the country's GDP. Every time the price of crude oil rises $1 a barrel, Iran gains about $900 million in export revenues. Crude oil prices rose around $15 over the course of 2004, giving Iran a hurricane-force revenue windfall last year.

Although most U.S. energy companies ceased dealing with Iran when President Clinton imposed sanctions against the regime in 1995, some appear unable to resist the lure of investing in a country that holds 10 percent of the world's proven oil reserves, is OPEC's second largest producer and has the world's second largest natural gas reserves, behind Russia.

In June of last year, for example, a grand jury in the U.S. issued a subpoena to Halliburton seeking information on the work in Iran of its Cayman Islands subsidiary. The Department of Justice has an ongoing criminal investigation into whether Halliburton violated any laws by trading with Iran through a subsidiary. Just a few days ago, Halliburton's CEO announced the company would withdraw its employees from Iran and end its business activities there when it fulfills its ongoing contracts, including a $35 million gas drilling project it just won last month. GE just made a similar announcement about its subsidiary's activities in Iran.

Foreign companies seeking profits from Iran's energy reserves do not have to worry about such impediments as economic sanctions. Indeed, their governments often bless and sometimes lend Them a hand to help win lucrative contracts. When U.S.-based Conoco had to terminate its $550 million contract to develop some offshore oil and gas fields in 1995, France's Total and Malaysia's Petronas jumped in. In March 1999, France's Elf Aquitaine and Italy's Eni/Agip won a $1 billion contract for a secondary offshore recovery program. In April 1999, TotalFinaElf teamed up with Eni and Canada's Bow Valley Energy to develop an offshore oil field. Shell, BP and Lukoil are also frequently mentioned as being in the chase for Iranian oil and gas contracts. The Economist Intelligence Unit estimates Iran has attracted $15–$20 billion in combined foreign investment in hydrocarbons.

Not only are foreign companies heavily invested in Iran's hydrocarbon sector, but Iran ships some 2.6 million barrels of oil a day to Japan, China, South Korea, Taiwan and Europe.

If President Bush is serious about chasing down tyrants around the globe, he should use every possible means. The legislation I am introducing today, the Investor in Iran Accountability Act, would give the President a powerful tool by holding accountable those

who lend the Iranian regime crucial financial assistance by investing in its energy sector.

First, the legislation would shine a spotlight on those American companies, like Halliburton, which have used the loophole in the Iran sanctions act to continue to do business with Iran in the energy sector. The bill would require the Treasury Secretary to publish a list of the United States companies whose subsidiaries continue to do energy deals with Iran. While I personally do not believe there should be any more backdoor deals with Iran, my view is that an informed American public is best equipped to hold these companies accountable.

Second, the legislation would hold up to the light of public accountability those foreign companies that have more than $1 million invested in Iran's energy interests by requiring the Treasury Department to publish a list of those companies as well. Third, the legislation would give American investors for the first time an idea of those U.S. pension and retirement plans, mutual funds and other financial instruments that hold investments in these U.S. and foreign companies by requiring the Treasury Department to publish a list of all public and private U.S. financial interests that hold more than $100,000-worth of investment in these companies. Finally, because unilateral economic sanctions penalize American companies and open the field to foreign companies without inflicting any real economic pain on Iran, the bill directs the President to negotiate an end to foreign investment in Iran's energy sector with the appropriate foreign governments.

Some of my colleagues will remember that in the late 1970s and 1980s Congress struggled with ways to force the South African regime to abandon apartheid. One of the most effective tools in that fight was a public armed with information about which companies were doing business there so that American shareholders could choose to place their money elsewhere. The movement by American investors to rid their portfolios of holdings in companies that persisted in doing business with the apartheid regime in South African proved to be one of the most potent tools in the fight to end apartheid. This legislation will arm American investors with knowledge about which U.S. and foreign companies are supporting Iran's critical energy sector and which U.S. entities hold investments in them. With this knowledge, it is my hope that American investors will choose not to aid and abet the Iranian regime by continuing to hold shares in companies or funds that invest in the Iranian oil and gas sector.

The Iranian regime has made no secret of its desire to attract billions of dollars-worth of foreign investment, particularly to the energy sector. It even adopted a law in January 2003 specifically designed to attract foreign investors. Iran, which has recently discovered some new reserves of 30 billion barrels of crude oil, has ambitious plans to expand oil production from around 3.9 million barrels a day in 2004 to 5 million barrels a day in 2009. But with deteriorating equipment and the natural decline rate of existing wells, it simply cannot achieve those goals without significant foreign help.

In closing, I would point out that the Securities and Exchange Commission has determined that significant corporate operations in countries subject to U.S. economic sanctions, such as Iran, can represent a material risk to United States investors and that such investments should be properly disclosed. My bill would make sure this information is disclosed to the American public.

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. 299

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 ''Investor in Iran Accountability Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Department of State's Patterns of Global Terrorism report for 2003 stated that ''Iran remained the most active state sponsor of terrorism in 2003''.

(2) That report further stated that—

(A) Iran continues to provide funding, safehaven, training, and weapons to known terrorist groups, including Hizballah, HAMAS, the Palestine Islamic Jihad, and the Popular Front for the Liberation of Palestine; and

(B) the Government of Iran's poor human rights record continues to worsen.

(3) In 1979, in response to the Islamic Revolution in Iran and the holding of United States citizens as hostages in Iran, the United States imposed economic sanctions against Iran that prohibit virtually all trade and investment activities with Iran by citizens of the United States or United States companies.

(4) The United States does not prohibit foreign subsidiaries of United States companies from investing in Iran if the foreign subsidiary is independent of the United States parent company.

(5) A number of subsidiaries of United States companies appear to be taking advantage of this condition and are investing in the energy sector in Iran through such subsidiaries.

(6) According to the Energy Information Administration of the Department of Energy, Iran is the second largest oil producer in the Organization of the Petroleum Exporting Countries (OPEC) and holds 10 percent of the world's proven oil reserves.

(7) According to the Energy Information Administration, the economy of Iran relies heavily on revenues generated by the export of oil and such revenues account for approximately 80 percent of Iran's total annual export earnings, nearly one-half of the annual budget of the Government of Iran, and as much as one-fifth of the gross domestic product of Iran.

(8) According to the Energy Information Administration, Iran is actively seeking significant new foreign investment in the energy sector and experts believe that with sufficient investment Iran could increase its crude oil production capacity significantly.

(9) The Department of Justice is conducting a criminal investigation into whether United States companies have violated any law by trading or investing with Iran through a subsidiary company that may not be completely independent of the parent company.

(10) The Securities and Exchange Commission has determined that significant corporate operations in countries subject to economic sanctions, such as Iran, can represent a material risk to investors in the United States and that such investments should be properly disclosed.

SEC. 3. POLICY OF THE UNITED STATES.

It is the policy of the United States—

(1) to enforce fully existing economic sanctions imposed by United States law against Iran, including sanctions imposed under the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) on persons that make certain investments that contribute to Iran's ability to develop and exploit its petroleum and natural gas resources;

(2) to make available to the public information regarding a United States person or a person that is controlled in fact by a United States person who maintains any direct or indirect investment in the energy sector in Iran; and

(3) to seek international cooperation in fully enforcing economic sanctions against Iran and in prohibiting any direct or indirect investment in Iran until Iran ceases to support international terrorism.

SEC. 4. DEFINITIONS.

In this Act:

(1) CONTROLLED IN FACT.—The term ''controlled in fact'' includes—

(A) with respect to a corporation, the holding of at least 50 percent (by vote or value) of the capital structure of the corporation; and

(B) with respect to a legal entity other than a corporation, the holding of interests representing at least 50 percent of the capital structure of the entity.

(2) ENERGY SECTOR.—The term ''energy sector'' means any research, exploration, development, production, sale, distribution, or advertising of natural gas, oil, or petroleum resources or nuclear power.

(3) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories or possessions of the United States.

(4) UNITED STATES PERSON.—The term ''United States person'' means any citizen of the United States, permanent resident alien, or entity organized under the laws of the United States or of any State, wherever located (including foreign branches).

SEC. 5. PUBLICATION OF INFORMATION ON INVESTMENTS.

(a) REQUIREMENT TO PUBLISH.—Not later than 120 days after the date of enactment of this Act, the Secretary of the Treasury shall publish in the Federal Register and make available to the public on the Internet website of the Department of the Treasury—

(1) a list of each United States person or each person that is controlled in fact by a United States person that maintains any direct or indirect investment in the energy sector in Iran;

(2) a list of each foreign person that owned investments in the energy sector in Iran with a total value of more than $1,000,000 during the 12-month period ending on the date of the publication in the Federal Register; and

(3) a list of—

(A) any United States person that holds the securities of a person described in paragraph (1) or (2) valued at more than $100,000;

(B) any investment company registered under section 8 of the Investment Company Act of 1940 that invests, reinvests, or trades in the securities of a person described in paragraph (1) or (2);

(C) any pension plan or other Federal or State retirement plan that invests in the securities of persons described in paragraph (1) or (2); and

(D) such other investors in the securities of persons described in paragraph (1) or (2) as the Secretary determines is appropriate to carry out the policy set out in section 3.

(b) REQUIREMENT OF UPDATE.—The Secretary of the Treasury shall update the lists described in paragraphs (1) through (3) of subsection (a) at least once during each calendar year. Such updates shall be published in the Federal Register and made available to the public on the Internet website of the Department of the Treasury.

SEC. 6. INTERNATIONAL COOPERATION.

The President, acting through the Secretary of the Treasury, the Secretary of State, or the head of any other appropriate Federal department or agency, shall undertake negotiations with the government of a foreign country to prohibit any direct or indirect investment in the energy sector in Iran by any person that is controlled in fact by that foreign country.

SEC. 7. EXTENSION OF THE IRAN AND LIBYA SANCTIONS ACT OF 1996.

Section 13(b) of the Iran and Libya Sanctions Act of 1996 (50 U.S.C. 1701 note) is amended by striking ''10'' and inserting ''15''.

By Ms. COLLINS (for herself, Mr. FEINGOLD, Mr. LUGAR, Ms. LANDRIEU, Mr. BURNS, Ms. MURKOWSKI, Mr. BOND, Mr. THOMAS, Mr. COCHRAN, Mr. SANTORUM, Mrs. LINCOLN, Mr. JEFFORDS, Mr. CONRAD, and Mr. LEAHY):

S. 300. A bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area; to the Committee on Finance.

Ms. COLLINS. Mr. President, I rise today to introduce the Medicare Rural Home Health Payment Fairness Act to extend the additional payment for home health services in rural areas for 2 years. This 5 percent add-on payment is currently scheduled to sunset on April 1st of this year.

Home health has become an increasingly important part of our health care system. The kinds of highly skilled—and often technically complex—services that our Nation's home health caregivers provide have enabled millions of our most frail and vulnerable older and disabled citizens to avoid hospitals and nursing homes and stay just where they want to be—in the comfort and security of their own homes. I have accompanied several of Maine's caring home health nurses on their visits to some of their patients. I have seen first hand the difference that they are making for Maine's elderly.

Surveys have shown that the delivery of home health services in rural areas can be as much as 12 to 15 percent more costly because of the extra travel time required to cover long distances between patients, higher transportation expenses, and other factors. Because of the longer travel times, rural caregivers are unable to make as many visits in a day as their urban counterparts. The Executive Director of the Visiting Nurses of Aroostook in Northern Maine, where I am from, tells me her agency covers 6,600 square miles with a population of only 73,000. Her costs are understandably much higher than other agencies' due to the long distances her staff must drive to see clients. Moreover, her staff is not able to see as many patients in one day as she would like.

Agencies in rural areas are also frequently smaller than their urban counterparts, which means that their relative costs are higher. Smaller agencies with fewer patients and fewer visits mean that fixed costs, particularly those associated with meeting regulatory requirements, are spread over a much smaller number of patients and visits, increasing overall per-patient and per-visit costs.

Moreover, in many rural areas, home health agencies are the primary caregivers for homebound beneficiaries with limited access to transportation. These rural patients often require more time and care than their urban counterparts, and are understandably more expensive for agencies to serve. If the extra rural payment is not extended, agencies may be forced to make decisions not to accept rural patients with greater care needs. That could translate into less access to health care for ill, homebound seniors. The result also would likely be that these seniors would be hospitalized more frequently and would have to seek care in nursing homes, adding considerable cost to the system.

Failure to extend the rural add-on payment will only put more pressure on rural home health agencies that are already operating on very narrow margins and could force some of these agencies to close their doors altogether. Many home health agencies operating in rural areas are the only home health providers in large geographic areas. If any of these agencies were forced to close, the Medicare patients in that region could lose all their access to home care.

The bipartisan legislation that I am introducing today with Senators FEINGOLD, LUGAR, BOND, LANDRIEU, BURNS, MURKOWSKI, THOMAS, COCHRAN, SANTORUM, LINCOLN, JEFFORDS, CONRAD and LEAHY will help to ensure that Medicare patients in rural areas continue to have access to the home health services they need. I urge all of our colleagues to join us as cosponsors.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. GREGG, and Mr. SUNUNU):

S. 301. A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont; to the Committee on Energy and Natural Resources.

Mr. LEAHY. Mr. President, I am pleased to introduce today the Upper Connecticut River Partnership Act. This legislation will help bring recognition to New England's largest river ecosystem and one of our Nation's fourteen American Heritage Rivers.

The purpose of this legislation is to help the communities along the river protect and enhance their rich cultural history, economic vitality, and the environmental integrity of the river.

From its origin in the mountains of northern New Hampshire, the Connecticut River runs over 400 miles and eventually empties into Long Island Sound. The river forms a natural boundary between my home state of Vermont and New Hampshire, and travels through the States of Massachusetts and Connecticut. The river and surrounding valley have long shaped and influenced development in the New England region. This river is one of America's earliest developed rivers, with European settlements going back over 350 years. The industrial revolution blossomed in the Connecticut River Valley, supported by new technologies such as canals and mills run by hydropower.

I am pleased that the entire Senate delegations from Vermont and New Hampshire have cosponsored this bill. For years, our offices and our States have worked together to help communities on both sides of the river develop local partnerships to protect the Connecticut River valley of Vermont and New Hampshire. And, while great improvements have been made to the river, its overall health remains threatened by water and air pollution, habitat loss, hydroelectric dams, and invasive species such as the zebra mussel.

Historically, the people throughout the Upper Connecticut River Valley have functioned cooperatively and the river serves to unite Vermont and New Hampshire communities economically, culturally and environmentally.

Citizens on both sides of the river know just how special this region is and have worked side by side for years to protect it. Efforts have been underway for some time to restore the Atlantic salmon fishery, protect threatened and endangered species, and support urban riverfront revitalization

In 1993, Vermont and New Hampshire came together to create the Connecticut River Joint Commissions—a unique partnership between the states, local businesses, all levels of government within the two states and citizens from all walks of life. This partnership helps coordinate the efforts of towns, watershed managers and other local groups to implement the Connecticut River Corridor Management Plan. This Plan has become the blueprint for how communities along the river can work with one another with Vermont and New Hampshire and with

the federal government to protect the river's resources.

The Upper Connecticut River Partnership Act would help carry out the recommendations of the Connecticut River Corridor Management Plan, which was developed under New Hampshire law with the active participation of Vermont citizens and communities.

This Act would also provide the Secretary of the Interior with the ability to assist the States of New Hampshire and Vermont with technical and financial aid for the Upper Connecticut River Valley through the Connecticut River Joint Commissions. The Act would also assist local communities with cultural heritage outreach and education programs while enriching the recreational activities already active in the Connecticut River Watershed of Vermont and New Hampshire.

Lastly, the bill will require that the Secretary of the Interior establish a Connecticut River Grants and Technical Assistance Program to help local community groups develop new projects as well as build on existing ones to enhance the river basin.

Over the next few years, I hope this bill will help bring renewed recognition and increased efforts to conserve the Connecticut River as one of our nation's great natural and economic resources.

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. 301

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 ''Upper Connecticut River Partnership Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the upper Connecticut River watershed in the States of New Hampshire and Vermont is a scenic region of historic villages located in a working landscape of farms, forests, and the mountainous headwaters and broad fertile floodplains of New England's longest river, the Connecticut River;

(2) the River provides outstanding fish and wildlife habitat, recreation, and hydropower generation for the New England region;

(3) the upper Connecticut River watershed has been recognized by Congress as part of the Silvio 0. Conte National Fish and Wildlife Refuge, established by the Silvio O. Conte National Fish and Wildlife Refuge Act (16 U.S.C. 668dd note; Public Law 102–212);

(4) the demonstrated interest in stewardship of the River by the citizens living in the watershed led to the Presidential designation of the River as 1 of 14 American Heritage Rivers on July 30, 1998;

(5) the River is home to the bistate Connecticut River Scenic Byway, which will foster heritage tourism in the region;

(6) each of the legislatures of the States of Vermont and New Hampshire has established a commission for the Connecticut River watershed, and the 2 commissions, known collectively as the ''Connecticut River Joint Commissions''—

(A) have worked together since 1989; and

(B) serve as the focal point for cooperation between Federal agencies, States, communities, and citizens;

(7) in 1997, as directed by the legislatures, the Connecticut River Joint Commissions, with the substantial involvement of 5 bistate local river subcommittees appointed to represent riverfront towns, produced the 6-volume Connecticut River Corridor Management Plan, to be used as a blueprint in educating agencies, communities, and the public in how to be good neighbors to a great river;

(8) this year, by Joint Legislative Resolution, the legislatures have requested that Congress provide for continuation of cooperative partnerships and support for the Connecticut River Joint Commissions from the New England Federal Partners for Natural Resources, a consortium of Federal agencies, in carrying out recommendations of the Connecticut River Corridor Management Plan;

(9) this Act effectuates certain recommendations of the Connecticut River Corridor Management Plan that are most appropriately directed by the States through the Connecticut River Joint Commissions, with assistance from the National Park Service and United States Fish and Wildlife Service; and

(10) where implementation of those recommendations involves partnership with local communities and organizations, support for the partnership should be provided by the Secretary.

(b) PURPOSE.—The purpose of this Act is to authorize the Secretary to provide to the States of New Hampshire and Vermont (including communities in those States), through the Connecticut River Joint Commissions, technical and financial assistance for management of the River.

SEC. 3. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) STATE.—The term ''State'' means—

(A) the State of New Hampshire; or

(B) the State of Vermont.

SEC. 4. CONNECTICUT RIVER GRANTS AND TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Connecticut River Grants and Technical Assistance Program to provide grants and technical assistance to State and local governments, nonprofit organizations, and the private sector to carry out projects for the conservation, restoration, and interpretation of historic, cultural, recreational, and natural resources in the Connecticut River watershed.

(b) CRITERIA.—The Secretary, in consultation with the Connecticut River Joint Commissions, shall develop criteria for determining the eligibility of applicants for, and reviewing and prioritizing applications for, grants or technical assistance under the program.

(c) COST-SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of carrying out a grant project under subsection (a) shall not exceed 75 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of a project may be provided in the form of in-kind contributions of services or materials.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $1,000,000 for each fiscal year.

By Mr. KENNEDY (for himself, Mr. GREGG, Mr. ENZI, Mr. FRIST, and Mr. BINGAMAN):

S. 302. A bill to make improvements in the Foundation for the National Institutes of Health; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, it's a privilege to join Senator FRIST, Senator ENZI, Senator GREGG, and Senator BINGAMAN in introducing the Foundation for the National Institutes of Health Improvement Act.

Our bill makes several improvements in the 1990 law that established the Foundation. Most significant, it assures the Foundation at least $500,000 annually from the NIH to support its administrative and operating expenses. These funds will enable the Foundation to use its own resources for the actual support of projects to strengthen NIH programs, rather than raise money for its own expenses. As the bill makes clear, the NIH Director and the Commissioner of Food and Drugs are ex officio members of the Foundation's board of directors.

Congress established the Foundation to raise private funds to support the research of the NIH. For every dollar the Foundation received from the NIH in 2003, it raised $426 in private funds. Since its creation, the Foundation has raised $270 million, or $68 in private support for every dollar from the NIH.

The Foundation is currently managing 37 programs supported by $270 million generated from private contributions. For example, the Edmond J. Safra Family Lodge on the NIH campus gives families of patients receiving inpatient treatment at the NIH Clinical Center a place to stay, at no cost to them.

In addition, the Foundation has formed partnerships with the NIH to develop new cancer treatments, to identify biochemical signs of osteoarthritis and Alzheimer's Disease, and to build on the promise of genomics. Through a public-private partnership, the Foundation helped accelerate the sequencing of the mouse genome. The Foundation is also collecting private funds to study drugs in children. In 2003, Bill Gates announced a gift to the Foundation of $200 million over the next 10 years to support research on global health priorities. Clearly, the Foundation's partnership with the NIH will grow productively in the coming years.

I urge my colleagues in the Senate to support this legislation, so that the Foundation can continue its effective support of the work and mission of the NIH.

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. 302

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 ''Foundation for the National Institutes of Health Improvement Act''.

SEC. 2. NATIONAL INSTITUTES OF HEALTH ESTABLISHMENT AND DUTIES.

Section 499 of the Public Health Service Act (42 U.S.C. 290b) is amended—

(1) in subsection (d)—

(A) in paragraph (1)—

(i) by amending subparagraph (D)(ii) to read as follows:

''(ii) Upon the appointment of the appointed members of the Board under clause (i)(II), the terms of service as members of the Board of the ex officio members of the Board described in clauses (i) and (ii) of subparagraph (B) shall terminate. The ex officio members of the Board described in clauses (iii) and (iv) of subparagraph (B) shall continue to serve as ex officio members of the Board.''; and

(ii) in subparagraph (G), by inserting ''appointed'' after ''that the number of'';

(B) by amending paragraph (3)(B) to read as follows:

''(B) Any vacancy in the membership of the appointed members of the Board shall be filled in accordance with the bylaws of the Foundation established in accordance with paragraph (6), and shall not affect the power of the remaining appointed members to execute the duties of the Board.''; and

(C) in paragraph (5), by inserting ''appointed'' after ''majority of the'';

(2) in subsection (j)—

(A) in paragraph (2), by striking ''(d)(2)(B)(i)(II)'' and inserting ''(d)(6)''; and

(B) in paragraph (10), by striking ''of Health.'' and inserting ''of Health and the National Institutes of Health may accept transfers of funds from the Foundation.''; and

(3) by striking subsection (l) and inserting the following:

''(l) FUNDING.—From amounts appropriated to the National Institutes of Health, for each fiscal year, the Director of NIH shall transfer not less than $500,000 to the Foundation.''.

By Mr. LAUTENBERG (for himself, Mr. BIDEN, Mr. KENNEDY, Mr. LEVIN, Mr. KOHL, Mr. CORZINE, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. MIKULSKI, and Mr. AKAKA):

S. 304. A bill to amend title 18, United States Code, to prohibit certain interstate conduct gng to exotic animals; to the Committee on the Judiciary.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Sportsmanship in Hunting Act of 2005. This bill would prohibit the barbaric and unsporting practice of ''canned hunts.'' I am pleased to be joined by my cosponsors, Senators BIDEN, KENNEDY, LEVIN, CORZINE, FEINGOLD, KOHL, DURBIN, SCHUMER, MIKULSKI, and AKAKA.

Canned hunts, also called canned shoots, take place on private land under circumstances that virtually assure a customer of a kill. Although they are advertised under a variety of names, such as hunting preserves or game ranches, canned hunts have two things in common: they charge a fee for killing an animal; and they violate the generally accepted practices of the hunting community, which are based on the concept of ''fair chase.'' Some canned hunts specialize in native species, such as white-tailed deer or elk, while others deal in exotic—non-native—animals that are either bred on-site or bought from dealers or breeders. Exotic animals include surplus animals bought from wild animal parks, circuses, and petting zoos. Many canned hunts offer both native and exotic species to their customers. The Humane Society of the United States estimates that there are more than 1000 canned hunt operations in at least 25 States.

Canned hunts cater to persons who lack the time, and sometimes the skill, for normal sports hunting. They do not require skill in tracking or shooting. For a price, many canned hunts quarantee a shooter a kill of the animal of his or her choice. A wild boar ''kill'' may sell for up to $1,000, a water buffalo for $3,500, and a red deer for up to $6,000.

The ''hunt'' of these tame animals occurs within a fenced enclosure, leaving the animal virtually no chance for escape. Fed and cared for by humans, these animals have often lost their instinctive impulse to flee from shooters who ''stalk'' them. In addition to fencing, canned hunts use other practices to assure their customers a kill. For example, they may bait them, using feeding stations to attract animals and make them easy targets from nearby shooting blinds or stands. These practices are prohibited by many State game commissions.

Canned hunts violate the principles of the sport of hunting. The Boone and Crockett Club, a hunting organization founded by Teddy Roosevelt, defines ''fair chase'' as the ''ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild, native North American game animal in a manner that does not give the hunter an improper advantage over such animals.'' Surely exotic animals held in canned hunt facilities can in no way be considered ''free-ranging,'' and the hunters at such facilities clearly have an enormous ''improper advantage'' over animals. As a result, many real hunters are opposed to the practice of canned hunting, believing it to make a mockery of their sport.

Canned hunts are strongly condemned by animal protection groups. Often, in order to preserve the animal as a ''trophy,'' customers will fire multiple shots into nonvital organs, condemning the animal to a slow and painful death. Because the animal cannot escape, the shooter has the time to place his shots. The Fund for animals has launched a national campaign against what it calls a ''cruel, unsporting, and egregious type of hunting.'' The Humane Society says that ''There is no more repugnant hunting practice than shooting tame, exotic mammals in fenced enclosures for a fee in order to obtain a trophy.'' The group believes that Federal legislation is needed ''to halt the cruel and unsportsmanlike business of canned hunts.''

In addition to being unethical, canned hunts may pose a serious health and safety threat to domestic livestock and native wildlife. Accidental escapes of exotic animals from game ranches is not uncommon, posing a danger to nearby livestock and indigenous wildlife. A dire threat to native deer and elk populations in this country is chronic wasting disease, the deer equivalent of cow disease. In some states, experts believe that canned hunts, with their high concentrations of animals, are encouraging transmission of this disease.

In recognition of these threats, several States have banned canned hunting of mammals. Unfortunately, most States lack laws to outlaw this practice. Because interstate commerce in exotic animals is common, federal legislation is essential to control these cruel practices.

My bill is essentially the same as legislation that was introduced in the 108th Congress, S. 2731, and legislation reported by the Judiciary Committee in the 107th Congress and sponsored by Senator BIDEN, S. 1655. It is similar to legislation that I introduced in the 106th, S. 1345, 105th, S. 995, and 104th, S. 1493, Congresses. The legislation that I am introducing today will target only canned hunt facilities that allow the hunting of exotic (nonnative) mammals. It is important to note what the bill does and does not do: 1. The bill does not regulate the hunting of native mammals, such as white-tail deer; 2. The bill does not regulate the hunting of any birds; 3. The bill protects only exotic (non-native) mammals in areas where they do not have an opportunity to avoid hunters, smaller than 1000 acres; and 4. The bill regulates the conduct of persons who operate canned hunts or traffic in exotic mammals used in such hunts, not the hunters who patronize canned hunt facilities. In summary, my bill would merely ban the transport and trade of non-native, exotic mammals for the purpose of staged trophy hunts.

The idea of a defenseless animal meeting a violent end as the target of a canned hunt is, at the very least, distasteful to many Americans. In an era when we are seeking to curb violence in our culture, canned hunts are certainly one form of gratuitous brutality that does not belong in society. I urge my colleagues to join me in supporting this legislation, which will help end this needless practice.

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. 304

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 ''Sportsmanship in Hunting Act of 2005''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The ethic of hunting involves the consideration of fair chase, which allows the animal the opportunity to avoid the hunter.

(2) At more than 1,000 commercial canned hunt operations across the country, trophy

hunters pay a fee to shoot captive exotic animals, from African lions to giraffes and blackbuck antelope, in fenced-in enclosures.

(3) Clustered in a captive setting at unusually high densities, confined exotic animals attract disease more readily than more widely dispersed native species who roam freely.

(4) The transportation of captive exotic animals to commercial canned hunt operations can facilitate the spread of disease across great distances.

(5) The regulation of the transport and treatment of exotic animals on shooting preserves falls outside the traditional domains of State agriculture departments and State fish and game agencies.

(6) This Act is limited in its purpose and will not limit the licensed hunting of any native mammals or any native or exotic birds.

(7) This Act does not aim to criticize those hunters who pursue animals that are not enclosed within a fence.

(8) This Act does not attempt to prohibit slaughterhouse activities, nor does it aim to prohibit the routine euthanasia of domesticated farm animals.

SEC. 3. TRANSPORT OR POSSESSION OF EXOTIC ANIMALS FOR PURPOSES OF KILLING OR INJURING THEM.

(a) IN GENERAL.—Chapter 3 of title 18, United States Code, is amended by adding at the end the following:

''§ 49. Exotic animals

''(a) PROHIBITION.—

''(1) IN GENERAL.—Whoever, in or substantially affecting interstate or foreign commerce, knowingly transfers, transports, or possesses a confined exotic animal, for the purposes of allowing the killing or injuring of that animal for entertainment or for the collection of a trophy, shall be fined under this title, imprisoned not more than 1 year, or both.

''(2) EXCEPTION.—This section shall not apply to the killing or injuring of an exotic animal in a State or Federal natural area reserve undertaking habitat restoration.

''(b) DEFINITIONS.—In this section—

''(1) the term 'confined exotic animal' means a mammal of a species not historically indigenous to the United States, that has been held in captivity, whether or not the defendant knows the length of the captivity, for the shorter of—

''(A) the majority of the animal's life; or

''(B) a period of 1 year; and

''(2) the term 'captivity' does not include any period during which an animal lives as it would in the wild—

''(A) surviving primarily by foraging for naturally occurring food;

''(B) roaming at will over an open area of not less than 1,000 acres; and

''(C) having the opportunity to avoid hunters.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—Any person authorized by the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may—

''(A) without a warrant, arrest any person that violates this section (including regulations promulgated under this section) in the presence or view of the arresting person;

''(B) execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce this section; and

''(C) with a search warrant, search for and seize any animal taken or possessed in violation of this section.

''(2) FORFEITURE.—Any animal seized with or without a search warrant shall be held by the Secretary or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary of the Interior in accordance with law.

''(3) ASSISTANCE.—The Director of the United States Fish and Wildlife Service may use by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for the purpose of enforcing this section.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 3 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 49. Exotic animals.''.

By Mr. CRAIG:

S. 305. A bill to authorize the Secretary of the Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior; to the Committee on Energy and Natural Resources.

Mr. CRAIG. Mr. President, I rise today to introduce the Department of Interior Volunteer Recruitment Act of 2005. This bill would allow the Department of the Interior to recruit and use volunteers in the Bureau of Indian Affairs and the Offices of the Secretary. It also addresses some problems with existing volunteer authorities at the Bureau of Reclamation and the U.S. Geological Survey.

The Department of the Interior is a leader in the Federal Government in providing opportunities for volunteer service, and this bill significantly enhances our ability to provide volunteer opportunities to interested Americans. The bill provides for appropriate ethics and tort claims coverage for DOI volunteers and ensures against the displacement of employees by volunteers. Last, the bill contains provisions which explicitly protect private property rights.

By making it easier for people to volunteer in more Department of the Interior bureaus, this legislation contributes a crucial piece to the President's call to all Americans to volunteer in their communities and to the Secretary's Take Pride in America program, which is working in concert with that call. There is wide support for the bill and there is no known opposition.

I look forward to working with my colleagues to move this excellent bill through the legislative process quickly.

By Ms. SNOWE (for herself, Mr. FRIST, Mr. GREGG, Mr. KENNEDY, Mr. ENZI, Mr. JEFFORDS, Mr. DODD, Mr. HARKIN, Ms. COLLINS, Mr. TALENT, Mr. BINGAMAN, Mr. HATCH, Ms. MIKULSKI, Mrs. MURRAY, and Mrs. CLINTON):

S. 306. A bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOW. Mr. President, I rise today to introduce the Genetic Information Nondiscrimination Act of 2005 and I am joined in doing so by a number of my colleagues including, Majority Leader FRIST, Senator JEFFORDS, Senator GREGG as well as the chairman and ranking member of the Senate HELP Committee, Senators ENZI and KENNEDY. The bill we are introducing today is the result of a collaborative effort spanning more than 8 years and I know I speak for my colleagues when I say that it is my hope that this bill will again receive the unanimous support of the Senate this year and that this will allow the House of Representatives to act swiftly in considering this bill this session.

This day has been a long time coming and, over the years, we have not only retraced our steps in some respects but—most importantly—forged ahead on new ground.

Since April of 1996, when I introduced for the first time the Genetic Information Nondiscrimination in Health Insurance Act, science has continued to hurtle forward, further opening the door to early detection and medical intervention through the discovery and identification of specific genes linked to diseases like breast cancer, Huntington's Disease, glaucoma, colon cancer, and cystic fibrosis. That 1996 bill recognized that with progress in the field of genetics accelerating at a breathtaking pace, we needed to ensure that with the scientific advances to come, we would advance the treatment and prevention of disease—without advancing a new basis for discrimination.

The following year, with the commitment of Senators FRIST and JEFFORDS to addressing this issue, I introduced a bill to ensure we would effectively address the need for protections against genetic discrimination in the health insurance industry. In turn, that bill was the basis for an amendment offered by Senator JEFFORDS, to the fiscal year 2001 Departments of Labor, Health and Human Services Appropriations bill which passed the Senate by a vote of 58–40.

While that victory was a notable step forward, unfortunately, it was not followed by the enactment of our bill. It did, however, respark the debate—which helped lay the foundation for our subsequent efforts.

Indeed, in March 2002, I was again joined by Senators FRIST and JEFFORDS in introducing an updated version of our bill with the new support of Senators GREGG and ENZI. That bill not only addressed what had become the real threat of employment discrimination but also captured the changing world of science as this was the first bill to include what we had learned with the completion of the Genome Project.

I think back to when Representative LOUISE SLAUGHTER and I had first introduced our bills in the 103rd Congress, and the completion of the Genome still seemed years away. Yet it was only four years later when everything changed with the unveiling of the first working draft of our entire genetic code. As we had known—and as with so many other scientific breakthroughs in history—the completion of the Genome not only brought about

the prospect of medical advances, such as improved detection and earlier intervention, but also the potential for harm and abuse. Every day since—absent enactment of a law such as the bill we are introducing—has been a day the American people have been left unprotected from this type of discrimination. Every day since we have left the full potential of the Genome untapped.

The very real fear of repercussions from one's genetic makeup was brought home to me through the real life experience of one of my constituents, Bonnie Lee Tucker. In 1997, Bonnie Lee wrote me about her fear of having the BRCA test for breast cancer, even though she has nine women in her immediate family who were diagnosed with breast cancer, and she herself is a survivor. She wrote to me about her fear of having the BRCA test, because she worried it will ruin her daughter's ability to obtain insurance in the future. And Bonnie Lee isn't the only one who has this fear. When the National Institutes of Health offered women genetic testing, nearly 32 percent of those who were offered a test for breast cancer risk declined to take it citing concerns about health insurance discrimination. What good is scientific progress if it cannot be applied to those who would most benefit?

I recall the testimony before Congress of Dr. Francis Collins, the Director of the National Human Genome Research Institute, without whom we wouldn't have reached this day. In speaking of the next step for those involved in the Genome project, he explained that the project's scientists were engaged in a major endeavor to ''uncover the connections between particular genes and particular diseases,'' to apply the knowledge they just unlocked. In order to do this, Dr. Collins said, ''we need a vigorous research enterprise with the involvement of large numbers of individuals, so that we can draw more precise connections between a particular spelling of a gene and a particular outcome.'' Well, this effort cannot be successful if people are afraid of possible repercussions of their participation in genetic testing.

The bottom line is that, given the advances in science, there are two separate issues at hand. The first is to restrict discrimination by health insurers. The second is to prevent employment discrimination based simply upon an individual's genetic information.

The bill we are introducing again today addresses both these issues based on the firm foundation of current law. With regard to health insurance, the issues are clear and familiar, and something the Senate has debated before, in the context of the consideration of larger privacy issues. Indeed, as Congress considered what is now the Health Insurance Portability and Accountability Act of 1996, we also addressed the issues of privacy of medical information.

Moreover, any legislation that seeks to fully address these issues must consider the interaction of the new protections with the privacy rule which was mandated by HIPAA—and our legislation does just that. Specifically, we clarify the protections of genetic information as well as information about the request or receipt of genetic tests, from being used by the insurer against the patient.

Because the fact of the matter is, genetic information only detects the potential for a genetically linked disease or disorder—and potential does not equal a diagnosis of disease. At the same time, it is critical that this information be available to doctors and other health care professionals when necessary to diagnose, or treat, an illness. This is a distinction that begs our acknowledgment, as we discuss ways to protect patients from potential discriminatory practices by insurers.

On the subject of employment discrimination, unlike our legislative history on debating health privacy matters, the issues surrounding protecting genetic information from workplace discrimination is not as extensive. To that end, our bipartisan bill creates these protections in the workplace—and there should be no question of this need.

As demonstrated by the Burlington Northern case, the threat of employment discrimination is very real, and therefore it is essential that we take this information off the table, so to speak, before the use of this information becomes widespread. While Congress has not yet debated this specific type of employment discrimination, we have a great deal of employment case law and legislative history on which to build.

Indeed, as we considered the need for this type of protection, we agreed that we must extend current law discrimination protections to genetic information. We reviewed current employment discrimination law and considered what sort of remedies people would have for instances of genetic discrimination and if these remedies would be different from those available to people under current law—for instance under the ADA or the EEOC. The bill we introduce today creates new protections by paralleling current law and clarifies the remedies available to victims of discrimination. Ensuring that regardless of whether a person is discriminated against because of their religion, their race or their DNA, these people will all receive the same strong protections under the law.

It has been more than 3 years since the completion of the working draft of the Human Genome. Like a book which is never opened, the wonders of the Human Genome are useless unless people are willing to take advantage of it. This bill is the product of more than 16 months of bipartisan negotiations and is a shining example of what we can accomplish if we set aside partisan differences in order to address the challenges facing the American people. Certainly this bill was only possible due to the commitment of each of the Members here today to work together to come to a successful end and for that I am grateful.

I urge my colleagues to support this bill as they have in the past and that its broad support will be seen as a clarion call by the House of Representatives that it is time for us to do our part so that the President can sign this bill into law and finally ensure the American public is protected from this newest form of discrimination.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator SNOWE, Senator PRIST, Senator GREGG, and Senator ENZI in introducing the Genetic Information Non-Discrimination Act. Today we take another step in our national journey to a fairer and more just America.

I particularly commend our colleague from Maine, Senator SNOWE, for her dedication to this vital issue. Senator SNOWE first proposed legislation on genetic discrimination in 1996. Hopefully, the bipartisan momentum we have built up in recent years will produce a consensus bill we can enact into law this year.

Two years ago, we celebrated an accomplishment that once seemed unimaginable—deciphering the entire sequence of the human DNA code. This amazing accomplishment will affect the 21st century as profoundly as the invention of the computer or the splitting of the atom affected the 20th century. But the extraordinary promise of science to improve health and relieve suffering is in jeopardy if our laws fail to provide adequate protections against misuse of genetic information.

Our bipartisan legislation prohibits health insurers from using genetic information to deny health coverage or raise premiums. It bars employers from using genetic information to make employment decisions.

Few kinds of information are more personal or more information than a person's genetic makeup. This information should not be shared by insurers or employers or be used in decisions about health coverage or a job. It should only be used by patients and their doctors to help them make the best possible decisions on diagnosis and treatment.

Breakthroughs in genetic science are bringing remarkable new opportunities for improving health care. But it also carries the danger that genetic information will be used as a basis for discrimination. I hope we can all agree that discrimination on the basis of a person's genetic traits is as unacceptable as discrimination on the basis of race or religion. No American should be denied health insurance or fired from a job because of a genetic test.

The vast potential of genetic knowledge to improve health care may go unfulfilled, if patients fear that information about their genetic characteristics will be used against them. Congress has a responsibility to guarantee

that genetic information remains private and is not used for improper purposes.

Experts in genetics are united in calling for strong protections to prevent this misuse and abuse of science. The HHS advisory panel on genetic testing—with experts in law, science, medicine, and business—recommended unambiguously that Federal legislation is needed to prohibit discrimination in employment or health insurance based on genetic information. Last fall, witnesses testified about their first hand accounts of genetic discrimination. Heidi Williams' children were denied health insurance because they were carriers for a genetic disorder. Phil Hardt's children feared discrimination so much that they sought genetic tests in secret, paying out of their own pockets and not using their real names.

Francis Collins, the leader of the NIH project to sequence the human genome, said, ''Genetic information and genetic technology can be used in ways that are fundamentally unjust. Already, people have lost their jobs, lost their health insurance, and lost their economic well-being because of the misuse of genetic information.''

Genetic tests are becoming even cheaper and more widely available. If we don't ban discrimination now, it may soon be routine for employers to use genetic tests to deny jobs to employees, based on their risk for disease.

When Congress enacts clear protections against genetic discrimination in employment health insurance, all Americans will be able to enjoy the benefits of genetic research, free from the fear that their personal genetic information will be used against them. If Congress fails to see that genetic information is used only for legitimate purposes, we will squander the vast potential of genetic research to improve the Nation's health.

Effective enforcement will be essential. It makes no sense to enact legislation giving the American people the promise of protection against this form of discrimination and then deny them the reality of that protection.

President Bush recognizes the seriousness of this problem, and supports a ban on genetic discrimination. In his words, ''genetic information should be an opportunity to prevent and treat disease, not an excuse for discrimination. Just as our Nation addressed discrimination based on race, we must now prevent discrimination based on genetic information.'' I commend the President for his support, and I look forward to working with the administration to see that a strong bill on genetic discrimination is signed into law this year.

It is time for Congress to act, and I urge the Senate to do so without delay.

By Mr. SANTORUM:

S. 307. A bill to amend the Farm Security and Rural Investment Act of 2002 to extend national dairy market loss payments; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SANTORUM. Mr. President I rise today to introduce a bill to extend the Milk Income Loss Contract, MILC program, the MILC Extension Act. In the 106th Congress, I called for a programmatic solution to market instability, when I introduced S. 2706, the National Dairy Farmers Fairness Act of 2000. S. 2706 was designed to eliminate the need for Congress to provide supplemental market loss payments to dairy producers by setting up a counter cyclical payment based on the market price of class III milk. Elements of S. 2706 were later borrowed to construct the MILC program, which was included in the 2002 Farm Bill.

My bill would extend MILC for 2 years at current support levels. All commodity support programs, except MILC, were authorized for the full length of the current Farm Bill. As constructed, the MILC program provides a safety net for all dairy producers by providing a payment whenever the minimum monthly market price for Class I milk price in Boston falls below $16.94 per hundredweight, cwt. MILC represents a broad regional compromise and while it is not perfect, I recognize its importance as a safety net for dairy producers. As such I am working to extend the program until 2007 when Congress will consider the next Farm Bill.

Budget constraints and compliance with our trade agreements requires us to reexamine the role of the federal government in agriculture. During this session of Congress I will engage in a focused effort to decrease direct payments and countercyclical programs. These discussions and reforms will be forthcoming, but allowing an important program that acts as a safety net for small farmers to expire would be too drastic of a first step.

Others have suggested that we grow this program. I will be steadfast in my opposition to growing this program. Growing the size of this program sends a potentially dangerous signal to our producers. At a time when the experts are predicting that the market may soften over coming months, Congress should not send a signal to producers to increase production. Dairy producers should look to the market, not to Washington, DC, for guidance as they manage their businesses.

As a member of the Senate Agriculture Committee who represents the fourth largest dairy producing state in the nation, I am committed to preserving the viability of Pennsylvania's dairy farmers. This legislative proposal represents a commonsense approach in the often-heated debate of dairy policy. I look forward to working with my colleagues, the President and the Secretary of Agriculture to extend this important program.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 38—COMMENDING THE PEOPLE OF IRAQ ON THE JANUARY 30, 2005, NATIONAL ELECTIONS

Mr. FRIST (for himself, Mr. REID, Mr. LUGAR, Mr. BIDEN Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 38

Whereas on January 30, 2005, Iraq held its first democratic elections in nearly half a century;

Whereas after more than 3 decades of enduring harsh repression and lack of freedom, millions cast ballots on January 30, 2005, to determine the future of their country in an election widely recognized as a success by the international community;

Whereas the hard work, contributions, vision, and sacrifices of the Interim Iraqi Government in undertaking major political, economic, social, and legal reforms and, in conjunction with the efforts of the Iraqi Independent Electoral Commission, in ensuring that Iraq held nationwide elections on January 30, and in not being intimidated by terrorist and insurgent forces resulted in the successful elections of January 30;

Whereas on January 30, President George W. Bush stated that the election in Iraq was a ''milestone'' in Iraq's history and that the ''world is hearing the voice of freedom from the center of the Middle East'';

Whereas the January 30 election is another step in the process of developing a free and democratic Iraq;

Whereas the people of Iraq cast votes to freely choose the 275-member Transitional National Assembly that will serve as the national legislature of Iraq for a transition period, name a Presidency Council, and select a Prime Minister;

Whereas the Transitional National Assembly will draft the permanent constitution of Iraq;

Whereas the election establishes a credible process for governing Iraq under a mandate from the majority of the people of Iraq for a new Iraq in which all communities are represented, minority rights are respected, and violence is not tolerated;

Whereas an estimated 14,300,000 Iraqis were registered to vote at more than 5,000 polling stations across Iraq and in 14 other countries;

Whereas, with 256 political entities composed of 18,900 Iraqi candidates standing for election in 20 different elections (the national election, 18 provincial elections, and Kurdistan Regional government election), voter turnout demonstrated widespread enthusiasm for self-determination;

Whereas Iraqi security forces joined with United States and Coalition forces in providing security for the elections;

Whereas despite these efforts, many Sunni Iraqis in some provinces did not vote because of fear and intimidation;

Whereas the United Nations Electoral Assistance Division and other nongovernmental organizations provided technical support and assistance to the Independent Electoral Commission of Iraq and the Iraqi Interim Government;

Whereas the people of Iraq will again exercise their popular will through a national referendum in October 2005, when the Transitional National Assembly presents a draft constitution for Iraq;

Whereas national elections based on that constitution are then to be held in December 2005 to choose an Iraqi government in a manner prescribed by the constitution;

Whereas it is in the interest of Iraq, the Middle East, the United States, and the international community that Iraq successfully transitions to a functioning democratic state, as this may serve as a catalyst for peace and stability in the region; and

Whereas the Iraqi government needs assistance from the broader international community to further develop governing capacity, train effective security forces who can defeat the terrorists and insurgents and maintain law and order, improve economic conditions, and maintain essential services, such as the delivery of electricity, gasoline, and water: Now, therefore, be it

Resolved, That the Senate—

(1) commends the people of Iraq on the successful nationwide elections held in Iraq on January 30, 2005, and recognizes the elections as another step in developing a free and democratic Iraq;

(2) recognizes the desire for freedom and liberty of all individuals who served as candidates, campaign workers, United Nations and Iraqi election officials, and voters in the January 30, 2005, elections in Iraq and congratulates the new members of the Transitional National Assembly and the leaders of the provincial and regional governments;

(3) urges the new leadership of Iraq to move forward with drafting the constitution, upholding the law, and holding a referendum on the new constitution in October 2005;

(4) encourages participation of all groups and communities in the drafting of a new constitution and the formation of a permanent government for Iraq;

(5) recognizes and honors the sacrifices made for freedom and liberty in Iraq by the people of Iraq;

(6) commends the Iraqi security forces, and the U.S. armed forces and Coalition forces, who ensured the elections could be conducted in a relatively safe, secure, and credible manner;

(7) condemns and deplores all acts of violence and intimidation against the people of Iraq by members of the former Iraqi regime, insurgents, and other extremists and terrorists;

(8) supports the establishment of a fully democratic Iraqi government that respects the rule of law, promotes ethnic and religious tolerance, respects the rights of women and all minorities, provides security and stability for the people of Iraq, and has the capacity to maintain basic services such as the delivery of sufficient electricity, gasoline, and water;

(9) believes that it is in the interest of the people of Iraq, the Middle East, the United States, and the international community that Iraq transitions to a fully democratic state, and that doing so may serve as a catalyst for peace and stability in the region;

(10) calls on the international community, particularly Arab states, countries with predominantly Muslim populations, and all North Atlantic Treaty Organization member states, to provide military and police personnel to train and assist Iraqi security forces and to otherwise assist in the political and economic development of Iraq;

(11) encourages the newly-elected transitional government of Iraq to ensure that all Iraqis, including members of the Sunni religious community, are represented in the Constitution-writing process and in the new Iraqi cabinet to improve the prospects for national unity and consensus; and

(12) looks forward to welcoming Iraq into the world community of democratic nations.

SENATE RESOLUTION 39—APOLOGING TO THE VICTIMS OF LYNCHING AND THE DESCENDANTS OF THOSE VICTIMS FOR THE FAILURE OF THE SENATE TO ENACT ANTI-LYNCHING LEGISLATION

Ms. LANDRIEU (for herself, Mr. ALLEN, Mr. LEVIN, Mr. FRIST, Mr. REID, Mr. ALLARD, Mr. AKAKA, Mr. BROWNBACK, Mr. BAYH, Ms. COLLINS, Mr. BIDEN, Mr. ENSIGN, Mrs. BOXER, Mr. HAGEL, Mr. CORZINE, Mr. LUGAR, Mr. DAYTON, Mr. MCCAIN, Mr. DODD, Ms. SNOWE, Mr. DURBIN, Mr. SPECTER, Mr. FEINGOLD, Mr. STEVENS, Mrs. FEINSTEIN, Mr. TALENT, Mr. HARKIN, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mr. NELSON of Florida, Mr. PRYOR, and Mr. SCHUMER) submitted the following resolution; which was refered to the Committed on the Judiciary:

S. RES. 39

Whereas the crime of lynching succeeded slavery as the ultimate expression of racism in the United States following Reconstruction;

Whereas lynching was a widely acknowledged practice in the United States until the middle of the 20th century;

Whereas lynching was a crime that occurred throughout the United States, with documented incidents in all but 4 States;

Whereas at least 4,742 people, predominantly African-Americans, were reported lynched in the United States between 1882 and 1968;

Whereas 99 percent of all perpetrators of lynching escaped from punishment by State or local officials;

Whereas lynching prompted African-Americans to form the National Association for the Advancement of Colored People (NAACP) and prompted members of B'nai B'rith to found the Anti-Defamation League;

Whereas nearly 200 anti-lynching bills were introduced in Congress during the first half of the 20th century;

Whereas, between 1890 and 1952, 7 Presidents petitioned Congress to end lynching;

Whereas, between 1920 and 1940, the House of Representatives passed 3 strong anti-lynching measures;

Whereas protection against lynching was the minimum and most basic of Federal responsibilities, and the Senate considered but failed to enact anti-lynching legislation despite repeated requests by civil rights groups, Presidents, and the House of Representatives to do so;

Whereas the recent publication of ''Without Sanctuary: Lynching Photography in America'' helped bring greater awareness and proper recognition of the victims of lynching;

Whereas only by coming to terms with history can the United States effectively champion human rights abroad; and

Whereas an apology offered in the spirit of true repentance moves the United States toward reconciliation and may become central to a new understanding, on which improved racial relations can be forged: Now, therefore, be it

Resolved, That the Senate—

(1) apologizes to the victims of lynching for the failure of the Senate to enact anti-lynching legislation;

(2) expresses the deepest sympathies and most solemn regrets of the Senate to the descendants of victims of lynching, the ancestors of whom were deprived of life, human dignity, and the constitutional protections accorded all citizens of the United States; and

(3) remembers the history of lynching, to ensure that these tragedies will be neither forgotten nor repeated.

Ms. LANDRIEU. Mr. President, I join with my colleague, the junior senator from Virginia, to resubmit our resolution of apology for the Senate's failure to pass anti-lynching legislation. We brought this legislation to the Senate's attention in the closing days of the 108th Congress, and indicated then that we would return in February, Black History Month, and seek its adoption his body.

When submitting the resolution earlier, I provided a narrative that described the horrors lynching. It is not necessary to review those facts at this time. The focus of my comments today concerns a critique of the need for this bill. As with many historical errors, there are those who suggest that we are looking at history with twenty-twenty vision. They assert we cannot pass judgment on people living in another context; everyone is blind to their own prejudices, while seeing those of the past clearly.

That is a critique that has a lot of merit in some cases. Societal morays evolve. In fact, our nation's entire history may be viewed as a giant experiment. Viewed from this perspective we find a slow, evolutionary understanding of the meanings of justice, liberty and democracy. However, Senator ALLEN and I remain confident in what we are seeking to do. The reason is that the Senate's failure to pass anti-lynching legislation is not merely a tragedy now, it was a tragedy then.

Socrates taught us that ''the greatest way to live with honor in this world is

to be what we pretend to be.'' The Senate filibusters that blocked anti-lynching legislation on three separate occasions besmirched the honor of this institution. We style ourselves the greatest deliberative body in the world, yet we showed little real deliberation on those days. We think of ourselves as the ''saucer'' that cools the passions of the House of Representatives. Yet the passions that needed cooling were found in this chamber. We argue that the Senate is the institution that protects the grand traditions of our nation, yet it was the traditions of the Declaration of Independence that we trampled over on those occasions. In short, when we consider the Senate's role in anti-lynching legislation, we simply were not what we pretend to be.

There is other contextual evidence that the Senate was out of step with justice and morality even when viewed at the time. In 1918, in the midst of the First World War, President Woodrow Wilson pleaded for the enactment of anti-lynching legislation. He stated:

> There have been many lynchings and every one of them has been a blow at the heart of ordered law and humane justice. No man who loves America, no man who really cares for her fame and honor and character, or who is truly loyal to her institutions, can justify mob action while the courts of justice are open and the Governments of the States and the Nation are ready and able to do their duty . . . We proudly claim to be the champions of democracy. If we really are in deed and in truth, let us see to it that we do not discredit our own. I say, plainly, that every American who takes part in the action of a mob or gives any sort of countenance is no true son of this great democracy, but its betrayer, and does more to discredit her by that single disloyalty to her standards of law and right than the words or her statesmen or the sacrifices of her heroic boys in the trenches can do to make suffering peoples believe her to be their savior.

There are two remarkable things about this quote. First, it is an indication of just how much lynching was impacting our country's reputation. In the middle of an enormous military effort that allied the forces of democracy against the great autocratic empires, the President had to take to reprimand his own countrymen. Furthermore, historians have long noted that President Wilson did not hold particularly progressive views of African Americans. Nevertheless, here he is taking his countrymen to task. Why? Because the injustice of our actions was clear to him, and were being laid bare—rather embarrassingly—before the whole world. While we struggled to demonstrate the strength and righteousness of democracy, we were belying our own story with lynchings. Once again, we simply were not being what we pretended to be.

Finally, I know in my heart that the people of the South were aware of the injustice that they were inflicting on African Americans. I know because I understand how deeply important religion and Christianity are to the people of the South. It pervades every aspect of our culture and history. But it was surely lost on no one in the South that the greatest victim of mob violence was Jesus. When looking at James Allen's book ''Without Sanctuary'' I think people will get a sense of God's suffering. You will also see the tragedy of humanity in the faces of the crowds. You quickly realize that man's inhumanity to man is an ancient question that still plagues us today. Yet in the helpless nobility of the victims, we are also reminded that God intends true peace and justice to come in the next world and not this one.

We have an opportunity today to teach, an opportunity to express remorse, and most importantly an opportunity to be what we pretend to be. In so doing, I hope we may return some of the lost honor of this Chamber.

Mr. President, it has been said that ''ignorance, allied with power, is the most ferocious enemy justice can have.'' Sadly, this great body, in which I am so proud to serve, once allied its power with ignorance. In so doing, it condoned unspeakable injustice that diminished the role of the Senate, and heaped untold suffering on Americans sorely in need of our protection. I am referring to the Senate's role in the decades long campaign to end lynching in this country. On three separate occasions, our colleagues in the House of Representatives passed anti-lynching legislation with overwhelming majorities. On all three of those occasions members of this Chamber blocked, or filibustered the consideration of that legislation.

Between 1882, when records first began to be collected, and 1968 4,742 Americans lost their lives to lynch mobs. The experts believe that undocumented cases might double that figure. The vast majority of those killed —3,445 Americans—were African American. Sadly, a disproportionate number of those deaths occurred within my home region of the South, but 46 of the 50 States experienced these atrocities. Lynching was truly a national problem deserving the attention of the national legislative bodies.

Frederick Douglas seems to have captured the real reason for this dark period of our national history. These acts of terrorism were not so much an admission of African Americans' weakness, but of their perseverance, and indomitable spirit. Douglas wrote:

> It is proof that the Negro is not standing still. He is not dead, but alive and active. He is not drifting with the current, but manfully resisting it . . . A ship rotting at anchor meets with no resistance, but when she sails on the sea, she has to buffet opposing billows. The enemies of the Negro see that he is making progress and they naturally wish to stop him and keep him in just what they consider his proper place.

It was, in short, the ability of African Americans to overcome Jim Crow laws, to overcome share-cropping, to overcome second-class citizenship that provoked such savagery. Its an old story that repeats itself throughout human history. Whether it was the Israelites in Egypt, the colonial empires in Africa or America's own history of Apartheid, rulers that assume superiority inevitably prove themselves models of mankind's basest instincts.

It should also be noted that this was not only an outrage committed against African Americans. The effort to dehumanize people on the basis of race or ethnicity did not limit itself to black Americans. In fact, the single largest incident of lynching occurred in my home State, in my home town of New Orleans. Yet, the victims were not black. They were Italians. On March 14, 1891, 11 Italian immigrants were lynched in the city of New Orleans. These immigrants too were thought to be less than human, and were simply rounded up as a group of the ''usual suspects'' following the murder of Police Superintendent David Hennessy. Already edgy from a media prompted Mafia scare, a mob surrounded the prison and eventually battered down the doors. An armed group of 25 men overtook the guards and summarily riddled the bodies of the 11 Italian prisoners with bullets. Their bodies were hung on lampposts outside the prison. Eyewitnesses described the cheering of the crowd as deafening.

Of course, the attacks on that day are an example of mob justice and its irrational prejudices. However, in nearly 25 percent of all lynchings the motivations of the attackers came down to a bald attempt to maintain a caste system in this country. The NAACP cataloged the reported motivations for these forms of attack. They included: using disrespectful, insulting, slanderous, boastful, threatening or incendiary language; insubordination, impertinence, or improper demeanor, a sarcastic grin, laughing at the wrong place, a prolonged silence; refusing to take off one's hat to a white person or to give the right-of-way when encountering a white on the sidewalk; resisting assault by whites; being troublesome generally; disorderly conduct, petty theft or drunkenness; writing an improper letter to a white person; paying undue or improper attention to a white female; accusing a white man of writing love letters to a black woman; or living or keeping company with a white woman; turning or refusing to turn State's evidence; testifying or bringing suit against a white person; being related to a person accused of a crime and already lynched; political activities; union organizing; conjuring; discussing a lynching; gambling; operating a house of ill fame; a personal debt; refusing to accept an employment offer; vagrancy; refusing to give up one's farm; conspicuously displaying one's wealth or property; and trying to act like a white man.

In many instances, lynchings were little more than a way to remove an economic competitor and confiscate his property. This was true in a number of cases in Mississippi involving successful African American landowners,

and in one notorious Hawaiian case involving a Japanese immigrant competing with established white businessmen.

Many of my colleagues might wonder why now? After all, some of these incidents are over a century old. There are two reasons. First, this aspect of American history is not well known or understood. As reconstruction concluded in the South, a very ugly struggle to reassert the social structure that preceded the Civil War took place. A great deal of it occurred with the tacit consent of the Federal Government, and the most part, the media either shared in the common prejudice, or simply ignored what was occurring.

Fortunately, we have the publication of the book ''Without Sanctuary'' by James Allen, Hilton Als, Congressman JOHN LEWIS, and Leon F. Litwak to serve as a focal point for our attention to this neglected history. This is a difficult book to examine. It serves as a catalog of inhuman crime perpetrated by very ordinary citizens. Looking at anything so tragic as the victims of these crimes would be disturbing, but that is not what will leave a lasting impression. It is the festive attitude, the smiles and smirks on the crowd gathered around the victim. They clearly take a perverse pride in this act. Hannah Arendt, the famous political philosopher, subtitled her book on Adolph Eichman's war crimes trials ''A Report on the Banality of Evil.'' When you look at the expressions on the faces of the murders in these photos, that is all you can think about. These are not crazed killers, these are rational people going about their every day lives, and committing unspeakable acts in the process.

Photos like these serve to remind us that a healthy society is not something that is built up over time, and then like a great monument, exists for centuries. Rather, a healthy society is a thin levee that must be constantly improved and maintained to hold back the worst instincts of mankind. I think the horrible pictures that came from Abu Gharib prison served as a reminder of this lesson. This book is even greater testimony that atrocities are not events that only occur in far off places. They can and have occurred here in the United States.

The only way to maintain a healthy society is to acknowledge and discuss our mistakes. No one would defend the Senate's filibuster of anti-lynching legislation today. I would like to think that any Senator who did so would quickly be looking for another line of work. However, despite the change of attitude we have taken no action to remedy our wrong. That is the purpose of this resolution today. I would like to extend my deep thanks to my courageous colleague, the Junion Senator from Virginia. He seemed to instantly understand the significance of this effort, and I believe it was vitally important to proceed with this resolution in a bipartisan manner. His input and drive have made this effort much more successful than it otherwise would have been.

It is our intention to introduce this legislation today, and use the recess period to confer with our colleagues about it. When we reconvene next year, we will re-introduce this resolution, and at that time, we hope to have the co-sponsorship of every member of this body. Then, we endeavor to enact the resolution to commemorate Black History month.

I said ignorance allied with power is justice's most ferocious enemy. Yet imagine what truth allied with power can bring. For over 50 years, African American achievement was seen as a threat to the majority of people in this nation. It is time to close the book on that tragic period and begin to celebrate the achievements of black Americans as accomplishments that have bettered us all. I believe that this resolution of apology will be an important symbolic step in this process of healing and growth.

Mr. ALLEN. Mr. President, I rise today to speak in support of an important resolution of apology that Senator MARY LANDRIEU and I are resubmitting today. Since first submitting this measure last September, I am proud to say that approximately a third of my colleagues from both sides of the aisle have lent their support by serving as original cosponsors this Congress.

Like all of my colleagues, I am proud to be a Member of this Chamber, not for its grandeur, but because of the grand ideas it represents. It is here, at these small, wood desks, that big ideas have been debated and argued throughout the course of history for the greater good of the people of the United States and the world. It is here in this Chamber, on this floor, that representative democracy has reached consensus from what our Founding Fathers called the ''Will of the People.''

In the history of this Chamber, there have been many great minds and defenders of freedom. One of those, whose words still reverberate here today, is Daniel Webster. Standing in the old Senate Chamber, Webster told his colleagues in 1834 that a ''representative of the people is a sentinel on the watch tower of liberty.''

Indeed, the United States Senate has been a great watchtower on liberty. Many individuals have venerated the Senate as the world's greatest deliberative body. The formidable British Member of Parliament, William Gladstone, called the American Senate, ''that remarkable body, the most remarkable of all the inventions of modern politics.''

But unfortunately, this august body has a stain on its history: lynching. Americans died from a noose, from flogging, from a torch, from the evil hearts of men outside this Chamber. While three-fourths of the 4,742 victims of these injustices were African-Americans, no race escaped the cruel act that is so contrary to the rule of law, due process and equal protection that we pride ourselves on in the United States. Jewish people, Asians, Hispanics, American Indians, Italians and others found themselves unprotected.

I rise today to offer a formal and heartfelt apology to all the victims of lynching in our history, and for the failure of the United States Senate to take action when action was most needed.

This body failed to act as these vile killings captivated front-page headlines, drew crowds with morbid curiosity and left thousands of mostly African Americans hanging from trees or bleeding to death from the lashings of whips. In not acting, this body failed to protect the liberty of which Webster spoke.

According to the archives of the Tuskegee Institute, 4,472 Americans died by lynching starting in 1882. Three-fourths of these acts of hatred were perpetrated against black men, women, and children. Many times these lynchings were not lone acts by a few white men. Rather, they were angry gangs or mobs whipped into frenzies by skewed mentalities of right and wrong.

One of those who suffered this awful fate was an African American named Zachariah Walker of Coatesville, VA. In 1911, Walker was dragged from a hospital bed where he was recovering from a gunshot wound. Accused of killing a white man—which he claimed was in self-defense—Walker was burned alive at the stake without a trial.

Such horrendous acts were not just a regional phenomenon of the South. States like Illinois, Ohio, Michigan, and even the Washington, DC area experienced mob violence. Lynching was not just a regional problem; it was a national crime, which occurred in 46 States of our country.

Despite the national scope of these acts, the Senate failed to pass any of the nearly 200 anti-lynching bills introduced in Congress during the first half of the twentieth century. After three bills were passed by the House of Representatives, they faced filibusters on this Senate floor.

Seven Presidents from 1890 to 1952 asked that such laws be passed. A Federal law would have afforded more protection to the innocent and would have brought the resources of the Federal Government to bear on those responsible for such egregious acts. Sadly, only one percent of such acts were prosecuted by the State or local authorities. I am proud to say Virginia passed an anti-lynching law which logically accounts for relatively fewer lynchings than in any other States in our region.

During the winter of 1937–1938, one grisly lynching captivated this body's attention. The previous April, two African Americans were taken from their jail cells in Mississippi, were whipped and slowly torched to death. Senator Champ Clark of Missouri posted photographs of the brutality back here in the cloakroom. For six weeks, this

body debated legislation to make lynching a Federal crime. For six weeks. In the end, those in favor of the pending anti-lynching bill failed to enact cloture to break the filibuster.

Historians will no doubt disagree as to a single reason why Senators blocked anti-lynching legislation in the 1920's to 1940's. My desire here is not to get into motivations.

Regardless of their reasoning, our reason tells us that it was wrong and it is appropriate to apologize for this lack of action.

Thankfully justice in our Nation has moved forward and left such despicable acts to history. In ignoring the protections of our Founding Fathers that everyone is innocent until proven guilty, the Senate turned its back on the most helpless in our society at a time when the weak needed protection.

I stand here today as a proud Senator from a Southern State. I look around this chamber and know of its abundance of honor and integrity throughout its history.

As Ephesians teaches us, ''all things that are reproved are made manifest by light.''

My fellow Senators, this simple, dignified apology is appropriate. It is not about any reparations. I respectfully urge my colleagues to reprove this tragedy and pass this resolution this month, February, in commemoration of Black History Month.

I shall close with the words of our Resolution:

Whereas an apology offered in the spirit of true repentance moves the United States toward reconciliation and may become central to a new understanding, on which improved racial relations can be forged: Now, therefore, be it

Resolved, That the Senate—

Apologizes to the victims of lynching for the failure of the Senate to enact anti-lynching legislation;

Expresses the deepest sympathies and most solemn regrets of the Senate to the descendents of victims of lynching, the ancestors of whom were deprived of life, human dignity, and the constitutional protections accorded all citizens of the United States; and

Remembers the history of lynching, to ensure that these tragedies will be neither forgotten nor repeated.

SENATE RESOLUTION 40—SUPPORTING THE GOALS AND IDEAS OF NATIONAL TIME OUT DAY TO PROMOTE THE ADOPTION OF THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS' UNIVERSAL PROTOCOL FOR PREVENTING ERRORS IN THE OPERATING ROOM

Ms. LANDRIEU (for herself, Mr. DURBIN, and Mr. SANTORUM) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 40

Whereas according to an Institute of Medicine report entitled ''To Err is Human: Building a Safer Health System'', published in 2000, between 44,000 and 98,000 hospitalized people in the United States die each year due to medical errors, and untold thousands more suffer injury or illness as a result of preventable errors;

Whereas there are more than 40,000,000 inpatient surgery procedures and 31,000,000 outpatient surgery procedures performed annually in the United States;

Whereas for the first time, nurses, surgeons, and hospitals throughout the country are being required by the Joint Commission on Accreditation of Healthcare Organizations to adopt a common set of operating room procedures in order to help curb the alarming number of deaths and injuries due to medical errors;

Whereas the Joint Commission on Accreditation of Healthcare Organizations has developed a universal protocol, endorsed by more than 50 national healthcare organizations, which calls for surgical teams to call a ''time out'' before surgeries begin in order to verify the patient's identity, the procedure to be performed, and the site of the procedure;

Whereas 4,579 accredited hospitals, 1,261 ambulatory care facilities, and 131 accredited office-based surgery centers were required by the Joint Commission on Accreditation of Healthcare Organizations to adopt the universal protocol beginning July 1, 2004;

Whereas the Association of periOperative Registered Nurses has created an Internet website and distributed 55,000 tool kits to healthcare professionals throughout the country to assist them in implementing the universal protocol; and

Whereas the Association of periOperative Registered Nurses, the Joint Commission on Accreditation of Healthcare Organizations, the American College of Surgeons, the American Society of Anesthesiologists, the American Hospital Association, and the American Society for Healthcare Risk Management celebrate National Time Out Day on June 22, 2005, to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideas of National Time Out Day, as designated by the Association of periOperative Registered Nurses and endorsed by the American College of Surgeons, the American Society of Anesthesiologists, the American Hospital Association, and the American Society for Healthcare Risk Management, to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room; and

(2) congratulates perioperative nurses and representatives of surgical teams for working together to reduce medical errors to ensure the improved health and safety of surgical patients.

Ms. LANDRIEU. Mr. President, we have all heard the expression, ''To err is human.'' We teach our children that mistakes are okay because we learn from them. However, there are some mistakes that are more costly to make than others. In 2000, the Institute of Medicine released a report entitled, ''To Err is Human: Building a Safer Health System.'' The report revealed the following devastating statistic: every year, between 44,000 and 98,000 hospitalized people in the United States die due to medical errors.

Science has not yet found a cure to cancer or even the common cold, but it has discovered a way to prevent the thousands of fatalities that occur every year due to medical errors. The Joint Commission on Accreditation of Healthcare Organizations developed a universal protocol that calls for surgical teams to literally call a ''time out'' before surgeries begin. This ''time out'' serves a brief period for surgeons and nurses to verify the patient's identity, the procedure to be performed, and the site of the procedure. Endorsed by the American College of Surgeons, the American Society of Anesthesiologists, the American Hospital Association, the Association of periOperative Registered Nurses, and the American Society for Healthcare Risk Management, this idea of a ''time out'' may seem almost simplistic, but the fact of the matter is even the best surgeon in the world can make a very costly mistake if he or she does not stop for a moment for surgery and take a ''time out.

Therefore, it is my pleasure to rise today to submit this resolution, which promotes a National Time Out Day and promotes the adoption of the Joint Commission on Accreditation of Healthcare Organization's universal protocol for preventing errors in the operating room.

To err may be human, but for the thousands of relatives that are currently sitting in a hospital waiting room, waiting for a loved one to come out of surgery, human error is not an acceptable answer.

SENATE RESOLUTION 41—CONGRATULATING THE NEW ENGLAND PATRIOTS ON THEIR VICTORY IN SUPER BOWL XXXIX

Mr. KENNEDY (for himself, Mr. KERRY, Mr. REED, Mr. CHAFEE, Mr. DODD, and Mr. LIEBERMAN) submitted the following resolution; which was considered and agreed to:

S. RES. 41

Whereas, on Sunday, February 6, 2005 the New England Patriots defeated the Philadelphia Eagles 24–21 in Super Bowl XXXIX, in Jacksonville, Florida;

Whereas this victory is the second consecutive Super Bowl championship for the New England Patriots and their third Super Bowl championship in the past four years;

Whereas all three Super Bowl victories by the New England Patriots were cliffhangers and were won by three points in each game;

Whereas the New England Patriots have set a National Football League record this season by winning 21 consecutive games;

Whereas Head Coach Bill Belichick and Assistant Coaches Romeo Crennel and Charlie Wiess of the New England Patriots brilliantly created successful game plans throughout the season;

Whereas wide receiver Deion Branch of the New England Patriots tied a Super Bowl record by catching eleven passes and was named Most Valuable Player in the Super Bowl;

Whereas extraordinary efforts by other players of the New England Patriots, including Tom Brady, Troy Brown, Teddy Bruschi, Corey Dillon, David Givens, Rodney Harrison, Willie McGinest, Richard Seymour, Adam Vinatieri, and Mike Vrabel, also contributed to the Super Bowl victory;

Whereas the offensive linemen of the New England Patriots, Matt Light, Joe Andruzzi, Dan Koppen, Stephen Neal, and Brandon

Gorin deserve great credit for protecting quarterback Tom Brady and blocking for running back Corey Dillon in the Super Bowl; and

Whereas owner Bob Kraft of the New England Patriots deserves great credit for his strong support of the team, and for his gracious acknowledgement that the Super Bowl Championship would not have been possible without the strong support of the millions of fans throughout New England: Therefore be it

Resolved, That the Senate of the United States congratulates the New England Patriots on their dramatic victory Super Bowl XXXIX.

SENATE RESOLUTION 42—EXPRESSING THE SENSE OF THE SENATE ON PROMOTING INITIATIVES TO DEVELOP AN HIV VACCINE

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 42

Whereas more than 20,000,000 people have died of the acquired immune deficiency syndrome (hereinafter referred to as ''AIDS'') between 1984 and 2004;

Whereas AIDS claimed the lives of more than 3,000,000 people in 2004, and nearly 8,500 people die each day from AIDS;

Whereas an estimated 40,000,000 people around the world are living with the human immunodeficiency virus (hereinafter referred to as ''HIV'') or AIDS;

Whereas an estimated 14,000 people become infected with HIV every day;

Whereas there will be 45,000,000 new HIV infections by 2010 and nearly 70,000,000 deaths by 2020;

Whereas an estimated 14,000,000 children have lost 1 or both parents to AIDS, and this number is expected to increase to 25,000,000 by 2010;

Whereas a child loses a parent to AIDS every 14 seconds;

Whereas more than 90 percent of the people infected with HIV live in the developing world;

Whereas more than 70 percent of the people infected with HIV live in sub-Saharan Africa;

Whereas communities and countries are struggling with the devastating human and economic toll that HIV and AIDS has taken on them;

Whereas the HIV/AIDS pandemic threatens political and regional stability and has contributed to broader economic and social problems, including food insecurity, labor shortages, and the orphaning of generations of children;

Whereas the United States is leading global efforts to combat the HIV/AIDS pandemic through its $15,000,000,000 Emergency Plan for AIDS Relief and its commitment to the Global Fund to Fight AIDS, Tuberculosis and Malaria;

Whereas, through the World Health Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the Global Fund to Fight AIDS, Tuberculosis and Malaria, the international community is cooperating multilaterally to combat HIV/AIDS;

Whereas developing an HIV vaccine is especially challenging due to the complicated nature of the virus;

Whereas many biotechnology companies have not invested in the development of HIV vaccines;

Whereas during the years 2001 and 2002, only 7 HIV vaccine candidates entered clinical trials, and only 1 of those candidates entered advanced human testing, but it proved ineffective;

Whereas the International AIDS Vaccine Initiative (IAVI) has been a very effective and positive force in the development of an HIV vaccine and has been instrumental in laying the groundwork for developing an HIV vaccine;

Whereas the Bill and Melinda Gates Foundation, the Rockefeller Foundation, and other public and private organizations are pursuing a variety of initiatives to develop an HIV vaccine, including establishing BIO Ventures for Global Health to help small biotechnology companies address the problems they confront in developing new medical products for poor countries;

Whereas, in June 2003, an international group of scientists proposed the creation of a Global HIV Vaccine Enterprise;

Whereas, since that time the Global HIV Vaccine Enterprise has been established, creating an alliance of the world's leading scientists and independent organizations committed to accelerating the development of a preventive HIV vaccine by enhancing coordination, information sharing, and collaboration globally;

Whereas the members of the Group of Eight (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States) met in Sea Island, Georgia in June 2004 and reaffirmed their commitment to combat the global HIV/AIDS pandemic by accelerating and coordinating efforts to develop an HIV vaccine;

Whereas at the meeting in Sea Island, Georgia, under the President's leadership, the Group of Eight endorsed the establishment of the Global HIV Vaccine Enterprise;

Whereas the United States has an HIV vaccine research and development center at the National Institutes of Health, and the President announced funding for the establishment of a second HIV vaccine research and development center in the United States that will become a key compound of the Global HIV Vaccine Enterprise;

Whereas the Global HIV Vaccine Enterprise has developed and published a shared scientific strategy that addresses the major obstacles to the development of an HIV vaccine, summarizes current scientific priorities, and describes an initial strategic approach to addressing these priorities; and

Whereas an HIV vaccine has the potential to prevent new HIV and AIDS cases, which would save millions of lives and dramatically reduce the negative economic consequences of HIV and AIDS: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE ON THE DEVELOPMENT OF AN HIV VACCINE.

It is the sense of the Senate that—

(1) the President should seek to build on the initiative of the members of the Group of Eight (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States) to develop a vaccine to curtail the spread of the human immunodeficiency virus (hereinafter referred to as ''HIV'') and should mobilize necessary economic and scientific support for the Global HIV Vaccine Enterprise, an alliance of the world's leading scientists and independent organizations committed to accelerating the development of a preventive HIV vaccine by enhancing coordination, information sharing, and collaboration globally;

(2) the President should continue to urge the members of the Group of Eight and other countries to garner support from their own economic, scientific, and philanthropic communities for the development of an HIV vaccine;

(3) the members of the Group of Eight should follow-up the June 2004 meeting in Sea Island, Georgia with official and private meetings, conferences, and other events to further explore and implement initiatives concerning the Global HIV Vaccine Enterprise;

(4) the members of the Group of Eight should leverage financial contributions from the international philanthropic community to provide funding, including funding to the private sector, to promote the development of an HIV vaccine;

(5) the members of the Group of Eight should include the scientific and political leadership of those countries most affected by the pandemic of HIV and the acquired immune deficiency syndrome (hereinafter referred to as ''AIDS''); and

(6) the members of the Group of Eight should develop a specific plan for furthering efforts towards this goal prior to the meeting of the Group of Eight planned for June 2005 in the United Kingdom.

SEC. 2. THE GLOBAL HIV VACCINE ENTERPRISE.

The Senate urges the President to continue the efforts of the United States to generate global support for the Global HIV Vaccine Enterprise by carrying out an initiative that—

(1) is in coordination and partnership with the members of the Group of Eight, the private sector, and other countries, especially those countries most affected by the HIV/AIDS pandemic;

(2) encourages the members of the Group of Eight to act swiftly to mobilize money and resources to support the Global HIV Vaccine Enterprise;

(3) includes a strategic plan to prioritize the scientific and other challenges to the development of an HIV vaccine, as set out in the Scientific Strategic Plan developed by the Global HIV Vaccine Enterprise, to coordinate research and product development efforts, and to encourage greater use of information-sharing networks and technologies;

(4) encourages the establishment of a number of coordinated global HIV vaccine development centers that have a sufficient number of researchers who possess the scientific expertise necessary to advance the development of an HIV vaccine; and

(5) increases cooperation, communication, and sharing of information on issues related to HIV and AIDS among regulatory authorities in various countries.

Mr. LUGAR. Mr. President, I rise to submit a resolution expressing the Sense of the Senate on promoting initiatives to develop an HIV vaccine.

On June 6, 2004, I introduced Senate Resolution 398 urging the President to promote initiatives to develop an HIV vaccine. While I am encouraged by the progress that has taken place in the months since I submitted that resolution, much remains to be done to develop an effective HIV vaccine. Because of the gravity and urgency of this issue, I am submitting my resolution.

The HIV/AIDS pandemic is unlike any disease in history and has profound implications for political stability, development, and human welfare. The sheer magnitude of the crisis is overwhelming. An estimated 40,000,000 people around the world live with HIV or AIDS, and nearly 8,500 people die every day from AIDS. Last year alone, more than 3 million people died from AIDS. Every 14 seconds, a child loses a parent to AIDS. An estimated 14,000,000 children have lost one or both parents to AIDS, and this number is expected to

increase to 25 million by 2010. According to recent projections from the World Health Organization and the Joint United Nations Program on HIV/AIDS, UNAIDS, if the pandemic spreads at its current rate, there will be 45 million new infections by 2010 and nearly 70 million deaths by 2020. Sub-Saharan Africa has been hardest hit by the disease, with more than 75 percent of the people infected with HIV living in the region.

The U.S. is leading global efforts to combat the pandemic through its $15 billion Emergency Plan for AIDS Relief and its commitment to the Global Fund to Fight AIDS, Tuberculosis, and Malaria. But the human and economic toll of the HIV pandemic demands that these activities be complemented by accelerated efforts to develop an HIV vaccine. An HIV vaccine would prevent new HIV and AIDS cases, which could save millions of lives and dramatically reduce the negative social and economic consequences of the disease. Yet, HIV vaccine development is still not prominent on national or international public health agendas.

Developing an HIV vaccine is particularly challenging because HIV is one of the most complicated viruses ever identified. In addition, many private sector biotechnology companies have not invested money and expertise in the search for an HIV vaccine. Developing an HIV vaccine, therefore, is unlikely to occur without a well-coordinated and focused global research effort.

The Global HIV Vaccine Enterprise is mobilizing such an effort. The Enterprise is an alliance of the world's leading scientists and independent organizations around the world committed to accelerating the development of a preventive vaccine for HIV/AIDS. The Enterprise, like the Human Genome Project, seeks to promote a new level of coordination and information-sharing to address a complex scientific problem. In addition, the HIV Vaccine Enterprise is intended to accelerate progress by promoting international public-private collaboration.

The International AIDS Vaccine Initiative, IAVI, has been instrumental in laying the groundwork for the Enterprise. The IAVI is an international organization that collaborates with developing countries, governments, and international agencies dedicated to accelerating the development of a vaccine to halt the AIDS epidemic. The IAVI, however, cannot accomplish this task alone. Here in the United States, the Bill and Melinda Gates Foundation and the Rockefeller Foundation have joined forces to help address the financial problems faced by small biotechnology companies. They founded BIO Ventures for Global Health to help small biotechnology companies address the problems they confront in developing new medical products for poor countries. The wider application of this model would greatly improve the development of vaccines and other medicines aimed at improving health in the developing world.

Under President Bush's leadership, the Members of the Group of Eight Industrialized Nations, G–8, during their meeting at Sea Island last June, endorsed the Global HIV Vaccine Enterprise. At the meeting, President Bush announced plans to establish a second HIV Vaccine Research and Development Center in the United States, in addition to the one already operating at the U.S. National Institutes of Health. Recently, the President announced funding for that second center, the Center for HIV/AIDS Vaccine Immunology, CHAVI, which will become a key component of the Enterprise.

I commend the President's leadership on this critically important issue. The G–8's endorsement of the Global HIV Vaccine Enterprise is a big step forward in the development of an HIV vaccine. My resolution acknowledges the President's and the G–8's actions towards this goal and urges them to continue to cooperate with other countries, particularly those hit hardest by the HIV/AIDS pandemic, to achieve this important objective.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Tuesday, February 8, 2005, at 9:30 a.m., to conduct its organization meeting for the 109th Congress.

For further information regarding this hearing, please contact Susan Wells at the Rules and Administration Committee on 224–6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Monday, February 7, 2005, at a time and location to be determined to hold a business meeting to consider the nominations of Michael Chertoff to be Secretary of Homeland Security, and Allen Weinstein to be Archivist of the United States.

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

PRIVILEGE OF THE FLOOR

Mr. SPECTER. Mr. President, I ask unanimous consent that the privilege of the floor be extended to the following staffers for the duration of S. 5: Harold Kim, Ryan Triplette, Hannibal Kemerer, Nathan Morris, Rita Lari Jocum, Kevin O'Scannlain, Brendan Dunn, and Scott Will, all from the Judiciary Committee.

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

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate, and after consultation with the Democratic Leader, pursuant to Public Law 106–286, appoints the following members to serve on the Congressional-Executive Commission on the People's Republic of China: the Senator from Montana, Mr. BAUCUS; the Senator from Michigan, Mr. LEVIN; the Senator from California, Mrs. FEINSTEIN; and the Senator from North Dakota, Mr. DORGAN.

CONGRATULATING THE NEW ENGLAND PATRIOTS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 41, submitted earlier today by Senators KENNEDY, KERRY, and REED.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 41) congratulating the New England Patriots on their victory in Super Bowl XXXIX.

There being no objection, the Senate proceeded to consider the resolution.

CONGRATULATING THE NEW ENGLAND PATRIOTS

Mr. KENNEDY. Mr. President, I welcome this opportunity to congratulate the New England Patriots for winning yesterday's exciting Super Bowl against the Philadelphia Eagles, 24–21.

What a year our sports teams in New England have had. The Patriots won the Super Bowl and the Boston Red Sox won the World Series. It doesn't get much better than that.

The Patriots deserve great credit for another brilliant season. They have shattered the NFL record by winning 21 straight games. The previous record was held by the Miami Dolphins in 1972, who won 15 straight games.

With nine seconds left in the game yesterday, Rodney Harrison intercepted his second pass of the day, clinching the Patriot's second straight Super Bowl and their third Super Bowl championship in 4 years.

All three of those Super Bowl victories were by the same narrow margin—three points. In their two previous Super Bowl victories, they won by last-second field goals. This year, the field

goal came earlier, but the game was no less a cliff-hanger.

Deion Branch, a wide receiver of the Patriots, was a special hero in the game. He tied a Super Bowl record by catching eleven passes, and was named the Super Bowl's Most Valuable Player. Quarterback Tom Brady, as usual, was outstanding. There were many other heroes as well on both offense and defense, and it took all their skill and great teamwork to put points on the scoreboard. In fact, they sacked the quarterback four times and had three interceptions, two by Rodney Harrison.

Much of the credit in the victory also goes to Bill Belichick and his two outstanding Assistant Coaches, Romeo Crennel and Charlie Weiss, who made sure that the team was well prepared with the strongest possible game plan every week throughout the season, and especially for the playoffs and the Super Bowl.

Finally, I congratulate Patriots owner Bob Kraft for his strong support of the team, and for his very generous tribute to all the Patriots fans as well. He was right when he said this Super Bowl victory would not have been possible without the strong support of millions of Patriots fans throughout New England.

The pending resolution commends the Patriots for their dramatic victory. I urge the Senate to approve it, and I hope very much we'll be back here in 2006 to pass a similar resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, that any statements related to the resolution be printed in the RECORD at the appropriate place as if read, without intervening action or debate.

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

The resolution (S. Res. 41) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 41

Whereas, on Sunday, February 6, 2005 the New England Patriots defeated the Philadelphia Eagles 24–21 in Super Bowl XXXIX, in Jacksonville, Florida;

Whereas this victory is the second consecutive Super Bowl championship for the New England Patriots and their third Super Bowl championship in the past four years;

Whereas all three Super Bowl victories by the New England Patriots were cliffhangers and were won by three points in each game;

Whereas the New England Patriots have set a National Football League record this season by winning 21 consecutive games;

Whereas Head Coach Bill Belichick and Assistant Coaches Romeo Crennel and Charlie Wiess of the New England Patriots brilliantly created successful game plans throughout the season;

Whereas wide receiver Deion Branch of the New England Patriots tied a Super Bowl record by catching eleven passes and was named Most Valuable Player in the Super Bowl;

Whereas extraordinary efforts by other players of the New England Patriots, including Tom Brady, Troy Brown, Teddy Bruschi, Corey Dillon, David Givens, Rodney Harrison, Willie McGinest, Richard Seymour, Adam Vinatieri, and Mike Vrabel, also contributed to the Super Bowl victory;

Whereas the offensive linemen of the New England Patriots, Matt Light, Joe Andruzzi, Dan Koppen, Stephen Neal, and Brandon Gorin deserve great credit for protecting quarterback Tom Brady and blocking for running back Corey Dillon in the Super Bowl; and

Whereas owner Bob Kraft of the New England Patriots deserves great credit for his strong support of the team, and for his gracious acknowledgement that the Super Bowl Championship would not have been possible without the strong support of the millions of fans throughout New England.

Resolved, That the Senate of the United States congratulates the New England Patriots on their dramatic victory Super Bowl XXXIX.

ORDERS FOR TUESDAY, FEBRUARY 8, 2005

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Tuesday, February 8. I further ask that following the prayer and the pledge the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for two leaders be reserved, and the Senate begin a period of morning business for up to 1 hour, with the first 30 minutes under the control of the majority leader or his designee, and the second 30 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate resume consideration of S. 5, the class action bill. I further ask unanimous consent that the Senate recess from 12:30 to 2:15 for the weekly party luncheons.

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

PROGRAM

Mr. MCCONNELL. Mr. President, tomorrow following morning business, the Senate will resume consideration of the class action bill. The chairman and ranking member will be here as we resume debate. We expect to begin the amending process tomorrow morning. Rollcall votes are expected during tomorrow's session. No votes are expected prior to the party luncheons.

Several Senators have expressed an interest in offering amendments, and we want to encourage all Senators who have amendments to contact the managers and get about offering them.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator DURBIN for up to 5 minutes.

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

The Senator from Illinois is recognized.

DEFENDING SENATOR REID

Mr. DURBIN. Mr. President, Barry Goldwater was a proud, conservative Republican. Many credit him as being the father of the modern conservative movement in this country.

He defended his conservative ideas and ideals vigorously. But he didn't attack his political adversaries personally. And he didn't like it when others did.

Barry Goldwater once said of the radical right, ''If they disagree with you one bit, you're a no-good S.O.B.'' That is Barry Goldwater's world.

Something tells me Barry Goldwater would dislike very much the character-assassination campaign being waged by the Republican National Committee against the Democratic leader of this Senate, HARRY REID.

This morning, the Senate began debate on a controversial plan proposed by our Republican colleagues, under a time agreement negotiated by Senator REID—Democrats are not filibustering this proposal. We came to work this morning to discover this article.

The lead story in this morning's Roll Call is ''RNC Turns up Heat on Reid.''

The RNC is sending out a 13-page ''research document'' on Senator REID to 1 million journalists, donors, and grassroots activists'' accusing Senator REID of obstructionism and other imagined grievances. Despite the fact that every nominee of the President has gone through this Chamber, and I believe we have only had two record votes and both of those cleared the Chamber, they are arguing that Senator REID is guilty of obstructionism.

The RNC Communications Director is quoted as saying, ''This is the initial salvo in the upcoming discussion that we are going to be having with Senator REID.'' This is not a discussion they're planning. This is an effort to try to intimidate political opponents into silence—and it is shameful.

HARRY REID is the walking definition of moderate. I have served with him in the House and Senate.

Why is the RNC doing this now? Because they do not want to debate their radical proposals on the merits.

They don't want to debate their radical proposals on the merits. They don't want to talk about the details of Social Security privatization, which is becoming increasingly unpopular in America. They don't want to talk about the budget they released today, which will make deep cuts in health care, veterans care, and education. They want to silence everybody and anybody who dares to question any part of the agenda.

That is not what America is about. It is not the way this Senate is supposed to work.

I say to my colleagues on the other side of the aisle, is there one amongst us who could withstand this type of

withering scrutiny and criticism? I think, frankly, my friends should stop and realize we have 2 years ahead of us in this session. We need to work with one another. We have and we will. Starting with this approach is bad.

I call on Senator FRIST to call the Republican National Committee the first thing in the morning and tell them that they have to suspend this personal attack on HARRY REID. If we are going to work in a cooperative bipartisan fashion, this attack is going to poison the well.

There is another element here, too. I have some rules in my life that are hard and fast when it comes to politics, and one rule is that I never attack my opponent's family. Never. There have been ample opportunities when some relative of my opponent did something very embarrassing or I could have issued a press release and taken advantage of it. I never did it because I never want people attacking my family.

The Republican National Committee starts off their campaign by attacking Senator REID's family. I think the hottest ring in hell is reserved for politicians who attack their opponents' families, and I hope Senator FRIST believes that, too.

In 1962, Jack Kennedy and Barry Goldwater thought they would probably face each other in the 1964 Presidential race. As different as their politics were, they respected one another, and they respected the American tradition of government and debate. They hoped that if they did face each other in 1964, they would be able to hold a series of debates around the country on the big issues of the day.

That is how politics was going to be waged in 1964. That is exactly how it should be waged today. Let's not make this the politics of mudslinging and the politics of personal attack. Let's, early on in the session, say that we are going to address the great issues that face us in a responsible manner. We should make a bipartisan pact at this time that there will be no more politics of personal destruction.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow morning.

Thereupon, the Senate, at 6:15 p.m., adjourned until Tuesday, February 8, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 7, 2005:

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE CHIEF OF NAVAL OPERATIONS, UNITED STATES NAVY, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5035:

To be admiral

VICE ADM. ROBERT F. WILLARD, 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 admiral

ADM. JOHN B. NATHMAN, 0000