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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, June 17, 2002, at 12:30 p.m.

Senate

FRIDAY, JUNE 14, 2002

The Senate met at 9 a.m. and was called to order by the Honorable BLANCHE L. LINCOLN, a Senator from the State of Arkansas.

PRAYER

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

Almighty God, Sovereign of this Nation and Lord of our lives, we thank You for the outward symbols of inner meaning that remind us of Your blessings. The sight of our flag stirs patriotism and dedication. It reminds us of Your providential care through the years, of our blessed history as a people, of our role in the unfolding of Your American dream, and of the privilege we share living in this land.

Today, as we celebrate Flag Day, we repledge allegiance to our flag and recommit ourselves to the awesome responsibilities that You have entrusted to us. May the flag that waves above this Capitol remind us that this is Your land.

Thank You, Lord, that our flag also gives us a bracing affirmation of the unique role of the Senate in our democracy. In each age, You have called truly great men and women to serve as leaders. May these contemporary patriots experience fresh strength and vision, as You renew the drumbeat of Your Spirit, calling them to march to the cadence of Your righteousness. In the Name of our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BLANCHE L. LINCOLN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 14, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BLANCHE L. LINCOLN, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. LINCOLN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, we are going to be in a period of morning business until 9:35 a.m. Senator MURRAY has the first 20 minutes. The remaining time will be under the control of the Republican leader or his designee. At 9:35, we are going to have two votes. Following that, the main reason for me appearing this morning is to tell Members S. 2600 will be open for amendment. We hope people will come over today. There will only be two votes.

We didn't have a good day yesterday. We had a couple of amendments, but the rest was not very serious business related to the extremely important antiterrorism insurance legislation.

We hope people will begin to move forward on this legislation. The majority leader indicated we are going to pass this legislation. It is just a question of whether we are going to do it with or without cloture.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 9:35, with 20 minutes being under the control of the Senator from Washington.

The Senator from Washington is recognized.

HEALTH CARE CHALLENGES IN THE STATE OF WASHINGTON

Mrs. MURRAY. Madam President, seniors in Washington State cannot get

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

the medical care they need, and I have come to the floor today to explain the problem and to offer a solution that has the support of doctors, nurses, hospitals, and patients throughout Washington State.

While many States are facing challenges in health care, the problems are especially severe in my home State, where providers are struggling to care for patients in a system that is falling down around them. There are many reasons for this crisis, but one of the most fundamental is the unfair way in which Medicare reimburses doctors and providers.

Just look at what happens to the seniors I represent. They have spent their lives working hard, raising their families, and paying into the Medicare system. In fact, they have paid the same percentage of their income into Medicare as Americans from every State. But when they retire, they find that their access to health care depends upon where they happen to live. If they live in Washington State, they can expect far less access and far fewer benefits than seniors in other States. That is because Medicare reimbursement rates vary State by State.

Today, those reimbursement rates don't reflect the true cost of providing care, and they are penalizing patients and providers throughout Washington.

Madam President, in recent years, we have lost many physicians and clinics, especially in our rural areas. These unfair Medicare rates are making the problem even worse by encouraging doctors to retire early, to move, or to stop seeing Medicare patients altogether.

At the same time, these rates make it even harder for us to attract the new doctors, nurses, and health care professionals that we need to fill the growing void. As a result, seniors have to spend all day long on the phone trying to find a doctor who will see them. More often than not, they are told the doctor is not accepting any new Medicare patients.

Today, I want to explain the problem, show the impact it is having on the people of my State, and talk about a legislative proposal that Senator CANTWELL and I have introduced to give Medicare patients the equity they deserve.

For years, the health care challenges of Washington State have been getting worse, just like in the Presiding Officer's State. More and more patients don't have insurance and families don't have enough insurance. There is a shortage of health care professionals. That is causing problems, especially in our rural areas. There are many reasons for these difficulties, including our growing retired population, the rising cost of medical care and prescription drugs, as we all know, and paperwork and insurance.

In January, Medicare payments to doctors were slashed by 5.4 percent nationwide. Because many private insurers base their rates on Medicare payments, providers cannot shift the costs as they could in the past. In addition, Washington State is facing a budget shortfall and that has affected funding for Medicaid.

As we in Washington State try to address those national challenges, we are starting out several steps behind. That is because Washington State receives far below the national average in Medicare payments per patient. As this chart behind me shows, Medicare rates vary by State. Shown here are the average Medicare payments per beneficiary. These figures come from the Federal agency that manages the program—the Centers for Medicare and Medicaid Services, known as CMS. These figures are for fiscal year 2000. I would love to show more recent numbers, but I understand CMS has decided they are no longer going to calculate or distribute these figures.

Looking at this chart, you can see that these figures vary dramatically between States. At the top is Louisiana. They get, on average, $7,336 per Medicare patient. At the bottom is Iowa, which receives less than half that, just $3,053. When you include the District of Columbia, Washington State, my State, ranks 42nd in the Nation in Medicare reimbursement beneficiary. The Presiding Officer's State of Arkansas ranks right here at about 28th in the Nation. It is well below the average of what most States get. The national average is $5,490. Washington State, my State, receives $3,921 per patient.

In fact, in New York, a doctor can be reimbursed at twice the rate as Washington State for some procedures. That affects the stability of our doctors, hospitals, clinics, and home health care providers. Over the lifetime of a Medicare beneficiary, it can mean thousands of dollars less spent on their care in Washington.

These regional inequities have resulted in vastly different levels of care and access to care. For example, in Florida, up here at the top of the chart, a lot of Medicare beneficiaries have access to prescription drugs and prescription eyeglasses in their Medicare Plus Choice program.

In Washington State, while there may be some willing providers, there are no open plans available that offer prescription drug coverage, much less eyeglasses, because of our low reimbursements.

Overall, this is about fairness and access to health care. So I want to point out four reasons this morning why this system is unfair to patients in my State and the other States that rank at the bottom in reimbursements.

First, Washington State seniors pay the same rate into Medicare as everyone else. During their working years, every American pays the same percent of their income into the Medicare system, no matter where they live.

During retirement, every American pays the exact same dollar amount in part B premiums, no matter which State they live in. Washington seniors pay the same, but they do not get the same access to care, and that is not fair.

Second, the reimbursement rates do not reflect the true costs of providing care. The cost of treating a patient does not magically drop when you cross the border into my home State of Washington. The health care pressures we are facing do not stop at the State line, but payments do, and that is forcing doctors to choose between helping patients and staying in business. That is not fair.

Third, health care today is affected by national trends that require more equal reimbursement rates throughout the country. Two of those trends are the shrinking pool of available doctors and the growing need for expensive medical equipment.

There are a limited number of medical professionals, and every State is now competing to attract them. Because Medicare rates are so much lower in my State, we cannot offer the same salaries or the same recruitment incentives.

Hospitals face this challenge when it comes to medical technology. Today, health care relies increasingly on sophisticated expensive technology. An MRI machine costs the same amount for a hospital in Florida as a hospital in Washington State, but the only difference is the hospital in Washington State receives far less money from Medicare to pay for it. Overall, that means our State cannot attract the providers or buy the equipment that other States can, and that is not fair.

I recently heard from doctors with Olympia Radiation Oncology in Olympia, WA, and they said:

> While the cost of state-of-the-art equipment and personnel remains the same from state to state, the reimbursement is allowing appropriately reimbursed states to maintain a higher quality of care, while Washington State is struggling to deliver basic care. . . . If this problem is not addressed in a timely manner, we will continue to have a migration of young people and businesses out of our state, and we will be left with an aging population with suboptimal care.

My State is being penalized for doing the right things in health care, and that is not fair. Washington State has a long tradition of providing high-quality, low-cost health care, but today that innovative tradition is being used against us by the Medicare system. Other States spend more than twice what we spend and end up with less healthy outcomes while we are being punished for providing excellent care at low costs, and that is not fair.

This is an issue of fairness. Our seniors pay the same into the system and pay the same Part B premiums, but we do not get the same access or benefits. Our doctors have to choose between staying in business or accepting Medicare patients because Medicare payments do not reflect the true costs.

Our State is competing with every other State to attract doctors and to buy medical equipment, but we do not

have the same resources as Medicare provides to other States.

Finally, our State is being penalized for providing highly efficient, high-quality health care at low costs. Any way we look at it, the system is not fair to the people I represent.

This difference in reimbursement rates would not be a big deal if it were just a bureaucratic formula on a piece of paper, but we are talking about whether or not people can see a doctor, and I can tell you, unfair Medicare rates are hurting patients in Washington State in several ways. Many doctors are leaving our State, retiring early, or even refusing to accept Medicare patients. Nationwide a study by the American Academy of Family Physicians found that 17 percent of family doctors are not accepting new Medicare patients. The problem is even more severe in my State. The Washington State Medical Association conducted a survey last November and found that 57 percent of physicians who responded said they are either limiting their Medicare patients or dropping all Medicare patients from their practice.

Many experts believe that study does not even show the full extent of the problem. Other doctors are just leaving our State altogether. Since 1998, the number of Washington State Medical Association members leaving our State has increased by 31 percent.

To illustrate this problem, the Washington State Medical Association took out print advertisements in Washington State newspapers. And they say: Eastern Washington, my State, has a thriving medical community. You will find them in places like Boise, ID and Eugene, OR.

It's getting to the point where Washington doctors can't afford to stay in Washington. Administrative costs are out of control, reimbursement rates don't cover services, medical practices are shutting down. The fact is Medicaid and Medicare are grossly underfunded and private payers are setting their rates according to public programs. Now what does this mean to the patient? It means that even if you have great health insurance, the underfunding of public programs puts your personal physician's practice in jeopardy. So in other words, all the insurance in the world isn't going to help when your family doctor packs up and leaves the State.

This is a pretty good description of what is happening in my State. When doctors leave our State or retire early, their patients have to look for a new doctor who will accept Medicare, and according to my State's medical association, each time one physician leaves the Medicare Program, 2,000 patients have to find a new caregiver.

Across Washington State, seniors are experiencing the frustration of spending all day on the phone and still not being able to find a doctor who will accept them just because they are on Medicare.

Many articles have been published in my State detailing the trouble our seniors are having finding a doctor, and I have included many of these articles on my Web site. But I want to share one example with my colleagues.

A few months ago in Sequim, WA, a small, rural community, an older woman came up to me in a parking lot with a cast on her arm. She told me when she broke her arm, she went to the doctor. He put her cast on and told her to come back in 4 weeks. In the interim, her doctor determined he could no longer take Medicare patients. So when she went back 4 weeks later, she found out her doctor would not see her because he was not accepting Medicare patients.

There she was in this parking lot, standing there asking me how she was supposed to get her cast off. That is how bad it has gotten.

These terrible examples are becoming more common every day in my State because unfair Medicare rates are encouraging doctors to leave my State or close their practices to Medicare patients. But it is not just a problem for people on Medicare. It ends up having an impact on everyone.

When a patient cannot find a doctor, a patient ends up in the emergency room. The ER is really the only place where a patient cannot be turned away. Unfortunately, by the time they make it to the ER, their symptoms, which could have been addressed easily, have now developed into more serious medical problems.

James Newman is an emergency room doctor in Kennewick, WA. He is the chairman of education for the Benton-Franklin County Medical Society. Dr. Newman has seen patients go into cardiac arrest in the emergency room because they did not get care early enough. Often those patients had symptoms for weeks, but they could not find a primary care doctor, so they end up going into cardiac arrest in the emergency room, and that is outrageous.

Dr. Newman says that once a patient is ready to leave the ER, he cannot find a doctor who will continue to care for them. So Dr. Newman, who is board certified in emergency medicine and has been practicing for 10 years, spends much of his time trying to find doctors for his patients, sometimes begging and borrowing favors just to get his patients the care they need, and he ends up having to practice beyond the normal scope of his job.

For example, he might give a patient an 8-month prescription for hypertension medicine because he knows that patient will not be able to find a primary care doctor to refill a shorter prescription. Even worse, Dr. Newman ends up seeing the same patients again and again in his emergency room because they cannot find a doctor to care for them. That is how bad things have gotten in my State.

Remember, the cost of providing care in emergency rooms is much higher than preventing those problems in the first place. This problem impacts everyone who needs emergency care. Our emergency rooms are overcrowded. According to a recent study by the Washington chapter of the American College of Emergency Room Physicians, 91 percent of small hospitals and 100 percent of large hospitals reported overcrowding.

In addition, 76 percent of large hospitals reported overcrowding 2 to 3 times a week or more often.

In addition to problems in the emergency room, these unfair rates also make it hard for us to recruit the new physicians we need to replace those who are moving and retiring early.

I want to share with the Senate what Mike Glenn, the CEO of Olympic Medical Center in Port Angles, WA had to say on recruitment.

As he tries to attract doctors, he is finding that hospitals in other States are offering twice the salaries he can offer.

He says:

Doctors in nearly every field are either fleeing our state to earn higher salaries, or staying but with growing levels of dissatisfaction and resentment.

Physician headhunter firms have targeted our state as fertile ground to find doctors willing to pack up and leave for positions in states benefitting from more Medicare dollars.

If this situation is not quickly remedied, many Washington communities will face critical shortages of physicians.

Imagine a trip to a hospital Emergency Room without qualified ER doctors to provide life saving treatment, or without anesthesiologists to staff the Operating Room.

This is not a doomsday scenario, but a logical consequence of the current Medicare reimbursement system.

There is no denying that unfair Medicare rates are hurting patients and providers in Washington State.

Doctors are leaving our State or refusing to see new Medicare patients.

As a result, seniors cannot find doctors who will accept them.

Too often, those seniors end up in the emergency room in much worse condition.

We cannot even dig ourselves out of this hole because the low reimbursement rates make it hard for us to recruit new doctors to Washington State

It is going to get worse.

As I mentioned earlier, in January, Medicare payments to doctors were cut by more than 5 percent.

They are expected to continue to decline in the next 3 years for a total decrease of 17 percent by 2005.

That is untenable. We need to do something about it.

Unfortunately, the Bush Administration does not acknowledge the severity of the problem.

In April, Tom Scully, the administrator of CMS, told Washington seniors that ''access was not yet a serious problem.''

On Wednesday, I asked him about it at a hearing, and he said basically the same thing: That it will be a problem, but it is not a serious problem today.

They do not get it.

CMS is not going to fix this.

The White House is not going to fix this.

The Office of Management and Budget is not going to fix this.

If we are going to fix this problem, we are going to have to do it right in the Senate.

That is why Senator CANTWELL and I have introduced S. 2568, the MediFair Act.

The MediFair Act is designed to restore access and fairness to Medicare, and—in the process—help seniors, the disabled and all of our citizens.

This proposal is based on what I have heard from doctors, nurses, hospitals and patients over the past year.

Our bill has been endorsed by the Washington State Medical Association, the Washington State Hospital Association, and the Washington Nurses Association.

On the House side, companion legislation has been introduced.

It has the support of lead sponsor ADAM SMITH along with Representatives DICKS, MCDERMOTT, BAIRD, INSLEE, and LARSEN.

The MediFair Act is a starting point for eliminating the regional inequities in Medicare.

The bill will make the system more fair.

It will ensure that seniors are not penalized when they choose to retire in the State of Washington.

It will encourage more doctors to accept Medicare patients.

It will make it easier for us to recruit new doctors to our State.

And it will help our hospitals and home health agencies get the resources they need to care for our patients.

Let me explain my bill. The MediFair Act works to bring States up from the bottom of the reimbursement list.

The legislation would ensure that every State receives at least the national average of per-patient spending.

The bill does not affect States that currently receive the national average or just above the national average.

Further, our bill promotes efficient health care and healthy outcomes.

This is an area where we really need to correct the incentives.

Here is how Mike Glenn of the Olympic Medical Center put it:

The concern is not over 42 states receiving better Medicare reimbursement than Washington, but over what is rewarded and what is not.

Washington hospitals and physicians are proud of our record of pioneering high quality, cost effective medicine. And we do so by focusing on treatments that can help, while avoiding overuse of treatments that cannot.

This style of medicine yields equal if not better patient outcomes. Our reward for this is to be paid a fraction of our actual costs.

To make matters worse, states who do not embrace our style of cost effective care continue to demand and receive twice as much funding from Medicare for no discernable difference in patient outcomes.

The gap between the ''haves'' and the ''have-not States'' is growing.

If Medicare does not change this—through action like the MediFair bill—Washington hospitals in Medicare dependent areas will enter into a death spiral until they are forced to close their doors.

So our bill promotes the right things: efficient healthcare and healthy outcomes. It will force States that receive inordinately high payments to improve the quality of their healthcare.

Payments would be reduced to those States, which do not realize healthy outcomes—such as extending life expectancy or reducing rates of diabetes or heart disease.

Simply put, our bill finally holds states accountable for the health care they provide with Medicare dollars.

Before I close, I want to answer just a few questions about my bill.

Some are concerned about the possible cost of fixing the inequities in Medicare.

I am, too.

But I also know that there is a high cost to doing nothing as seniors lose their doctors and their access to healthcare.

There is a cost to the community when seniors end up in-and-out of the emergency room on a regular basis.

And of course, there is a human cost to the patients and their families.

Another question I have heard is:

How will this bill attract support from Senators from high reimbursement states?

First, States that are using Medicare dollars efficiently and effectively don't need to be concerned.

Either way, I recognize that not everyone will embrace this specific legislative proposal.

I want to find a solution that will help seniors get the care they need, and I recognize that there may be different ways to approach the problem.

This MediFair bill is a starting point. It's a way to draw attention to the problem and get folks to look at various solutions.

What matters is fixing the problem, so I welcome ideas and suggestions from anyone who wants to help us solve this problem.

Finally, some of my colleagues may wonder how this bill fits into our efforts to provide a Medicare prescription drug benefit, which is something I have worked to pass for several years.

We have introduced the ''Medicare Outpatient Prescription Drug Act of 2002,'' of which I am a cosponsor.

Our work on prescription drugs should not keep us from fixing this fundamental problem.

After all, a prescription drug benefit isn't worth anything if there aren't any doctors to write out a prescription. So both issues are critical, and we need to move forward on both of them.

We need to fix these problems now—before another senior in my State loses her doctor—before another patient goes into cardiac arrest in the emergency room because he could not find a doctor when his symptoms first appeared.

The system is unfair, and as Dr. Sam Cullison said, ''Sadly, it is the Medicare patients themselves who are paying the price for this inequity.''

We can restore fairness to Medicare.

We can help patients get the medical access they need, and the MediFair Act is part of that process.

I invite my colleagues to talk with Senator CANTWELL and me about how we can move this or any other proposal forward.

I conclude by saying that this is a matter of critical national attention, and I am going to work every single day to educate our fellow Senators, who are also impacted. We have to do something about this.

I ask unanimous consent that several articles be printed in the RECORD.

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

[From the Everett Herald, June 4, 2002]

MURRAY'S MEDICARE PLAN A STEP IN RIGHT DIRECTION

Sen. Patty Murray has the right intention. She wants to make Medicare work better for patients and health care providers alike in this state.

Murray and the rest of the state's congressional Democrats have united around a plan that would raise Medicare reimbursements to health care providers in states where payments are below the national average. Washington is among the 10 lowest states in reimbursement rates, which actually punish areas with relatively efficient health care systems.

Murray's Medi-Fair Act would remedy the inequity by raising all payment rates to at least the national average and over time, forcing improvements elsewhere. It's a good plan, but one that is more likely to raise much-needed discussions rather than solve the problem immediately.

The short-term political reality is that the potential solutions run into a double-whammy. On one side, the Bush administration appears determined to avoid domestic spending increases—unless there is a high enough political gain, such as with the farm bill. On the other side, major states—including California, New York and Florida—aren't about to help others address the equity issue unless their higher Medicare reimbursements can be protected.

The best hope is that Murray and potential allies in both parties, including Republican Sen. Charles Grassley of Iowa (where reimbursement rates are the lowest of all), can raise the level of discussion to the point that a solution becomes politically necessary.

Certainly, for Medicare patients and aging baby-boomers who will soon use the system, the need for action is becoming increasingly serious. The inequities have been around for years, but their effects have become more severe. In this state, many doctors are now refusing to take new Medicare patients because the reimbursements don't cover physicians' costs. The problems extend beyond doctors, though, to other providers.

For the entire health care system, the paper work accompanying Medicare is also a serious issue. It aggravates the low reimbursements here by running up the expenses in medical offices. There is a need for a system that simplifies administration, just as there is a need for a health care system that provides broader access for all people, regardless of age and income.

Action on reforming Medicare's inequities should not be made to wait for such larger solutions. Medicare is America's most significant achievement in assuring health care access. Its erosion cannot be tolerated. Whatever the politics obstacles to immediate action, the Murray initiative helps bring forward the issue of massive inequities in reimbursements. That's a step in the right direction.

[From the Bellingham Herald, June 12, 2002]

''MEDIFAIR'' IS WORKABLE ANSWER

Our nation's Medicare system is so fraught with problems that there is no single cure for what ails it. Recovery will require multiple remedies over time. Still, U.S. Sen. Patty Murray, D–Wash., took a healthy step toward a solution in announcing her ''Medifair'' legislation last month.

Much lip service has been paid to addressing Medicare issues, but Murray's bill, still in draft form, advances the fight.

It's no secret that Washington state is at the low end of the scale for reimbursements. That's more than evident in Whatcom County, where the Family Care Network and Madrona Medical groups have had to stop taking new Medicare patients because they can't afford to treat them.

Despite the fact that everyone pays into the system at equal rates, the doctors who treat them are not reimbursed at the same rates. States like California and Florida receive far higher payments than Washington, which is being penalized for trying to contain medical costs. The current formula is unfair to both the patients who pay into it and to the health-care providers who treat them.

Murray's bill would require that every state receive at least the national average for per-patient spending, which was $5,490 in 2000. Washington received about $3,900 per beneficiary in 2000, making it 42nd among the states in per capita spending.

Under Murray's proposal, states that receive 105 percent of the average could see cuts.

In reality, the bill will face very strong opposition and will be difficult to pass. Big states will fight hard not to have their reimbursements cut, and the formula could require new revenue that won't be readily available.

The important thing is that Murray is getting the system on the table for examination.

While Washington ranks near the bottom in reimbursements, it ranks closer to the top in numbers of Medicare clients. The federal plan covers about 750,000 seniors and disabled people in this state, making it 18th in the nation in client base, according to 1999 figures.

U.S. Rep. Rick Larsen, D-Arlington, has already announced he's behind Murray's idea.

It's time for Washington's other members of Congress, on both sides of the aisle, to join this fight and help Washington be a leader in Medicare reform.

[From the Spokesman-Review, June 5, 2002]

MURRAY'S BILL RIGHTS MEDICARE INEQUITY

(By John Webster)

Unveiling a Medicare-enhancement bill the other day, U.S. Sen. Patty Murray told an unsettling story: An elderly constituent wearing a cast on her arm came up to Murray and said that when the time came to get her cast removed, her physician refused to see her because he recently had stopped accepting Medicare patients.

Why would any member of the healing profession want to shun Medicare, a major source of patients? Because, in Washington state, Medicare's reimbursement rates are lousy and getting worse.

That's why Murray introduced S. 2568, the MediFair Act of 2002. The bill would compel Medicare officials to correct a reimbursement inequity.

The state medical association says this inequity has created such financial difficulty that a growing number of older physicians are throwing in the towel and retiring; young physicians are moving to states other than Washington; and, some Washington state physicians are deciding to stop taking Medicare patients.

These are alarming trends for the residents of our state. The problem is particularly troubling for Spokane. Here, there is a sizable population of low-income and elderly people who depend on Medicare. In addition, Spokane is a regional center for advanced medical services—one of the strongest sectors in our economy. Medicare is a leading source of the health care industry's income; if it fails to cover costs, that's a serious problem.

The reimbursement inequity has existed for years, but it is getting progressively worse. When Medicare set its reimbursement rates years ago, it built them on the status quo, state by state. Medical care was more cost-efficient here than in some states, so reimbursement rates here were set at a lower level.

But as years went by, physicians have faced a accelerating need to invest in high-tech equipment, which costs the same everywhere. Medicare's rates left Washington's clinics with less money to buy that technology, than doctors had in other states.

On top of that, in 1997 Congress approved a series of cuts in Medicare, to balance the federal budget. Ever since, Medicare has been cutting physicians' reimbursement rates. Doctors in less-efficient states with higher reimbursement rates had leeway to adopt efficiencies and adjust. Not so, in Washington, where rates are lower. By 2005, that 1997 budget deal is scheduled to have cut reimbursement rates by 17 percent.

As of 2000, Sen. Murray says, Medicare spent an average of $3,921 on each Medicare beneficiary in Washington state. In New York it spent $6,924. The national average was $5,490. Washington's rate ranked 42nd in the nation.

This makes it tough for Washington to keep or recruit physicians.

According to a survey by the Washington State Medical Association, 57 percent of physicians are limiting or dropping Medicare patients from their practice.

Murray's bill would require Social Security to correct the inequity; in states such as Washington, Medicare would have to raise reimbursement rates to the national average.

The proposal has the support of associations representing the state's doctors, hospitals and nurses. Good for Sen. Murray, for seeking a solution. The elderly depend on Medicare, and they are counting on Congress to fix Medicare's many ailments—including this one, which threatens the stability of medical clinics as well as access to the physicians that elderly people need.

Mrs. MURRAY. I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the remaining time shall be under the control of the Republican leader or his designee.

The Senator from Virginia

UNANIMOUS CONSENT AGREEMENT—S. 2600

Mr. ALLEN. Madam President, I ask unanimous consent that amendment 3838, which will be the second vote today, be referred to as the Harkin-Allen amendment in recognition of the tireless efforts and leadership of our colleague from Iowa on this important issue.

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

TERRORISM RISK INSURANCE

Mr. ALLEN. In support of the Harkin-Allen amendment No. 3838, I do want to say that our friend and colleague from Iowa, Senator HARKIN, and I, introduced the measure to allow victims of terrorist acts to seek judgments in our Federal courts with due process and, if accorded a judgment, be able to try to get that judgment satisfied from assets of those terrorist organizations or terrorist assets which have been seized or frozen by the Federal Government.

This measure allows those people from all across the country, including Iowa, Virginia, and other States, to get satisfaction for compensatory damages that they have been awarded. I want to again thank our colleague from Iowa, Senator HARKIN, for his great leadership and his great efforts in this regard.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

ENERGY POLICY

Mr. THOMAS. Madam President, I will make a few remarks this morning in our remaining time regarding one of the issues before us. We, of course, have spent a good deal of time on emergencies over the last number of months, and properly so. We have had emergencies. Obviously, the most compelling one has been terrorism and homeland defense.

In addition to that, we have talked about a number of other things. We have had fires; agriculture, which we felt is something of an emergency; as well as health care, which the Senator from Washington talked about. Indeed, most legislation that comes up is sort of deemed an emergency, at least in the view of the sponsor.

There is one thing which I think pretty clearly should be one of the most important, something that will affect us over time and one that we can avoid, which is the energy problem in our country. Probably nothing touches more Americans than energy, whether it be electric energy or gasoline for one's automobile.

Finally, after a considerable amount of effort in both Houses, we do have an energy bill that has passed both Houses. It is designed to give us an energy policy which we have not had for a very long time. Obviously, there are differences between the House-passed bill and the Senate-passed bill. Both of them have many of the components that were put forth by the President and the Vice President early last year in terms of an energy policy. Yesterday, we had the appointment of a conference committee named by the House, and I am pleased with that because we will be able now to go forward in putting together these two bills and coming out with an energy policy for the United States.

I want to emphasize how important that is. We have seen some problems

recently in California, of course, and problems can occur in other places. We will likely see some this summer if we continue to have the heat we have had, and the demand for electric power. There will be some problems, I suppose, relative to that.

We are seeking a policy that does several things. No. 1, it avoids having an energy crisis. There is no real need for that. We know what is needed. It is very simple to set forth what we have to have in the future. We are also seeking to try to do whatever we can. It is very possible to avoid overdependency on imported oil and fuel. We are now 60 percent dependent on overseas countries for our oil supplies. These are our challenges.

In addition, an energy policy that looks forward to cleaner air and protecting our environment is one everyone is committed to. There will be great debate over ANWR and whether or not a small footprint on 19 million acres of a wildlife refuge in Alaska would be detrimental. That is yet to be decided.

However that turns out, there are things we have to do. One opportunity we have is to continue to make coal a cleaner resource. Regarding electric generation, 50 percent is generated by coal. That will continue to grow, I suspect, and be a larger percentage over time. We need to make sure we can make the coal-generated electricity as clean as possible. Our bill will provide for additional help with respect to that. It is important we do that. Coal is probably the largest energy resource we have available in the United States.

Regarding gas and oil, again, we have become very dependent on imports. We have great opportunities in this area in the continental United States, in Alaska and the West. We need to do that and be balanced with the environment and production. We need access to public lands to do that. We will work on that.

We have an opportunity now to deal with one of the issues that impacts, probably more than anything else in this country, our policy on energy. We are ready to move with that. It needs to be balanced between renewables, production, environment, and usage. We can do that.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

TERRORISM INSURANCE

Mr. DODD. Madam President, we are going to start voting at 9:35. We need a roadmap to follow as to what we are going to do in the next 45 minutes with a variety of votes on matters that are related in some degree, but mostly unrelated, to S. 2600, the terrorism insurance bill, the subject of debate all day yesterday. We will be continuing with matters that have to be dealt with before we get back to that bill. I take a minute or so to express my sincere hope we will get back to that bill. I regret it is taking this long. We have been at this an awfully long time.

We only dealt with two amendments yesterday that were relevant to the bill despite all the talk about this. There are people from the AFL–CIO, to business groups, developers, commercial interests, who would like to see the bill adopted soon because of the inability of major projects to move forward due to the unavailability of terrorism insurance.

We have come a long way while waiting to get here. This is an important issue. The President indicated this, and the Secretary of the Treasury, and every organization I know of, with the exception of one or two, believe this is something we must do and should have done earlier. We will deal with some of the other matters, and I don't minimize the importance of them, but we are getting off track from the underlying bill. The leader feels strongly about this, as do many Members on both sides. We had some very fine speeches yesterday by Members on both sides of the aisle in support of this underlying legislation.

My hope is sooner, rather than later, we can adopt S. 2600. We will deal with some other matters, but I hope to get back to the bill and complete it. I am prepared to stay here as long as we have to and listen to Senators all day today and all day Monday. There will be no votes until Tuesday, but we can dispense with debate today and Monday and bring us to final closure on this bill on Tuesday. The leader has to make some decisions on proceeding, but he is determined the legislation move forward.

I yield the floor.

Mr. LEAHY. What is the parliamentary situation?

The ACTING PRESIDENT pro tempore. At 9:30, morning business is to be closed.

The Senator from Iowa.

Mr. HARKIN. Madam President, I ask unanimous consent that I be allowed to speak for 4 minutes and delay the vote from 9:35 to 9:39.

Mr. LEAHY. Reserving the right to object, and I shall not, has there been reserved time already on this vote?

The ACTING PRESIDENT pro tempore. There is no time reserved for debate on matters.

Mr. LEAHY. Madam President, I understood the Senator from Vermont had time reserved on the Leahy-Hatch amendment. Am I incorrect on that?

The ACTING PRESIDENT pro tempore. There was an order for the Senator to be recognized to offer the amendment but no specific time for debate.

Mr. LEAHY. I thank the Chair.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Iowa will be recognized for 4 minutes.

HARKIN-ALLEN AMENDMENT ON TERRORISM VICTIM'S ACCESS TO COMPENSATION

Mr. HARKIN. Madam President, first, I thank the Senator from Virginia, Senator ALLEN, for bringing this matter to the floor. I was unavoidably detained yesterday. I had a lot of constituents from the Greater Des Moines Chamber of Commerce, about 140 Iowans, with whom I was meeting as we concluded a very busy day to cap off their annual work trip to Washington, D.C. Unfortunately, I was unable to be here in the Chamber to assist and help my good friend from Virginia in offering this amendment.

I personally thank the Senator from Virginia for filling in the gap yesterday and getting this amendment up on this bill. This is an issue that needs to be addressed and I could not ask for a more dedicated and steadfast ally than Senator ALLEN in helping pursue justice for all of the innocent American victims of state-sponsored terrorism. This is an issue that must be addressed by this Congress.

That is why the bipartisan legislation Senator ALLEN and I introduced in April—the Terrorism Victim's Access to Compensation Act (S. 2134) and the amendment that Senator ALLEN joins me in offering here take two very important steps. First, this amendment would require that compensation be paid first and foremost from the blocked and frozen assets of the state sponsors of terrorism and their agents, not U.S. taxpayers, in cases where American victims of terrorism secure a final judgment in our federal courts and are awarded compensation accordingly.

Second, this amendment provides a level playing field for all American victims of state-sponsored terrorism who are pursuing redress in our federal courts and compensation from the blocked assets of state sponsors of terrorism, including their agencies and instrumentalities.

Madam President, we are united as Americans to meet the threat of international terrorism. This fight is being waged on many fronts, from the mountains of Afghanistan to the borders and streets of America.

Even as we track down the terrorists and defend America, we must never forget that terrorist acts are ultimately stories of human tragedy. We must never forget the victims.

I am talking about American victims like the dedicated, professional woman from Waverly, IA, Kathryn Koob, who sought to build cross-cultural ties between the Iranian people and the American people only to be taken hostage in the U.S. Embassy in Tehran and held captive for 444 nightmarish days in Iran.

I am talking about American victims like Taleb Subh from LeClaire, IA, who, as a teenager, was visiting relatives in Kuwait and terrorized by Saddam Hussein and his troops at the outbreak of the Persian Gulf War.

These are two examples, but Americans in all 50 states have suffered. That is why Senator ALLEN and I have joined together with 17 co-sponsors on both sides of the aisle to advance this legislation to ensure that American victims of state-sponsored terrorism are justly compensated for their pain, suffering, and losses.

Current law allows American citizens to sue terrorists for compensation for their losses. Many Americans have won verdicts and judgments in our federal courts, yet have been unable to collect even though the U.S. Treasury lawfully controls at least $3.7 billion in blocked or frozen assets of the seven foreign governments known to sponsor terrorism. Our own government has worked to prevent these families from collecting. In fact, our own State Department and Justice Department have gone into federal court to single out and block the 52 Americans held hostage in Iran and their families from even being able to pursue justice in our federal courts, let alone collect compensation.

To be clear, current law only applies to terrorist states. At present, seven foreign governments are officially designated by the U.S. State Department as state sponsors of terrorism. They are Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba. It is those state sponsors of international terrorism, not the American taxpayer, who must be compelled to pay these costs first and foremost.

The Harkin-Allen Amendment sends a clear message to foreign governments that sponsor international terrorism: If you sponsor terrorism, if you attack innocent Americans, we will pursue you, we will bring you to justice, and America will literally make you pay.

American victims of state-sponsored terrorism deserve to be compensated for their pain, suffering, and losses by those terrorists who sponsor and commit these terrible acts. The Congress should clear the way for those with court-ordered judgments to be paid from blocked terrorist assets and, in so doing, deter future acts of state-sponsored terrorism against innocent Americans.

Again, I appreciate the Senator from Virginia taking the initiative on this and getting this amendment up when I was unavoidably detained yesterday. I hope we have a resounding vote in favor of its passage.

Mr. ALLEN. Will the Senator yield?

Mr. HARKIN. I yield.

Mr. ALLEN. I say to my good friend from Iowa, Senator HARKIN, this is referred to as the Harkin-Allen amendment. I thank you for your great leadership. All of us have a lot of busy times around here, but we are teamed together for the victims who ought to get just compensation from these terrorists.

Mr. HARKIN. I thank the Senator from Virginia for his kindness and generosity and for propounding that unanimous consent request. He is a gentleman.

Several Senators addressed the Chair.

Mr. HARKIN. Madam President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. I ask for the yeas and nays on both amendments—I withdraw that.

Madam President, I ask unanimous consent I be allowed to proceed for no more than 3 minutes on the Leahy-Hatch amendment.

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

TERRORIST BOMBINGS CONVENTION

Mr. LEAHY. Madam President, the Senator from Iowa has left the floor. I note he and the Senator from Virginia—we had attempted to move the Harkin-Allen amendment through the Judiciary Committee yesterday. There was an objection to moving it, on the Republican side; otherwise, I would think we could have had it on the floor as a freestanding matter.

We are considering the Leahy-Hatch substitute for the Terrorist Bombing Convention. This bill brings the United States into immediate compliance with two international conventions signed by the United States. Both conventions were entered into after the terrorist bombings at the U.S. embassies in Kenya and Tanzania. If anybody wants to know why these treaties are important, look at the news today, the horrific car bombing outside the U.S. consulate in Karachi, Pakistan.

We grieve for the victims; we mourn with the families of the dead; and we pray for the speedy recovery of the injured. And, Mr. President, we act. Not tomorrow—not next month—but today. We act to protect future victims. We act to punish future evil doers. We act to show that the United States will lead the international community in the fight to end such terrorist bombings. That is precisely what my bill, S. 1770, and the Leahy-Hatch substitute does. Although I introduced this bill over six months ago, today's events should serve as a jolt to us all. The time for delay and obstructionism and partisan bickering is over. It is time to pass this bill.

I am pleased the Senate is considering the Leahy-Hatch substitute amendment to S. 1770, the ''Terrorist Bombing Convention and Suppression of the Financing of Terrorism Convention Implementation Acts of 2001.'' This bill will bring the United States into immediate compliance with two important international conventions, which were signed by the United States and transmitted to the United States Senate for ratification by President Clinton. Both Conventions were entered into after the terrorist bombings at the United States embassies in Kenya and Tanzania.

Consideration of these important treaties was inexcusably delayed when the Senate was under Republican control, and passage of this implementation legislation has been likewise blocked by an anonymous Republican hold. As I urged in a statement on the floor of the Senate on June 7, Republican obstructionism on this anti-terrorism legislation should stop, the anonymous Republican hold on this bill should be lifted and this bill should pass.

The International Convention for the Suppression of Terrorist Bombings—''Bombing Convention''—was adopted by the United Nations General Assembly in December 1997 and signed by the United States in January 1998. In September 1999, it was transmitted to the Senate by President Clinton for ratification, but no action was taken on this treaty while the Senate remained under Republican control.

The International Convention for the Suppression of Financing Terrorism—''Financing Convention''—was adopted by the United Nations General Assembly in December 1999 and signed by the United States in January 2000. In October 2000, it was transmitted to the Senate by President Clinton for ratification, but, again, no action was taken on this treaty while the Senate remained under Republican control.

When the Senate reorganized under a Democratic majority last summer, the Foreign Relations Committee under the leadership of Chairman BIDEN moved expeditiously to report these conventions to the full Senate. The antibombing treaty, in particular, sat in the Foreign Relations Committee for approximately 2 years without action during the Clinton administration when the Senate was under Republican control. Senator BIDEN deserves credit for acting quickly to report these treaties shortly after he assumed chairmanship of the Foreign Relations Committee. Under the leadership of Majority Leader DASCHLE, the two treaties were considered by the Senate, which gave its consent to ratification by unanimous consent on December 5, 2001.

Yet even as Senator BIDEN and Majority Leader DASCHLE were pushing to move the treaties themselves through the Senate, the Bush administration did not transmit proposed implementing legislation to the Judiciary Committee before or during the time that we were working together day and night to write the USA PATRIOT Act, the bipartisan antiterrorism legislation responding to the events of September 11. I remain puzzled why the administration felt that this measure should be separated from that effort.

Both treaties require the signatory nations to enact certain, precisely worded criminal provisions in their laws in order to be in compliance. That is what S. 1770, the Leahy bill, does. I introduced S. 1770, on December 5, 2001, shortly after passage of the USA Patriot Act, as a separate bill. This was the same day that the Senate agreed to ratify both treaties. I then tried to

move the bill quickly through the Senate, but an anonymous Republican hold blocked passage.

Again this year I tried to move the bill through the Senate, but again there was an anonymous hold from the Republican side of the aisle which blocked its passage. Had there not been a hold placed on the bill last year, I am quite sure that we could have resolved any remaining issues in conference, as the Republican-controlled House was simultaneously passing its own version of my bill.

After the anonymous hold was placed on S. 1770 at the end of the last session, we received a letter from the Department of Justice on January 29, 2002, about the bill. The letter stated that the Department ''support[ed] the legislation but recommend[ed] several modifications.'' None of the modifications which the Department recommended dealt with issues that were necessary for compliance with the treaties, the basic purpose of the bill. The legislation I originally introduced would bring this country into full compliance with those important obligations and take away an excuse from nations that are hesitant to cooperate in the war against terrorism.

The recent spate of horrible suicide bombings around the world and the fact that the convention prohibiting terrorist financing entered into force on April 10, 2002, demonstrate the pressing need for this legislation. As if that was not enough, only last month the FBI Director warned that he believes that suicide bombings in the United States are ''inevitable,'' bringing home the point that this legislation is required both to fight terrorism at home and abroad. Nevertheless, S. 1770 has been subjected to an anonymous Republican hold since December of last year.

In the post-September 11 environment it is almost beyond my understanding why any Member of this body would secretly obstruct passage of an important piece of antiterrorism legislation—yet here we are in June, blocked from compliance with two international terrorism treaties by a secret Republican hold. As the Administration has made clear, both Conventions are:

important to insure that all nations have in place laws to enable full and effective international cooperation against terrorism. By enacting this legislation, the United States will be in a position to lead the cooperative effort against terrorist bombings and terrorist finances.

See Statement of Administration Policy, December 19, 2001.

The legislation meets our obligations under the treaties in the following ways. Both conventions require signatory nations to adopt criminal laws prohibiting specified terrorist activities in order to create a regime of universal jurisdiction over certain crimes. Articles 2 and 4 of the Bombing Convention require signatory countries to criminalize the delivery, placement, discharge or detonation of explosives and other lethal devices ''in, into, or against'' various defined public places with the intent to kill, cause serious bodily injury, or extensively damage such public places. The Bombing Convention also requires that signatories criminalize aiding and abetting, attempting, or conspiring to commit such crimes.

Articles 2 and 4 of the Financing Convention require signatory countries to criminalize willfully ''providing or collecting'' funds, directly or indirectly, with knowledge that they are to be used to carry out acts which either (1) violate nine enumerated existing treaties, or (2) are aimed at killing or injuring civilians with the purpose of intimidating a population or compelling a government to do any act. The Financing Convention also requires that signatories criminalize aiding and abetting, attempting, or conspiring to commit such crimes. Signatories must criminalize such acts under Article 2 whether or not ''the funds were actually used to carry out'' such an offense.

Both conventions require that signatory nations exercise limited extraterritorial jurisdiction and extradite or prosecute those who commit such crimes when found inside their borders. The conventions also require that signatories ensure that, under their domestic laws, political, religious, ideological, racial or other similar considerations are not a justification for committing the enumerated crimes. Thus, signatory nations will not be able to assert such bases to deny an extradition request for a covered crime. Finally, Article 4 of each convention requires that signatory states make the covered offenses ''punishable by appropriate penalties which take into account the grave nature of [the] offenses.''

S. 1770 and the substitute amendment, consistent with the House version of this bill, H.R. 3275, create two new crimes (one for bombings and another for financing terrorist acts) that track precisely the language in the treaties, and bring the United States into compliance. The legislation also provides extraterritorial jurisdiction as required by the conventions. Furthermore the bill creates domestic jurisdiction for these crimes in limited situations where a national interest is implicated, while excluding jurisdiction over acts where the conventions do not require such jurisdiction and there is no distinct federal interest served.

The bill, again consistent with the H.R. 3275, also contains ''ancillary provisions'' that would make the two new crimes predicates for money laundering and RICO charges, and for wiretaps. The two provisions would also be subject to an 8-year statute of limitations and included as a ''federal crime of terrorism.'' Finally, civil asset forfeiture would be available for the new terrorism financing crime. Existing anti-terrorism crimes are predicates for each of these tools, and providing law enforcement with these ancillary provisions is both consistent and appropriate.

Neither international convention requires a death penalty provision for any covered crime. Indeed, the Department of Justice, in a memorandum dated November 14, 2001 to the Subcommittee on Crime of the House Judiciary Committee, made amply clear that ''the death penalty is not required by the Convention'' and would not be required to bring the United States into compliance. This should come as no surprise, given international sentiment opposing the United States' use of the death penalty in other contexts.

The inclusion of a death penalty provision in the implementing legislation for these conventions could lead to complications in extraditing individuals to the United States from countries that do not employ the death penalty. Therefore, unlike the House version of the implementing legislation, the original Senate version of S. 1770 contained no new death penalty provision.

The Administration's insistence on adding yet another death penalty to our federal criminal laws is especially inexplicable given the context of this implementing legislation. The chief purpose of the Terrorist Bombing Convention is to foster international cooperation and decrease hurdles to extradition in terrorism cases. The United States, understandably, wants those who victimize its citizens around the world to be subject to trial and punishment in our own courts. Beyond that purpose, the legislation is largely duplicative of existing state and federal laws.

Even in the recent terrorism context, however, where the desire to assist the United States is at its peak, our closest allies have balked or obstructed our prosecution efforts when the death penalty has been implicated, wasting valuable time in our proactive efforts to prevent future attacks. For instance, according to press reports France offered legal assistance to Zacarrias Moussaoui, the so-called ''20th Hijacker,'' in part due to the decision to seek the death penalty in his case. Spain also refused to extradite a highly dangerous group of terrorists to the United States based upon concerns about the death penalty, and a European Union raises similar concerns. This week the Washington Post reported that Germany also is refusing to fully cooperate in the prosecution of Moussaoui because the United States is seeking the death penalty in that case. In short, the primary purpose of this implementing legislation, fostering international cooperation, may be defeated by the White House's insistence on the inclusion of a death penalty provision in this bill.

Nevertheless, at the insistence of the White House, the substitute amendment would allow the government to seek the death penalty in bombing

cases where death results, by reference to the existing death penalty provision found in 18 U.S.C. §2332a, prohibiting the use of weapons of mass destruction.

Unlike H.R. 3275, the original Senate version of S. 1770 also did not contain a third new crime for ''concealment'' of material support for terrorists. The Department of Justice conceded in the November, 2001, memorandum that this provision was not necessary to bring the United States into compliance with the conventions, stating, ''the concealment offense set forth in proposed 18 U.S.C. §2339(c)(b) does not directly implement the Convention.'' Indeed, in the wake of the passage of new money laundering provisions in the USA PATRIOT Act, P.L. No. 107–56, and due to the existence of a concealment crime under 18 U.S.C. §2339A, with which the Department of Justice recently charged several people in New York, including a criminal defense attorney, such legislation is largely duplicative of existing law. More problematic, however, is the fact that the House bill provided a lower mens rea requirement than §2339A, an important change that was not highlighted or explained in the Administration's accompanying materials.

The substitute amendment contains a new crime of concealment that tracks the existing mens rea requirements of §2339A, so that a large class of non terrorist related activity is not inadvertently covered. This new crime would be punishable by ten years imprisonment.

Finally, the original Senate bill contained an important new tool for international cooperation between law enforcement which is not included in H.R. 3275 and has been deleted from the substitute amendment. Currently, there is no clear statutory authority allowing domestic law enforcement agents to share Title III wiretap information with foreign law enforcement counterparts. This may create problems when, for example, the DEA seeks to alert Colombian authorities that a cocaine shipment is about to leave a Colombian port but the information is derived from a Title III wiretap.

The original bill would have clarified the authority for sharing wiretap derived information, specifically in the Title III context. The bill provided a clear mechanism through which law enforcement could share wiretap information with foreign law enforcement, while at the same time ensuring that there are appropriate safeguards to protect this sensitive information against misuse. It added a subsection to 18 U.S.C. §2517, permitting disclosure of wiretap information to foreign officials (1) with judicial approval, (2) in such a manner and under such conditions as a court may direct, and (3) consistent with Attorney General guidelines on how the information may be used to protect confidentiality. Unfortunately, due to the White House's objection, the substitute removes it from the bill.

I am pleased that obstructing has stopped on this important implementing legislation for two anti-terrorism treaties that are intended to increase protections for our national security by enhancing international cooperation in the fight against terrorism.

I ask unanimous consent for the substitute to be printed in its entirety the record at the conclusion of my remarks along with the sectional analysis including a summary of the changes made by the substitute to the original bill.

ANTI-TERRORISM CONVENTIONS IMPLEMENTATION—SECTION-BY-SECTION ANALYSIS

TITLE I—SUPPRESSION OF TERRORIST BOMBINGS

Title I of this bill implements the International Convention for the Suppression of Terrorist Bombings, which was signed by the United States on January 12, 1998, and was transmitted to the Senate for its advice and consent to ratification on September 8, 1999. Twenty-eight States are currently party to the Convention, which entered into force internationally on May 23, 2001. The Convention requires State Parties to combat terrorism by criminalizing certain attacks on public places committed with explosives or other lethal devices, including biological, chemical and radiological devices. The Convention also requires that State Parties criminalize aiding and abetting, conspiring and attempting to undertake such terrorist attacks.

Section 101. Short Title

Section 101 provides that title I may be cited as ''The Terrorist Bombings Convention Implementation Act of 2001.''

Section 102. Bombing Statute

Section 102 adds a new section to the Federal criminal code, to be codified at 18 U.S.C. §2332f and entitled ''Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities,'' which makes terrorist acts covered by the Convention a crime. New section 2332f supplements and does not supplant existing Federal and State laws, and contains five subsections, which are described below.

Subsection (a) makes it a crime to unlawfully place or detonate an explosive in certain public places and facilities with the intent to cause death or serious bodily injury, or with the intent to cause extensive destruction, where such destruction results in, or is likely to result in, major economic loss. Conspiracies and attempts to commit such crimes are also criminalized. This provision implements Article 2, paragraphs 1, 2 and 3 of the Convention.

Inclusion of the term ''unlawfully'' in subsection (a), which is mirrored in Article 2 of the Convention defining the offenses, is intended to allow what would be considered under U.S. law as common law defenses. For purposes of subsection (a), whether a person acts ''unlawfully'' will depend on whether he is acting within the scope of authority recognized under and consistent with existing U.S. law, which reflects international law principles, such as self defense or lawful use of force by police authorities. This language is not to be construed as permitting the assertion, as a defense to prosecution under new section 2332f, that a person purportedly acted under authority conveyed by any particular foreign government or official. Such a construction, which would exempt State-sponsored terrorism, would be clearly at odds with the purpose of the Convention and this implementing legislation.

With respect to the mens rea provision of subsection (a), it is sufficient if the intent is to significantly damage the targeted public place or facility. Further, for the purpose of subsection (a), when determining whether the act resulted in, or was likely to result in, major economic loss, the physical damage to the targeted place or facility may be considered, as well as other types of economic loss including, but not limited to, the monetary loss or other adverse effects resulting from the interruption of its activities. The adverse effects on non- targeted entities and individuals, the economy and the government may also be considered in this determination insofar as they are due to the destruction caused by the unlawful act.

Subsection (b) establishes the jurisdictional bases for the covered offenses and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention (Article 8(1)), which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention who are found within the jurisdiction of a State Party. While current Federal or State criminal laws encompass all the activity prohibited by the Convention that occurs within the United States, subsection (b)(1) ensures Federal jurisdiction where there is a unique Federal interest, e.g., a foreign government is the victim of the crime or the offense is committed in an attempt to compel the United States to do or abstain from doing any act.

Subsection (c) establishes the penalties for committing the covered crimes at any term of years or life. This provision differs from the Administration proposal, which sought to add a new death penalty provision for this crime, despite the fact that such a provision is not required for compliance under the Convention and may create hurdles in seeking extradition to the United States under this statute.

Subsection (d) sets forth certain exemptions to jurisdiction as provided by the Convention. Specifically, the subsection exempts from jurisdiction activities of armed forces during an armed conflict and activities undertaken by military forces of a State in the exercise of their official duties.

Subsection (e) contains definitions of twelve terms that are used in the new law. Six of those definitions (''State or government facility,'' ''infrastructure facility,'' ''place of public use,'' ''public transportation system,'' ''other lethal device,'' and ''military forces of a State'') are the same definitions used in the Convention. Four additional definitions (''serious bodily injury,'' ''explosive,'' ''national of the United States,'' and ''intergovernmental organization'') are definitions that already exist in other U.S. statutes. One of those definitions (''armed conflict'') is defined consistent with an international instrument relating to the law of war, and a U.S. Understanding to the Convention that is recommended to be made at the time of U.S. ratification. The final term (''State'') has the same meaning as that term has under international law.

Section 103. Effective Date

Since the purpose of Title I is to implement the Convention, section 103 provides that the new criminal offense created in Section 102 will not become effective until the date that the Convention enters into force in the United States. This will ensure immediate compliance of the United States with its obligations under the Convention.

TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM

Title II implements the International Convention for the Suppression of the Financing of Terrorism, which was signed by the United States on January 10, 2000, and was

transmitted to the Senate for its advice and consent to ratification on October 12, 2000. The Convention is not yet in force internationally, but will enter into force 30 days after the deposit of the 22nd instrument of ratification with the U.N. Secretary-General. Once in force, the Convention requires State Parties to combat terrorism by criminalizing certain financial transactions made in furtherance of various terrorist activities. The Convention also requires that State Parties criminalize conspiracies and attempts to undertake such financing.

Section 201. Short Title

Section 201 provides that title II may be cited as ''The Suppression of Financing of Terrorism Convention Implementation Act of 2001.''

Section 202. Terrorism Financing Statute

Section 202(a) adds a new section to the Federal criminal code, to be codified at 18 U.S.C. §2339C and entitled ''Prohibitions against the financing of terrorism,'' which makes financial acts covered by the Convention a crime. New section 2339C supplements and does not supplant existing Federal and State laws, and contains five subsections, which are described below.

Subsection (a) makes it a crime to provide or collect funds with the intention or knowledge that such funds are to be used to carry out certain terrorist acts. Conspiracies and attempts to commit these crimes are also criminalized. This subsection implements Article 2, paragraphs 1, 3, 4 and 5 of the Convention.

Subsection (b) establishes the jurisdictional bases for the covered offenses under section 2339C(a) and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention (Article 10), which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention who are found within the territory of a State Party. The structure of this provision is designed to accommodate the structure of the Convention, which sets forth both mandatory and permissive bases of jurisdiction, and excludes certain offenses that lack an international nexus. Some portions of this provision go beyond the jurisdictional bases required or expressly permitted under the Convention, however, where expanded jurisdiction is desirable from a policy perspective because a unique Federal interest is implicated and is consistent with the Constitution.

Subsection (c) establishes the penalties for committing the covered crimes at imprisonment for not more than 20 years, a fine under title 18, United States Code, or both. This penalty is consistent with the current penalties for money laundering offenses. See 18 U.S.C. §1956.

Subsection (d) contains 13 definitions of terms that are used in the new law. Two of those definitions (''government facility,'' and ''proceeds'') are the same definitions used in the Convention. The definition for ''funds'' is identical to that contained in the Convention with the exception that coins and currency are expressly mentioned as money. The definitions for ''provides'' and ''collects'' reflect the broad scope of the Convention. The definition for ''predicate acts'' specifies the activity for which the funds were being provided or collected. These are the acts referred to in subparagraphs (A) and (B) of section 2339C(a)(1). The definition of ''treaty'' sets forth the nine international conventions dealing with counter-terrorism found in the Annex to the Convention. The term ''intergovernmental organization,'' which is used in the Convention, is specifically defined to make clear that it contains within its ambit existing international organizations. The definitions for ''international organization,'' ''serious bodily injury,'' and ''national of the United States'' incorporate definitions for those terms that already exist in other U.S. statutes. One of the definitions (''armed conflict'') is defined consistent with international instruments relating to the law of war. The final term (''State'') has the same meaning as that term has under international law.

Subsection (e) creates a civil penalty of at least $10,000 payable to the United States, against any legal entity in the United States, if any person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a) of the new section 2339C. This civil penalty may be imposed regardless of whether there is a conviction of such person under subsection (a), and is in addition to any other criminal, civil, or administrative liability or penalty allowable under United States law. Subsection (e) fulfills Article 5 of the Convention.

Section 203. Effective Date

Section 203 provides that those provisions of the Act that may be implemented immediately shall become effective upon enactment. However, two jurisdictional provisions will not become effective until the Financing Convention enters into force for the United States. Those provisions are the new 18 U.S.C. §§2339C(b)(1)(D) and (2)(B). In addition, new 18 U.S.C. §2339C(d)(7)(I), which is a definitional section specifically linked to the Bombing Convention, will not become effective until that Convention enters into effect.

TITLE III—ANCILLARY MEASURES

Title III, which is not required by the International Conventions but will assist in federal enforcement, adds the new 18 U.S.C. §§2332f and 2339C to several existing provisions of law.

Section 301. Ancillary Measures

Sections 2332f and 2339C are made predicates under the wiretap statute (18 U.S.C. §2516(1)(q)) and under the statute relating to the provision of material support to terrorists (18 U.S.C. §2339A). Sections 2332f and 2339C are also added to those offenses defined as a ''Federal crime of terrorism'' under 18 U.S.C. §2332b(g)(5)(B), as amended by the USA PATRIOT Act. P.L. No. 107–56. In addition, a provision is added to the civil asset forfeiture statute that makes this tool available in the case of a violation of 18 U.S.C. §2339C. These provisions are consistent with the treatment of similar Federal crimes already in existence.

TITLE IV—FOREIGN DISCLOSURE OF WIRETAP INTERCEPTS

This provision, which is not required by the International Conventions, clarifies that Federal law enforcement authorities may disclose otherwise confidential wiretap information to their foreign counterparts with appropriate judicial approval. This provision is intended to ensure effective cooperation between domestic and foreign law enforcement in the investigation and prosecution of international criminal organizations.

Section 401. Short Title

Section 401 provides that title IV may be cited as ''The Foreign Law Enforcement Cooperation Act of 2001.''

Section 402. Amendment to Wiretap Statute

Section 402 adds a new subsection to 18 U.S.C. §2517 that governs the disclosure of otherwise confidential information gathered pursuant to a Title III wiretap. This provision clarifies the authority of domestic law enforcement officers to disclose such information as may show a violation of either domestic or foreign criminal law to foreign law enforcement officials. The provision requires a court order prior to making such a disclosure and sets the standards for the issuance of such an order. It is intended to allow foreign disclosure only to enforce the criminal laws of either the United States or the foreign nation. It also requires that an attorney for the government certify that the foreign officials who are to receive the wiretap information have been informed of the Attorney General's guidelines protecting confidentiality. This provision is intended to enhance the ability of domestic law enforcement to work with their foreign counterparts to investigate international criminal activity at the same time as protecting against improper use of such wiretap information.

Mr. LEAHY. Madam President, we must act. The United States must lead the international community in the fight to end such terrorist bombings. This is precisely what the Leahy-Hatch substitute does. We have been trying to pass this legislation for 6 months. We have been trying to clear it. We have been involved with the White House to reach a consensus.

I thank Senator HATCH for his work, and the White House. We have worked out the whole matter with the White House and with Senators. I urge its passage. I urge its passage with as large a vote as possible.

I yield the remainder of our time.

Mr. ENZI. Madam President, I rise in support of H.R. 3275. I am very pleased that the Senate is considering this valuable legislation which would make the United States compliant with two very important treaties.

I believe one of our most significant duties, as the United States Senate, is the consideration of treaties for ratification. We alone have the responsibility to give advice and consent to international understandings and agreements made by the executive branch of our Government.

The two treaties this legislation addresses are part of a nearly four-decade process of conventions considering acts of terrorism. As we debate this legislation, we are examining long-term global means to address the threat of terrorism. The Convention on the Suppression of Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism require the United States and any country adopting the treaties to criminalize terrorist bombings and to criminalize direct or indirect financing of terrorist acts.

The Financing Convention addresses some of the issues we worked on last year. The Senate has already approved antiterrorism legislation that included provisions dealing with money laundering issues which help deter and punish terrorist acts and would enhance law enforcement investigatory tools. The legislation established rule-making procedures for the U.S. Treasury, clarified guidelines for international banking, and maintained accountability considerations for individuals and financial institutions. I believe it is imperative that we continue to address terrorist financing domestically as well as internationally. In response to requests by the United States, countries throughout the world began the

search for terrorists' financial assets. The freezing of these assets is a first step to the eradication of global terrorist organizations.

On September 28 of last year, the United Nations Security Council adopted Resolution 1373 which established a set of legally binding obligations for each member nation. Now, this is quite significant because there are not a lot of legally binding resolutions considered by the Security Council. Resolution 1373 requires each nation to prevent the financing of terrorism, deny safe haven to terrorists, and increase cooperation and information sharing in these efforts. Resolution 1373, which passed with our support, also directs nations to ratify all outstanding terrorism related conventions.

Nations, both allies and former adversaries, overwhelmingly acted to sign, ratify, and become compliant with a number of terrorism conventions. It has taken the United States nearly 9 months to do so. The Senate Foreign Relations Committee held a hearing on these treaties last October and approved them in November. The full Senate ratified the treaties in December.

Now, most people might think that once the Senate gives its advice and consent to a treaty, it is ratified and the United States is full party to the agreement. This could only be seen as a ''virtual'' ratification. It is not, however, until the United States is fully compliant with the treaty that the President can deposit our articles of ratification and we become full treaty members.

It is this last step where the Senate faltered. We had the House approved implementing legislation last December. We are only now, in June, contemplating its passage. We cannot drag our feet any longer.

Today we are considering implementing language. We are ready to vote. We are ready to make the United States compliant with important treaties that can help us fight against terrorism. The amendment language is identical to the version passed by the House in December. It is the right language, the appropriate language and should pass the Senate today.

I encourage my colleagues to support this amendment, support the fight against terrorism, and support making the United States compliant to these two valuable international agreements.

Mr. FEINGOLD. Madam President, I rise today to oppose a provision in H.R. 3275, the Terrorist Bombings Convention Implementation Act, and the proposed Leahy-Hatch amendment to S. 1770, the Senate version of this implementing legislation, which would authorize the use of the death penalty by the Federal Government.

This bill seeks to implement into Federal law the obligations of the United States under the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. The U.S. signed these conventions, which were later ratified by the Senate on December 5, 2001. These two conventions are vital to our efforts to fight terrorism. These conventions will fill an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in bombings and financially support terrorist organizations. Both conventions require participating countries to pass specific criminal laws to implement those nations' obligations under the conventions.

But while these conventions do not require a death penalty, the House bill and the proposed amendment to the Senate bill would authorize the use of the death penalty by the United States. Not only do I oppose the expansion of the Federal death penalty at a time when Americans are questioning the fairness of the administration of this punishment, but I also fear that expanding the Federal death penalty through this implementing legislation will undermine our fight against terrorism.

I fear that the inclusion of a death penalty could actually thwart the purpose of these conventions. Instead of encouraging international cooperation in the fight against terrorism, this implementing legislation threatens to hamper international cooperation to prevent and punish terrorist bombings and financing of terrorist organizations. Many nations, including our closest allies in the fight against terrorism, may refuse to extradite suspects to nations where those suspects will face the death penalty. Already our allies like France and Germany have expressed their concerns about extraditing individuals or sharing information concerning al-Qaeda suspects out of concern that the United States will seek the death penalty against suspected terrorists. As this experience obviously shows, it doesn't serve the cause of justice, peace, or freedom to include a death penalty provision in this important bill.

Moreover, this is not the time to expand the Federal death penalty. Americans are increasingly recognizing that the current death penalty system is broken, and risks executing the innocent or applying the ultimate punishment disproportionately to those who may live in the ''wrong'' part of the country, have the ''wrong'' color skin, or just not have the money to pay for a ''dream team'' defense.

These problems plague the integrity of the justice system at the state and federal levels. A report released by the Justice Department in September 2000 showed troubling racial and geographic disparities in the administration of the federal death penalty. The color of a defendant's skin or the federal district in which the prosecution takes place can affect whether a defendant lives or dies in the federal system. Former Attorney General Janet Reno ordered a further analysis of why these disparities exist. And Attorney General Ashcroft has agreed to continue this study.

We have not yet seen the results of this study, nor have we had the opportunity to review and understand what the results might mean for the fairness and integrity of our federal justice system. While this important study is underway, Congress should not create even more death-eligible crimes.

As Governor George Ryan of Illinois said at a hearing I held on June 12th in the Senate Judiciary Subcommittee on the Constitution on the report of the Illinois Governor's Commission on Capital Punishment, ''especially after September 11, . . . the United States must be a model for the rest of the world. And that means our justice system should be the glowing example for the pursuit of truth and justice. It must be fair and compassionate.''

There is no question that we should prosecute and punish severely those responsible for the horrific attacks on our nation on September 11th or those who may plan or perpetrate acts of terror in the future. But I am very concerned that the bill's provision for the death penalty against suspected terrorists could undermine the purpose of the conventions and our ability to seek vital information and cooperation from other nations. I fear that the death penalty provision will weaken, not strengthen, our hand in pursuing terrorists, especially our global efforts to bring alleged terrorists to justice and to prevent future acts of terror.

For these reasons, I cannot in good conscience support H.R. 3275, the proposed Leahy substitute amendment to H.R. 3275, the proposed Leahy-Hatch amendment to S. 1770, or S. 1770, if the amendment should be adopted.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

TERRORISM RISK INSURANCE ACT OF 2002

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 2600, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2600) to ensure the continued financial capacity of the insurers to provide coverage for risks from terrorism.

Pending:

Santorum amendment No. 3842, to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts.

Allen amendment No. 3838, to provide for satisfaction of judgments from frozen assets

of terrorists, terrorist organizations, and state sponsors of terrorism.

Brownback amendment No. 3843, to prohibit the patentability of human organisms.

Ensign amendment No. 3844 (to amendment No. 3843), to prohibit the patentability of human organisms.

AMENDMENT NO. 3842 WITHDRAWN

The ACTING PRESIDENT pro tempore. Under the previous order, the amendment numbered 3842 is withdrawn.

TERRORIST BOMBINGS CONVENTION IMPLEMENTATION ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Judiciary Committee is discharged from further consideration of H.R. 3275 and the Senate will now proceed to its consideration.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3275) to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

AMENDMENT NO. 3847

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont, Mr. LEAHY, or his designee, is to be recognized now to offer an amendment.

Mr. LEAHY. Madam President, I call up my amendment which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Vermont (Mr. LEAHY), for himself and Mr. HATCH, proposes an amendment numbered 3847.

(The amendment is printed in today's RECORD under ''Text Of Amendments.'')

The ACTING PRESIDENT pro tempore. Is there further debate on this amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 3847) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. LEAHY. Madam President, I ask for the yeas and nays.

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

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUYE), the Senator from Vermont (Mr. JEFFORDS), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

I further announce that if present and voting, the Senator from North Dakota (Mr. CONRAD) and the Senator from New Jersey (Mr. TORRICELLI) would each vote ''aye.''

Mr. NICKLES. I announce that the Senator from Colorado (Mr. ALLARD), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. BROWNBACK), the Senator from Kentucky (Mr. BUNNING), the Senator from Montana (Mr. BURNS), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Kansas (Mr. ROBERTS) are necessarily absent.

I further announce that if present and voting the Senator from Utah (Mr. HATCH) and the Senator from Kentucky (Mr. BUNNING) would each vote ''yea.''

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

The result was announced—yeas 83, nays 1, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—83

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

NAYS—1

Feingold

NOT VOTING—16

Allard	Conrad	Jeffords
Bennett	Crapo	Murkowski
Boxer	Dorgan	Roberts
Brownback	Hatch	Torricelli
Bunning	Helms	
Burns	Inouye	

The bill (H.R. 3275), as amended, was passed.

UNANIMOUS CONSENT REQUEST

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, we are about to vote on the Allen amendment——

Mr. ALLEN. The Harkin-Allen amendment.

Mr. DASCHLE. I am sorry, the Harkin-Allen amendment. Once the Harkin-Allen amendment is disposed of, the pending business is the Ensign and Brownback amendments. I know Senator BROWNBACK could not be here today. So I ask unanimous consent that the Brownback amendment be set aside so that we can entertain other amendments.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Could you repeat the unanimous consent request?

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Ensign and Brownback amendments be set aside so we can entertain other amendments today and on Monday.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. I would have to object at this time until we can have a discussion about that.

The PRESIDING OFFICER. Objection is heard.

TERRORIST BOMBINGS CONVENTION IMPLEMENTATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Judiciary Committee is discharged from further consideration of S. 1770, and the Senate will now proceed to its consideration.

The clerk will report the bill by title.

The senior assistant bill clerk read as follows:

A bill (S. 1770) to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont, Mr. LEAHY, or his designee, is to be recognized to offer an amendment.

AMENDMENT NO. 3848

(Purpose: To propose a substitute)

Mr. LEAHY. Mr. President, I call up my amendment at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. HATCH, proposes an amendment numbered 3848.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3848) was agreed to.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (S. 1770), as amended, was passed.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

TERRORISM RISK INSURANCE ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now continue consideration of S. 2600, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2600) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

VOTE ON AMENDMENT NO. 3838

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 3838. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUYE), the Senator from Vermont (Mr. JEFFORDS), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. CONRAD) and the Senator from New Jersey (Mr. TORRICELLI) would each vote ''aye.''

Mr. NICKLES. I announce that the Senator from Colorado (Mr. ALLARD), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. BROWNBACK), the Senator from Kentucky (Mr. BUNNING), the Senator from Montana (Mr. BURNS), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Kansas (Mr. ROBERTS) are necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote ''yea.''

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

The result was announced—yeas 81, nays 3, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—81

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

NAYS—3

Chafee	Hagel	Lugar

NOT VOTING—16

Allard	Conrad	Jeffords
Bennett	Crapo	Murkowski
Boxer	Dorgan	Roberts
Brownback	Hatch	Torricelli
Bunning	Helms	
Burns	Inouye	

The amendment (No. 3838) was agreed to.

Mr. DASCHLE. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. DASCHLE. Mr. President, a few minutes ago, prior to the vote we have just now taken, I asked unanimous consent to set aside the Brownback and Ensign amendments, and that was not agreed to. It is now my intention to file a cloture motion on the bill, and I ask that the cloture motion be read.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 410, S. 2600, the terrorism insurance bill:

Harry Reid, Hillary Rodham Clinton, Jean Carnahan, Charles Schumer, Kent Conrad, Tom Daschle, Richard Durbin, Jack Reed, Byron L. Dorgan, Christopher J. Dodd, Debbie Stabenow, Jay Rockefeller, Maria Cantwell, Jeff Bingaman, Daniel K. Akaka, Evan Bayh, Joseph Lieberman.

Mr. DASCHLE. Mr. President, we will announce the time of the cloture vote which will, of course, occur on Tuesday morning, but I do hope Senators who are interested in the bill at the very least will express themselves today and on Monday. We will be in session on Monday.

I hope we can achieve cloture on the terrorism bill. Of course, that is still accommodating Senators who wish to offer amendments for a 30-hour period following the cloture vote should it be successful.

Senator LOTT and I have just been discussing the schedule for the remainder of the week. Once we have completed our work on the terrorism insurance bill, it will be my intention to move to the Defense authorization bill. I do not think that will take a motion to proceed, but certainly one will be offered if it is required. We will be on that for the remainder of the week and for whatever length of time it will take in the following week.

Senators should be reminded that we only have 2 weeks to go in this work period. We are hopeful we can accommodate a number of nominations and a lot of other work besides the Defense authorization bill and the terrorism insurance bill. At the very least, we are going to finish those two pieces of legislation prior to the time we leave.

I will announce later today the time for the vote on cloture, but it will be Tuesday morning. I urge my colleagues to be present for that vote. I yield the floor.

Mr. LOTT. Mr. President, will the distinguished majority leader yield? I want to clarify again that the majority leader does not anticipate recorded votes on Monday, even though we will be in session for debate and for, I guess, amendments to be offered; is that correct?

Mr. DASCHLE. The distinguished Republican leader is correct. Earlier he may recall that we announced some no-vote Mondays. This particular Monday is one of the no-vote Mondays, so-called, so I am going to respect that commitment. Senators have made scheduling decisions. Certainly we will be in session. As I say, it will be an opportunity for people to come to the floor to speak to the bill.

It is unfortunate we have not been able to get agreement to set the amendments aside because I think it would offer other Senators the chance to offer additional amendments. Barring that UC, we will expect to be in session without the additional consideration of other amendments.

Mr. LOTT. Mr. President, if I can continue, I certainly understand and support the decision to identify certain dates for a variety of reasons when Senators are aware there will not be votes, but I emphasize again, as the majority leader has, it does not mean we cannot be in session and get a lot of work done.

Also, I understand why Senator DASCHLE feels a necessity to file cloture. Obviously, we discourage each other from doing that, but in order to move forward after a reasonable period of time—I have done it many times on this terrorism insurance issue, while there are some other amendments, hopefully germane amendments, that will and can be offered and debated and

considered, in order to get to the Defense authorization bill and complete our work before the Fourth of July recess, we need to complete this bill in a reasonable period of time—Tuesday or Wednesday—and then go right to Defense authorization.

I commend the Senator for making that decision. There are a lot of other bills Senators on both sides are pushing the majority leader to do, meritorious or otherwise. This is very important.

I encourage Senators on both sides of the aisle, when we get to the Defense authorization bill, let's not use this as a grab bag. We have lots we need to do in this area. We are talking about a pay raise for our military men and women. We are talking about quality-of-life issues. We are talking about basic decisions about the future of our defense for our country. There will be plenty other opportunities to offer unrelated, nongermane amendments.

I believe Senator WARNER and Senator LEVIN will be ready to go. There will be disagreements and heated debate on some of the amendments. Some will take time. I believe the managers are ready to go and will make good progress on it and be assured we can get it done without it being very messy.

I appreciate the decision Senator DASCHLE has made. I think it is the right thing for the Senate, for the military, and for our country.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I thank the Senator as always for his cooperation. This is an important schedule. We know we have to finish the work on terrorism insurance. We know we have to deal with the Defense authorization bill. The Senator from Virginia and the Senator from Michigan have been ready to go for a couple of weeks. It should be a good debate.

I also agree with the distinguished Republican leader that this should not be the grab bag, this should not be the vehicle that attracts extraneous legislation. Let's get it done and done cleanly and move on to other matters that are important as well.

Mr. LOTT. Mr. President, I wish to make one other point, if I can be recognized in my own right, before Senator WARNER leaves. Senator DASCHLE and I have also been talking about ways to move forward on nominations. Hopefully, we are coming up with a process that will allow us to make good progress across the board on nominations in the next couple of weeks. I am looking forward to continuing work on that also.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, on behalf of the members of the Armed Services Committee, I thank both of our leaders for recognizing the need to move to the Defense authorization bill. That hopefully will then set the stage for the Defense appropriations bill to follow in an orderly manner.

Just moments ago, the chairman of our committee, the Senator from Michigan, Mr. LEVIN, and I conferred with the leadership. I think I can speak on behalf of the chairman that we are both ready to go, and we will be prepared to bring up some of the more, should we say, controversial amendments early on so that those issues can be addressed and hopefully thereafter we can move quickly through the other provisions of the bill.

I thank the Chair, and I thank the leadership.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I am a strong supporter of this legislation and wish to praise my Connecticut colleague, Senator DODD, for his diligence in crafting a workable solution to the terror insurance issue. As we all know, this has been a frustrating process and Senator DODD has proven to be tenacious in the quest to enact this legislation into law. He is performing a valuable and mostly unsung public service.

Let me explain why I believe this issue is so important and why Senator DODD's work is so important.

As part of their property and casualty insurance, many businesses have insurance against the costs that arise if their business is interrupted. If we don't pass an effective terror insurance bill, there will be a massive interruption in the business community. We can avoid this result by passing this legislation.

Property and casualty insurance is not optional for most businesses. Not every business owner buy life insurance, but nearly every business buys property and casualty insurance—to protect its property, to protect it against liability, and to protect its employees under the State workers compensation laws. Property and casualty insurance is required by investors and shareholders. It is required by banks that lend for construction and other projects.

We all know that home mortgage companies require the homeowners to maintain homeowners property insurance, and it's the same with business lending.

Maintaining property and casualty insurance is mandated as part of the fiduciary obligation to the business. And if property and casualty insurance for major causes of loss is not available, or it is prohibitively expensive, businesses face a difficult choice about going forward with construction projects, and other ventures. If no insurance is available, banks won't lend and the business activity that is depending on the loans will stop. The impact on the real estate, energy, construction, and transportation sectors will be severe.

For their part, insurance companies must be able to ''underwrite'' their policies. This means that they need to be able to assess their exposure or risk of a claim. They need to know if their exposure to claims is acceptable, excessive, or indeterminate. In the case of claims for damages caused by terror attacks, there is not way to assess their risk and no way to underwrite the policy. There are too many uncertainties.

One thing that is certain, as it was not before September 11, is that losses from terrorist acts can cost tens of billions of dollars. In fact, under the worst-case scenarios, losses could easily reach hundreds of billions of dollars.

There are hundreds of insurers in any given market. It is a highly competitive industry. But these insurers are dependent on reinsurers who help insurance companies spread their risk. When reinsurers will not renew their contracts unless they contain terrorism exclusions or limitations, many if not most of the insurance companies will not be able to provide terrorism coverage—at any cost.

Insurance companies need reinsurance because their own capital to cover losses is finite.

Even a good sized company—one that would be in the top half dozen or so commercial insurers in the U.S.—with perhaps 5 percent of the commercial lines market and capital of $7 or $8 billion—would have to ask, do we want to roll the dice on our very survival by writing terrorism coverage and covering it with our own reserves?

That is not a risk that an insurance company will take. If we do not pass this legislation, therefore, insurers will take whatever steps they consider necessary to ensure they do not drive themselves into bankruptcy.

The insurance industry can protect itself by reducing its exposure to terrorism claims. There is nothing we can do in the Congress—within the limits of our Constitution—to require insurance companies to write policies. They don't have to write policies. If they don't write policies, or write them only with extraordinary premiums for terror coverage, the companies may not be as profitable in the short run, but they will at least be protecting themselves against involvency.

State regulators are already considering terrorism exclusions—as they should do, consistent with their responsibilities to oversee the solvency of the insurance industry. Absent exclusions, in states where they might not be approved for one reason or another, the insurers will have no choice but to limit their business.

If insurance companies are permitted to write policies with no coverage for claims connected to terrorism, then businesses will have to decide if they will self-insure against these losses. Many of them will conclude that they cannot accept this exposure.

Therefore, if we fail to pass this legislation, it will be everyone that the insurance companies they insure that loses. Insurance companies can protect themselves by not writing policies, or writing only policies without any coverage for acts of terror, or writing policies with extraordinary premiums. But companies that need insurance coverage may have even harsher options.

So, the issue is how we enable enough insurance companies to determine that the risk of terrorist claims is a risk that they can assume.

That is what this legislation is all about—defining the risk so that insurers can assess and put a price on it. This legislation is about facilitating insurance companies' ability to continue to write property and casualty insurance policies. It is about providing business owners with the opportunity to buy insurance against terror claims and doing so in the private market to the extent that is possible.

This is, of course, not the first time we have faced this kind of an issue. The Federal Government has a history of partnering with the insurance industry to provide coverages for risks that are too big—too uninsurable—for the industry alone.

Current examples are the flood, crop, and nuclear liability programs, and in the past we've seen partnerships on vaccine liability and riot reinsurance. From an insurability standpoint, these risks are probably more insurable than terrorism.

Some might debate whether we should have passed the existing programs, or whether they are operated efficiency. But there should be no debate about the need for a terrorism program, and Senator DODD has structured this one the right way—with retentions and loss sharing by the industry, so the incentives are there for efficient operations.

Again, I congratulate my Connecticut colleague, Senator DODD, for his diligence in working through these complicated issues and bringing this bill to the floor. We need to defeat the amendments and enact this legislation into law as soon as possible.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to address the Senate as in morning business for 4 minutes.

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

AIR FORCE STAFF SERGEANT ANISSA SHERO

Mr. ROCKEFELLER. Mr. President, I have the sad duty to report another death of a West Virginian in Afghanistan. For many generations, the people of West Virginia have answered the call and many have paid with their lives. West Virginians understand the cost of freedom and have always been willing to pay that cost when called for duty.

Today we are reminded again how much that cost is because we now know of the death of Anissa A. Shero in Gardez, Afghanistan. She is from Grafton, WV. This was a tragic death in an airplane crash. She is the first woman Air Force casualty in the war in Afghanistan. She was married to SSgt Nathan Shero this past September, 2001. She had just been married. He is also deployed.

Her father was a disabled Vietnam war veteran who lost both of his legs as a result of a casualty, and her grandfather fought in the Battle of the Bulge in the Second World War. She was a volunteer who chose to serve her country in the face of grave danger. When terrorists struck, she was there. She left behind the mountains of West Virginia, in a sense, to go to the mountains of Afghanistan, to risk her life so our lives would be freer and safer.

She was part of an extraordinarily successful effort to eradicate the Taliban and to make tremendous disruption to and demoralize the al-Qaida forces, and again to give us more freedom and hope. Men and women in both nations are safer now because of her work, and unfortunately because of her death.

All of us who value freedom owe Sergeant Shero a profound debt of gratitude and honor, and I know the thoughts and prayers of many people in this Chamber, the other body, and all over America, certainly all over West Virginia, are like mine, with her family and her friends. She represented the very best of West Virginia and the very best of America. She was strong, courageous, and dedicated. She will forever serve as a role model for West Virginians, for men and women alike, who love their country and who, like her, know that our ideals are worth fighting for.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I ask unanimous consent that I be allowed to address the Senate as in morning business.

Mr. SARBANES. Mr. President, may I inquire how long the Senator is asking for?

Mr. HAGEL. I would need no more than 15 minutes.

The PRESIDING OFFICER. The Senator is recognized for up to 15 minutes.

PEACE IN THE MIDDLE EAST

Mr. HAGEL. Mr. President, I rise today to address an issue of urgent concern for American foreign policy: the situation in the Middle East and its implications for our war on terrorism.

Yesterday the majority leader offered three principles to guide our policy in the Middle East. I share his concern about the gravity of the situation we face and his affirmation of American support for Israel, and the imperative of American leadership in helping bring about a lasting peace in the region.

Time is not on our side. In April, I spoke before this body in support of President Bush's leadership in bringing a diplomatic resolution to this conflict. I applaud the President and his team for their progress so far in assembling the pieces of a potentially historic agreement and coalition for peace. But we are still only at the beginning of a long and difficult process.

What happens in the Middle East cannot be separated from our interests in the war on terrorism. If we fail in peace-making between Israel and her neighbors, there will be grave consequences for the United States, Israel, and the world. We will further empower the terrorists and extremists, those who thrive, find refuge, and recruit in conditions of poverty, violence, and despair. We must help secure a vision of hope for the people of the Middle East in order to reclaim the peace initiative.

It is time to put the endgame up front in the Israeli-Palestinian conflict. The Palestinians must have a state, with contiguous and secure borders, and Israel must have a state without terrorism and with secure borders. President Bush endorsed the concept of a Palestinian state in a historic speech to the United Nations last year. If we do not address this, the core political issue of this conflict, we will allow the extremists on both sides to win. And then we will all lose: Palestinians, Israelis, Arabs, Americans, the world.

Strong, engaged, steady, and visionary American leadership is a predicate for the future of the Middle East. The Arab League peace proposal, at the initiative of Crown Prince Abdullah of Saudi Arabia, calls for normal relations between Israel and the Arab world and presents a unique and historic opportunity for peace. The Bush administration may be considering recognizing a transitional or provisional Palestinian state, with the specific details to be worked out over time, an idea similar to the Peres-Abu Ala agreement of last year. The so-called ''Quartet''—US, Russia, the EU, and the UN—provides an international context for this possibility and a revived diplomatic track.

The pieces may be in place, the image of an idea for peace forming on the horizon, although the work ahead will be difficult. There are no easy answers or risk-free options. We can no longer defer the tough decisions on Israeli settlements, Palestinian refugees, borders, and the status of Jerusalem. The time for a step-by-step sequential process has come and gone. We are close to reaching a line of demarcation, where only bold and courageous leadership on all sides can show the way to a resolution.

Israel must make some hard choices for peace. It knows that military means alone will not end terrorism. Settlements in the occupied West Bank and Gaza must end. Israel should withdraw its military from the Palestinian towns it has re-occupied, as soon as the security situation allows. The emphasis for Israel must be on developing a coalition of common interests including our Arab allies and the United States to form the core of a peace coalition. Israel should move closer to this coalition and away from isolation and reliance on only the military option to ending the crisis.

The Israeli people have suffered too much and too long from terrorism. It

must end. America will continue to stand by our friend and do what we must to help secure a peace and Israel's survival. But America's support of Israel should not be at the expense or exclusion of our relationships with our Arab friends and the Palestinian people. It need not be. America is against terrorists, America is not against Arabs or Palestinians. We are and can be a friend and supporter of all sides. We must be, or there will be no hope and no peace.

This also means that we will not retreat from our support of democratic principles, values, and expectations. We will not trade friendship and freedom for expediency and peace.

The other Arab leaders of the region must play a major role in this revived peace process. They have serious responsibilities and significant self-interests in helping end terrorism and resolving this conflict. There is no longer room for ambiguity or criticism from the sidelines. Abdication of responsibility or subtlety is no longer an option.

Crown Prince Abdullah, King Abdullah of Jordan, and President Mubarak of Egypt and other Arab leaders clearly understand the high stakes and are willing to take risks for peace. The prospects for getting a peace process back on track is best served when the risks are shared.

The Palestinian leadership must respond to the challenge and opportunity before it. Terrorism does an injustice to the Palestinian struggle for self-determination. A Palestinian state cannot be born from and committed to terrorism and hostility toward its neighbor.

It is a tragedy that the Palestinian people have been linked in the minds of many people—many Americans, to the methods of terrorists and extremists who represent only darkness and hatred, not the aspirations of most Palestinians for statehood and a life of hope and peace.

Real reform and change within the Palestinian Authority has become a condition of any peace agreement. This must happen—and happen now. The present Palestinian government must stand up and show a leadership that has been lacking for too long. The current Palestinian leaders must be accountable and take responsibility for the future of the Palestinian people. Terrorism and violence are not the means to statehood and legitimacy.

American and Israeli pressure and intervention, however, can not be the final determinants of a new Palestinian leadership. An alternative Palestinian leadership, as Foreign Minister Shimon Peres told me a couple of months ago, may be either too weak to make peace or too radical to even consider it. This will certainly be the case if alternative leadership is perceived as primarily the result of American or Israeli collaboration.

There are those in the Palestinian movement that have been speaking out for democracy and against corruption in the Palestinian Authority for some time. Hanan Ashrawi and Mustafa Barghouti, as well as many others, have been taking risks for democracy for Palestinians and transparency in Palestinian governance long before it became a condition for a renewed peace process.

Leaders of the Arab world must take more responsibility for Palestinian leadership. They cannot look away. It is now far too dangerous for them to allow further drift in the Middle East.

In considering the difficult road ahead, I understand the political constraints and risks that Israel and our Arab friends face in moving forward with peace. But it is better to share the risk than leave the field to the terrorists and extremists who will fill the leadership vacuum.

The problems in the Middle East affect and influence all aspects of our foreign policy, including our leadership in the war on terrorism. The Arab-Israeli conflict cannot be separated from America's foreign policy. Actions in the Middle East have immense consequences for our other policies and interests in the world. We are limited in dealing with other conflicts until this conflict is on a path to resolution.

America's policy and role in the Middle East, and the perception of our policies and role across the globe, affects our policies and interests in Afghanistan, South Asia, Indonesia, and all parts of the world. We cannot defeat terrorism without the active support of our friends and allies around the world. This will require an enhancement of our relationships, not an enhancement of our power. It will require America's reaching out to other nations. It will require a wider lens in our foreign policy with a new emphasis on humanitarian, economic, and trade issues as well as military and intelligence relationships.

We need the active support and involvement of Egypt, Saudi Arabia, Jordan, and the other states of the Middle East to defeat terrorism. The potential for isolating them on one side, with the United States and Israel on the other, is the wrong path. The alternative to developing coalitions of common interest in the Middle East and our war on terrorism is a region afire with radicalism and rage directed at Israel and the United States. We cannot wait. We cannot defer the peace timetable to the perfect time for peace. There is no perfect time for peace or perfect set of dynamics for peace. It will happen because we make it happen. We must seize the time we have, with all its imperfections.

The perception of American power becomes the reality of American power. If we fail in our diplomatic efforts to help bring peace to Israel and her neighbors, and isolate ourselves and Israel in the process, our security and Israel's security will become more vulnerable and the world more dangerous.

We need to keep our eye on the objectives: peace between Israel and its neighbors and victory in our war on terrorism. I close by joining my colleague, the majority leader, in encouraging President Bush not to risk unraveling the progress we have made so far in the Middle East by allowing a period of inattention and inaction to drag us all back into a dark abyss of despair and danger. A conference or some tangible relevant framework for peace must be announced and organized soon. The stakes have rarely been so high, the opportunities so great, and the margins for error so small.

CLONING

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the matter before the Senate at the present time is an amendment offered by my friend, Senator BROWNBACK. I will address the issues raised by that amendment.

We are considering a question that is of vital importance for every American affected by diabetes, cancer, Parkinson's disease, or other serious disorders. That question is whether we will permit a type of life-saving medical research to achieve its full potential to heal illnesses and cure disease—or whether we will stop this promising research dead in its tracks and deny its benefits to millions of Americans.

We all know where Senator BROWNBACK stands on the issue of medical research using the breakthrough new technique of nuclear transplantation. My friend from Kansas wants to ban this research forever. That's the position he has stated time and again in this Chamber and in forums across the country. And that is what the amendment that he offers today will accomplish.

Members of this body have spent long, serious hours grappling with the complex scientific and ethical issues raised by the issue of human cloning. Senators know the difference between human cloning and medical research. Human cloning produces a human being. Medical research is done in a laboratory dish and produces cells. But these cells can be used by doctors to develop astonishing transplants that will never be rejected by a patient's own body.

A majority of the Senate opposes any legislation to ban, even temporarily, the lifesaving research on nuclear transplantation that brings such hope to so many of our constituents. In the innocuous guise of an amendment to suspend certain aspects of the patent law, my friend from Kansas is trying to accomplish the goal he has long sought—banning medical research that uses nuclear transplantation.

The Brownsack amendment does many things. First, it bans patents on any cloned human being. It seems to me that if we want to ban human cloning, then we should ban it—pure

and sample. I introduced legislation with Senator ARLEN SPECTER, Senator FEINSTEIN, and Senator HATCH to ban human cloning in a straightforward way. Our legislation makes human cloning a crime punishable by 10 years in prison and substantial fines. That's the way to prohibit cloning.

Using cloning to reproduce a child is improper and immoral—and it ought to be illegal. I think that every Member of the Senator would agree on this point.

Some want to use our opposition to human cloning to advance a more sweeping agenda. In the name of banning cloning, they would place unwarranted restrictions on medical research that could improve and extend countless lives. In a letter to the Congress, 40 Nobel Laureates wrote that these restrictions would ''impede progress against some of the most debilitating diseases known to man.''

Of course we should reject the offensive idea that human beings could be patented, as the Patent Office already rightly does. But the Brownback amendment goes far belong this commonsense proposal. It is so broadly written as to ban patents on single cells derived from medical laboratory research using cloning techniques. It even bans patents on the processes used to conduct this important medical research.

Why would my friend from Kansas propose such sweeping bans on patents? He offers this proposal precisely because he knows that if it is enacted, it will eviscerate this research.

The extraordinary progress in medical research that we have seen in recent years relies on two great motors of innovation: NIH funding and a dynamic private biotechnology sector.

But when it comes to vital research using nuclear transplantation techniques, one of those motors has already been broken. There are no research grants being given by NIH or any other Federal agency for this research. There never have been, and under this administration, there never will be.

If we had allowed our Nation's great research universities to conduct extensive nuclear transplanation research, there's no telling what medical miracles we might have seen by now. Perhaps scientists using NIH funds could have already developed replacement cells for little children with diabetes that would never run the risk of tissue rejection. Perhaps those same NIH-funded scientists could have developed new cures for those whose minds and memories slowly ebb away on the tide of Alzheimer's disease.

Fortunately, we have a robust and dynamic biotechnology industry where new cures are developed and new discoveries made. Because NIH will not fund nuclear transplantation research, every major discovery in this field has come from funds provided by biotechnology companies.

But the biotechnology industry runs on patents. Abraham Lincoln said that the patent system ''added the fuel of interest to the fire of genius.''

The Brownback amendment would permanently shut off the supply of that fuel. It would accomplish Senator BROWNBACK's long-held goal of banning this medical research entirely. NIH already can't fund it and the Brownback amendment would make sure no biotechnology company would touch it.

Instead of debating peripheral issues like patents, we should be debating the question that's at the core of this debate, whether we should allow or prohibit a type of medical research that bring hope to millions of Americans simply because it seems new or strange to some people.

We offered our opponents on this issue the opportunity for a debate, but they declined that offer. I am saddened by this decision, because I believe that these issues deserve to be debated thoroughly on their own merits, not hastily considered as part of legislation on insurance. I hope that we will have the opportunity for a full debate on the issue of cloning, as I know it is of profound interest to many of our colleagues. It has been my privilege to take part in some of the other great debates we have had over the years on issues raised by the progress of science.

In the 1970s we debated whether to ban the basic techniques of biotechnology. Some of the very same arguments that are raised against nuclear transplantation research today were raised against biotechnology back then. Some said that it would lead to ecological catastrophe or genetic monsters. Critics told us that the new science of recombinant DNA research was unproven and untested. They said that it might never yield new cures and that its benefits would never materialize.

We could not know in the 1970s all the incredible advances that recombinant DNA research would bring, not only in medical breakthroughs, but in so many different aspects of our lives. We didn't know then that DNA fingerprinting would one day ensure that criminals are punished and the wrongly imprisoned are released. But that is what is happening today. We did not know then that scientists would learn to put thousands of genes on a tiny chip, so that medicines can be customized for the genetic signature of an individual patient. But that is what is happening today. We did not know any of this in the 1970s. But we did know that recombinant DNA research offered extraordinary promise and that it should not be banned.

Because Congress rejected those arguments then, patients across America today can benefit from breakthrough new biotechnology products that help dissolve clots in the arteries of stroke victims, fight leukemia, and help those with crippling arthritis lead productive lives.

When in vitro fertilization was first developed in the 1980s, it too was bitterly denounced. And once again, there were calls to make this medical breakthrough illegal. Because Congress rejected those arguments then, thousands of Americans today can experience the joys of parenthood through the very techniques that were once so strongly opposed.

Even heart transplants once seemed new or strange. Some denounced the idea of taking a beating heart from the chest of one person and placing it in the body of another.

But this debate is not about abstract ideas or complex medical terms. It is about real people who could be helped by this research. Dr. Douglas Melton is one of the nation's foremost researchers on diabetes. For Dr. Melton, the stakes involved in this research could not be higher. His young son, Sam, has juvenile diabetes, and Dr. Melton works tirelessly to find a cure for his son's condition.

One of the most promising areas of research on diabetes involves using stem cells to provide the insulin that Sam, and thousands of children like him, need to live healthy, active lives.

But a shadow looms over this research. A patient's body may reject the very cells intended to provide a cure. To unlock the potential of stem cell research, doctors are trying to reprogram stem cells with a patient's own genetic material. Using the breakthrough technique of nuclear transplantation, each one of us could receive transplants or new cells perfectly matched to our own bodies. Can we really tell Sam Melton, and the millions of Americans suffering from diabetes, or Parkinson's disease, or spinal injuries that we won't pursue every opportunity to find a cure for their disorders?

Some who support the Brownback proposal say that the science is still uncertain, that we should delay this research because we can not predict what avenue of scientific inquiry will be the quickest pathway to a breakthrough.

The Brownback amendment makes certain that breakthrough cures will never see the light of day. If Congress adopts that proposal, we can be certain that doctors will never use this medical research to develop new pancreas cells for diabetics that are perfectly matched to the patient's own body. We can be certain that doctors will never use these techniques for important new insights into the basic mechanisms of Parkinson disease or Alzheimer's disease. We can be certain that patients in every community in every State in the Nation will be denied the hope and the benefits that this research brings.

That is the kind of certainty the Brownback amendment brings. If you want to accept this false and dangerous certainty, then you should vote for his amendment.

But if you want to promote life saving medical research, if you want to side with patients, if you want to take a chance on hope, then I urge you to vote for patients, for medicine, for hope and for the bipartisan proposal that I have introduced with Senator

SPECTER, Senator FEINSTEIN, Senator HATCH, and many other colleagues.

I yield the floor.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Ohio.

Mr. DEWINE. I thank the Chair.

(The remarks of Mr. DEWINE and Mr. KENNEDY pertaining to the introduction of S. 2626 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. KENNEDY. 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.

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

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

CLONING

Mrs. FEINSTEIN. Mr. President, I listened to the distinguished senior Senator from Massachusetts speak on the cloning issue. I thought it might be a good opportunity to offer a few thoughts on that issue.

When one says cloning, most people automatically think of human cloning. They don't know that there is an aspect of it which is called nuclear transplantation or stem cell research. The two issues become somewhat blurred. In fact, if you ask people, do they think stem cell research should proceed, the answer you get invariably, once they understand it, is yes.

I deeply believe that stem cell research today in America is one of the brightest scientific fields we know of and offers unparalleled hope and opportunity for so many victims of a myriad of chronic, debilitating, and often fatal diseases. It is the bright rainbow out there in medical research.

I understand last night the Senator from Kansas placed an amendment before the body. I rise to indicate my strong opposition for that amendment. As I understand it, it would prevent stem cell research from going ahead. I also know there is discussion in the Halls of this distinguished body about presenting legislation for a 2-year moratorium on both human cloning and stem cell research. I would oppose that as well.

What would that say to an ALS victim who maybe has 5 years to live with the understanding that all research which could be of help to that victim will be stopped for 2 years? It is a mistake. It is throwing the baby out with the bathwater. It should not happen.

A number of us, including the Presiding Officer, have put together a bill on a bipartisan basis which satisfies the overwhelming majority of the people in America as well as a substantial majority of this body. It says: We recognize the fact that the cloning of a human being is unacceptable. It is immoral, and it should not be done. Therefore, our legislation would make it a crime punishable by up to 10 years in prison to clone or attempt to clone a human being, without exception. It would establish a fine of $1 million or three times any profits made, whichever is greater, on any person who clones or attempts to clone a human being. The financial penalty is in addition to the 10-year prison term.

It is very strong. It is definitive on making the cloning of a human being illegal and subject to a 10-year prison sentence and strong fines.

The beauty of our legislation is that it would also allow this most promising form of stem cell research, somatic cell nuclear transplantation, to be conducted on a human egg for up to 14 days only, under strict standards and Federal regulation. This 14-day requirement is consistent with the standard established in the United Kingdom and recommended by the California Advisory Committee on Human Cloning. There is precedent for it.

The reason for 14 days is to limit any research before the so-called primitive streak can take over that egg.

This stem cell research can only take place on an unfertilized egg. This is important because many of the opponents of stem cell research say: Aha, this is an organism capable of being a living being.

It is no different than a clump of blood cells. They are alive. Those blood cells are not capable of becoming a human being.

Skin cells are alive. They are not capable of becoming a human being, nor are any cells in the human body capable of that. An unfertilized egg is not capable of becoming a human being. Therefore, we limit stem cell research to unfertilized eggs.

We would ban profiteering and coercion by requiring that all egg donations for this stem cell research be voluntary, and that women who donate eggs can only be compensated minimally—large payments to induce donation would be prohibited.

We would prohibit the purchase or sale of unfertilized eggs, something called oocytes or blastocysts. We would require that nuclear transplantation occur in laboratories, completely separate from labs that engage in invitro fertilization, to prevent a ''blurring of the lines,'' to avoid the risk that eggs used in legitimate and important nuclear transplantation research would then be implanted in a woman.

We would prohibit the export of eggs that have undergone nuclear transplantation to any foreign country that does not ban human cloning. This prohibition is designed to avoid the risk that valuable research in the United States will result in a human clone anywhere in the world.

We include strong ethics requirements that mandate informed consent by egg donors, review of any nuclear transplantation research by an ethics board, and safety and privacy protection. And we have applied to this the strict Federal regulations that are appropriate in this area.

Any researcher who violates the bill's ethics requirements—even without attempting to clone a human being and becoming subject to the 10-year prison term and $1 million fine—will face civil penalties of up to $250,000 per violation.

So the legislation that you, Senator HATCH, Senator SPECTER, Senator HARKIN, Senator THURMOND, and myself, in a bipartisan way, have put together, we believe, offers this body the soundest approach to make human cloning illegal and, yet, to permit stem cell research to go ahead only on an unfertilized egg, only up to 14 days with strict ethical and Federal regulatory standards; to prohibit export to any country that permits human cloning; to separate it from in vitro fertilization, so there can be no blurring of the lines.

I think it is a bill that is well thought out, a bill that will stand the test of time and, most importantly, it is a bill that, while prohibiting the cloning of the human, will permit this bright rainbow of research to go forward.

Mr. President, you and I know that today there are 90,000 people awaiting organs or tissue replacement. We know that 4,000 people a year die because they didn't get it or because their body rejects that organ. Let's talk about what stem cell research is.

You have a human egg. That egg is unfertilized. Before it exists for 14 days, its nucleus is withdrawn. Into that space of the nucleus in this egg is injected the DNA from a sick person—a person who may have cancer, or ALS, or a brittle child who may be subject to amputation, blindness or death; it could be a Parkinson's patient or a burn patient. That egg is then forced to differentiate. As it goes through that period, it then can be encouraged to grow into tissues, or an organ, which then, when given to the sick person, there will be no rejection of that tissue or that organ. It also can be used with blood. It also can be used for cancer patients.

I cannot stress too much, when we get to the actual debate, there is anecdote after anecdote of individuals who have lost hope, for whom stem cell research gives back that hope. We have 40 Nobel laureates supporting us. We have hundreds of patient advocacy groups all across this Nation supporting us. We have the hopes and dreams of hundreds of thousands of people who are otherwise condemned to a life of disability.

Mr. President, you and I stood at a press conference with Christopher Reeve, one of America's great and talented human beings. We listened to him plead to be able to go ahead because this is the first time that, if you have had your spine severed, there is an opportunity to regenerate, to do something that has never been done in history—to give a paraplegic or a quadriplegic the opportunity to walk again.

In the Judiciary Committee, we heard testimony from a young woman by the name of Chris Golden. She was an Arlington, VA, police officer and a marathon runner. She was out running and she was hit by a car and her spine was severed. All of her dreams and hopes of continuing in the Arlington Police Department and of running once again were severed. She says she now hopes and dreams that one day she will wake up and they will have found a treatment that can regenerate her spinal system. Instead, today she wakes up to a wheelchair, and she even has a problem being able to brush her teeth.

There is story after story of people who have lost hope and, because of this new scientific frontier, they can have hope again.

Life is for the living. It is important to improve that life. I cannot understand how people want to resist this. I cannot understand how they would prevent stem cell research. I cannot understand how they would say an unfertilized egg is something we have to protect, when women lose hundreds of these every month. It makes no sense. It is arbitrary; it is capricious; it is unscientific; it is wrong. And, yes, if we know of hundreds of thousands of suffering Americans who might be helped, it is also immoral.

So those of us who have put together this legislation believe it will stand the test of time. We are very close today to that 60-vote necessity to move ahead with it. So I am hopeful that sometime during next week we will be able to say, yes, in fact we have the 60 votes and, yes, in fact the Senate of the United States of America is going to stand tall to cross this frontier of stem cell research and be able to offer the hope and the dream of a good life to literally hundreds of thousands of people.

I thank the Chair and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. FEINSTEIN). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators allowed to speak for a period not to exceed 10 minutes each.

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

NATIONAL SMALL CITIES DAY

Mr. DASCHLE. Madam President, today is National Flag Day, and it is appropriate that we all pause to honor this important symbol of American Freedom. The National League of Cities has designated this day, June 14, 2002 as second annual National Small Cities Day to call attention to the role of small cities and towns in American life.

The vast majority of cities throughout our Nation have populations of fewer than 50,000 people. These communities play an essential role in nurturing families, cultivating values, and building a strong sense of commitment and connection. In fact, the theme for National Small Cities Day is building quality communities by making decisions by choice and not by chance.

Millions of Americans live better lives because small cities provide services and programs that meet the needs of their citizens. In the wake of the September 11 terrorist attacks, millions of Americans have looked to the leaders of their small communities to help ensure their safety and security by working in partnership with other levels of government.

Businesses, civic organizations, and citizens across the nation are partners in building quality communities and must be encouraged to continue to support efforts that make these cities and towns better places in which to live. The Federal government, too, must continue to be a good partner by supporting important efforts that help strengthen communities, such as the Community Oriented Policing Program, the Community Development Block Grant program, and funds for local terrorism preparedness programs.

We must continue to work together and look for ways to further strengthen our small cities and towns through creativity, innovation, and collaboration.

I join the National League of Cities and the Small Cities Council in encouraging President Bush, my Congressional colleagues, state governments, community organizations, businesses, and citizens to honor the efforts of ''small town America'' today and renew our commitment to work together on this day and in the future to build quality communities that improve the lives of citizens throughout the nation.

COMMEMORATION OF FLAG DAY

Mr. THURMOND. Madam President, two hundred and twenty-five years ago today, the United States was engaged in its War for Independence. I note that the American Continental Army, now the United States Army, was established by the Continental Congress, just 2 years earlier on June 14, 1775. I express my congratulations to the United States Army on its 227th birthday.

At the start of that War, American colonists fought under a variety of local flags. The Continental Colors, or Grand Union Flag, was the unofficial national flag from 1775–1777. This flag had thirteen alternating red and white stripes, with the English flag in the upper left corner.

Following the publication of the Declaration of Independence, it was no longer appropriate to fly a banner containing the British flag. Accordingly, on June 14, 1777, the Continental Congress passed a resolution that ''the Flag of the United States be 13 stripes alternate red and white, and the Union be 13 stars white in a blue field representing a new constellation.''

No record exists as to why the Continental Congress adopted the now-familiar red, white and blue. A later action by the Congress, convened under the Articles of Confederation, may provide an appropriate interpretation on the use of these colors. Five years after adopting the flag resolution, in 1782, a resolution regarding the Great Seal of the United States contained a statement on the meanings of the colors: Red: For hardiness and courage; White: For purity and innocence; and Blue: For vigilance, perseverance, and justice.

The stripes, symbolic of the 13 original colonies, were similar to the five red and four white stripes on the flag of the Sons of Liberty, an early colonial flag. The stars of the first national flag after 1777 were arranged in a variety of patterns. The most popular design placed the stars in alternating rows of three or two stars. Another flag placed twelve stars in a circle with the thirteenth star in the center. A now popular image of a flag of that day, although it was rarely used at the time, placed the thirteen stars in a circle.

As our country has grown, the Stars and Stripes have undergone necessary modifications. Alterations include the addition, then deletion, of stripes; and the addition and rearrangement of the field of stars.

While our Star-Spangled Banner has seen changes, the message it represents is constant. That message is one of patriotism and respect, wherever the flag is found flying. Henry Ward Beecher, a prominent 19th century clergyman and lecturer stated:

A thoughtful mind, when it sees a nation's flag, sees not the flag only, but the nation itself; and whatever may be its symbols, its insignia, he reads chiefly in the flag the Government, the principles, the truths, and the history which belong to the nation that sets it forth.

Old Glory represents the land, the people, the government and the ideals of the United States, no matter when or where it is displayed throughout the world. The flag has proudly represented our Republic beyond the Earth and into the heavens. The stirring images of Neil Armstrong and Edwin Aldrin saluting the flag on the moon, on July 20, 1969 moved the Nation to new heights of patriotism and national pride.

Today we pause to commemorate our Nation's most clear symbol, our flag. President Woodrow Wilson signed a Presidential Proclamation designating June 14, 1916 as Flag Day. On a prior occasion President Wilson noted:

Things that the flag stands for were created by the experiences of a great people. Everything that it stands for was written by their lives. The flag is the embodiment, not of sentiment, but of history. It represents the experiences made by men and women, the experiences of those who do and live under the flag.

Flag day was officially designated a National observance by a Joint Resolution approved by Congress and the President in 1949, and first celebrated the following year. This year, then, marks the 52nd anniversary of a Congressionally designated Flag Day.

It is appropriate that we pause today, on this Flag Day, to render our respect and honor to the symbol of our Nation, and to review our commitment to the underlying principles it represents. Today, let us reflect on the deeds and sacrifices of those who have gone before and the legacy they left to us. Let us ponder our own endeavors and the inheritance we will leave to future generations. Since the tragic events of last September 11, the display of the flag has taken on a renewed emphasis. It is a visual representation of our commitment to freedom, peace and liberty. Today, the flag is a banner which proudly proclaims, ''United We Stand.''

Finally, as we commemorate the heritage our flag represents, may we as a nation pledge not only our allegiance, but also our efforts to furthering the standards represented by its colors, courage, virtue, perseverance, and justice. Through these universal concepts, We the People can ensure better lives for ourselves and our children, for these are the characteristics of greatness. In doing so, we can move closer to the goal so well stated by Daniel Webster at the laying of the cornerstone of the Bunker Hill Monument on June 17, 1825. On that occasion he said:

Let our object be our country, our whole country, and nothing but our country. And, by the blessing of God, may that country itself become a vast and splendid monument, not of oppression and terror, but of Wisdom, of Peace, and of Liberty, upon which the world may gaze with admiration forever.

I have long supported legislation which imposes penalties on anyone who knowingly mutilates, defaces, burns, tramples upon, or physically defiles any U.S. flag. I have also supported a constitutional amendment to grant Congress and the States the power to prohibit the physical desecration of the U.S. flag. I regret that the Senate has yet to adopt a Resolution for a flag protection Constitutional amendment.

I am pleased that each day the Senate is in session, a designated Senator leads the Senate in reciting the Pledge of Allegiance to the Flag of the United States. This has added greatly to the opening of the Senate each day.

Today I encourage my colleagues and all Americans to take note of the history and meaning of this 14th day of June. We celebrate our Flag, observing its 225th birthday, and the 227-year-old Army which has so proudly and valiantly defended it and our great Nation.

COMMEMORATING THE 227TH BIRTHDAY OF THE UNITED STATES ARMY

Mr. THURMOND. Madam President, I rise today to commemorate the 227th Birthday of the United States Army. On June 14, 1775, as our Republic was struggling to emerge, the Second Continental Congress enacted legislation creating the American Continental Army. The founding fathers knew if the citizens of this Nation were to be secure in their liberty, the Nation would require the ability to defend and protect itself. Fortunately, this Congress also selected George Washington to command this new force. His sense of purpose, integrity, and leadership were an inspiration to the troops he led to secure the independence of the Nation. His vision of the citizen soldier defending his home, family, and country were critical to founding of the Republic.

From humble beginnings, at Lexington and in the forge of battles such as Charleston, Cowpens, and Kings Mountain and from the winter encampment at Valley Forge, the Army secured victory at Yorktown. From Chippewa, New Orleans, Palo Alto, Buena Vista, to the numerous skirmishes on the frontier known as the Indian Wars, the Army proudly defended this Nation. The entry of the United States into World War I with the Army leading the way, sealed the allied victory. During World War II, the Army fought worldwide with troops in the Americas, Europe, Africa, Asia, and the Pacific. The defense of our freedoms continued with the Korean War, the Viet Nam War, and Desert Storm. Today our soldiers are found throughout the world, Bosnia, Kosovo, Afghanistan and elsewhere, courageously defending our Nation and the ideals it represents.

Our Army reflects the values of our Nation's citizens. Our citizen soldiers serve to protect our freedoms today just as they did to gain our freedoms over 200 years ago. I am proud of our soldiers and appreciate their selfless service. I was proud to wear the uniform of the United States Army. Happy Birthday to the United States Army.

Mr. HAGEL. Madam President, I rise today to wish the United States Army happy birthday. It was 227 years ago today, in 1775, that the Continental Army of the United States was formed. The United States Army has had a monumental impact on our country.

Millions of men and women over the past 227 years have served in the senior branch of our military forces. The Army is interwoven into the culture of America. Those who have had the great privilege of serving our country in the U.S. Army understand that.

This year is an especially important anniversary. The United States Military Academy at West Point this year celebrated their bicentennial anniversary. The newly commissioned class of Lieutenants from the West Point Class of 2002 will face a future much like those faced by their predecessors in the Class of 1942, a world where the United States finds itself in a struggle to protect our precious values of liberty, freedom, and democracy.

This struggle will not be easy. As of today, we have soldiers stationed or deployed in 125 nations. Today we are at war with the scourge of our time, terrorism. We must go at the root and strike at the heart of terrorist organizations and those nations granting them safe harbor. And to do so we depend on our United States Army.

This mission is not easy. Our soldiers will spend holidays in far away countries, miss anniversaries with their spouses and birthdays with their children. They do this out of love for our nation and a sense of the greater good. But we must remember that these are the lucky ones. Since military operations started in Afghanistan, the following Army soldiers have given their lives in service to our great nation during Operation Enduring Freedom: Pfc. Kristofer Stonesifer; Spc. John J. Edmunds; Pvt. Giovany Maria; Staff Sgt. Brian ''Cody'' Prosser; Master Sgt. Jefferson Donald Davis; Sgt. 1st Class Daniel Petithory; Sgt. 1st Class Nathan R. Chapman; Spc. Jason A. Disney; Spc. Thomas F. Allison; Staff Sgt. James P. Dorrity; Chief Warrant Officer Jody L. Egnor; Sgt. Jeremy D. Forshee; Staff Sgt. Kerry W. Frith; Major Curtis D. Feisner; Captain Bartt D. Owens; Staff Sgt. Bruce A. Rushforth, Jr.; Sgt. Bradley S. Crose; Spc. Marc A. Anderson; Pfc. Matthew A. Commons; Sgt. Philip J. Svitak; Chief Warrant Officer Stanley L. Harriman; Staff Sgt. Brian T. Craig; Staff Sgt. Justin J. Galewski; Sgt. Jamie O. Maugans; Sgt. 1st Class Daniel A. Romero; Sgt. Gene Vance, Jr.; and Sgt. 1st Class Peter P. Tycz II.

''Duty, honor, country'' is the motto of the U.S. Army. It is America. Every generation of Americans who have served in the U.S. Army, from the Continental Army to today's fighting men and women, have been shaped by this motto. It has molded lives in ways that are hard to explain, just as the Army has touched our national life and history and made the world more secure, prosperous, and a better place for all mankind.

On this 227th birthday of the U.S. Army, as a proud U.S. Army veteran, I say happy birthday to the Army veterans of our country. We recognize and thank those who served and whose examples inspired those of us who have had the opportunity to serve in the U.S. Army.

It is the Army that has laid the foundation for all of this nation's distinguished branches of service and helped build a greater, stronger America.

On this, the 227th birthday of the Army, I say Happy Birthday and, in the

great rich tradition of the U.S. Army, I proclaim my annual Senate floor ''Hooah!''

DOMESTIC VIOLENCE GROUPS SUPPORT CLOSING THE GUN SHOW LOOPHOLE

Mr. LEVIN. Madam President, since 1968 it has been illegal for convicted felons, illegal aliens, individuals involuntarily committed to a mental health facility, individuals who have renounced their citizenship, drug addicts, those dishonorably discharged from the military, and fugitives who possess or purchase a firearm. In 1996, Congress passed legislation to extend the prohibition on firearms to individuals who were under a domestic violence restraining order or convicted of a domestic violence misdemeanor. I supported that legislation because of growing evidence that people who had committed acts of domestic violence were buying guns and using them.

According to the Department of Justice, Office of Justice Programs, 40 percent of women killed with firearms are murdered by an intimate partner. According to a Violence Policy Center analysis, a woman is 14 times more likely to be murdered by a spouse, intimate acquaintance or close relative if there has been a history of domestic violence. And, having one or more guns in the home makes a woman more than seven times more likely to be the victim of homicide.

The threat posed by some domestic abusers was highlighted by a Federal court case, Emerson v. United States. Timothy Joe Emerson was subject to a domestic violence restraining order that required him to stay away from his wife and her young daughter. Because of the restraining order, he was prohibited from possessing a firearm. Emerson was indicted for violating that provision after an incident in which he threatened his wife with a Beretta pistol and pointed it at her child. This is not an isolated case, and we need to prevent these people from possessing and purchasing firearms.

On Wednesday morning my staff met with Kathy Hagenian of the Michigan Coalition Against Domestic and Sexual Violence. Kathy is in Washington this week as part of the National Network to End Domestic Violence Annual Meeting and Legislative Day. The Coalition's mission is to combat all domestic and sexual violence by supporting prevention and intervention programs in communities throughout the State of Michigan. One of the issues she raised was her organization's support of Senator REED's Gun Show Background Check Act. I, too, support this common sense gun safety legislation. This bill would simply apply the background checks that are mandatory for guns purchased in stores to gun shows.

In 1996, the Congress closed the domestic violence loophole. Now it is time to close the gun show loophole. The lack of background checks at gun shows leaves battered women and their children vulnerable to violence. I urge my colleagues to support this important gun safety legislation.

THE MADRID PROTOCOL IMPLEMENTATION ACT

Mr. LEAHY. Madam President, I have come to the floor today to talk about an important piece of legislation, S. 407, the Madrid Protocol Implementation Act, which continues to be blocked from Senate consideration. As I said in an earlier statement on June 7, 2002, there are important bills that have cleared the Democratic side of the aisle and that have bipartisan support, but are being blocked by holds placed by anonymous Republican Senators. Last week, I spoke about legislation concerning national security and law enforcement, including S. 1770, implementing legislation for two anti-terrorism treaties. Fortunately, today, the Senate overwhelmingly passed the Leahy-Hatch substitute amendment to S. 1770 to help ensure that the United States continues to lead the world in the global fight against terrorism. I rise today to speak about protecting the intellectual property of American business.

I introduced S. 407, the Madrid Protocol Implementation Act, with Senator HATCH last year to provide implementing legislation for an important treaty, the Madrid Protocol. This bill promises to help American businesses better protect their intellectual property in the international marketplace.

The Clinton administration transmitted the Madrid Protocol to the Senate for ratification in 2000, but no action was taken while the Senate was under majority control by the Republicans. Under the leadership of Chairman BIDEN, the Senate Foreign Relations Committee, in November, 2001, reported the Madrid Protocol to the Senate with the recommendation that the Senate give its advice and consent to accession to the Madrid Protocol.

S. 407 would implement this new treaty. The legislation would make no substantive change in American trademark law. The bill would set up new procedures for trademark applicants to file a single trademark application with the Patent and Trademark Office. This single filing would give the applicant ''one stop'' international trademark registration—a process only available to signatory countries to the Protocol. This would benefit American businesses and companies who need to protect their trademarks as they sell their goods and services in international markets, including over the Internet.

The House version of this bill, H.R. 741, has already passed the Republican House of Representatives, as it has for the past three Congresses. The Senate Judiciary Committee unanimously reported this bill favorably to the full Senate in July, 2001, and we have been trying unsuccessfully to get it passed by unanimous consent ever since.

This bill is critical in keeping our trademark laws up-to-date. It represents a significant step in our efforts to ensure that American trademark law adequately serves and promotes American interests. It is time for the anonymous, secret Republican holds on S. 407 to be lifted so that the Senate can pass this important legislation to protect the private intellectual property of Americans in the global economy.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred June 9, 2002 in Riverside, CA. An attack outside a popular gay bar left one gay man dead and another wounded. Jeffery Owens, 40, died of multiple stab wounds while coming to the aid of Michael Bussee, 48, who was being beaten and stabbed in the bar parking lot. Before stabbing Owens, one attacker was heard to yell ''You want some trouble . . . fag, here it is!'' Police are currently looking for the assailants, four men with shaved heads, and are investigating the incident as a hate crime.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

TRIBUTE TO RAYMOND D. EVANS

• Mr. BOND. Mr. President, I rise to pay tribute to the staple of the Missouri conservation community, Mr. Raymond D. Evans. Mr. Evans is retiring after 35 years of service with the Missouri Department of Conservation and he is a major contributor to the development of conservation provisions for the State of Missouri. Mr. Evan's fundamental efforts have played a role in developing provisions that helped land owners implement management practices to improve profitability and wildlife values by helping to protect the soil and water resources that are the foundation of agriculture and wildlife productivity. He has maintained the highest standard of excellence in his service to conservation and received several awards from his peers and associates as a result. These awards include the management Award from the Southeast Section of The

Wildlife Society, and Award of Merit from the ASCS for helping write and pass the Farm Bill. Mr. Evans has also received the American Motors Conservation Award for his many contributions to the success of the Missouri Conservation Department's coordinated forest habitat management program, and the E. Sydney Stephens Award for his career contributions to Missouri's wildlife resources. I wish to honor and thank him for his hard work and dedication to the preservation of wildlife and the environment.

To people in Missouri, Mr. Evans has always been known as ''Ray''. His trademark ribbon tie, warm smile and commitment to his neighbors and the land they live on will remain his legacy. On the national scene, Ray has been a tireless advocate of Federal assistance to promote local initiatives. Ray has always understood that conservation is a ''public good'' and, consequently, the public should help landowners provide that public good. As a practicing farmer, Ray also understands and helps our urban friends understand that farmers are the most committed practitioners of conservation because it is good business and because they want to leave more value to their children and future generations. In other words, they want to leave it better than they found it. It is that understanding that won him the trust of landowners which is a key element to the success with which Ray is associated.

Ray's advocacy has been tireless, both for him and those of us he pursued constantly. With Ray, the ''to-do'' list is never complete and every success is followed by a new initiative. Recently, after Ray witnessed President Bush signing the 4th consecutive Farm Bill Ray worked on, Ray innocently succeeded in lifting the President's speech and convincing the President to sign it for him. While Ray was a good enough salesman to pull that off, he couldn't get past the staff who have obligations to the National Archives but if anyone deserves a high-level souvenir for his work in conservation, it would be Ray. Nevertheless, I am pleased that Ray got some face time with the Commander-in-Chief out of the deal.

On behalf of many citizens who benefited from his friendship, work, and guidance, I thank Ray and I thank his wife Carole for lending him to us. While I trust he will continue sharing his presence at many conservation-related events, I am pleased that he and Carole will have more time to enjoy time together. I recommend that he take her for long walks in the countryside so they can both appreciate what they have done for the landscape.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

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. BINGAMAN:

S. 2624. A bill to amend part A of title IV of the Social Security Act to require a comprehensive strategic plan for the State temporary assistance to needy families program; to the Committee on Finance.

By Mr. GRAHAM (for himself, Mr. MILLER, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. DASCHLE, Mr. CLELAND, Mr. INOUYE, Mr. REID, Ms. MIKULSKI, Mr. JOHNSON, Mr. LEAHY, Mrs. CLINTON, Mr. NELSON of Florida, Mr. SARBANES, Mr. BINGAMAN, Ms. STABENOW, Mr. WELLSTONE, Mr. HOLLINGS, Mrs. MURRAY, Mr. SCHUMER, Mr. AKAKA, Mrs. BOXER, Mr. REED, Mr. DODD, Mr. LEVIN, Mrs. CARNAHAN, Ms. CANTWELL, Mr. DURBIN, and Mr. DAYTON):

S. 2625. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the medicare program; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. DEWINE, Mr. HARKIN, Mr. MCCAIN, Mr. DURBIN, Mr. GRAHAM, Mr. WELLSTONE, Ms. COLLINS, Mrs. FEINSTEIN, and Mr. REED):

S. 2626. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CLELAND:

S. 2627. A bill to protect marine species off the coast of Georgia; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 839

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 839, a bill to amend title XVIII of the Social Security Act to increase the amount of payment for inpatient hospital services under the medicare program and to freeze the reduction in payments to hospitals for indirect costs of medical education.

S. 1339

At the request of Mr. CAMPBELL, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 1339, a bill to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1678

At the request of Mr. MCCAIN, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1678, a bill to amend the Internal Revenue Code of 1986 to provide that a member of the uniformed services or the Foreign Service shall be treated as using a principal residence while away from home on qualified official extended duty in determining the exclusion of gain from the sale of such residence.

S. 1785

At the request of Mr. CLELAND, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 2051

At the request of Mr. REID, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 2051, a bill to remove a condition preventing authority for concurrent receipt of military retired pay and veterans' disability compensation from taking affect, and for other purposes.

S. 2059

At the request of Ms. MIKULSKI, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2059, a bill to amend the Pubic Health Service Act to provide for Alzheimer's disease research and demonstration grants.

S. 2194

At the request of Mr. MCCONNELL, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 2194, a bill to hold accountable the Palestine Liberation Organization and the Palestinian Authority, and for other purposes.

S. RES. 283

At the request of Mr. GRAHAM, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. Res. 283, a resolution recognizing the successful completion of democratic elections in the Republic of Colombia.

AMENDMENT NO. 3838

At the request of Mr. ALLEN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 3838 proposed to S. 2600, a bill to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

At the request of Mr. TORRICELLI, his name was added as a cosponsor of amendment No. 3838 proposed to S. 2600, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. MILLER, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. DASCHLE, Mr. CLELAND, Mr. INOUYE, Mr. REID, Ms. MIKULSKI, Mr. JOHNSON, Mr. LEAHY, Mrs. CLINTON, Mr. NELSON of Florida, Mr. SARBANES, Mr. BINGAMAN, Ms.

STABENOW, Mr. WELLSTONE, Mr. HOLLINGS, Mrs. MURRAY, Mr. SCHUMER, Mr. AKAKA, Mrs. BOXER, Mr. REED, Mr. DODD, Mr. LEVIN, Mrs. CARNAHAN, Ms. CANTWELL, Mr. DURBIN, and Mr. DAYTON):

S. 2625. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the Medicare Program; to the Committee on Finance.

Mr. GRAHAM. Madam President, along with my colleagues, Senators, MILLER and KENNEDY, I am very pleased to announce the introduction of the Medicare Outpatient Prescription Drug Act of 2002.

A prescription drug benefit is the most fundamental shift we can make in the health care of older Americans. Adding a prescription drug benefit to Medicare will represent a 180 degree turn, a change in the focus of how we deliver health care to our Nation's seniors.

Quite simply, including prescription drugs will transform Medicare from a sickness program to a wellness program. Failure to provide a prescription drug benefit will continue to confine millions of elderly Americans to a system that is antiquated, one that only looks backward, not forward.

The sponsors of this legislation do not buy the conventional wisdom that nothing significant can be enacted in an election year. We are committed to meeting our goal this year: passage of a universal, comprehensive, and affordable prescription drug benefit.

To be sure, there are questions in this debate which still remain. But, the most important question, ''will our drug benefit meet seniors' needs?'', can be answered with a resounding ''YES.''

The voluntary benefit we are offering to all seniors is very simple, no gimmicks, gotchas or ''gaps'' to fall into. With our benefit, ''what you see is what you get.'' Seniors will know exactly what they will pay, and exactly what they will get: the monthly premium is $25, no matter where a person lives; all beneficiaries get assistance from the very first prescription of the year.

For the first two years, seniors will pay $10 for each generic prescription, and no more than $40 for all medically-necessary brand-name medicines. All other drugs would cost no more than $60. After two years, the co-pay will be indexed to the increase in prescription drug prices.

Seniors who either pay $4,000 out of their own pocket or have a third party contribute towards this $4,000 spending level would pay no more.

Seniors with very low incomes, below 135 percent of poverty, would pay no premiums. Seniors with incomes between 135 and 150 percent of the poverty level would pay reduced premiums.

And no senior will be faced with a burdensome ''asset test'' that could deny them the very drugs they need.

This kind of certainty, and this kind of help, is what beneficiaries need. Take, for example a 68-year-old man with two conditions very common among the elderly, congestive heart failure and diabetes, and no drug coverage. He would have to spend over $5,100 annually for a typical medication regimen. Under our plan, this gentleman would get the medicines he needs to stay healthy, and would save nearly $3,300.

In addition to being affordable, comprehensive, and universally available to all of America's seniors, we need a drug benefit that will be attractive to beneficiaries. Why? Because voluntary participation of all seniors will ensure that we will have a program that is sustainable for the long run. A program that attracts only the sickest beneficiaries is doomed to fail.

The Congressional Budget Office has evaluated our plan and has stated that it does not leave a single Medicare beneficiary without access to drug coverage.

How does this bill achieve this goal? By following the principle that the drug benefit should track the prescription drug benefits that seniors have been accustomed to in their working years. We have an attractive benefit with an affordable premium and a catastrophic provision that is an insurance policy for all elderly, in particular, for those seniors who are healthy right now, but who may face health problems later in life. We have modeled our bill after what works for most Americans right now. Our benefit includes tiered copayments, and we use as our delivery system the private sector model in place today in every part of the country.

Addition of a prescription drug benefit will be the largest expansion of the Medicare program since it was initiated in 1965. This fact challenges Congress to be sure that we get it right. In light of the scope of the changes we are making, we are suggesting that, after seven years, Congress should examine how well the benefit is working and to make whatever modifications are necessary and appropriate. Not only will we learn about how our delivery system has worked, but we can discover that access to prescription drugs will save Medicare money. How? By doctors prescribing medications instead of performing costly medical procedures. A physician on my staff recently told me that his students had never seen an ulcer operation. Why? Because prescription drugs have ended the need for this surgery.

Improving Medicare by including a prescription drug benefit is a serious and critical undertaking, and deserves our most serious efforts. We all know that our seniors cannot afford to wait out another election cycle.

I am pleased to announce that the American Association of Retired Persons, America Federation of State and County Municipal Employees, the National Council on the Aging, Families USA, the AFL–CIO, the Alliance for Retired Americans, the National Committee to Preserve Social Security and Medicare, and the Generic Pharmaceutical Association support our legislation. I ask unanimous consent that their letters of support be printed in the RECORD. With their help, we can get this done this year.

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

AARP,
Washington, DC, June 12, 2002.

Hon. BOB GRAHAM and Hon. ZELL MILLER,
U.S. Senate,
Washington, DC.

DEAR SENATORS: We are pleased to restate our position on your revised Medicare prescription drug proposal. Action on a bipartisan prescription drug benefit is a top priority for AARP, our members and the nation.

Medicare beneficiaries have waited long enough for access to meaningful, affordable prescription drug coverage. We know from our membership that in order for a Medicare prescription drug benefit to provide comprehensive coverage it must include:

An affordable premium and coinsurance;

Meaningful catastrophic stop-loss that limits out-of-pocket costs;

A benefit that does not expose beneficiaries to a gap in insurance coverage;

Additional assistance for low-income beneficiaries; and

Quality and safety features to curb unnecessary costs and prevent dangerous drug interactions.

AARP supports your initiative in incorporate these goals. We commend you for including key elements in your proposal that Medicare beneficiaries and our members have indicated they find valuable. For instance, your proposal includes a premium that many Medicare beneficiaries view as affordable and a benefit design that does not include a gap in insurance coverage. Your proposal also now includes co-payments specified as dollar amounts, an approach that our research shows our members prefer to coinsurance. In our view, this plan could provide real value to beneficiaries in protecting them against the high costs of prescription drugs.

It is important that any prescription drug benefit be made a permanent and stable part of Medicare, and we want to work with you to achieve this before enactment.

Thank you for your leadership on this issue. We look forward to working with you and your colleagues as the legislation moves forward. AARP will continue to urge Congress to work in a bipartisan manner to enact affordable, meaningful Medicare prescription drug coverage.

Sincerely,

WILLIAM D. NOVELLI,
Executive Director and CEO.

THE NATIONAL COUNCIL ON THE AGING,
Washington, DC, June 11, 2002.

Hon. BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the National Council on the Aging (NCOA)—the nation's first organization formed to represent America's seniors and those who serve them—I write to commend and thank you for your proposal to provide meaningful Medicare prescription drug coverage to America's seniors. The Medicare Outpatient Prescription Drug Act of 2002 is consistent with the principles supported by the vast majority of

organizations representing Medicare beneficiaries. It provides the foundation for a vehicle that we hope can achieve bipartisan consensus on this issue this year.

NCOA is particularly pleased that your legislation would provide prescription drug coverage that is universal, voluntary, reliable, and continuous. Other proposals being offered include significant coverage gaps and would fail to solve the problem. Under such bills, a significant number of beneficiaries would not want to participate in the program, and many of those who do participate would continue to be forced to choose between buying food and essential medicines.

We commend many of the modifications you have made to your Medicare bill from last year. These improvements include a significantly lower premium, the option to provide a flat copayment, an earlier effective date, and assistance with the very first prescription. We believe these changes will make the coverage affordable and attractive to the vast majority of beneficiaries, which is so critical to making a voluntary prescription drug program work. While we have concerns about the need to reauthorize the program after 2010, we understand the budget trade-offs needed to provide meaningful and attractive coverage, and fully expect that the Congress would reauthorize the program.

NCOA is also pleased that your proposal does not include price controls and that the program would promote stability and efficiency through administration by multiple, competing Pharmacy Benefit Managers (PBMs), using management tools available in the private sector in which PBMs would be at risk of their performance, including effective cost containment.

NCOA deeply appreciates your efforts to move this critical debate in a direction that guarantees access to meaningful coverage—even in rural and frontier areas of the country—and responds in a constructive manner to many of the specific concerns that have been raised regarding other Medicare prescription drug proposals.

It is impossible to have real health security without coverage for prescription drugs. Prescription drug coverage is the number one legislative priority for America's seniors. Virtually every member of Congress has made campaign promises to try to pass a good prescription drug bill. The time has come to get serious and to work together to achieve consensus on the issues in controversy. Your proposal provides us with an excellent starting point.

NCOA looks forward to working on a bipartisan basis with you and other members of Congress to pass legislation this year that provides meaningful, continuous, affordable prescription drug coverage to all Medicare beneficiaries.

Sincerely,

JAMES FIRMAN,
President and CEO.

NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE,
Washington, DC, June 12, 2002.

Sen. BOB GRAHAM,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the millions of members and supporters of the National Committee to Preserve Social Security and Medicare, I write in support of your Medicare prescription drug legislation that will provide much needed relief to seniors. Your bill contains all of the elements that seniors need in a comprehensive drug benefit under Medicare, such as universal, voluntary, affordable, not means tested and most importantly, with a defined benefit, so that seniors can plan accordingly. Prescription drug prices are increasing over 17% per year (faster than inflation) and seniors are spending more on out-of-pocket drug expenditures than ever. The time is now to enact a drug benefit that will provide the Medicare beneficiary with some assistance.

We are pleased that your plan would be available for seniors, no matter where they live. Our members have expressed to us that a prescription drug benefit must be affordable. We believe that a plan such as yours, with no annual deductible and a $4,000 cap on out of pocket expenditures, is reasonable and one that most seniors would be able to afford.

We applaud you for your leadership in this area. Please let me know how we can further support your efforts.

Sincerely,

BARBARA KENNELLY,
President.

FAMILIES USA,
Washington, DC, June 13, 2002.

Sen. BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: We congratulate you and Senators Miller, Kennedy and Rockefeller on the introduction of your bill, ''The Medicare Outpatient Prescription Drug Act,'' which provides a prescription drug benefit for Medicare beneficiaries.

This is an issue of utmost importance to all Americans who need prescription drugs, especially to seniors and people with disabilities. As you well know, seniors' ability to afford prescription drugs is a particularly difficult problem today. In our 2001 report entitled, ''Enough to Make You Sick: Prescription Drug Prices for the Elderly,'' we concluded that the 50 top drugs used by seniors rose 2.3 times the rate of inflation between 2000 and 2001. We are in the process of updating this report for last year, and our preliminary data shows that this devastating rate of price increases continues. Millions of seniors have limited income and no, or limited, drug coverage and will find themselves deciding whether to buy drugs or to pay for other essentials.

Your bill addresses many important design issues that we care about in a Medicare prescription drug benefit. The benefit is universal, comprehensive, and is delivered through the Medicare program, ensuring that seniors know it will be available to them when it is needed. Low-income people get extra assistance. Also, there are provisions to assure that costs will be contained and quality maintained.

Please let us know how we can assist you to move this bill toward enactment so that all Medicare beneficiaries can have access to the prescription drugs they need.

Sincerely,

RONALD F. POLLACK,
Executive Director.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, DC, June 12, 2002.

Senators EDWARD KENNEDY, BOB GRAHAM, and ZELL MILLER,
U.S. Senate,
Washington, DC.

DEAR SENATORS: On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to express our support for the Medicare prescription drug benefit proposal you unveiled today.

AFSCME has long supported the creation of a Medicare prescription drug benefit that is comprehensive in coverage, affordable and voluntary for all Medicare beneficiaries. We believe that your proposal is a solid step forward in meeting these standards.

In particular, we applaud your proposal's provisions for continuous coverage. We believe that it is one of the most critical components of a meaningful prescription drug benefit. Beneficiaries must have coverage they can count on, with no gaps in coverage. Doing anything less would force our seniors to pay all prescription costs out of their own pocket when they will need the coverage the most.

Since Medicare was started over 35 years ago, many illnesses that were once only treatable in a hospital can now be effectively treated with prescription drugs. Adding a drug benefit to the program is the most urgently needed Medicare reform. We applaud you for not holding the prescription drug benefit hostage to force radical privatization proposals that would cut benefits and increase costs for retirees.

We look forward to working with you and the other sponsors of this important legislation. A Medicare prescription drug benefit is long overdue, and our nation's seniors deserve no less.

Sincerely,

CHARLES M. LOVELESS,
Director of Legislation.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, June 12, 2002.

Hon. BOB GRAHAM,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the 13 million members of the AFL–CIO, I am writing to commend you for your efforts to provide much-needed relief to Medicare beneficiaries. Your proposal to create a voluntary drug benefit within the Medicare program represents an encouraging and solid step toward enacting the one reform most urgently needed for Medicare.

Seniors need a real benefit that provides comprehensive, continuous and certain coverage. The Graham-Miller-Kennedy bill provides that benefit, giving seniors coverage they can count on. A Medicare drug benefit must also be affordable for beneficiaries. The $25 monthly premium and zero deductible in your proposal means seniors need only pay an affordable premium to begin getting coverage immediately. And no senior will have to pay more than $40 for the drugs they need and often will pay less.

In addition, your proposal would not put at risk those retirees who currently have some prescription drug coverage through an employer. Retiree health care is the primary source of prescription drug coverage for seniors, and your proposal rightly provides some relief for employers that choose to continue that coverage.

A proposal widely reported under consideration by House Republican leaders offers only unreliable, expensive and unworkable coverage through private plans, with an enormous gap in coverage that leaves seniors without any coverage at all for drug costs between $2000 and $4500. And the only relief for employers is if they drop the coverage they now offer. Such a proposal will not move us any closer to a real benefit.

As this debate moves forward, we want to work with you and your co-sponsors to enact the best possible Medicare drug benefit. We appreciate your role in advancing that process.

Sincerely,

WILLIAM SAMUEL,
Director of Legislation.

ALLIANCE FOR RETIRED AMERICANS,
Washington, DC, June 12, 2002.

Sen. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the over 2.7 million members of the Alliance for Retired Americans, I want to thank you for your tireless work on behalf of older and disabled Americans to create a Medicare prescription drug benefit program. I also want to express our views on the Medicare prescription drug legislation proposed by you and Senators Graham and Miller. The Alliance supports this proposal as a positive step forward in the effort to create a Medicare prescription drug benefit program.

The Alliance for Retired Americans believes that all older and disabled Americans need an affordable, comprehensive, and voluntary Medicare prescription drug benefit now. Such a benefit program should have low monthly premiums, annual deductibles, and be administered as part of the Medicare program. Your proposed legislation meets these Alliance principles. Unlike other proposals that would begin in 2005, your plan would start in 2004, which gives beneficiaries the coverage they need a full year earlier.

The Alliance will work to enact your legislation. During legislative deliberations, the Alliance will seek to improve benefits because we believe that an 80/20 co-insurance payment system, like the rest of Medicare, will provide the best benefits for older and disabled Americans. The Alliance also supports a $2,000 annual catastrophic cap. We will continue to work to improve any legislation that moves through Congress in order to reach these goals.

Older Americans will spend $1.8 trillion on prescription drugs during the next decade. The inflation rate for prescription drugs will continue at an annual double digit pace as well. Our members and indeed all Americans simply cannot afford these costs. We look forward to working with you and Senators Graham and Miller to enact a comprehensive Medicare prescription drug benefit as soon as possible.

Sincerely yours,

EDWARD F. COYLE,
Executive Director.

GENERIC PHARMACEUTICAL ASSOCIATION,
Washington, DC, June 12, 2002.

Hon. BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the Generic Pharmaceutical Association (GPhA), we would like to commend you and Senators Miller and Kennedy for your leadership introducing legislation to create a Medicare prescription drug benefit for our nation's seniors. We agree with you that the passage and enactment of a voluntary Medicare prescription drug benefit is long overdue. We are strongly supportive of your innovative tiered co-pay structure, as well as the other provisions advocated by you and your colleagues, that are designed to increase the utilization of high-quality, affordable generic medicines.

Generic pharmaceuticals have a proven track record of substantially lowering drug costs. Studies have shown that for every 1 percent increase in generic drug utilization, consumer, business, and health plan purchasers save over $1 billion. The increased use of generics can play an invaluable role in helping Medicare, Medicaid, the Federal Employees Health Benefit Plan (FEHBP) and other Federal and private plans assure that beneficiaries have access to quality, affordable medications. A tiered co-pay system with a significant differential between brand and generic pharmaceuticals will ensure an appropriate incentive is in place for seniors to consider more cost-effective options when making choices about pharmaceutical therapies. We believe an explicit dollar co-pay will also provide seniors with the comfort of knowing they will pay a fixed cost to have their prescriptions filled.

With your leadership, the Graham/Miller/Kennedy bill employs a number of private sector best practices that are now widely used to assure access to cost-effective, quality affordable medications. These provisions not only encourage the appropriate and beneficial use of these products, but provide unbiased and greatly needed educational information to the public about the benefits of these medicines.

The Graham/Miller/Kennedy bill adheres to GPhA's principles for creating a Medicare prescription drug benefit and steers the Medicare reform debate down a prudent public policy path. We look forward to working with you, your cosponsors and with other Members of the House and Senate of both parties to further our common objective of providing our nation's nearly 40 million Medicare beneficiaries and the taxpayers who help support them with the most affordable and highest quality prescription drug benefit possible. If the rest of the Congress and the Administration follow your lead in recognizing the role generics must play in reaching this objective, we are confident we will achieve this goal.

Thank you again for your efforts. If we can be of any assistance to you, please do not hesitate to call.

Sincerely,

KATHLEEN JAEGER,
President and CEO.

Mr. GRAHAM. I want to thank Senators MILLER and KENNEDY for their leadership and commitment to this issue, and urge all of our colleagues to join us in ensuring passage of this critical legislation this year.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 2625

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 ''Medicare Outpatient Prescription Drug Act of 2002''.

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

SEC. 2. MEDICARE OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM.

(a) ESTABLISHMENT.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by redesignating part D as part E and by inserting after part C the following new part:

''PART D—OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM

''DEFINITIONS

''SEC. 1860. In this part:

''(1) COVERED OUTPATIENT DRUG.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'covered outpatient drug' means any of the following products:

''(i) A drug which may be dispensed only upon prescription, and—

''(I) which is approved for safety and effectiveness as a prescription drug under section 505 of the Federal Food, Drug, and Cosmetic Act;

''(II)(aa) which was commercially used or sold in the United States before the date of enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (bb) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

''(III)(aa) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (bb) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling.

''(ii) A biological product which—

''(I) may only be dispensed upon prescription;

''(II) is licensed under section 351 of the Public Health Service Act; and

''(III) is produced at an establishment licensed under such section to produce such product.

''(iii) Insulin approved under appropriate Federal law, including needles, syringes, and disposable pumps for the administration of such insulin.

''(iv) A prescribed drug or biological product that would meet the requirements of

clause (i) or (ii) except that it is available over-the-counter in addition to being available upon prescription.

''(B) EXCLUSION.—The term 'covered outpatient drug' does not include any product—

''(i) except as provided in subparagraph (A)(iv), which may be distributed to individuals without a prescription;

''(ii) for which payment is available under part A or B or would be available under part B but for the application of a deductible under such part (unless payment for such product is not available because benefits under part A or B have been exhausted), determined, except as provided in subparagraph (C), without regard to whether the beneficiary involved is entitled to benefits under part A or enrolled under part B; or

''(iii) except for agents used to promote smoking cessation and agents used for the treatment of obesity, for which coverage may be excluded or restricted under section 1927(d)(2).

''(C) CLARIFICATION REGARDING IMMUNOSUPPRESSIVE DRUGS.—In the case of a beneficiary who is not eligible for any coverage under part B of drugs described in section 1861(s)(2)(J) because of the requirements under such section (and would not be so eligible if the individual were enrolled under such part), the term 'covered outpatient drug' shall include such drugs if the drugs would otherwise be described in subparagraph (A).

''(2) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means an individual that is entitled to benefits under part A or enrolled under part B.

''(3) ELIGIBLE ENTITY.—The term 'eligible entity' means any entity that the Secretary determines to be appropriate to provide eligible beneficiaries with covered outpatient drugs under a plan under this part, including—

''(A) a pharmacy benefit management company;

''(B) a retail pharmacy delivery system;

''(C) a health plan or insurer;

''(D) a State (through mechanisms established under a State plan under title XIX);

''(E) any other entity approved by the Secretary; or

''(F) any combination of the entities described in subparagraphs (A) through (E) if the Secretary determines that such combination—

''(i) increases the scope or efficiency of the provision of benefits under this part; and

''(ii) is not anticompetitive.

''(4) MEDICARE+CHOICE ORGANIZATION; MEDICARE+CHOICE PLAN.—The terms 'Medicare+Choice organization' and 'Medicare+Choice plan' have the meanings given such terms in subsections (a)(1) and (b)(1), respectively, of section 1859 (relating to definitions relating to Medicare+Choice organizations).

''(5) PRESCRIPTION DRUG ACCOUNT.—The term 'Prescription Drug Account' means the Prescription Drug Account (as established under section 1860K) in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

''ESTABLISHMENT OF OUTPATIENT PRESCRIPTION DRUG BENEFIT PROGRAM

''SEC. 1860A. (a) PROVISION OF BENEFIT.—

''(1) IN GENERAL.—Beginning in 2004, the Secretary shall provide for and administer an outpatient prescription drug benefit program under which each eligible beneficiary enrolled under this part shall be provided with coverage of covered outpatient drugs as follows:

''(A) MEDICARE+CHOICE PLAN.—If the eligible beneficiary is eligible to enroll in a Medicare+Choice plan, the beneficiary—

''(i) may enroll in such a plan; and

''(ii) if so enrolled, shall obtain coverage of covered outpatient drugs through such plan.

''(B) MEDICARE PRESCRIPTION DRUG PLAN.—If the eligible beneficiary is not enrolled in a Medicare+Choice plan, the beneficiary shall obtain coverage of covered outpatient drugs through enrollment in a plan offered by an eligible entity with a contract under this part.

''(2) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible beneficiary to enroll in the program established under this part.

''(3) SCOPE OF BENEFITS.—The program established under this part shall provide for coverage of all therapeutic classes of covered outpatient drugs.

''(b) ACCESS TO ALTERNATIVE PRESCRIPTION DRUG COVERAGE.—In the case of an eligible beneficiary who has creditable prescription drug coverage (as defined in section 1860B(b)(1)(F)), such beneficiary—

''(1) may continue to receive such coverage and not enroll under this part; and

''(2) pursuant to section 1860B(b)(1)(C), is permitted to subsequently enroll under this part without any penalty and obtain coverage of covered outpatient drugs in the manner described in subsection (a) if the beneficiary involuntarily loses such coverage.

''(c) FINANCING.—The costs of providing benefits under this part shall be payable from the Prescription Drug Account.

''ENROLLMENT UNDER PROGRAM

''SEC. 1860B. (a) ESTABLISHMENT OF PROCESS.—

''(1) PROCESS SIMILAR TO ENROLLMENT UNDER PART B.—The Secretary shall establish a process through which an eligible beneficiary (including an eligible beneficiary enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization) may make an election to enroll under this part. Such process shall be similar to the process for enrollment in part B under section 1837, including the deeming provisions of such section.

''(2) REQUIREMENT OF ENROLLMENT.—An eligible beneficiary must enroll under this part in order to be eligible to receive covered outpatient drugs under this title.

''(b) SPECIAL ENROLLMENT PROCEDURES.—

''(1) LATE ENROLLMENT PENALTY.—

''(A) INCREASE IN PREMIUM.—Subject to the succeeding provisions of this paragraph, in the case of an eligible beneficiary whose coverage period under this part began pursuant to an enrollment after the beneficiary's initial enrollment period under part B (determined pursuant to section 1837(d)) and not pursuant to the open enrollment period described in paragraph (2), the Secretary shall establish procedures for increasing the amount of the monthly part D premium under section 1860E(a) applicable to such beneficiary—

''(i) by an amount that is equal to 10 percent of such premium for each full 12-month period (in the same continuous period of eligibility) in which the eligible beneficiary could have been enrolled under this part but was not so enrolled; or

''(ii) if determined appropriate by the Secretary, by an amount that the Secretary determines is actuarily sound for each such period.

''(B) PERIODS TAKEN INTO ACCOUNT.—For purposes of calculating any 12-month period under subparagraph (A), there shall be taken into account—

''(i) the months which elapsed between the close of the eligible beneficiary's initial enrollment period and the close of the enrollment period in which the beneficiary enrolled; and

''(ii) in the case of an eligible beneficiary who reenrolls under this part, the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which the beneficiary reenrolled.

''(C) PERIODS NOT TAKEN INTO ACCOUNT.—

''(i) IN GENERAL.—For purposes of calculating any 12-month period under subparagraph (A), subject to clause (ii), there shall not be taken into account months for which the eligible beneficiary can demonstrate that the beneficiary had creditable prescription drug coverage (as defined in subparagraph (F)).

''(ii) APPLICATION.—This subparagraph shall only apply with respect to a coverage period the enrollment for which occurs before the end of the 60-day period that begins on the first day of the month which includes—

''(I) in the case of a beneficiary with coverage described in clause (ii) of subparagraph (F), the date on which the plan terminates, ceases to provide, or reduces the value of the prescription drug coverage under such plan to below the actuarial value of the coverage provided under the program under this part; or

''(II) in the case of a beneficiary with coverage described in clause (i), (iii), or (iv) of subparagraph (F), the date on which the beneficiary loses eligibility for such coverage.

''(D) PERIODS TREATED SEPARATELY.—Any increase in an eligible beneficiary's monthly part D premium under subparagraph (A) with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which the beneficiary may have.

''(E) CONTINUOUS PERIOD OF ELIGIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii), for purposes of this paragraph, an eligible beneficiary's 'continuous period of eligibility' is the period that begins with the first day on which the beneficiary is eligible to enroll under section 1836 and ends with the beneficiary's death.

''(ii) SEPARATE PERIOD.—Any period during all of which an eligible beneficiary satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which the beneficiary attained age 65 shall be a separate 'continuous period of eligibility' with respect to the beneficiary (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

''(F) CREDITABLE PRESCRIPTION DRUG COVERAGE DEFINED.—For purposes of this part, the term 'creditable prescription drug coverage' means any of the following:

''(i) MEDICAID PRESCRIPTION DRUG COVERAGE.—Prescription drug coverage under a medicaid plan under title XIX, including through the Program of All-inclusive Care for the Elderly (PACE) under section 1934 and through a social health maintenance organization (referred to in section 4104(c) of the Balanced Budget Act of 1997).

''(ii) PRESCRIPTION DRUG COVERAGE UNDER A GROUP HEALTH PLAN.—Prescription drug coverage under a group health plan, including a health benefits plan under the Federal Employees Health Benefit Program under chapter 89 of title 5, United States Code, and a qualified retiree prescription drug plan (as defined in section 1860J(e)(3)), that provides coverage of the cost of prescription drugs the actuarial value of which (as defined by the Secretary) to the beneficiary equals or exceeds the actuarial value of the benefits provided to an individual enrolled in the outpatient prescription drug benefit program under this part.

''(iii) STATE PHARMACEUTICAL ASSISTANCE PROGRAM.—Coverage of prescription drugs under a State pharmaceutical assistance program.

''(iv) VETERANS' COVERAGE OF PRESCRIPTION DRUGS.—Coverage of prescription drugs for veterans, and survivors and dependents of veterans, under chapter 17 of title 38, United States Code.

''(2) OPEN ENROLLMENT PERIOD FOR CURRENT BENEFICIARIES IN WHICH LATE ENROLLMENT PROCEDURES DO NOT APPLY.—

''(A) IN GENERAL.—The Secretary shall establish an applicable period, which shall begin on the date on which the Secretary first begins to accept elections for enrollment under this part, during which any eligible beneficiary may enroll under this part without the application of the late enrollment procedures established under paragraph (1)(A).

''(B) OPEN ENROLLMENT PERIOD TO BEGIN PRIOR TO JANUARY 1, 2004.—The Secretary shall ensure that eligible beneficiaries are permitted to enroll under this part prior to January 1, 2004, in order to ensure that coverage under this part is effective as of such date.

''(3) SPECIAL ENROLLMENT PERIOD FOR BENEFICIARIES WHO INVOLUNTARILY LOSE CREDITABLE PRESCRIPTION DRUG COVERAGE.—The Secretary shall establish a special open enrollment period for an eligible beneficiary that loses creditable prescription drug coverage.

''(c) PERIOD OF COVERAGE.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and subject to paragraph (3), an eligible beneficiary's coverage under the program under this part shall be effective for the period provided in section 1838, as if that section applied to the program under this part.

''(2) OPEN AND SPECIAL ENROLLMENT.—Subject to paragraph (3), an eligible beneficiary who enrolls under the program under this part pursuant to paragraph (2) or (3) of subsection (b) shall be entitled to the benefits under this part beginning on the first day of the month following the month in which such enrollment occurs.

''(3) LIMITATION.—Coverage under this part shall not begin prior to January 1, 2004.

''(d) TERMINATION.—

''(1) IN GENERAL.—The causes of termination specified in section 1838 shall apply to this part in the same manner as such causes apply to part B.

''(2) COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PARTS A AND B.—

''(A) IN GENERAL.—In addition to the causes of termination specified in paragraph (1), the Secretary shall terminate an individual's coverage under this part if the individual is no longer enrolled in either part A or B.

''(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of termination of coverage under part A or (if later) under part B.

''(3) PROCEDURES REGARDING TERMINATION OF A BENEFICIARY UNDER A PLAN.—The Secretary shall establish procedures for determining the status of an eligible beneficiary's enrollment under this part if the beneficiary's enrollment in a plan offered by an eligible entity under this part is terminated by the entity for cause (pursuant to procedures established by the Secretary under section 1860C(a)(1)).

''ENROLLMENT IN A PLAN

''SEC. 1860C. (a) PROCESS.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary shall establish a process through which an eligible beneficiary who is enrolled under this part but not enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization shall make an annual election to enroll in any plan offered by an eligible entity that has been awarded a contract under this part and serves the geographic area in which the beneficiary resides. Such process shall include for the default enrollment in such a plan in the case of an eligible beneficiary who is enrolled under this part but who has failed to make an election of such a plan.

''(B) RULES.—In establishing the process under subparagraph (A), the Secretary shall—

''(i) use rules similar to the rules for enrollment, disenrollment, and termination of enrollment with a Medicare+Choice plan under section 1851, including—

''(I) the establishment of special election periods under subsection (e)(4) of such section; and

''(II) the application of the guaranteed issue and renewal provisions of subsection (g) of such section (other than paragraph (3)(C)(i), relating to default enrollment); and

''(ii) coordinate enrollments, disenrollments, and terminations of enrollment under part C with enrollments, disenrollments, and terminations of enrollment under this part.

''(2) FIRST ENROLLMENT PERIOD FOR PLAN ENROLLMENT.—The process developed under paragraph (1) shall—

''(A) ensure that eligible beneficiaries who choose to enroll under this part are permitted to enroll with an eligible entity prior to January 1, 2004, in order to ensure that coverage under this part is effective as of such date; and

''(B) be coordinated with the open enrollment period under section 1860B(b)(2)(A).

''(b) MEDICARE+CHOICE ENROLLEES.—

''(1) IN GENERAL.—An eligible beneficiary who is enrolled under this part and enrolled in a Medicare+Choice plan offered by a Medicare+Choice organization shall receive coverage of covered outpatient drugs under this part through such plan.

''(2) RULES.—Enrollment in a Medicare+Choice plan is subject to the rules for enrollment in such a plan under section 1851.

''PROVIDING INFORMATION TO BENEFICIARIES

''SEC. 1860D. (a) ACTIVITIES.—

''(1) IN GENERAL.—The Secretary shall conduct activities that are designed to broadly disseminate information to eligible beneficiaries (and prospective eligible beneficiaries) regarding the coverage provided under this part.

''(2) SPECIAL RULE FOR FIRST ENROLLMENT UNDER THE PROGRAM.—To the extent practicable, the activities described in paragraph (1) shall ensure that eligible beneficiaries are provided with such information at least 30 days prior to the open enrollment period described in section 1860B(b)(2)(A).

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—The activities described in subsection (a) shall—

''(A) be similar to the activities performed by the Secretary under section 1851(d);

''(B) be coordinated with the activities performed by the Secretary under such section and under section 1804; and

''(C) provide for the dissemination of information comparing the plans offered by eligible entities under this part that are available to eligible beneficiaries residing in an area.

''(2) COMPARATIVE INFORMATION.—The comparative information described in paragraph (1)(C) shall include a comparison of the following:

''(A) BENEFITS.—The benefits provided under the plan, including the prices beneficiaries will be charged for covered outpatient drugs, any preferred pharmacy networks used by the eligible entity under the plan, and the formularies and appeals processes under the plan.

''(B) QUALITY AND PERFORMANCE.—To the extent available, the quality and performance of the eligible entity offering the plan.

''(C) BENEFICIARY COST-SHARING.—The cost-sharing required of eligible beneficiaries under the plan.

''(D) CONSUMER SATISFACTION SURVEYS.—To the extent available, the results of consumer satisfaction surveys regarding the plan and the eligible entity offering such plan.

''(E) ADDITIONAL INFORMATION.—Such additional information as the Secretary may prescribe.

''(3) INFORMATION STANDARDS.—The Secretary shall develop standards to ensure that the information provided to eligible beneficiaries under this part is complete, accurate, and uniform.

''(c) USE OF MEDICARE CONSUMER COALITIONS TO PROVIDE INFORMATION.—

''(1) IN GENERAL.—The Secretary may contract with Medicare Consumer Coalitions to conduct the informational activities under—

''(A) this section;

''(B) section 1851(d); and

''(C) section 1804.

''(2) SELECTION OF COALITIONS.—If the Secretary determines the use of Medicare Consumer Coalitions to be appropriate, the Secretary shall—

''(A) develop and disseminate, in such areas as the Secretary determines appropriate, a request for proposals for Medicare Consumer Coalitions to contract with the Secretary in order to conduct any of the informational activities described in paragraph (1); and

''(B) select a proposal of a Medicare Consumer Coalition to conduct the informational activities in each such area, with a preference for broad participation by organizations with experience in providing information to beneficiaries under this title.

''(3) PAYMENT TO MEDICARE CONSUMER COALITIONS.—The Secretary shall make payments to Medicare Consumer Coalitions contracting under this subsection in such amounts and in such manner as the Secretary determines appropriate.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to contract with Medicare Consumer Coalitions under this section.

''(5) MEDICARE CONSUMER COALITION DEFINED.—In this subsection, the term 'Medicare Consumer Coalition' means an entity that is a nonprofit organization operated under the direction of a board of directors that is primarily composed of beneficiaries under this title.

''PREMIUMS

''SEC. 1860E. (a) ANNUAL ESTABLISHMENT OF MONTHLY PART D PREMIUM RATES.—

''(1) IN GENERAL.—The Secretary shall, during September of each year (beginning in 2003), determine and promulgate a monthly part D premium rate for the succeeding year.

''(2) AMOUNT.—The Secretary shall determine the monthly part D premium rate for the succeeding year as follows:

''(A) PREMIUM FOR 2004.—The monthly part D premium rate for 2004 shall be $25.

''(B) INFLATION ADJUSTMENT OF PREMIUM FOR 2005 AND SUBSEQUENT YEARS.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of any calendar year beginning after 2004, the monthly part D premium rate for the year shall be the amount described in subparagraph (A) increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the percentage (if any) by which the amount of the average annual per capita aggregate expenditures payable from the Prescription Drug Account for the year (as estimated under section 1860J(c)(2)(C)) exceeds the amount of such expenditures in 2004.

''(ii) ROUNDING.—If the monthly part D premium rate determined under clause (i) is not a multiple of $1, such rate shall be rounded to the nearest multiple of $1.

''(b) COLLECTION OF PART D PREMIUM.—The monthly part D premium applicable to an eligible beneficiary under this part (after application of any increase under section 1860B(b)(1)) shall be collected and credited to the Prescription Drug Account in the same manner as the monthly premium determined under section 1839 is collected and credited to the Federal Supplementary Medical Insurance Trust Fund under section 1840.

''OUTPATIENT PRESCRIPTION DRUG BENEFITS

''SEC. 1860F. (a) REQUIREMENT.—A plan offered by an eligible entity under this part shall provide eligible beneficiaries enrolled in such plan with—

''(1) coverage of covered outpatient drugs—

''(A) without the application of any deductible; and

''(B) with the cost-sharing described in subsection (b); and

''(2) access to negotiated prices for such drugs under subsection (c).

''(b) COST-SHARING.—

''(1) THREE-TIERED COPAYMENT STRUCTURE FOR DRUGS INCLUDED IN THE FORMULARY.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, in the case of a covered outpatient drug that is dispensed in a year to an eligible beneficiary and that is included in the formulary established by the eligible entity (pursuant to section 1860H(c)) for the plan, the beneficiary shall be responsible for a copayment for the drug in an amount equal to the following:

''(i) GENERIC DRUGS.—In the case of a generic covered outpatient drug, $10 for each prescription (as defined by the Secretary in consultation with the Medicare Prescription Drug Advisory Committee established under section 1860L) of such drug.

''(ii) PREFERRED BRAND NAME DRUGS.—In the case of a preferred brand name covered outpatient drug (including a drug treated as a preferred brand name drug under subparagraph (C)), $40 for each prescription (as so defined) of such drug.

''(iii) NONPREFERRED BRAND NAME DRUG.—In the case of a nonpreferred brand name covered outpatient drug (that is not treated as a preferred brand name drug under subparagraph (C)), $60 for each prescription (as so defined) of such drug.

''(B) REDUCTION BY ELIGIBLE ENTITY.—An eligible entity offering a plan under this part may reduce the applicable copayment amount that an eligible beneficiary enrolled in the plan is subject to under subparagraph (A) if the Secretary determines that such reduction—

''(i) is tied to the performance requirements described in section 1860I(b)(1)(C); and

''(ii) will not result in an increase in the expenditures made from the Prescription Drug Account.

''(C) TREATMENT OF MEDICALLY NECESSARY NONPREFERRED AND NONFORMULARY DRUGS.—The eligible entity shall treat a nonpreferred brand name drug and a nonformulary drug as a preferred brand name drug under subparagraph (A)(ii) if such nonpreferred or nonformulary drug, as the case may be, is determined (pursuant to subparagraph (D) or (E) of section 1860H(a)(3)) to be medically necessary.

''(2) AUTHORITY FOR INCREASED COST-SHARING FOR NONFORMULARY DRUGS.—Pursuant to section 1860H(c)(3)(A), an eligible entity offering a plan under this part may require cost-sharing for a nonformulary drug that is higher than the copayment amount described in paragraph (1)(A)(iii).

''(3) COST-SHARING MAY NOT EXCEED NEGOTIATED PRICE.—

''(A) IN GENERAL.—If the amount of cost-sharing for a covered outpatient drug that would otherwise be required under this subsection (but for this paragraph) is greater than the applicable amount, then the amount of such cost-sharing shall be reduced to an amount equal to such applicable amount.

''(B) APPLICABLE AMOUNT DEFINED.—For purposes of subparagraph (A), the term 'applicable amount' means an amount equal to—

''(i) in the case of generic drugs and preferred brand name drugs, the negotiated price for the drug (as reported to the Secretary pursuant to section 1860H(a)(5)(A)) less $5; and

''(ii) in the case of nonpreferred brand name drugs and nonformulary drugs, the negotiated price for the drug (as so reported).

''(4) NO COST-SHARING ONCE EXPENSES EQUAL ANNUAL OUT-OF-POCKET LIMIT.—

''(A) IN GENERAL.—An eligible entity offering a plan under this part shall provide coverage of covered outpatient drugs without any cost-sharing if the individual has incurred costs (as described in subparagraph (C)) for covered outpatient drugs in a year equal to the annual out-of-pocket limit specified in subparagraph (B).

''(B) ANNUAL OUT-OF-POCKET LIMIT.—Subject to paragraph (5), for purposes of this part, the 'annual out-of-pocket limit' specified in this subparagraph is equal to $4,000.

''(C) APPLICATION.—In applying subparagraph (A)—

''(i) incurred costs shall only include costs incurred for the cost-sharing described in this subsection; but

''(ii) such costs shall be treated as incurred without regard to whether the individual or another person, including a State program or other third-party coverage, has paid for such costs.

''(5) INFLATION ADJUSTMENT FOR COPAYMENT AMOUNTS AND ANNUAL OUT-OF-POCKET LIMIT.—

''(A) IN GENERAL.—For any year after 2005—

''(i) the copayment amounts described in clauses (i), (ii), and (iii) of paragraph (1)(A) are equal to the copayment amounts determined under such paragraph (or this paragraph) for the previous year increased by the annual percentage increase described in subparagraph (B); and

''(ii) the annual out-of-pocket limit specified in paragraph (4)(B) is equal to the annual out-of-pocket limit determined under such paragraph (or this paragraph) for the previous year increased by the annual percentage increase described in subparagraph (B).

''(B) ANNUAL PERCENTAGE INCREASE.—The annual percentage increase specified in this subparagraph for a year is equal to the annual percentage increase in the prices of covered outpatient drugs (including both price inflation and price changes due to changes in therapeutic mix), as determined by the Secretary for the 12-month period ending in July of the previous year.

''(C) ROUNDING.—If any amount determined under subparagraph (A) is not a multiple of $1, such amount shall be rounded to the nearest multiple of $1.

''(c) ACCESS TO NEGOTIATED PRICES.—Under a plan offered by an eligible entity with a contract under this part, the eligible entity offering such plan shall provide eligible beneficiaries enrolled in such plan with access to negotiated prices (including applicable discounts) used for payment for covered outpatient drugs, regardless of the fact that only partial benefits may be payable under the coverage with respect to such drugs because of the application of the cost-sharing under subsection (b).

''ENTITIES ELIGIBLE TO PROVIDE OUTPATIENT DRUG BENEFIT

''SEC. 1860G. (a) ESTABLISHMENT OF PANELS OF PLANS AVAILABLE IN AN AREA.—

''(1) IN GENERAL.—The Secretary shall establish procedures under which the Secretary—

''(A) accepts bids submitted by eligible entities for the plans which such entities intend to offer in an area established under subsection (b); and

''(B) awards contracts to such entities to provide such plans to eligible beneficiaries in the area.

''(2) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into contracts under this part.

''(b) AREA FOR CONTRACTS.—

''(1) REGIONAL BASIS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and subject to paragraph (2), the contract entered into between the Secretary and an eligible entity with respect to a plan shall require the eligible entity to provide coverage of covered outpatient drugs under the plan in a region determined by the Secretary under paragraph (2).

''(B) PARTIAL REGIONAL BASIS.—

''(i) IN GENERAL.—If determined appropriate by the Secretary, the Secretary may permit the coverage described in subparagraph (A) to be provided in a partial region determined appropriate by the Secretary.

''(ii) REQUIREMENTS.—If the Secretary permits coverage pursuant to clause (i), the Secretary shall ensure that the partial region in which coverage is provided is—

''(I) at least the size of the commercial service area of the eligible entity for that area; and

''(II) not smaller than a State.

''(2) DETERMINATION.—

''(A) IN GENERAL.—In determining regions for contracts under this part, the Secretary shall—

''(i) take into account the number of eligible beneficiaries in an area in order to encourage participation by eligible entities; and

''(ii) ensure that there are at least 10 different regions in the United States.

''(B) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—The determination of coverage areas under this part shall not be subject to administrative or judicial review.

''(c) SUBMISSION OF BIDS.—

''(1) SUBMISSION.—

''(A) IN GENERAL.—Subject to subparagraph (B), each eligible entity desiring to offer a plan under this part in an area shall submit a bid with respect to such plan to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

''(B) BID THAT COVERS MULTIPLE AREAS.—The Secretary shall permit an eligible entity to submit a single bid for multiple areas if the bid is applicable to all such areas.

''(2) REQUIRED INFORMATION.—The bids described in paragraph (1) shall include—

''(A) a proposal for the estimated prices of covered outpatient drugs and the projected annual increases in such prices, including differentials between formulary and nonformulary prices, if applicable;

''(B) a statement regarding the amount that the entity will charge the Secretary for managing, administering, and delivering the benefits under the contract;

''(C) a statement regarding whether the entity will reduce the applicable cost-sharing amount pursuant to section 1860F(b)(1)(B) and if so, the amount of such reduction and how such reduction is tied to the performance requirements described in section 1860I(b)(1)(C);

''(D) a detailed description of the performance requirements for which the payments to the entity will be subject to risk pursuant to section 1860I(b)(1)(C);

''(E) a detailed description of access to pharmacy services provided under the plan, including information regarding—

''(i) whether the entity will use a preferred pharmacy network under the plan; and

''(ii) if a preferred pharmacy network is used, whether the entity will offer access to pharmacies that are outside such network and if such access is provided, rules for accessing such pharmacies;

''(F) with respect to the formulary used by the entity, a detailed description of the procedures and standards the entity will use for—

''(i) adding new drugs to a therapeutic class within the formulary; and

''(ii) determining when and how often the formulary should be modified;

''(G) a detailed description of any ownership or shared financial interests with other entities involved in the delivery of the benefit as proposed under the plan;

''(H) a detailed description of the entity's estimated marketing and advertising expenditures related to enrolling eligible beneficiaries under the plan and retaining such enrollment; and

''(I) such other information that the Secretary determines is necessary in order to carry out this part, including information relating to the bidding process under this part.

''(d) ACCESS TO BENEFITS IN CERTAIN AREAS.—

''(1) AREAS NOT COVERED BY CONTRACTS.—The Secretary shall develop procedures for the provision of covered outpatient drugs under this part to each eligible beneficiary enrolled under this part that resides in an area that is not covered by any contract under this part.

''(2) BENEFICIARIES RESIDING IN DIFFERENT LOCATIONS.—The Secretary shall develop procedures to ensure that each eligible beneficiary enrolled under this part that resides in different areas in a year is provided the benefits under this part throughout the entire year.

''(e) AWARDING OF CONTRACTS.—

''(1) NUMBER OF CONTRACTS.—The Secretary shall, consistent with the requirements of this part and the goal of containing costs under this title, award in a competitive manner at least 2 contracts to offer a plan in an area, unless only 1 bidding entity (and the plan offered by the entity) meets the minimum standards specified under this part and by the Secretary.

''(2) DETERMINATION.—In determining which of the eligible entities that submitted bids that meet the minimum standards specified under this part and by the Secretary to award a contract, the Secretary shall consider the comparative merits of each bid, as determined on the basis of the past performance of the entity and other relevant factors, with respect to—

''(A) how well the entity (and the plan offered by the entity) meet such minimum standards;

''(B) the amount that the entity will charge the Secretary for managing, administering, and delivering the benefits under the contract;

''(C) the performance requirements for which the payments to the entity will be subject to risk pursuant to section 1860I(b)(1)(C);

''(D) the proposed negotiated prices of covered outpatient drugs and annual increases in such prices;

''(E) the factors described in section 1860D(b)(2);

''(F) prior experience of the entity in managing, administering, and delivering a prescription drug benefit program;

''(G) effectiveness of the entity and plan in containing costs through pricing incentives and utilization management; and

''(H) such other factors as the Secretary deems necessary to evaluate the merits of each bid.

''(3) EXCEPTION TO CONFLICT OF INTEREST RULES.—In awarding contracts under this part, the Secretary may waive conflict of interest laws generally applicable to Federal acquisitions (subject to such safeguards as the Secretary may find necessary to impose) in circumstances where the Secretary finds that such waiver—

''(A) is not inconsistent with the—

''(i) purposes of the programs under this title; or

''(ii) best interests of beneficiaries enrolled under this part; and

''(B) permits a sufficient level of competition for such contracts, promotes efficiency of benefits administration, or otherwise serves the objectives of the program under this part.

''(4) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—The determination of the Secretary to award or not award a contract to an eligible entity with respect to a plan under this part shall not be subject to administrative or judicial review.

''(f) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—The provisions of section 1851(h) shall apply to marketing material and application forms under this part in the same manner as such provisions apply to marketing material and application forms under part C.

''(g) DURATION OF CONTRACTS.—Each contract awarded under this part shall be for a term of at least 2 years but not more than 5 years, as determined by the Secretary.

''MINIMUM STANDARDS FOR ELIGIBLE ENTITIES

''SEC. 1860H. (a) IN GENERAL.—The Secretary shall not award a contract to an eligible entity under this part unless the Secretary finds that the eligible entity agrees to comply with such terms and conditions as the Secretary shall specify, including the following:

''(1) QUALITY AND FINANCIAL STANDARDS.—The eligible entity meets the quality and financial standards specified by the Secretary.

''(2) PROCEDURES TO ENSURE PROPER UTILIZATION, COMPLIANCE, AND AVOIDANCE OF ADVERSE DRUG REACTIONS.—

''(A) IN GENERAL.—The eligible entity has in place drug utilization review procedures to ensure—

''(i) the appropriate utilization by eligible beneficiaries enrolled in the plan covered by the contract of the benefits to be provided under the plan;

''(ii) the avoidance of adverse drug reactions among such beneficiaries, including problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse and misuse; and

''(iii) the reasonable application of peer-reviewed medical literature pertaining to improvements in pharmaceutical safety and appropriate use of drugs.

''(B) AUTHORITY TO USE CERTAIN COMPENDIA AND LITERATURE.—The eligible entity may use the compendia and literature referred to in clauses (i) and (ii), respectively, of section 1927(g)(1)(B) as a source for the utilization review under subparagraph (A).

''(3) PATIENT PROTECTIONS.—

''(A) ACCESS.—

''(i) IN GENERAL.—The eligible entity ensures that the covered outpatient drugs are accessible and convenient to eligible beneficiaries enrolled in the plan covered by the contract, including by offering the services 24 hours a day and 7 days a week for emergencies.

''(ii) AGREEMENTS WITH PHARMACIES.—The eligible entity shall enter into a participation agreement with any pharmacy that meets the requirements of subsection (d) to furnish covered prescription drugs to eligible beneficiaries under this part. Such agreements shall include the payment of a reasonable dispensing fee for covered outpatient drugs dispensed to a beneficiary under the agreement.

''(iii) PREFERRED PHARMACY NETWORKS.—If the eligible entity utilizes a preferred pharmacy network, the network complies with the standards under subsection (e).

''(B) ENSURING THAT BENEFICIARIES ARE NOT OVERCHARGED.—The eligible entity has procedures in place to ensure that each pharmacy with a participation agreement under this part with the entity complies with the requirements under subsection (d)(1)(C) (relating to adherence to negotiated prices).

''(C) CONTINUITY OF CARE.—

''(i) IN GENERAL.—The eligible entity ensures that, in the case of an eligible beneficiary who loses coverage under this part with such entity under circumstances that would permit a special election period (as established by the Secretary under section 1860C(a)(1)), the entity will continue to provide coverage under this part to such beneficiary until the beneficiary enrolls and receives such coverage with another eligible entity under this part or, if eligible, with a Medicare+Choice organization.

''(ii) LIMITED PERIOD.—In no event shall an eligible entity be required to provide the extended coverage required under clause (i) beyond the date which is 30 days after the coverage with such entity would have terminated but for this subparagraph.

''(D) PROCEDURES REGARDING THE DETERMINATION OF DRUGS THAT ARE MEDICALLY NECESSARY.—

''(i) IN GENERAL.—The eligible entity has in place procedures on a case-by-case basis to treat a nonpreferred brand name drug as a preferred brand name drug and a nonformulary drug as a preferred brand name drug under this part if the nonpreferred brand name drug or the nonformulary drug, as the case may be, is determined—

''(I) to be not as effective for the enrollee in preventing or slowing the deterioration of, or improving or maintaining, the health of the enrollee; or

''(II) to have a significant adverse effect on the enrollee.

''(ii) REQUIREMENT.—The procedures under clause (i) shall require that determinations under such clause are based on professional medical judgment, the medical condition of the enrollee, and other medical evidence.

''(E) PROCEDURES REGARDING APPEAL RIGHTS WITH RESPECT TO DENIALS OF CARE.—The eligible entity has in place procedures to ensure—

''(i) a timely internal review for resolution of denials of coverage (in whole or in part and including those regarding the coverage of nonpreferred brand name drugs and nonformulary drugs as preferred brand name drugs) in accordance with the medical exigencies of the case and a timely resolution of complaints, by enrollees in the plan, or by providers, pharmacists, and other individuals acting on behalf of each such enrollee (with the enrollee's consent) in accordance with requirements (as established by the Secretary) that are comparable to such requirements for Medicare+Choice organizations under part C (and are not less favorable to the enrollee than such requirements under

such part as in effect on the date of enactment of the Medicare Outpatient Prescription Drug Act of 2002);

''(ii) that the entity complies in a timely manner with requirements established by the Secretary that (I) provide for an external review by an independent entity selected by the Secretary of denials of coverage described in clause (i) not resolved in the favor of the beneficiary (or other complainant) under the process described in such clause, and (II) are comparable to the external review requirements established for Medicare+Choice organizations under part C (and are not less favorable to the enrollee than such requirements under such part as in effect on the date of enactment of the Medicare Outpatient Prescription Drug Act of 2002); and

''(iii) that enrollees are provided with information regarding the appeals procedures under this part at the time of enrollment with the entity and upon request thereafter.

''(F) PROCEDURES REGARDING PATIENT CONFIDENTIALITY.—Insofar as an eligible entity maintains individually identifiable medical records or other health information regarding eligible beneficiaries enrolled in the plan that is covered by the contract, the entity has in place procedures to—

''(i) safeguard the privacy of any individually identifiable beneficiary information;

''(ii) maintain such records and information in a manner that is accurate and timely;

''(iii) ensure timely access by such beneficiaries to such records and information; and

''(iv) otherwise comply with applicable laws relating to patient confidentiality.

''(G) PROCEDURES REGARDING TRANSFER OF MEDICAL RECORDS.—

''(i) IN GENERAL.—The eligible entity has in place procedures for the timely transfer of records and information described in subparagraph (F) (with respect to a beneficiary who loses coverage under this part with the entity and enrolls with another entity (including a Medicare+Choice organization) under this part) to such other entity.

''(ii) PATIENT CONFIDENTIALITY.—The procedures described in clause (i) shall comply with the patient confidentiality procedures described in subparagraph (F).

''(H) PROCEDURES REGARDING MEDICAL ERRORS.—The eligible entity has in place procedures for—

''(i) working with the Secretary to deter medical errors related to the provision of covered outpatient drugs; and

''(ii) ensuring that pharmacies with a contract with the entity have in place procedures to deter medical errors related to the provision of covered outpatient drugs.

''(4) PROCEDURES TO CONTROL FRAUD, ABUSE, AND WASTE.—The eligible entity has in place procedures to control fraud, abuse, and waste.

''(5) REPORTING REQUIREMENTS.—

''(A) IN GENERAL.—The eligible entity provides the Secretary with reports containing information regarding the following:

''(i) The negotiated prices that the eligible entity is paying for covered outpatient drugs.

''(ii) The prices that eligible beneficiaries enrolled in the plan that is covered by the contract will be charged for covered outpatient drugs.

''(iii) The management costs of providing such benefits.

''(iv) Utilization of such benefits.

''(v) Marketing and advertising expenditures related to enrolling and retaining eligible beneficiaries.

''(B) TIMEFRAME FOR SUBMITTING REPORTS.—

''(i) IN GENERAL.—The eligible entity shall submit a report described in subparagraph (A) to the Secretary within 3 months after the end of each 12-month period in which the eligible entity has a contract under this part. Such report shall contain information concerning the benefits provided during such 12-month period.

''(ii) LAST YEAR OF CONTRACT.—In the case of the last year of a contract under this part, the Secretary may require that a report described in subparagraph (A) be submitted 3 months prior to the end of the contract. Such report shall contain information concerning the benefits provided between the period covered by the most recent report under this subparagraph and the date that a report is submitted under this clause.

''(C) CONFIDENTIALITY OF INFORMATION.—

''(i) IN GENERAL.—Notwithstanding any other provision of law and subject to clause (ii), information disclosed by an eligible entity pursuant to subparagraph (A) (except for information described in clause (ii) of such subparagraph) is confidential and shall only be used by the Secretary for the purposes of, and to the extent necessary, to carry out this part.

''(ii) UTILIZATION DATA.—Subject to patient confidentiality laws, the Secretary shall make information disclosed by an eligible entity pursuant to subparagraph (A)(iv) (regarding utilization data) available for research purposes. The Secretary may charge a reasonable fee for making such information available.

''(6) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—The eligible entity complies with the requirements described in section 1860G(f).

''(7) RECORDS AND AUDITS.—The eligible entity maintains adequate records related to the administration of the benefits under this part and affords the Secretary access to such records for auditing purposes.

''(b) SPECIAL RULES REGARDING COST-EFFECTIVE PROVISION OF BENEFITS.—In providing the benefits under a contract under this part, an eligible entity shall—

''(1) employ mechanisms to provide the benefits economically, such as through the use of—

''(A) alternative methods of distribution;

''(B) preferred pharmacy networks (pursuant to subsection (e)); and

''(C) generic drug substitution;

''(2) use mechanisms to encourage eligible beneficiaries to select cost-effective drugs or less costly means of receiving drugs, such as through the use of—

''(A) pharmacy incentive programs;

''(B) therapeutic interchange programs; and

''(C) disease management programs;

''(3) encourage pharmacy providers to—

''(A) inform beneficiaries of the differentials in price between generic and brand name drug equivalents; and

''(B) provide medication therapy management programs in order to enhance beneficiaries' understanding of the appropriate use of medications and to reduce the risk of potential adverse events associated with medications; and

''(4) develop and implement a formulary in accordance with subsection (c).

''(c) REQUIREMENTS FOR FORMULARIES.—

''(1) IN GENERAL.—The formulary developed and implemented by the eligible entity shall comply with standards established by the Secretary in consultation with the Medicare Prescription Drug Advisory Committee established under section 1860L.

''(2) REQUIREMENTS FOR STANDARDS.—The standards established under paragraph (1) shall require that the eligible entity—

''(A) use a pharmacy and therapeutic committee (that meets the standards for a pharmacy and therapeutic committee established by the Secretary in consultation with such Medicare Prescription Drug Advisory Committee) to develop and implement the formulary;

''(B) assign all brand name drugs included in the formulary to either the preferred category or nonpreferred category of drugs;

''(C) include—

''(i) all generic covered outpatient drugs in the formulary;

''(ii) at least 1 brand name covered outpatient drug from each therapeutic class (as defined by the Secretary in consultation with such Medicare Prescription Drug Advisory Committee) as a preferred brand name drug in the formulary; and

''(iii) if there is more than 1 brand name covered outpatient drug available in a therapeutic class, at least 1 such drug as a preferred brand name drug in the formulary and at least 1 such drug as a nonpreferred brand name drug in the formulary;

''(D) develop procedures for the modification of the formulary, including for the addition of new drugs to an existing therapeutic class;

''(E) pursuant to section 1860F(b)(1)(C), provide for coverage of nonpreferred brand name drugs and nonformulary drugs at the preferred rate when determined under subparagraph (D) or (E) of subsection (a)(3) to be medically necessary;

''(F) disclose to current and prospective beneficiaries and to providers in the service area the nature of the formulary restrictions, including information regarding the drugs included in the formulary and any difference in the cost-sharing for—

''(i) drugs included in the formulary; and

''(ii) for drugs not included in the formulary; and

''(G) provide a reasonable amount of notice to beneficiaries enrolled in the plan that is covered by the contract under this part of any change in the formulary.

''(3) CONSTRUCTION.—Nothing in this part shall be construed as precluding an eligible entity from—

''(A) except as provided in section 1860F(b)(1)(C) (relating to the coverage of medically necessary drugs at the preferred rate), requiring cost-sharing for nonformulary drugs that is higher than the copayment amount established in section 1860F(b)(1)(A)(iii);

''(B) educating prescribing providers, pharmacists, and beneficiaries about the medical and cost benefits of drugs included in the formulary (including generic drugs); or

''(C) requesting prescribing providers to consider a drug included in the formulary prior to dispensing of a drug not so included or a preferred brand name drug prior to dispensing of a nonpreferred brand name drug, as long as such a request does not unduly delay the provision of the drug.

''(d) TERMS OF PARTICIPATION AGREEMENT WITH PHARMACIES.—

''(1) IN GENERAL.—A participation agreement between an eligible entity and a pharmacy under this part (pursuant to subsection (a)(3)(A)(ii)) shall include the following terms and conditions:

''(A) APPLICABLE REQUIREMENTS.—The pharmacy shall meet (and throughout the contract period continue to meet) all applicable Federal requirements and State and local licensing requirements.

''(B) ACCESS AND QUALITY STANDARDS.—The pharmacy shall comply with such standards as the Secretary (and the eligible entity) shall establish concerning the quality of, and enrolled beneficiaries' access to, pharmacy services under this part. Such standards shall require the pharmacy—

''(i) not to refuse to dispense covered outpatient drugs to any eligible beneficiary enrolled under this part;

''(ii) to keep patient records (including records on expenses) for all covered outpatient drugs dispensed to such enrolled beneficiaries;

''(iii) to submit information (in a manner specified by the Secretary to be necessary to administer this part) on all purchases of such drugs dispensed to such enrolled beneficiaries; and

''(iv) to comply with periodic audits to assure compliance with the requirements of this part and the accuracy of information submitted.

''(C) ENSURING THAT BENEFICIARIES ARE NOT OVERCHARGED.—

''(i) ADHERENCE TO NEGOTIATED PRICES.—The total charge for each covered outpatient drug dispensed by the pharmacy to a beneficiary enrolled in the plan, without regard to whether the individual is financially responsible for any or all of such charge, shall not exceed the negotiated price for the drug (as reported to the Secretary pursuant to subsection (a)(5)(A)).

''(ii) ADHERENCE TO BENEFICIARY OBLIGATION.—The pharmacy may not charge (or collect from) such beneficiary an amount that exceed's the cost-sharing that the beneficiary is responsible for under this part (as determined under section 1860F(b) using the negotiated price of the drug).

''(D) ADDITIONAL REQUIREMENTS.—The pharmacy shall meet such additional contract requirements as the eligible entity specifies under this section.

''(2) APPLICABILITY OF FRAUD AND ABUSE PROVISIONS.—The provisions of section 1128 through 1128C (relating to fraud and abuse) apply to pharmacies participating in the program under this part.

''(e) PREFERRED PHARMACY NETWORKS.—

''(1) IN GENERAL.—If an eligible entity uses a preferred pharmacy network to deliver benefits under this part, such network shall meet minimum access standards established by the Secretary.

''(2) STANDARDS.—In establishing standards under paragraph (1), the Secretary shall take into account reasonable distances to pharmacy services in both urban and rural areas.

''PAYMENTS

''SEC. 1860I. (a) PROCEDURES FOR PAYMENTS TO ELIGIBLE ENTITIES.—The Secretary shall establish procedures for making payments to each eligible entity with a contract under this part for the management, administration, and delivery of the benefits under this part.

''(b) REQUIREMENTS FOR PROCEDURES.—

''(1) IN GENERAL.—The procedures established under subsection (a) shall provide for the following:

''(A) MANAGEMENT PAYMENT.—Payment for the management, administration, and delivery of the benefits under this part.

''(B) REIMBURSEMENT FOR NEGOTIATED COSTS OF DRUGS PROVIDED.—Payments for the negotiated costs of covered outpatient drugs provided to eligible beneficiaries enrolled under this part and in a plan offered by the eligible entity, reduced by any applicable cost-sharing under section 1860F(b).

''(C) RISK REQUIREMENT TO ENSURE PURSUIT OF PERFORMANCE REQUIREMENTS.—An adjustment of a percentage (as determined under paragraph (2)) of the payments made to an entity under subparagraph (A) to ensure that the entity, in managing, administering, and delivering the benefits under this part, pursues performance requirements established by the Secretary, including the following:

''(i) CONTROL OF MEDICARE AND BENEFICIARY COSTS.—The entity contains costs to the Prescription Drug Account and to eligible beneficiaries enrolled under this part and in the plan offered by the entity, as measured by generic substitution rates, price discounts, and other factors determined appropriate by the Secretary that do not reduce the access of such beneficiaries to medically necessary covered outpatient drugs.

''(ii) QUALITY CLINICAL CARE.—The entity provides such beneficiaries with quality clinical care, as measured by such factors as—

''(I) the level of adverse drug reactions and medical errors among such beneficiaries; and

''(II) providing specific clinical suggestions to improve health and patient and prescriber education as appropriate.

''(iii) QUALITY SERVICE.—The entity provides such beneficiaries with quality services, as measured by such factors as sustained pharmacy network access, timeliness and accuracy of service delivery in claims processing and card production, pharmacy and member service support access, response time in mail delivery service, and timely action with regard to appeals and current beneficiary service surveys.

''(2) PERCENTAGE OF PAYMENT TIED TO RISK.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the percentage (which may be up to 100 percent) of the payments made to an entity under subparagraph (A) that will be tied to the performance requirements described in paragraph (1)(C).

''(B) LIMITATION ON RISK TO ENSURE PROGRAM STABILITY.—In order to provide for program stability, the Secretary may not establish a percentage to be adjusted under this subsection at a level that jeopardizes the ability of an eligible entity to administer and deliver the benefits under this part or administer and deliver such benefits in a quality manner.

''(3) RISK ADJUSTMENT OF PAYMENTS BASED ON ENROLLEES IN PLAN.—To the extent that an eligible entity is at risk under this subsection, the procedures established under subsection (a) may include a methodology for risk adjusting the payments made to such entity based on the differences in actuarial risk of different enrollees being served if the Secretary determines such adjustments to be necessary and appropriate.

''(4) PASS-THROUGH OF REBATES AND PRICE CONCESSIONS OBTAINED BY THE ELIGIBLE ENTITY.—The Secretary, if determined by the Secretary to be in the best interests of the medicare program or eligible beneficiaries, may establish procedures for reducing the amount of payments to an eligible entity under subsection (a) to take into account any rebates or price concessions obtained by the entity from manufacturers of covered outpatient drugs.

''(c) PAYMENTS TO MEDICARE+CHOICE ORGANIZATIONS.—For provisions related to payments to Medicare+Choice organizations for the administration and delivery of benefits under this part to eligible beneficiaries enrolled in a Medicare+Choice plan offered by the organization, see section 1853(c)(8).

''(d) SECONDARY PAYER PROVISIONS.—The provisions of section 1862(b) shall apply to the benefits provided under this part.

''EMPLOYER INCENTIVE PROGRAM FOR EMPLOYMENT-BASED RETIREE DRUG COVERAGE

''SEC. 1860J. (a) PROGRAM AUTHORITY.—The Secretary is authorized to develop and implement a program under this section to be known as the 'Employer Incentive Program' that encourages employers and other sponsors of employment-based health care coverage to provide adequate prescription drug benefits to retired individuals by subsidizing, in part, the sponsor's cost of providing coverage under qualifying plans.

''(b) SPONSOR REQUIREMENTS.—In order to be eligible to receive an incentive payment under this section with respect to coverage of an individual under a qualified retiree prescription drug plan (as defined in subsection (e)(3)), a sponsor shall meet the following requirements:

''(1) ASSURANCES.—The sponsor shall—

''(A) annually attest, and provide such assurances as the Secretary may require, that the coverage offered by the sponsor is a qualified retiree prescription drug plan, and will remain such a plan for the duration of the sponsor's participation in the program under this section; and

''(B) guarantee that it will give notice to the Secretary and covered retirees—

''(i) at least 120 days before terminating its plan; and

''(ii) immediately upon determining that the actuarial value of the prescription drug benefit under the plan falls below the actuarial value of the outpatient prescription drug benefit under this part.

''(2) BENEFICIARY INFORMATION.—The sponsor shall report to the Secretary, for each calendar quarter for which it seeks an incentive payment under this section, the names and social security numbers of all retirees (and their spouses and dependents) covered under such plan during such quarter and the dates (if less than the full quarter) during which each such individual was covered.

''(3) AUDITS.—The sponsor and the employment-based retiree health coverage plan seeking incentive payments under this section shall agree to maintain, and to afford the Secretary access to, such records as the Secretary may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage, the accuracy of incentive payments made, and such other matters as may be appropriate.

''(4) OTHER REQUIREMENTS.—The sponsor shall provide such other information, and comply with such other requirements, as the Secretary may find necessary to administer the program under this section.

''(c) INCENTIVE PAYMENTS.—

''(1) IN GENERAL.—A sponsor that meets the requirements of subsection (b) with respect to a quarter in a calendar year shall be entitled to have payment made by the Secretary on a quarterly basis (to the sponsor or, at the sponsor's direction, to the appropriate employment-based health plan) of an incentive payment, in the amount determined in paragraph (2), for each retired individual (or spouse or dependent) who—

''(A) was covered under the sponsor's qualified retiree prescription drug plan during such quarter; and

''(B) was eligible for, but was not enrolled in, the outpatient prescription drug benefit program under this part.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—The amount of the payment for a quarter shall be, for each individual described in paragraph (1), ⅔ of the sum of the monthly Government contribution amounts (computed under subparagraph (B)) for each of the 3 months in the quarter.

''(B) COMPUTATION OF MONTHLY GOVERNMENT CONTRIBUTION AMOUNT.—For purposes of subparagraph (A), the monthly Government contribution amount for a month in a year is equal to the amount by which—

''(i) 1/12 of the amount estimated under subparagraph (C) for the year involved; exceeds

''(ii) the monthly Part D premium under section 1860E(a) (determined without regard to any increase under section 1860B(b)(1)) for the month involved.

''(C) ESTIMATE OF AVERAGE ANNUAL PER CAPITA AGGREGATE EXPENDITURES.—

''(i) IN GENERAL.—The Secretary shall for each year after 2003 estimate for that year

an amount equal to average annual per capita aggregate expenditures payable from the Prescription Drug Account for that year.

''(ii) TIMEFRAME FOR ESTIMATION.—The Secretary shall make the estimate described in clause (i) for a year before the beginning of that year.

''(3) PAYMENT DATE.—The payment under this section with respect to a calendar quarter shall be payable as of the end of the next succeeding calendar quarter.

''(d) CIVIL MONEY PENALTIES.—A sponsor, health plan, or other entity that the Secretary determines has, directly or through its agent, provided information in connection with a request for an incentive payment under this section that the entity knew or should have known to be false shall be subject to a civil monetary penalty in an amount up to 3 times the total incentive amounts under subsection (c) that were paid (or would have been payable) on the basis of such information.

''(e) DEFINITIONS.—In this section:

''(1) EMPLOYMENT-BASED RETIREE HEALTH COVERAGE.—The term 'employment-based retiree health coverage' means health insurance or other coverage, whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation, of health care costs for retired individuals (or for such individuals and their spouses and dependents) based on their status as former employees or labor union members.

''(2) EMPLOYER.—The term 'employer' has the meaning given the term in section 3(5) of the Employee Retirement Income Security Act of 1974 (except that such term shall include only employers of 2 or more employees).

''(3) QUALIFIED RETIREE PRESCRIPTION DRUG PLAN.—The term 'qualified retiree prescription drug plan' means health insurance coverage included in employment-based retiree health coverage that—

''(A) provides coverage of the cost of prescription drugs with an actuarial value (as defined by the Secretary) to each retired beneficiary that equals or exceeds the actuarial value of the benefits provided to an individual enrolled in the outpatient prescription drug benefit program under this part; and

''(B) does not deny, limit, or condition the coverage or provision of prescription drug benefits for retired individuals based on age or any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

''(4) SPONSOR.—The term 'sponsor' has the meaning given the term 'plan sponsor' in section 3(16)(B) of the Employer Retirement Income Security Act of 1974.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the program under this section.

''PRESCRIPTION DRUG ACCOUNT IN THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

''SEC. 1860K. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1841 an account to be known as the 'Prescription Drug Account' (in this section referred to as the 'Account').

''(2) FUNDS.—The Account shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, the account as provided in this part.

''(3) SEPARATE FROM REST OF TRUST FUND.—Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund.

''(b) PAYMENTS FROM ACCOUNT.—

''(1) IN GENERAL.—The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including payments to eligible entities under section 1860I, payments to Medicare+Choice organizations under section 1853(c)(8), and payments with respect to administrative expenses under this part in accordance with section 201(g).

''(2) TREATMENT IN RELATION TO PART B PREMIUM.—Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1839.

''(c) APPROPRIATIONS TO COVER BENEFITS AND ADMINISTRATIVE COSTS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the amount by which the benefits and administrative costs of providing the benefits under this part in the year exceed the premiums collected under section 1860E(b) for the year.

''(2) LIMITATION.—No amounts shall be appropriated, and no amounts expended, for expenses incurred for providing coverage of covered outpatient drugs after January 1, 2011. The Secretary may make payments on or after such date for expenses incurred to the extent such expenses were incurred for providing coverage of covered outpatient drugs prior to such date.

''MEDICARE PRESCRIPTION DRUG ADVISORY COMMITTEE

''SEC. 1860L. (a) ESTABLISHMENT OF COMMITTEE.—There is established a Medicare Prescription Drug Advisory Committee (in this section referred to as the 'Committee').

''(b) FUNCTIONS OF COMMITTEE.—On and after March 1, 2003, the Committee shall advise the Secretary on policies related to—

''(1) the development of guidelines for the implementation and administration of the outpatient prescription drug benefit program under this part; and

''(2) the development of—

''(A) standards for a pharmacy and therapeutics committee required of eligible entities under section 1860H(c)(2)(A);

''(B) standards required under subparagraphs (D) and (E) of section 1860H(a)(3) for determining if a drug is medically necessary;

''(C) standards for—

''(i) establishing therapeutic classes;

''(ii) adding new therapeutic classes to a formulary; and

''(iii) defining a prescription of covered outpatient drugs for purposes of applying cost-sharing under section 1860F(b);

''(D) procedures to evaluate the bids submitted by eligible entities under this part; and

''(E) procedures to ensure that eligible entities with a contract under this part are in compliance with the requirements under this part.

''(c) STRUCTURE AND MEMBERSHIP OF THE COMMITTEE.—

''(1) STRUCTURE.—The Committee shall be composed of 19 members who shall be appointed by the Secretary.

''(2) MEMBERSHIP.—

''(A) IN GENERAL.—The members of the Committee shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, attainments, and understanding of pharmaceutical cost control and quality enhancement, exceptionally qualified to perform the duties of members of the Committee.

''(B) SPECIFIC MEMBERS.—Of the members appointed under paragraph (1)—

''(i) five shall be chosen to represent physicians, 2 of whom shall be geriatricians;

''(ii) two shall be chosen to represent nurse practitioners;

''(iii) four shall be chosen to represent pharmacists;

''(iv) one shall be chosen to represent the Centers for Medicare & Medicaid Services;

''(v) four shall be chosen to represent actuaries, pharmacoeconomists, researchers, and other appropriate experts;

''(vi) one shall be chosen to represent emerging drug technologies;

''(vii) one shall be closed to represent the Food and Drug Administration; and

''(viii) one shall be chosen to represent individuals enrolled under this part.

''(d) TERMS OF APPOINTMENT.—Each member of the Committee shall serve for a term determined appropriate by the Secretary. The terms of service of the members initially appointed shall begin on January 1, 2003.

''(e) CHAIRPERSON.—The Secretary shall designate a member of the Committee as Chairperson. The term as Chairperson shall be for a 1-year period.

''(f) COMMITTEE PERSONNEL MATTERS.—

''(1) MEMBERS.—

''(A) COMPENSATION.—Each member of the Committee who is not an officer or employee of the Federal Government 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 Committee. All members of the Committee who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(B) TRAVEL EXPENSES.—The members of the Committee 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 Committee.

''(2) STAFF.—The Committee may appoint such personnel as the Committee considers appropriate.

''(g) OPERATION OF THE COMMITTEE.—

''(1) MEETINGS.—The Committee shall meet at the call of the Chairperson (after consultation with the other members of the Committee) not less often than quarterly to consider a specific agenda of issues, as determined by the Chairperson after such consultation.

''(2) QUORUM.—Ten members of the Committee shall constitute a quorum for purposes of conducting business.

''(h) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

''(i) TRANSFER OF PERSONNEL, RESOURCES, AND ASSETS.—For purposes of carrying out its duties, the Secretary and the Committee may provide for the transfer to the Committee of such civil service personnel in the employ of the Department of Health and Human Services (including the Centers for Medicare & Medicaid Services), and such resources and assets of the Department used in carrying out this title, as the Committee requires.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such

sums as may be necessary to carry out the purposes of this section.''.

(b) EXCLUSIONS FROM COVERAGE.—

(1) APPLICATION TO PART D.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended in the matter preceding paragraph (1) by striking ''part A or part B'' and inserting ''part A, B, or D''.

(2) PRESCRIPTION DRUGS NOT EXCLUDED FROM COVERAGE IF REASONABLE AND NECESSARY.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

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

(B) in subparagraph (I), by striking the semicolon at the end and inserting '', and''; and

(C) by adding at the end the following new subparagraph:

''(J) in the case of prescription drugs covered under part D, which are not reasonable and necessary to prevent or slow the deterioration of, or improve or maintain, the health of eligible beneficiaries;''.

(c) CONFORMING AMENDMENTS TO FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND.—Section 1841 of the Social Security Act (42 U.S.C. 1395t) is amended—

(1) in the last sentence of subsection (a)—

(A) by striking ''and'' before ''such amounts''; and

(B) by inserting before the period the following: '', and such amounts as may be deposited in, or appropriated to, the Prescription Drug Account established by section 1860K'';

(2) in subsection (g), by inserting after ''by this part,'' the following: ''the payments provided for under part D (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),'';

(3) in subsection (h), by inserting after ''1840(d)'' the following: ''and section 1860E(b) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund)''; and

(4) in subsection (i), by inserting after ''section 1840(b)(1)'' the following: '', section 1860E(b) (in which case the payments shall be made from the Prescription Drug Account in the Trust Fund),''.

(d) CONFORMING REFERENCES TO PREVIOUS PART D.—

(1) IN GENERAL.—Any reference in law (in effect before the date of enactment of this Act) to part D of title XVIII of the Social Security Act is deemed a reference to part E of such title (as in effect after such date).

(2) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this Act.

SEC. 3. PART D BENEFITS UNDER MEDICARE+CHOICE PLANS.

(a) ELIGIBILITY, ELECTION, AND ENROLLMENT.—Section 1851 of the Social Security Act (42 U.S.C. 1395w–21) is amended—

(1) in subsection (a)(1)(A), by striking ''parts A and B'' and inserting ''parts A, B, and D''; and

(2) in subsection (i)(1), by striking ''parts A and B'' and inserting ''parts A, B, and D''.

(b) VOLUNTARY BENEFICIARY ENROLLMENT FOR DRUG COVERAGE.—Section 1852(a)(1)(A) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(A)) is amended by inserting ''(and under part D to individuals also enrolled under that part)'' after ''parts A and B''.

(c) ACCESS TO SERVICES.—Section 1852(d)(1) of the Social Security Act (42 U.S.C. 1395w–22(d)(1)) is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(F) in the case of covered outpatient drugs (as defined in section 1860(1)) provided to individuals enrolled under part D, the organization complies with the access requirements applicable under part D.''.

(d) PAYMENTS TO ORGANIZATIONS FOR PART D BENEFITS.—

(1) IN GENERAL.—Section 1853(a)(1)(A) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(A)) is amended—

(A) by inserting ''determined separately for the benefits under parts A and B and under part D (for individuals enrolled under that part)'' after ''as calculated under subsection (c)'';

(B) by striking ''that area, adjusted for such risk factors'' and inserting ''that area. In the case of payment for the benefits under parts A and B, such payment shall be adjusted for such risk factors as''; and

(C) by inserting before the last sentence the following: ''In the case of the payments under subsection (c)(8) for the provision of coverage of covered outpatient drugs to individuals enrolled under part D, such payment shall be adjusted for the risk factors of each enrollee as the Secretary determines to be feasible and appropriate to ensure actuarial equivalence.''.

(2) AMOUNT.—Section 1853(c) of the Social Security Act (42 U.S.C. 1395w–23(c)) is amended—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting ''for benefits under parts A and B'' after ''capitation rate''; and

(B) by adding at the end the following new paragraph:

''(8) CAPITATION RATE FOR PART D BENEFITS.—

''(A) IN GENERAL.—In the case of a Medicare+Choice plan that provides coverage of covered outpatient drugs to an individual enrolled under part D, the capitation rate for such coverage shall be the amount described in subparagraph (B). Such payments shall be made in the same manner and at the same time as the payments to the Medicare+Choice organization offering the plan for benefits under parts A and B are otherwise made, but such payments shall be payable from the Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund under section 1841.

''(B) AMOUNT.—The amount described in this paragraph is an amount equal to 1/12 of the average annual per capita aggregate expenditures payable from the Prescription Drug Account for the year (as estimated under section 1860J(c)(2)(C)).''.

(e) LIMITATION ON ENROLLEE LIABILITY.—Section 1854(e) of the Social Security Act (42 U.S.C. 1395w–24(e)) is amended by adding at the end the following new paragraph:

''(5) SPECIAL RULE FOR PART D BENEFITS.—With respect to outpatient prescription drug benefits under part D, a Medicare+Choice organization may not require that an enrollee pay any deductible or pay a cost-sharing amount that exceeds the amount of cost-sharing applicable for such benefits for an eligible beneficiary under part D.''.

(f) REQUIREMENT FOR ADDITIONAL BENEFITS.—Section 1854(f)(1) of the Social Security Act (42 U.S.C. 1395w–24(f)(1)) is amended by adding at the end the following new sentence: ''Such determination shall be made separately for the benefits under parts A and B and for prescription drug benefits under part D.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services provided under a Medicare+Choice plan on or after January 1, 2004.

SEC. 4. ADDITIONAL ASSISTANCE FOR LOW-INCOME BENEFICIARIES.

(a) INCLUSION IN MEDICARE COST-SHARING.—Section 1905(p)(3) of the Social Security Act (42 U.S.C. 1396d(p)(3)) is amended—

(1) in subparagraph (A)—

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

(B) in clause (ii), by inserting ''and'' at the end; and

(C) by adding at the end the following new clause:

''(iii) premiums under section 1860E(a).''; and

(2) in subparagraph (B), by inserting ''and cost-sharing described in section 1860F(b)'' after ''section 1813''.

(b) EXPANSION OF MEDICAL ASSISTANCE.—Section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) is amended—

(1) in clause (iii)—

(A) by striking ''section 1905(p)(3)(A)(ii)'' and inserting ''clauses (ii) and (iii) of section 1905(p)(3)(A) and for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII),''; and

(B) by striking ''and'' at the end;

(2) by redesignating clause (iv) as clause (vi); and

(3) by inserting after clause (iii) the following new clauses:

''(iv) for making medical assistance available for medicare cost-sharing described in section 1905(p)(3)(A)(iii) and for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII) for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds 120 percent but does not exceed 135 percent of such official poverty line for a family of the size involved;

''(v) for making medical assistance available for medicare cost-sharing described in section 1905(p)(3)(A)(iii) on a linear sliding scale based on the income of such individuals for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds 135 percent but does not exceed 150 percent of such official poverty line for a family of the size involved; and''.

(c) NONAPPLICABILITY OF RESOURCE REQUIREMENTS TO MEDICARE PART D COST-SHARING.—Section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)) is amended by adding at the end the following flush sentence:

''In determining if an individual is a qualified medicare beneficiary under this paragraph, subparagraph (C) shall not be applied for purposes of providing the individual with medicare cost-sharing described in section 1905(p)(3)(A)(iii) or for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII).''.

(d) NONAPPLICABILITY OF PAYMENT DIFFERENTIAL REQUIREMENTS TO MEDICARE PART D COST-SHARING.—Section 1902(n)(2) of the Social Security Act (42 U.S.C. 1396a(n)(2)) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to the cost-sharing described in section 1860F(b).''.

(e) 100 PERCENT FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended—

(1) by striking ''and'' before ''(4)''; and

(2) by inserting before the period at the end the following: '', and (5) the Federal medical assistance percentage shall be 100 percent

with respect to medical assistance provided under clauses (iv) and (v) of section 1902(a)(10)(E)''.

(f) TREATMENT OF TERRITORIES.—Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended by adding at the end the following new paragraph:

''(3) Notwithstanding the preceding provisions of this subsection, with respect to fiscal year 2004 and any fiscal year thereafter, the amount otherwise determined under this subsection (and subsection (f)) for the fiscal year for a Commonwealth or territory shall be increased by the ratio (as estimated by the Secretary) of—

''(A) the aggregate amount of payments made to the 50 States and the District of Columbia for the fiscal year under title XIX that are attributable to making medical assistance available for individuals described in clauses (i), (iii), (iv), and (v) of section 1902(a)(10)(E) for payment of medicare cost-sharing described in section 1905(p)(3)(A)(iii) and for medicare cost-sharing described in section 1905(p)(3)(B) (but only insofar as it relates to benefits provided under part D of title XVIII); to

''(B) the aggregate amount of total payments made to such States and District for the fiscal year under such title.''.

(g) CONFORMING AMENDMENTS.—Section 1933 of the Social Security Act (42 U.S.C. 1396u–3) is amended—

(1) in subsection (a), by striking ''section 1902(a)(10)(E)(iv)'' and inserting ''section 1902(a)(10)(E)(vi)'';

(2) in subsection (c)(2)(A)—

(A) in clause (i), by striking ''section 1902(a)(10)(E)(iv)(I)'' and inserting ''section 1902(a)(10)(E)(vi)(I)''; and

(B) in clause (ii), by striking ''section 1902(a)(10)(E)(iv)(II)'' and inserting ''section 1902(a)(10)(E)(vi)(II)'';

(3) in subsection (d), by striking ''section 1902(a)(10)(E)(iv)'' and inserting ''section 1902(a)(10)(E)(vi)''; and

(4) in subsection (e), by striking ''section 1902(a)(10)(E)(iv)'' and inserting ''section 1902(a)(10)(E)(vi)''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply for medical assistance provided under section 1902(a)(10)(E) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)) on and after January 1, 2004.

SEC. 5. MEDIGAP REVISIONS.

Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

''(v) MODERNIZED BENEFIT PACKAGES FOR MEDICARE SUPPLEMENTAL POLICIES.—

''(1) REVISION OF BENEFIT PACKAGES.—

''(A) IN GENERAL.—Notwithstanding subsection (p), the benefit packages classified as 'H', 'I', and 'J' under the standards established by subsection (p)(2) (including the benefit package classified as 'J' with a high deductible feature, as described in subsection (p)(11)) shall be revised so that—

''(i) the coverage of outpatient prescription drugs available under such benefit packages is replaced with coverage of outpatient prescription drugs that complements but does not duplicate the coverage of outpatient prescription drugs that is otherwise available under this title;

''(ii) the revised benefit packages provide a range of coverage options for outpatient prescription drugs for beneficiaries, but do not provide coverage for more than 90 percent of the cost-sharing amount applicable to an individual under section 1860F(b);

''(iii) uniform language and definitions are used with respect to such revised benefits;

''(iv) uniform format is used in the policy with respect to such revised benefits;

''(v) such revised standards meet any additional requirements imposed by the amendments made by the Medicare Outpatient Prescription Drug Act of 2002; and

''(vi) except as revised under the preceding clauses or as provided under subsection (p)(1)(E), the benefit packages are identical to the benefit packages that were available on the date of enactment of the Medicare Outpatient Prescription Drug Act of 2002.

''(B) MANNER OF REVISION.—The benefit packages revised under this section shall be revised in the manner described in subparagraph (E) of subsection (p)(1), except that for purposes of subparagraph (C) of such subsection, the standards established under this subsection shall take effect not later than January 1, 2004.

''(2) CONSTRUCTION OF BENEFITS IN OTHER MEDICARE SUPPLEMENTAL POLICIES.—Nothing in the benefit packages classified as 'A' through 'G' under the standards established by subsection (p)(2) (including the benefit package classified as 'F' with a high deductible feature, as described in subsection (p)(11)) shall be construed as providing coverage for benefits for which payment may be made under part D.

''(3) GUARANTEED ISSUANCE AND RENEWAL OF REVISED POLICIES.—The provisions of subsections (q) and (s), including provisions of subsection (s)(3) (relating to special enrollment periods in cases of termination or disenrollment), shall apply to medicare supplemental policies revised under this subsection in the same manner as such provisions apply to medicare supplemental policies issued under the standards established under subsection (p).

''(4) OPPORTUNITY OF CURRENT POLICYHOLDERS TO PURCHASE REVISED POLICIES.—

''(A) IN GENERAL.—No medicare supplemental policy of an issuer with a benefit package that is revised under paragraph (1) shall be deemed to meet the standards in subsection (c) unless the issuer—

''(i) provides written notice during the 60-day period immediately preceding the period established for the open enrollment period established under section 1860B(b)(2)(A), to each individual who is a policyholder or certificate holder of a medicare supplemental policy issued by that issuer (at the most recent available address of that individual) of the offer described in clause (ii) and of the fact that such individual will no longer be covered under such policy as of January 1, 2004; and

''(ii) offers the policyholder or certificate holder under the terms described in subparagraph (B), during at least the period established under section 1860B(b)(2)(A), a medicare supplemental policy with the benefit package that the Secretary determines is most comparable to the policy in which the individual is enrolled with coverage effective as of the date on which the individual is first entitled to benefits under part D.

''(B) TERMS OF OFFER DESCRIBED.—The terms described in this subparagraph are terms which do not—

''(i) deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (A)(ii) that is offered and is available for issuance to new enrollees by such issuer;

''(ii) discriminate in the pricing of such policy because of health status, claims experience, receipt of health care, or medical condition; or

''(iii) impose an exclusion of benefits based on a preexisting condition under such policy.

''(5) ELIMINATION OF OBSOLETE POLICIES WITH NO GRANDFATHERING.—No person may sell, issue, or renew a medicare supplemental policy with a benefit package that is classified as 'H', 'I', or 'J' (or with a benefit package classified as 'J' with a high deductible feature) that has not been revised under this subsection on or after January 1, 2004.

''(6) PENALTIES.—Each penalty under this section shall apply with respect to policies revised under this subsection as if such policies were issued under the standards established under subsection (p), including the penalties under subsections (a), (d), (p)(8), (p)(9), (q)(5), (r)(6)(A), (s)(4), and (t)(2)(D).''.

SEC. 6. HHS STUDIES AND REPORT ON UNIFORM PHARMACY BENEFIT CARDS AND SYSTEMS FOR TRANSFERRING PRESCRIPTIONS ELECTRONICALLY.

(a) STUDIES.—The Secretary of Health and Human Services shall conduct a study to determine the feasibility and advisability of—

(1) establishing a uniform format for pharmacy benefit cards provided to beneficiaries by eligible entities under the outpatient prescription drug benefit program under part D of title XVIII of the Social Security Act (as added by section 2); and

(2) developing systems to electronically transfer prescriptions under such program from the prescriber to the pharmacist.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the results of the studies conducted under subsection (a) together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such studies.

SEC. 7. GAO STUDY AND BIENNIAL REPORTS ON COMPETITION AND SAVINGS.

(a) ONGOING STUDY.—The Comptroller General of the United States shall conduct an ongoing study and analysis of the outpatient prescription drug benefit program under part D of title XVIII of the Social Security Act (as added by section 2), including an analysis of—

(1) the extent to which the competitive bidding process under such program fosters maximum competition and efficiency; and

(2) the savings to the medicare program resulting from such outpatient prescription drug benefit program, including the reduction in the number or length of hospital visits.

(b) INITIAL REPORT ON COMPETITIVE BIDDING PROCESS.—Not later than 9 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the results of the portion of the study conducted pursuant to subsection (a)(1).

(c) BIENNIAL REPORTS.—Not later than January 1, 2005, and biennially thereafter, the Comptroller General of the United States shall submit to Congress a report on the results of the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Comptroller General determines appropriate.

SEC. 8. EXPANSION OF MEMBERSHIP AND DUTIES OF MEDICARE PAYMENT ADVISORY COMMISSION (MEDPAC).

(a) EXPANSION OF MEMBERSHIP.—

(1) IN GENERAL.—Section 1805(c) of the Social Security Act (42 U.S.C. 1395b–6(c)) is amended—

(A) in paragraph (1), by striking ''17'' and inserting ''19''; and

(B) in paragraph (2)(B), by inserting ''experts in the area of pharmacology and prescription drug benefit programs,'' after ''other health professionals,''.

(2) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(A) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1805(c)(3) of the Social Security Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the 2 additional members of the Commission provided for by the amendment under paragraph (1)(A) are as follows:

(i) One member shall be appointed for 1 year.

(ii) One member shall be appointed for 2 years.

(B) COMMENCEMENT OF TERMS.—Such terms shall begin on January 1, 2003.

(b) EXPANSION OF DUTIES.—Section 1805(b)(2) of the Social Security Act (42 U.S.C. 1395b–6(b)(2)) is amended by adding at the end the following new subparagraph:

''(D) PRESCRIPTION MEDICINE BENEFIT PROGRAM.—Specifically, the Commission shall review, with respect to the outpatient prescription drug benefit program under part D, the impact of such program on—

''(i) the pharmaceutical market, including costs and pricing of pharmaceuticals, beneficiary access to such pharmaceuticals, and trends in research and development;

''(ii) franchise, independent, and rural pharmacies; and

''(iii) beneficiary access to outpatient prescription drugs, including an assessment of out-of-pocket spending, generic and brand name drug utilization, and pharmacists' services.''.

Mr. MILLER. Madam President, I am proud to tell America's seniors who have been waiting in line for a long time that, finally, they have reached the front of the line. Their time has come. This Senate is ready to take action on prescription drugs.

Our action cannot come soon enough. Most of our elderly in this country are not wealthy. Many live on fixed incomes. They are the ones who are hurt first and hurt most by rising health care costs.

Our elderly have been waiting a long time. Waiting for Congress to do something. Waiting for Congress to help them with the skyrocketing costs of their prescription drugs.

Our bill provides an affordable prescription drug benefit under Medicare for all seniors for the first time. Coverage begins with the first prescription filled because there is no deductible.

For the roughly 12 million seniors in this country who earn less than $11,900 a year, there is no premium and no copayment. For our neediest seniors, our bill gives them their medicine for free.

For those who earn more, our plan has an affordable a $25 monthly premium and a copayment of $10 for generic drugs and $40 for brand-name drugs. Also, our bill has no gap in coverage and an out-of-pocket maximum of $4,000 a year.

We realize it is a huge, complex and complicated undertaking. And that is why this bill provides that in 2011, we will come back and re-evaluate this program, just like we do with other complicated legislation.

We believe that is the wise and judicious thing to do. In fact, if the original Medicare program had required such a reauthorization, we probably would have had a prescription drug benefit added to it long ago.

But since Medicare was permanently authorized from the beginning, there was no requirement for Congress to re-evaluate and therefore modernize the program as circumstances changed over the years.

And, reauthorization is not anything new or different. We re-evaluate many programs on a regular basis: We just did it with the Farm Bill. Welfare Reform, the Elementary and Secondary Education program, Head Start, all of them are re-evaluated at regular intervals.

I hope that all members of the Senate will come together and pass this bill in the next few weeks so that our elderly across this land of plenty, those folks who have played by the rules and worked hard, can have some hope and some dignity in the last few years they are on this earth.

Mr. KENNEDY. Madam President, Medicare is a solemn promise between government and its citizens and between the generations. It says, ''Contribute to the system during your working years and we will assure you health security in your retirement years.'' But that promise is broken every day, because Medicare does not cover prescription drugs. The Graham-Miller-Kennedy Medicare Prescription Drug Act of 2002 sends the message loud and clear: it is time to mend Medicare's broken promise.

There is no domestic issue that is more important to the American people than assuring that senior citizens can afford the prescription drugs they need. Senior citizens have an average income of $15,000, and they spend an average of $2,000 of that limited income on prescription drugs. Too many of our elderly citizens must choose between food on the table and the medicine their doctors prescribe. Too many of the elderly are taking half the drugs their doctor prescribes, or none at all, because they simply can't afford them.

Every day we delay, the problem becomes worse. Prescription drugs costs are escalating at double-digit rates. One-third of all senior citizens don't have a dime of prescription drug coverage, and those who do have coverage are in danger of losing it. The sad fact is that the only senior citizens who have reliable, affordable, adequate coverage are the very poor on Medicaid. That is not good enough, and we are here today to say that America owes it to its senior citizens to do better.

Every politician understands that senior citizens, and their children, and their grandchildren want action. Every politician understands that opposition to a prescription drug benefit is not a sustainable position. The question is not whether Congress will pass a bill; the question is whether we will pass a bill that truly provides the protection senior citizens need. The elderly do not need a prescription drug benefit that cannot pass the truth in advertising test. They don't need a benefit that pays pennies on the dollar for the medicines the elderly need to survive. They do not need a benefit that offers the pretence of relief but not the performance.

The bill we are offering today mends the broken promise of Medicare. It offers real benefits at a price the elderly can afford. It is a lifeline for every senior citizen who needs prescription drugs. It is a priority for the American people.

It is time to pass a Medicare prescription drug benefit. It is time for Congress to listen to the American people instead of the powerful special interests.

By Mr. CLELAND:

S. 2627. A bill to protect marine species off the coast of Georgia; to the Committee on Commerce, Science, and Transportation.

Mr. CLELAND. Madam President, I rise today to introduce legislation to help protect marine species in the exclusive economic zone off the coast of Georgia. Shark gillnetting causes bycatch of many marine species, including valuable gamefish such as tarpon, red drum, king mackerel, and cobia and leatherback sea turtles, a protected species. Gillnets are already prohibited in Georgia's State waters, and my legislation would also prohibit this gear from being used in the Federal waters off the coast of Georgia. This legislation is supported by the Georgia Department of Natural Resources, which has jurisdiction over the State's coastal resources.

My proposal does not prohibit shark fishing but rather affects the means of fishing. Shark fishers can use other methods for fishing such as long-lines or hook and line as alternatives. Additionally, this bill only affects the waters off the coast of Georgia. The neighboring States are still allowed to handle the bycatch, enforcement, and other issues as they believe is appropriate.

The waters affected by the legislation are home to many types of marine life that are vitally important to Georgia's traditional and expanding charter fishery, as well as the state's coastal communities and tourism industry. These businesses are negatively impacted by the shark gillnetting bycatch rates and its impacts on gamefish populations, including some already overfished stocks. In August 2000, I was contacted by some of these Georgia business people who are concerned over what they see as a dramatic decrease in the fish population and about the future viability of their businesses. These citizens work to create a delicate balance between the environment and their livelihood by limiting their catches and releasing fish to help insure the sustained health of local fish stocks and their habitats. Shark gillnetting has disrupted this balance. My legislation is the first step to bringing this balance back in line.

As the Commerce Committee, of which I am a member, begins the reauthorization of the Magnuson-Stevens Fishery Conservation Management Act, I will work with Chairman HOLLINGS to address this issue. It is at once an environmental issue, a small business issue, a state sovereignty issue, and it is the right thing to do.

By Mr. KENNEDY (for himself, Mr. DEWINE, Mr. HARKIN, Mr. MCCAIN, Mr. DURBIN, Mr.

GRAHAM, Mr. WELLSTONE, Ms. COLLINS, Mrs. FEINSTEIN, and Mr. REED):

S. 2626. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Madam President, today Senator KENNEDY, my colleague from Massachusetts, and I, Senator DURBIN, and others are introducing a bill designed to help protect children from the dangers of tobacco. Quite simply, our bill would finally give the Food and Drug Administration the authority it needs to effectively regulate both the manufacture and the sale of tobacco products.

My colleagues will all remember that we visited this issue a few years ago, in 1998, when our colleague from Arizona, Senator MCCAIN, and others introduced the Universal Tobacco Settlement Act, which included a major section that provided the FDA with the authority to regulate tobacco products. Also, of course, during 1998, 46 States entered into an agreement known as the Master Settlement Agreement, MSA. They entered into that agreement with the major tobacco companies to settle all State lawsuits seeking to recover the Medicaid costs of treating smokers.

Fast forward from 1998 until today. Tobacco proponents would have you believe this master settlement resolved the issue of tobacco use by imposing all these restrictions. But the truth is, it did not. Smoking among young people remains a huge national problem.

Every day in this country, nearly 5,000 young people under the age of 18 try their first cigarette. In my own home State of Ohio, 33 percent—one-third—of children 18 and under smoke. These kids in Ohio, by themselves, go through 45 million packs of cigarettes each year.

If that is not bad enough, look at it another way: 90 percent of smokers start smoking before the age of 19. More than 6.4 million children across this country will die prematurely because of a decision they will make as children, as adolescents—a decision to start smoking cigarettes.

In my home State of Ohio, as I indicated, one-third of the children smoke. We know the statistics are that one-third of people who smoke in this country will die prematurely because of an alcohol-related illness. One-third of the one-third, therefore, in the State of Ohio will die prematurely.

While States have limited options available for tobacco advertising under this 1998 Master Settlement Agreement, the reality is that the tobacco companies still are able to choose the contents of their advertisements. They are still able to get around this settlement. They are still able to run ads like this: ''Skol, A Pinch Better.'' Guess where that ad ran? In Sports Illustrated.

How many young people in this country every week wait for that Sports Illustrated to come in the mail, or buy it when it comes to the store?

The companies are savvy. They have really changed their marketing strategies. They have concentrated more money into different advertising markets. As a result, more than 3 years after the major tobacco companies agreed to stop marketing to children as part of this tobacco settlement, children are still twice as likely as adults to be exposed to tobacco advertising.

Let me repeat that. Children are still twice as likely as adults to be exposed to tobacco advertising.

This chart shows and represents a poll which was done. The question asked was: Have you seen any advertising for cigarettes or tobacco in the last 2 weeks? Among teens, 64 percent said yes; adults, only 27 percent.

In spite of the claim that tobacco companies are not targeting children, for whatever reason that is the market that is hearing it; that is who is seeing the message; that is who is hearing the message; that is whom the message is affecting.

According to the Federal Trade Commission's annual report on cigarette sales and advertising, the year 2000 represented the largest increase ever in tobacco companies' spending on ''promotional allowances''; that is, the money tobacco companies pay retailers to promote their products in prominent locations in stores, or for high visible shelf space. We know that is one of the greatest marketing techniques—put it somewhere I can see it when I walk in the store. It is right at eye level for kids near the cash register, in an aisle where the customer must walk by to pay the cashier.

That same year—the year 2000—cigarette manufacturers spent a record $9.5 billion on advertising and promotion. That is an increase of 16 percent from the year 1999.

Tobacco companies also spend billions of dollars advertising through enticing promotional items—lighters, hats, and other products—they give away for free at the ''point of sale,'' or, in other words, at the cash register or the place of checkout in the grocery store or the convenience store.

In fact, spending on such promotional or value-added items increased by 37 percent between 1999 and the year 2000.

Let us not fool ourselves. These promotional strategies and advertisements reach our children. Statistics show that 75 percent of our children visit a convenience store at least once a week.

I ask my colleagues. The next time you walk into a convenience store, look at how many different times you see an advertisement for tobacco products. They are everywhere. You walk in the store, and it may be on the clock—a little promotional clock that says when the store is open and when the store is closed. They will be at eye level. They will be by the cashier when you check out. They will be everywhere—image after image after image. It is calculated, and it works. Convenience stores are a place—right or wrong—where kids go. Seventy-five percent of kids visit convenience stores, as I said, at least once a week. That is a target area.

This isn't just about advertising and marketing schemes. It is also about to be manufacturers' failure to disclose the specific ingredients in their products.

I realize full well that tobacco users and nonusers alike recognize and understand that tobacco products are hazardous to their health. Everybody knows that. That is not what I am talking about. I am talking about requiring the tobacco companies to list the ingredients in their products. They do not have to do that today. Tobacco is an unregulated product. I believe it makes common sense that tobacco companies should be required to list when they put arsenic—and they do—or put formaldehyde or ammonia in the cigarettes. They should have to at least list it. It just makes common sense. Yet the law today does not require them to do that.

While simply listing the ingredients, toxic as they may be, might not seem like much, think about it this way. Current law makes sure that we know what is in products designed to help people quit smoking—products such as the patch or the Nicorette gum, which are regulated, but not the very product that gets people addicted in the first place, the cigarettes. Doesn't that seem absurd?

Think about it this way: Right now, the Food and Drug Administration requires Philip Morris to print the ingredients in its Kraft Macaroni and Cheese. They have to print all of the ingredients. Pick up a box. Every single ingredient that is in there they have to print but not the ingredients in cigarettes, a product, by the way, that contributes to the deaths of more than 440,000 people a year.

Right now the FDA requires Philip Morris, which owns Nabisco, to print the ingredients contained in Oreo cookies and Ritz crackers but not the ingredients in Camel or Winston cigarettes, even though cigarettes cause one-third of all cancer deaths and 90 percent of lung cancer deaths. It is unfathomable to me—and I think it is unfathomable to everybody—that we would require the listing of ingredients on these products. We even require the listing of the ingredients on bottled water. Yet we do not require the listing of ingredients for one of the leading causes of death and disease in this country.

Right now, the FDA requires printed ingredients for chewing gum, lipstick, bottled water, and ice cream, but not for cigarettes—a product that causes 20 percent of all heart disease deaths, 90 percent of lung cancer, which is the leading cause of cancer deaths among women, and the leading cause of preventable death in the United States.

Another way to look at it is if a company wants to market a food product

as ''fat-free'' or ''reduced-fat'' or ''lite,'' that company is required to meet certain standards regarding the number of calories or the amount of fat grams in that product. You can look right on that package and find it. Yet cigarette companies can call a cigarette a ''Camel Light'' or a ''Marlboro Light'' and not reveal a thing about the amount of tar or nicotine or arsenic in that supposedly ''light'' cigarette.

Not having access to all of the information about this deadly product just makes no sense. It is something we need to change. With the bill we are introducing, we can change it.

It is time we finally give the FDA the authority it needs to fix these problems. The legislation that Senator KENNEDY and Senator DURBIN and I are introducing will do just that.

First, the bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing—consistent with the first amendment—that targets our children.

Additionally, our bill would require advertisements to be in black and white text only, unless they are in adult publications, and would define adult publications in terms of readership.

Next, our legislation would give consumers more information about the ingredients in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products.

It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco, to the paper, or to the filter.

It would require a description of the content, delivery, and form of nicotine in each tobacco product.

It would require information on the health, behavioral, or physiologic effects of the tobacco products.

Further, it would require tobacco companies to provide information on the reduction of risk to health available through technology.

And finally, it would establish an approval process for all new tobacco products entering the market—new products such as advance with its ''trionic filter'', which claims to have—and I quote—''all of the taste . . . less of the toxins'' of other cigarettes.

Obviously, we already know that smoking is a health risk. We all know that. But, what we don't know about is the harm caused by or what adverse health effects are created by the other ingredients in tobacco products or by how the tobacco is burned. We do not know all the details about that. Tobacco companies should share that. There are tobacco products on the market that are not conventional cigarettes. They have carbon filters running down the center of them. They are sophisticated products that burn tobacco differently, that affect the body differently, and that may cause people to smoke them differently. These are all things that should be examined, they should be reviewed, and they should be commented on by the Food and Drug Administration, so the public knows what they are choosing to consume.

Here we have a pack of Eclipse cigarettes, which claims it will—and I quote—''Change the way you smoke.'' It also claims that it—and again I quote—''may present less risk of cancer, bronchitis, and possibly emphysema.'' This is what they say in the bold print. I don't know who ''they'' are, and I don't know where they got their information, but the public should know.

Below the bold print in this same pack is the following, smaller print:

Evidence suggests that smokers who already have cardiovascular disease and who switch to Eclipse may further increase their health risk.

So in the bold print we have a statement that is not cited and not supported, and then in the fine print we have a statement that is supported by numerous studies. Which claim are you more likely to believe? And which statement should be broadcast in bold lettering to the consumer?

By introducing this bill, we are finally saying we are not going to let tobacco manufacturers have free rein over markets and consumers anymore.

Today, we are taking a step towards making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place. We all know it is dangerous. But the tobacco companies no longer should be able to hide all the facts.

With this bill, we are not just saying, ''Buyer beware''—we all know there are dangers—but what we are saying is, ''Tobacco companies, be honest.'' We are saying, ''Tobacco companies, stop marketing to our kids.'' We are saying, ''Tobacco companies, tell consumers about what they are really buying.''

Madam President, it is time we hold these companies to the same standards we expect from other producers. It is time to give kids a fighting chance when it comes to resisting cigarettes. It is time to finally just do the right thing.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, I join my friend and colleague from Ohio, Senator DEWINE, in expressing our appreciation to all of our cosponsors for this legislation that we have introduced. And I commend him for the excellent presentation and description of the legislation that he has just given to the Senate this morning.

We indicate to our friends and colleagues that this legislation is very similar to the legislation that was included in the larger tobacco legislation the Senate considered several years ago. It was not really subject to any amendments that I remember during that period of time. That overall legislation, I believe, gained 58 votes on the floor of the Senate. So we had broad support for the legislation. In many respects, I think there is even broader support for this particular legislation.

So we are very hopeful we will be able to make progress in considering this legislation favorably in the Senate, and in the House, and have it become law. We have every intention of holding hearings and, hopefully a markup in July. I believe we will have very broad support from our colleagues for the reasons Senator DEWINE has outlined.

This legislation is focused on children and what we can do to discourage children from becoming addicted to tobacco in this country. I will just take a very few moments to review the highlights.

Just very quickly, every day, 5,000 children try their first cigarette. More than 2,000 become new daily smokers. A third will die prematurely.

If the current trend continues, 6.4 million children, who are under 18 years of age, will die prematurely from smoking related illness. 400,000 people a year die from smoke related illness. We are telling the youth of America their lives are going to be greatly shortened as a result of this kind of addiction.

As I mentioned, 400,000 Americans die each year from smoke-caused disease, and tobacco costs $75 billion in annual health care costs. These are costs that are spent by Medicare, Medicaid, veterans hospitals, and expended privately.

Again, to give the focus of where the advertising is going, this chart shows the number of teens between 12 and 17 who were reached five or more times by tobacco advertising in the year 1999.

A March 2002 study asked teenagers and adults, ''have you seen any advertising for cigarettes or spit tobacco in the last 2 weeks?'' For the teenagers, 64 percent had seen advertising; while for adults, just 27 percent.

What we are maintaining is that the industry is targeting children. These are commercial surveys, and they substantiate our point.

The money that is being expended for these extraordinary advertising budgets is targeted to teenagers, to effectively hook them and addict them.

This chart shows the very substantial increase in promotional expenditures from 1997 to the year 2000. As the chart showed, expenditures totaled $5.660 billion in 1997 and increased to $9.5 billion in the year 2000.

Over the last 5 years, it has virtually doubled. Where is it being targeted? The children. Are the children seeing it? Yes. Are they becoming more addicted? Yes. Is this really a national problem? Yes. Can we do something about it? Yes. Will this legislation do something about it? Yes, because it incorporates many of the recommendations made by former heads of the FDA as well as from the many experts we have heard from at a range of hearings we have held.

The bottom line: If smoking rates do not decline, over 6 million children who are alive today under the age of 18 will suffer premature death.

This is a matter of enormous importance. It is of importance to families, to parents, to children, and to our country. We have targeted, responsible legislation to deal with this issue. We are serious about presenting it to the Senate, which we will do. We are looking for broad support from the American people.

We are grateful for all of the public health agencies that support it: cancer, heart, lung, all of the various health-related agencies that support this legislation. They are going to be strong allies.

Mr. Myers, who is with Tobacco Free Children, has done such an extraordinary job and has made this a high priority. We are serious about it, and we hope to be able to help the families in this country by doing something about children being addicted to cigarettes.

This bill will give the Food and Drug Administration broad authority to regulate tobacco products for the protection of the public health. We cannot in good conscience allow the federal agency most responsible for protecting the public health to remain powerless to deal with the enormous risks of tobacco, the most deadly of all consumer products.

The provisions in this bill closely track those in the bipartisan compromise reached during Senate consideration of comprehensive tobacco control legislation in 1998. Fifty-eight Senators supported it at that time. That legislation was never enacted because of disputes over tobacco taxation and litigation, not over FDA authority.

This FDA provision is a fair and balanced approach to FDA regulation. It creates a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gives FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

I believe that any attempt to weaken the 1998 language would undermine the FDA's ability to deal effectively with the enormous health risks posed by smoking. This concern is shared by a number of independent public health experts. The bipartisan compromise agreed to in 1998 is still the best opportunity for Senators to come together and grant FDA the regulatory authority it needs to substantially reduce the number of children who start smoking and to help addicted smokers quit. Nothing less will do the job.

The stakes are vast. Five thousand children have their first cigarette every day, and two thousand of them become daily smokers. Nearly a thousand of them will die prematurely from tobacco-induced diseases. Smoking is the number one preventable cause of death in the nation today. Cigarettes kill well over four hundred thousand Americans each year. That is more lives lost than from automobile accidents, alcohol abuse, illegal drugs, AIDS, murder, suicide, and fires combined. Our response to a public health problem of this magnitude must consist of more than half-way measures.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over nine billion dollars a year to promote its products. Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products. If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. This legislation will give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children.

FDA authority must also extend to the sale of tobacco products. Nearly every state makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. This legislation will give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress as recently as 1994 that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA regulate them for the protection of the public health. Over forty million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. This legislation will require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims will be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Smoking is the number one preventable cause of death in America. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

This legislation will give the FDA the legal authority it needs: To reduce youth smoking by preventing tobacco advertising which targets children; to prevent the sale of tobacco products to minors; to help smokers overcome their addiction; to make tobacco products less toxic for those who continue to use them; and to prevent the tobacco industry from misleading the public about the dangers of smoking.

We cannot allow the tobacco industry to stop us from doing what we know is right for America's children. I intend to do all I can to see that Congress enacts this legislation this year. The public health demands it.

Mrs. FEINSTEIN. Mr. President, I rise today with Senators KENNEDY and DEWINE in support of legislation to empower the Food and Drug Administration, FDA, to regulate tobacco products.

During my time in the Senate, I have become very involved with cancer. I am the Co-Chair of the Senate Cancer Caucus and the Vice-Chair of the National Dialogue on Cancer, which is Chaired by former President and Barbara Bush.

The cancer community is united in the belief that the single most important preventive measure is to place tobacco products under the regulatory control of the FDA. I stand behind the cancer community and express the same belief.

Smoking causes one-third of all cancers, and is the cause of approximately 165,000 deaths annually.

I firmly believe that cancer cannot be conquered without addressing smoking and the use of tobacco products.

Smoking results in death or disability for over half of tobacco users, according to the Centers for Disease Control, CDC. Smoking costs the health care system over $70 billion annually.

Over the past two decades, we have learned that tobacco companies have manipulated the level of nicotine in cigarettes to increase the number of people addicted to their product.

There are more than 40 chemicals in tobacco smoke that cause cancer in humans and animals, according to the CDC. Tobacco smoke has toxic components, as well as tar, carbon monoxide and other dangerous additives.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. I believe that empowering the FDA to regulate tobacco will help do that.

The U.S. Surgeon General and the Centers for Disease Control and Prevention have unequivocally demonstrated that, for example, anti-smoking campaigns can reduce smoking, a major cause of cancer.

California is a good example: My state started an aggressive tobacco control program in 1989 and throughout the 1990s, tobacco use dropped at two to three times faster than the rest of the country.

Ninety percent of adult smokers begin before age 18 and every day, 3,000 young people become smokers.

This bill will provide meaningful regulation by the Food and Drug Administration of the content and marketing of tobacco products, especially the addicting and carcinogenic components.

Dr. C. Everett Koop, former US Surgeon General, and Dr. David Kessler, former Commissioner of the Food and Drug Administration, in 1997 report, cited FDA and other studies and said:

> Nicotine in cigarettes and smokeless tobacco has the same pharmacological effects as other drugs that FDA has traditionally regulated . . . nicotine is extremely addictive . . . and the vast majority of people who use nicotine-containing cigarettes and smokeless tobacco do so to satisfy their craving for the pharmacological effects of nicotine; that is, to satisfy their drug-dependence or addiction.

They go to recommend that the ''FDA should continue to have authority to regulate all areas of nicotine, as well as other constituents and ingredients, and that authority should be made completely explicit.''

I am pleased that to note that even the Philip Morris Companies has acknowledged the need for FDA to regulate tobacco. On their website, they say:

> We believe federal legislation that includes granting FDA authority to regulate tobacco products could effectively address many of the complex tobacco issues that concern the public, the public health community and us.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. This bill gives FDA the power to regulate tobacco products' content, design, sale, and marketing.

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. 2626

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 ''Youth Smoking Prevention and Public Health Protection Act''.

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

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of epic and worsening proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use

by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under Article I, Section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco induced disease. Such a reduction in youth smoking would also result in approximately $110,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 1999, the tobacco industry spent close to $8,240,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco advertising than adults, they smoke the most advertised brands, and children as young as 3 to 6 years old can recognize a character associated with smoking at the same rate as they recognize cartoons and fast food characters.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text-only requirements, while not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (62 Fed. Reg. 44615-44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the standards set forth in the amendments made by this Act for the regulation of tobacco products by the Food and Drug Administration and the restriction on the sale and distribution, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this Act.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those product before reaching the age of 18. Tobacco advertising and promotion plays a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop and introduce less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that adults are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers; and

(8) to impose appropriate regulatory controls on the tobacco industry

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this Act (or an amendment made by this Act) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in State, Tribal, or Federal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this Act (or an amendment made by this Act) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

"CHAPTER IX—TOBACCO PRODUCTS

"SEC. 900. DEFINITIONS.

''In this chapter:

''(1) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(2) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(3) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements for cigarettes shall also apply to cigarette tobacco.

''(4) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(2)).

''(5) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of cigarette or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(6) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(7) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(8) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(9) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

''(10) RETAILER.—The term 'retailer' means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(11) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(12) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(13) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''(14) TOBACCO PRODUCT MANUFACTURER.—Term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product; or

''(B) imports a finished cigarette or smokeless tobacco product for sale or distribution in the United States.

''(15) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

"SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a health claim is made for such products under section 201(g)(1)(C) or 201(h)(3).

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Youth Smoking Prevention and Public Health Protection Act, and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or the Youth Smoking Prevention and Public Health Protection Act, shall be construed to affect the Secretary's authority over, or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) TOBACCO LEAF.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of the manufacturer, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding any other provision of this subparagraph, if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production. For purposes of the preceding sentence, the term 'controlled by' means a member of the same controlled group of corporations as that term is used in section 52(a) of the Internal Revenue Code of 1986, or under common control within the meaning of the regulations promulgated under section 52(b) of such Code.

"SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any poisonous or deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) it is, or purports to be or is represented as, a tobacco product which is subject to a performance standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(5) it is required by section 910(a) to have premarket approval, is not exempt under section 906(f), and does not have an approved application in effect;

''(6) the methods used in, or the facilities or controls used for, its manufacture, packing or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(7) it is a tobacco product for which an exemption has been granted under section 906(f) for investigational use and the person who was granted such exemption or any investigator who uses such tobacco product under such exemption fails to comply with a requirement prescribed by or under such section.

"SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; and

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco,

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in any State in an establishment not duly registered under section 905(b), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as defined in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a performance standard established under section 907, unless it bears such labeling as may be prescribed in such performance standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908;

''(B) to furnish any material or information required by or under section 909; or

''(C) to comply with a requirement under section 912.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product. No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement. No advertisement of a tobacco product, published after the date of enactment of the Youth Smoking Prevention and Public Health Protection Act shall, with respect to the language of label statements as prescribed under section 4 of the Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55).

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Youth Smoking Prevention and Public Health Protection Act, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit to the Secretary the following information:

''(1) A listing of all tobacco ingredients, substances and compounds that are, on such date, added by the manufacturer to the tobacco, paper, filter, or other component of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine.

''(3) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, behavioral, or physiologic effects of tobacco products, their constituents, ingredients, and components, and tobacco additives, described in paragraph (1).

''(4) All documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(5) All documents (including underlying scientific information) relating to marketing research involving the use of tobacco products.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(b) ANNUAL SUBMISSION.—A tobacco product manufacturer or importer that is required to submit information under subsection (a) shall update such information on an annual basis under a schedule determined by the Secretary.

''(c) TIME FOR SUBMISSION.—

''(1) NEW PRODUCTS.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Youth Smoking Prevention and Public Health Protection Act, the manufacturer of such product shall provide the information required under subsection (a) and such product shall be subject to the annual submission under subsection (b).

''(2) MODIFICATION OF EXISTING PRODUCTS.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive, increases or decreases the quantity of an existing tobacco additive or the nicotine content, delivery, or form, or eliminates a tobacco additive from any tobacco product, the manufacturer shall within 60 days of such action so advise the Secretary in writing and reference such modification in submissions made under subsection (b).

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person.

''(c) REGISTRATION OF NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment in any State registered with the Secretary under this section shall be subject to inspection under section 704, and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by one or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, may register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) of this section and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), or (d) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which has not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a performance standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in

such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of June 1, 2002, as defined by the Secretary by regulation shall, at least 90 days before making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall by regulation prescribe)—

''(A) the basis for such person's determination that the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2002, that is in compliance with the requirements of this Act; and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-JUNE 1, 2002 PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2002, and before the date of enactment of the Youth Smoking Prevention and Public Health Protection Act shall be submitted to the Secretary within 6 months after the date of enactment of that Act.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking under section 907, 908, 909, or 910, or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 904, 907, 908, 909, or 910 or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of tobacco products consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATION.—No restriction under paragraph (1) may prohibit the sale of any tobacco product in face-to face transactions by a specific category of retail outlets.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—The Secretary may, in accordance with subparagraph (B), prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a tobacco product), packing and storage of a tobacco product, conform to current good manufacturing practice, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford an advisory committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO ADVISORY COMMITTEE.—The Secretary may refer to an advisory committee any petition submitted under subparagraph (A). The advisory committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to an advisory committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, controls, and facilities prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the period ending 3 years after the date of enactment of the Youth Smoking Prevention and Public Health Protection Act.

''(f) EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from this chapter under such conditions as the Secretary may prescribe by regulation.

''(g) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. PERFORMANCE STANDARDS.

''(a) IN GENERAL.—

''(1) FINDING REQUIRED.—The Secretary may adopt performance standards for a tobacco product if the Secretary finds that a performance standard is appropriate for the protection of the public health. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(2) CONTENT OF PERFORMANCE STANDARDS.—A performance standard established under this section for a tobacco product—

''(A) shall include provisions to provide performance that is appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for the reduction or elimination of nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents or harmful components of the product; or

''(iii) relating to any other requirement under (B);

''(B) shall, where necessary to be appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the performance characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(3) PERIODIC RE-EVALUATION OF PERFORMANCE STANDARDS.—The Secretary shall provide for periodic evaluation of performance standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (2) by any person.

''(4) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall, to the maximum extent practicable—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a tobacco product.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a performance standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the performance standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing performance standard for the tobacco product, including a draft or proposed performance standard, for consideration by the Secretary.

''(C) FINDING.—A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to be appropriate for the protection of the public health.

''(D) CONSIDERATION BY SECRETARY.—The Secretary shall consider all information submitted in connection with a proposed standard, including information concerning the countervailing effects of the performance standard on the health of adolescent tobacco users, adult tobacco users, or non-tobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(E) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee, the Secretary shall—

''(i) promulgate a regulation establishing a performance standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) EFFECTIVE DATE.—A regulation establishing a performance standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before one year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade.

''(3) SPECIAL RULE FOR STANDARD BANNING CLASS OF PRODUCT OR ELIMINATING NICOTINE CONTENT.—Because of the importance of a decision of the Secretary to issue a regulation establishing a performance standard—

''(A) eliminating all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

it is appropriate for the Congress to have the opportunity to review such a decision. Therefore, any such standard may not take effect before a date that is 2 years after the President notifies the Congress that a final regulation imposing the restriction has been issued.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person may by a regulation, promulgated in accordance with the requirements of paragraphs (1) and (2)(B), amend or revoke a performance standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a performance standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERENCE TO ADVISORY COMMITTEE.—The Secretary—

''(A) may, on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a performance standard; or

''(B) shall, upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation to an advisory committee, for a report and recommendation

with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment. If a proposed regulation is referred under this paragraph to the advisory committee, the Secretary shall provide the advisory committee with the data and information on which such proposed regulation is based. The advisory committee shall, within 60 days after the referral of a proposed regulation and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation. A copy of such report and recommendation shall be made public by the Secretary.

"SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a) of this section.

"SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

"SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any tobacco product that is not commercially marketed (other than for test marketing) in the United States as of June 1, 2002, is required unless the manufacturer has submitted a report under section 905(j), and the Secretary has issued an order that the tobacco product is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of June 1, 2002, that is in compliance with the requirements of this Act.

''(B) PRODUCTS INTRODUCED BETWEEN JUNE 1, 2002, AND ENACTMENT OF THIS CHAPTER.—Subparagraph (A) does not apply to a tobacco product that—

''(i) was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after June 1, 2002, and before the date of enactment of the Youth Smoking Prevention and Public Health Protection Act; and

''(ii) for which a report was submitted under section 905(j) within 6 months after such date,

until the Secretary issues an order that the tobacco product is substantially equivalent for purposes of this section or requires premarket approval.

''(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—For purposes of this section and section 905(j), the terms 'substantially equivalent' or 'substantial equivalence' mean, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—For purposes of subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(3) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application for premarket approval shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any performance standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such performance standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERENCE TO ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) shall, upon the request of an applicant,

refer such application to an advisory committee and for submission (within such period as the Secretary may establish) of a report and recommendation respecting approval of the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that one or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order approving an application for a tobacco product may require as a condition to such approval that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPROVAL.—The Secretary shall deny approval of an application for a tobacco product if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a performance standard in effect under section 907, compliance with which is a condition to approval of the application, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to place such application in approvable form (which measures may include further research by the applicant in accordance with one or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether approval of a tobacco product is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include one or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was approved, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was approved, that such tobacco product is not shown to conform in all respects to a performance standard which is in effect under section 907, compliance with which was a condition to approval of the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing approval of the application may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with subsection (e).

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an approved application would cause serious, adverse health consequences or death, that is greater than ordinarily caused by tobacco products on the market, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

"SEC. 911. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a performance standard for a tobacco product; or

''(B) a denial of an application for approval under section 910(c),

any person adversely affected by such regulation or order may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit wherein such person resides or has his or her principal place of business for judicial review of such regulation or order.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court to the Secretary or other officer designated by the Secretary for that purpose.

''(B) RECORD OF PROCEEDINGS.—With respect to an action under paragraph (1), the Secretary shall file in the court the record of the proceedings on which the Secretary based the Secretary's regulation or order and each record or order shall contain a statement of the reasons for its issuance and the basis, on the record, for its issuance.

''(C) DEFINITION.—For purposes of this section, the term 'record' means all notices and other matter published in the Federal Register with respect to the regulation or order reviewed, all information submitted to the Secretary with respect to such regulation or order, proceedings of any panel or advisory committee with respect to such regulation or order, any hearing held with respect to such regulation or order, and any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) COURT MAY ORDER SECRETARY TO MAKE ADDITIONAL FINDINGS.—

''(1) IN GENERAL.—If the petitioner in an action under subsection (a)(1) applies to the court for leave to adduce additional data, views, or arguments respecting the regulation or order being reviewed and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceedings before the Secretary, the court may order the Secretary to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions.

''(2) MODIFICATION OF OR ADDITIONAL FINDINGS.—The Secretary may modify the Secretary's findings, or make new findings by reason of the additional data, views, or arguments under paragraph (1) and shall file with the court such modified or new findings, and the Secretary's recommendation, if any, for the modification or setting aside of the regulation or order being reviewed, with the return of such additional data, views, or arguments.

''(c) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A regulation or order described in paragraph (1) or (2) of subsection (a) shall not be affirmed if it is found to be unsupported by substantial evidence on the record taken as a whole.

''(d) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(e) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

''(f) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review under this section or under any other provision of law or a regulation or order issued under section 906, 907, 908, 909, 910, or 914, each such regulation or order shall contain a statement of the reasons for its issuance and the basis, in the record of the proceedings held in connection with its issuance, for its issuance.

"SEC. 912. POSTMARKET SURVEILLANCE.

''(a) DISCRETIONARY SURVEILLANCE.—The Secretary may require a tobacco product manufacturer to conduct postmarket surveillance for a tobacco product of the manufacturer if the Secretary determines that postmarket surveillance of the tobacco product is necessary to protect the public health or is necessary to provide information regarding the health risks and other safety issues involving the tobacco product.

''(b) SURVEILLANCE APPROVAL.—Each tobacco product manufacturer required to conduct a surveillance of a tobacco product under subsection (a) shall, within 30 days after receiving notice that the manufacturer is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.

"SEC. 913. REDUCED RISK TOBACCO PRODUCTS.

''(a) REQUIREMENTS.—

''(1) IN GENERAL.—For purposes of this section, the term 'reduced risk tobacco product' means a tobacco product designated by the Secretary under paragraph (2).

''(2) DESIGNATION.—

''(A) IN GENERAL.—A product may be designated by the Secretary as a reduced risk tobacco product if the Secretary finds that the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect public health, based on an application submitted by the manufacturer of the product (or other responsible person) that—

''(i) demonstrates through testing on animals and short-term human testing that use of such product results in ingestion or inhalation of a substantially lower yield of toxic substances than use of conventional tobacco products; and

''(ii) if required by the Secretary, includes studies of the long-term health effects of the product.

If such studies are required, the manufacturer may consult with the Secretary regarding protocols for conducting the studies.

''(B) BASIS FOR FINDING.—In making the finding under subparagraph (A), the Secretary shall take into account—

''(i) the risks and benefits to the population as a whole, including both users of tobacco products and non-users of tobacco products;

''(ii) the increased or decreased likelihood that existing users of tobacco products will stop using such products including reduced risk tobacco products;

''(iii) the increased or decreased likelihood that those who do not use tobacco products will start to use such products, including reduced risk tobacco products; and

''(iv) the risks and benefits to consumers from the use of a reduced risk tobacco product as compared to the use of products approved under chapter V to reduce exposure to tobacco.

''(3) MARKETING REQUIREMENTS.—A tobacco product may be marketed and labeled as a reduced risk tobacco product if it—

''(A) has been designated as a reduced risk tobacco product by the Secretary under paragraph (2);

''(B) bears a label prescribed by the Secretary concerning the product's contribution to reducing harm to health; and

''(C) complies with requirements prescribed by the Secretary relating to marketing and advertising of the product, and other provisions of this chapter as prescribed by the Secretary.

''(b) REVOCATION OF DESIGNATION.—At any time after the date on which a tobacco product is designated as a reduced risk tobacco product under this section the Secretary may, after providing an opportunity for an informal hearing, revoke such designation if the Secretary determines, based on information not available at the time of the designation, that—

''(1) the finding made under subsection (a)(2) is no longer valid; or

''(2) the product is being marketed in violation of subsection (a)(3).

''(c) LIMITATION.—A tobacco product that is designated as a reduced risk tobacco product that is in compliance with subsection (a) shall not be regulated as a drug or device.

''(d) DEVELOPMENT OF REDUCED RISK TOBACCO PRODUCT TECHNOLOGY.—A tobacco product manufacturer shall provide written notice to the Secretary upon the development or acquisition by the manufacturer of any technology that would reduce the risk of a tobacco product to the health of the user for which the manufacturer is not seeking designation as a 'reduced risk tobacco product' under subsection (a).

"SEC. 914. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

"SEC. 915. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Youth Smoking Prevention and Public Health Protection Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C.

1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 916. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, the Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section does not apply to the regulations referred to in section 102 of the Youth Smoking Prevention and Public Health Protection Act.

''SEC. 917. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Youth Smoking Prevention and Public Health Protection Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require the testing, reporting, and disclosure of tobacco product smoke constituents and ingredients that the Secretary determines should be disclosed to the public in order to protect the public health. Such constituents shall include tar, nicotine, carbon monoxide, and such other smoke constituents or ingredients as the Secretary may determine to be appropriate. The regulations may require that tobacco product manufacturers, packagers, or importers make such disclosures relating to tar and nicotine through labels or advertising, and make such disclosures regarding other smoke constituents or ingredients as the Secretary determines are necessary to protect the public health.

''(c) AUTHORITY.—The Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product smoke constituents.

''SEC. 918. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) ADDITIONAL REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products, including laws, rules, regulations, or other measures relating to or prohibiting the sale, distribution, possession, exposure to, or use of tobacco products by individuals of any age that are in addition to, or more stringent than, requirements established under this chapter. No provision of this chapter shall limit or otherwise affect any State, Tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement applicable under the provisions of this chapter relating to performance standards, premarket approval, adulteration, misbranding, registration, reporting, good manufacturing standards, or reduced risk products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, use, or distribution of a tobacco product including requirements related to the access to, and the advertising and promotion of, a tobacco product.

''(b) ADDITIONAL RESTRICTIONS ON UNDERAGE USAGE.—Nothing in this chapter shall be construed to prevent a Federal agency (including the Armed Forces), a State or a political subdivision of a State, or the government of an Indian tribe from adopting and enforcing additional measures that further restrict or prohibit tobacco product sale to, use by, and accessibility to individuals under the legal age of purchase established by such agency, State, subdivision, or government of an Indian tribe.

''(c) NO LESS STRINGENT.—Nothing in this chapter is intended to supersede any State, local, or Tribal law that is not less stringent than this chapter.

''(d) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

''(e) WAIVERS.—Upon the application of a State or political subdivision thereof, the Secretary may, by regulation promulgated after notice and an opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a tobacco product if—

''(1) the requirement is more stringent than a requirement applicable under the provisions described in subsection (a)(1) which would be applicable to the tobacco product if an exemption were not in effect under this subsection; or

''(2) the requirement—

''(A) is required by compelling local conditions; and

''(B) compliance with the requirement would not cause the tobacco product to be in violation of any applicable requirement of this chapter.

''SEC. 919. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Youth Smoking Prevention and Public Health Protection Act, the Secretary shall establish a 9-member advisory committee, to be known as the 'Tobacco Products Scientific Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in the medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(A) 3 individuals who are officers or employees of a State or local government, or of the Federal government;

''(B) 2 individuals as representatives of interests of the tobacco manufacturing industry;

''(C) 2 individuals as representatives of interests of physicians and other health care professionals; and

''(D) 2 individuals as representatives of the general public.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex-officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members of the Advisory Committee to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect for level 4 of the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.''.

SEC. 102. CONSTRUCTION OF CURRENT REGULATIONS.

(a) IN GENERAL.—The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (62 Fed. Reg. 44615–44618 beginning at ''part 897'') are hereby deemed to be lawful and shall have the same legal force and effect as if such regulations had been lawfully promulgated by the Secretary under chapter IX and section 701 of the Federal Food, Drug, and Cosmetic Act (as amended by this Act). Not later than 30 days after the date of enactment of this Act, the Secretary shall republish such regulations in the Federal Register. Such regulations shall take effect on the date that is 12 months after such date of enactment, except that the Secretary may designate an earlier effective date. The Secretary shall amend the designation of authority in such regulations in accordance with this subsection.

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document entitled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, or 909'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(j)(2).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 906(f), or 908;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 906(f), or 909; or

''(C) to comply with a requirement under section 522 or 912.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1).'';

(4) in paragraph (4) as so redesignated—

(A) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: '', (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or subsection (j) of section 905'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)—

(A) in paragraph (1), by inserting ''tobacco product,'' after ''device,''; and

(B) by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3), the following:

''(4) Paragraph (1) does not apply to any tobacco product—

''(A) which does not comply with an applicable requirement of section 907 or 910; or

''(B) which under section 906(f) is exempt from either such section.

This paragraph does not apply if the Secretary has determined that the exportation of the tobacco product is not contrary to the public health and safety and has the approval of the country to which it is intended for export or the tobacco product is eligible for export under section 802.''.

(k) SECTION 802.—Section 802 (21 U.S.C. 382) is amended—

(1) in subsection (a), by striking ''device— '' and inserting ''device or tobacco product— '';

(2) in subsection (a)(1)(C), by striking ''and'' after the semicolon;

(3) in subsection (a)(2), by striking subparagraph (C) and all that follows in that subsection and inserting the following:

''(C) is a banned device under section 516; or

''(3) which, in the case of a tobacco product—

''(A) does not comply with an applicable requirement of section 907 or 910; or

''(B) under section 906(f) is exempt from either such section,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug, device, or tobacco product is, except as provided in subsection (f), authorized under subsection (b), (c), (d), or (e) of this section or section 801(e)(2) or 801(e)(4). If a drug, device, or tobacco product described in paragraph (1), (2), or (3) may be exported under subsection (b) and if an application for such drug or device under section 505, 515, or 910 of this Act or section 351 of the Public Health Service Act (42 U.S.C. 262) was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug, device, or tobacco product will be exported of such disapproval.'';

(4) in subsection (b)(1)(A), by inserting ''or tobacco product'' after ''device'' each time it appears;

(5) in subsection (c), by inserting ''or tobacco product'' after ''device'' and inserting ''or section 906(f)'' after ''520(g).'';

(6) in subsection (f), by inserting ''or tobacco product'' after ''device'' each time it appears; and

(7) in subsection (g), by inserting ''or tobacco product'' after ''device'' each time it appears.

(l) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(m) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect only upon the promulgation of final regulations by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time that constitute a repeated violation;

(2) providing for notice to the retailer of each violation at a particular retail outlet;

(3) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on false identification does not constitute a violation of any minimum age requirement for the sale of tobacco products.

TITLE II—TOBACCO PRODUCT WARNINGS AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) IN GENERAL.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive''

''WARNING: Tobacco smoke can harm your children''

''WARNING: Cigarettes cause fatal lung disease''

''WARNING: Cigarettes cause cancer''

''WARNING: Cigarettes cause strokes and heart disease''

''WARNING: Smoking during pregnancy can harm your baby''

''WARNING: Smoking can kill you''

''WARNING: Tobacco smoke causes fatal lung disease in non-smokers''

''WARNING: Quitting smoking now greatly reduces serious risks to your health''

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Except as provided in subparagraph (B), each label statement shall comprise at least the top 25 percent of the front and rear panels of the package. The word ''WARNING'' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word ''WARNING'' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under paragraph (4) of this subsection. The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital ''W'' of the word ''WARNING'' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that in the case of—

''(A) an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section or the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2) of this subsection. The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(4) MARKETING REQUIREMENTS.—

''(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.''.

(b) REPEAL OF PROHIBITION ON STATE RESTRICTION.—Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended—

(1) by striking ''(a) ADDITIONAL STATEMENTS.—'' in subsection (a); and

(2) by striking subsection (b).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 301 of this title, is further amended by adding at the end the following:

''(c) CHANGE IN REQUIRED STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer''
''WARNING: This product can cause gum disease and tooth loss''
''WARNING: This product is not a safe alternative to cigarettes''
''WARNING: Smokeless tobacco is addictive''

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 25 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) the word ''WARNING'' shall appear in capital letters and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraph (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

SEC. 204. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of, as amended by section 303 of this title, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the warning label statements required by subsection (a) of this section, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 205. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 301 of this title, is further amended by adding at the end the following:

''(4)(A) The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3847. Mr. LEAHY (for himself and Mr. HATCH) proposed an amendment to the bill H.R. 3275, to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes.

SA 3848. Mr. LEAHY (for himself and Mr. HATCH) proposed an amendment to the bill S. 1770, supra.

SA 3849. Mr. REID (for Mr. WELLSTONE (for himself and Mr. GRAHAM)) proposed an amendment to the bill S. Res. 283, recognizing the successful completion of democratic elections in the Republic of Colombia.

SA 3847. Mr. LEAHY (for himself and Mr. HATCH) proposed an amendment to the bill H.R. 3275, to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—SUPPRESSION OF TERRORIST BOMBINGS

SEC. 101. SHORT TITLE.

This title may be cited as the ''Terrorist Bombings Convention Implementation Act of 2001''.

SEC. 102. BOMBING STATUTE.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332e the following:

''§ 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

''(a) OFFENSES.—

''(1) IN GENERAL.—Whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility—

''(A) with the intent to cause death or serious bodily injury, or

''(B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss,

shall be punished as prescribed in subsection (c).

''(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

''(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

''(1) the offense takes place in the United States and—

''(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

''(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

''(C) at the time the offense is committed, it is committed—

''(i) on board a vessel flying the flag of another state;

''(ii) on board an aircraft which is registered under the laws of another state; or

''(iii) on board an aircraft which is operated by the government of another state;

''(D) a perpetrator is found outside the United States;

''(E) a perpetrator is a national of another state or a stateless person; or

''(F) a victim is a national of another state or a stateless person;

''(2) the offense takes place outside the United States and—

''(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

''(B) a victim is a national of the United States;

''(C) a perpetrator is found in the United States;

''(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

''(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

''(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

''(G) the offense is committed on board an aircraft which is operated by the United States.

''(c) PENALTIES.—Whoever violates this section shall be punished as provided under section 2332a(a) of this title.

''(d) EXEMPTIONS TO JURISDICTION.—This section does not apply to—

''(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

''(2) activities undertaken by military forces of a state in the exercise of their official duties; or

''(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

''(e) DEFINITIONS.—As used in this section, the term—

''(1) 'serious bodily injury' has the meaning given that term in section 1365(g)(3) of this title;

''(2) 'national of the United States' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(3) 'state or government facility' includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of Government, the legislature or the judiciary or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

''(4) 'intergovernmental organization' includes international organization (as defined in section 1116(b)(5) of this title);

''(5) 'infrastructure facility' means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications;

''(6) 'place of public use' means those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public, whether continuously, periodically, or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public;

''(7) 'public transportation system' means all facilities, conveyances, and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

''(8) 'explosive' has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage;

''(9) 'other lethal device' means any weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents, or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

''(10) 'military forces of a state' means the armed forces of a state which are organized, trained, and equipped under its internal law for the primary purpose of national defense or security, and persons acting in support of those armed forces who are under their formal command, control, and responsibility;

''(11) 'armed conflict' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature; and

''(12) 'state' has the same meaning as that term has under international law, and includes all political subdivisions thereof.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by inserting after section 2332e the following:

''2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.''.

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the applicability of any other Federal or State law which might pertain to the underlying conduct.

SEC. 103. EFFECTIVE DATE.

Section 102 shall take effect on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States.

TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM

SEC. 201. SHORT TITLE.

This title may be cited as the ''Suppression of the Financing of Terrorism Convention Implementation Act of 2001''.

SEC. 202. TERRORISM FINANCING STATUTE.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by adding at the end thereof the following new section:

''§ 2339C. Prohibitions against the financing of terrorism

''(a) OFFENSES.—

''(1) IN GENERAL.—Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

''(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

''(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

''(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

''(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

''(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

''(1) the offense takes place in the United States and—

''(A) a perpetrator was a national of another state or a stateless person;

''(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

''(C) on board an aircraft which is operated by the government of another state;

''(D) a perpetrator is found outside the United States;

''(E) was directed toward or resulted in the carrying out of a predicate act against—

''(i) a national of another state; or

''(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

''(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

''(G) was directed toward or resulted in the carrying out of a predicate act—

''(i) outside the United States; or

''(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

''(2) the offense takes place outside the United States and—

''(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

''(B) a perpetrator is found in the United States; or

''(C) was directed toward or resulted in the carrying out of a predicate act against—

''(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

''(ii) any person or property within the United States;

''(iii) any national of the United States or the property of such national; or

''(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

''(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

''(4) the offense is committed on board an aircraft which is operated by the United States; or

''(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the

United States to do or abstain from doing any act.

''(c) CONCEALMENT.—Whoever—

''(1)(A) is in the United States; or

''(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); and

''(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support, resources, or funds—

''(A) knowing or intending that the support or resources were provided in violation of section 2339B of this title; or

''(B) knowing or intending that any such funds or any proceeds of such funds were provided or collected in violation of subsection (a);

shall be punished as prescribed in subsection (d)(2).

''(d) PENALTIES.—

''(1) SUBSECTION (A).—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

''(2) SUBSECTION (C).—Whoever violates subsection (c) shall be fined under this title, imprisoned for not more than 10 years, or both.

''(e) DEFINITIONS.—In this section—

''(1) the term 'funds' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

''(2) the term 'government facility' means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

''(3) the term 'proceeds' means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

''(4) the term 'provides' includes giving, donating, and transmitting;

''(5) the term 'collects' includes raising and receiving;

''(6) the term 'predicate act' means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

''(7) the term 'treaty' means—

''(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

''(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

''(C) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

''(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

''(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

''(F) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

''(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

''(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

''(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

''(8) the term 'intergovernmental organization' includes international organizations;

''(9) the term 'international organization' has the same meaning as in section 1116(b)(5) of this title;

''(10) the term 'armed conflict' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

''(11) the term 'serious bodily injury' has the same meaning as in section 1365(g)(3) of this title;

''(12) the term 'national of the United States' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

''(13) the term 'state' has the same meaning as that term has under international law, and includes all political subdivisions thereof.

''(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least $10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

''2339C. Prohibitions against the financing of terrorism.''.

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the scope or applicability of any other Federal or State law.

SEC. 203. EFFECTIVE DATE.

Except for paragraphs (1)(D) and (2)(B) of section 2339C(b) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States, and for the provisions of section 2339C(e)(7)(I) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of Terrorist Bombing enters into force for the United States, section 202 shall take effect on the date of enactment of this Act.

TITLE III—ANCILLARY MEASURES

SEC. 301. ANCILLARY MEASURES.

(a) WIRETAP PREDICATES.—Section 2516(1)(q) of title 18, United States Code, is amended by—

(1) inserting ''2332f,'' after ''2332d,''; and

(2) striking ''or 2339B'' and inserting ''2339B, or 2339C''.

(b) FEDERAL CRIME OF TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

(1) inserting ''2332f (relating to bombing of public places and facilities),'' after ''2332b (relating to acts of terrorism transcending national boundaries),''; and

(2) inserting ''2339C (relating to financing of terrorism,'' before ''or 2340A (relating to torture)''.

(c) PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.—Section 2339A of title 18, United States Code, is amended by inserting ''2332f,'' before ''or 2340A''.

(d) FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.''.

SA 3848. Mr. LEAHY (for himself and Mr. HATCH) proposed an amendment to the bill S. 1770, to implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—SUPPRESSION OF TERRORIST BOMBINGS

SEC. 101. SHORT TITLE.

This title may be cited as the ''Terrorist Bombings Convention Implementation Act of 2001''.

SEC. 102. BOMBING STATUTE.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after section 2332e the following:

''§ 2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities

''(a) OFFENSES.—

''(1) IN GENERAL.—Whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility—

''(A) with the intent to cause death or serious bodily injury, or

''(B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss,

shall be punished as prescribed in subsection (c).

''(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

''(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

''(1) the offense takes place in the United States and—

''(A) the offense is committed against another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

''(B) the offense is committed in an attempt to compel another state or the United States to do or abstain from doing any act;

''(C) at the time the offense is committed, it is committed—

''(i) on board a vessel flying the flag of another state;

''(ii) on board an aircraft which is registered under the laws of another state; or

''(iii) on board an aircraft which is operated by the government of another state;

''(D) a perpetrator is found outside the United States;

''(E) a perpetrator is a national of another state or a stateless person; or

''(F) a victim is a national of another state or a stateless person;

''(2) the offense takes place outside the United States and—

''(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

''(B) a victim is a national of the United States;

''(C) a perpetrator is found in the United States;

''(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

''(E) the offense is committed against a state or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

''(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

''(G) the offense is committed on board an aircraft which is operated by the United States.

''(c) PENALTIES.—Whoever violates this section shall be punished as provided under section 2332a(a) of this title.

''(d) EXEMPTIONS TO JURISDICTION.—This section does not apply to—

''(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

''(2) activities undertaken by military forces of a state in the exercise of their official duties; or

''(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

''(e) DEFINITIONS.—As used in this section, the term—

''(1) 'serious bodily injury' has the meaning given that term in section 1365(g)(3) of this title;

''(2) 'national of the United States' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(3) 'state or government facility' includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of Government, the legislature or the judiciary or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

''(4) 'intergovernmental organization' includes international organization (as defined in section 1116(b)(5) of this title);

''(5) 'infrastructure facility' means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications;

''(6) 'place of public use' means those parts of any building, land, street, waterway, or other location that are accessible or open to members of the public, whether continuously, periodically, or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public;

''(7) 'public transportation system' means all facilities, conveyances, and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

''(8) 'explosive' has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage;

''(9) 'other lethal device' means any weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents, or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

''(10) 'military forces of a state' means the armed forces of a state which are organized, trained, and equipped under its internal law for the primary purpose of national defense or security, and persons acting in support of those armed forces who are under their formal command, control, and responsibility;

''(11) 'armed conflict' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature; and

''(12) 'state' has the same meaning as that term has under international law, and includes all political subdivisions thereof.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by inserting after section 2332e the following:

''2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.''.

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the applicability of any other Federal or State law which might pertain to the underlying conduct.

SEC. 103. EFFECTIVE DATE.

Section 102 shall take effect on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States.

TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM

SEC. 201. SHORT TITLE.

This title may be cited as the ''Suppression of the Financing of Terrorism Convention Implementation Act of 2001''.

SEC. 202. TERRORISM FINANCING STATUTE.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, relating to terrorism, is amended by adding at the end thereof the following new section:

''§ 2339C. Prohibitions against the financing of terrorism

''(a) OFFENSES.—

''(1) IN GENERAL.—Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

''(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

''(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

''(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

''(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

''(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

''(1) the offense takes place in the United States and—

''(A) a perpetrator was a national of another state or a stateless person;

''(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

''(C) on board an aircraft which is operated by the government of another state;

''(D) a perpetrator is found outside the United States;

''(E) was directed toward or resulted in the carrying out of a predicate act against—

''(i) a national of another state; or

''(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

''(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

''(G) was directed toward or resulted in the carrying out of a predicate act—

''(i) outside the United States; or

''(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

''(2) the offense takes place outside the United States and—

''(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

''(B) a perpetrator is found in the United States; or

''(C) was directed toward or resulted in the carrying out of a predicate act against—

''(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

''(ii) any person or property within the United States;

''(iii) any national of the United States or the property of such national; or

''(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

''(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

''(4) the offense is committed on board an aircraft which is operated by the United States; or

''(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

''(c) CONCEALMENT.—Whoever—

''(1)(A) is in the United States; or

''(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); and

''(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support, resources, or funds—

''(A) knowing or intending that the support or resources were provided in violation of section 2339B of this title; or

''(B) knowing or intending that any such funds or any proceeds of such funds were provided or collected in violation of subsection (a);

shall be punished as prescribed in subsection (d)(2).

''(d) PENALTIES.—

''(1) SUBSECTION (A).—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

''(2) SUBSECTION (C).—Whoever violates subsection (c) shall be fined under this title, imprisoned for not more than 10 years, or both.

''(e) DEFINITIONS.—In this section—

''(1) the term 'funds' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

''(2) the term 'government facility' means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

''(3) the term 'proceeds' means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

''(4) the term 'provides' includes giving, donating, and transmitting;

''(5) the term 'collects' includes raising and receiving;

''(6) the term 'predicate act' means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

''(7) the term 'treaty' means—

''(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

''(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

''(C) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

''(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

''(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

''(F) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

''(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

''(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

''(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

''(8) the term 'intergovernmental organization' includes international organizations;

''(9) the term 'international organization' has the same meaning as in section 1116(b)(5) of this title;

''(10) the term 'armed conflict' does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

''(11) the term 'serious bodily injury' has the same meaning as in section 1365(g)(3) of this title;

''(12) the term 'national of the United States' has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

''(13) the term 'state' has the same meaning as that term has under international law, and includes all political subdivisions thereof.

''(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least $10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

''2339C. Prohibitions against the financing of terrorism.''.

(c) DISCLAIMER.—Nothing contained in this section is intended to affect the scope or applicability of any other Federal or State law.

SEC. 203. EFFECTIVE DATE.

Except for paragraphs (1)(D) and (2)(B) of section 2339C(b) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States, and for the provisions of section 2339C(e)(7)(I) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of Terrorist Bombing enters into force for the United States, section 202 shall take effect on the date of enactment of this Act.

TITLE III—ANCILLARY MEASURES

SEC. 301. ANCILLARY MEASURES.

(a) WIRETAP PREDICATES.—Section 2516(1)(q) of title 18, United States Code, is amended by—

(1) inserting ''2332f,'' after ''2332d,''; and

(2) striking ''or 2339B'' and inserting ''2339B, or 2339C''.

(b) FEDERAL CRIME OF TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

(1) inserting ''2332f (relating to bombing of public places and facilities),'' after ''2332b (relating to acts of terrorism transcending national boundaries),''; and

(2) inserting ''2339C (relating to financing of terrorism,'' before ''or 2340A (relating to torture)''.

(c) PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.—Section 2339A of title 18, United States Code, is amended by inserting ''2332f,'' before ''or 2340A''.

(d) FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.''.

SA 3849. Mr. REID (for Mr. WELLSTONE (for himself and Mr. GRAHAM)) proposed an amendment to the bill S. Res. 283, recognizing the successful completion of democratic elections in the Republic of Colombia; as follows:

On page 2, line 8, strike ''their continuing'' and insert ''encourages their''.

On page 3, line 18, strike ''to continue''.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON CHILDREN AND FAMILIES

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on ''Newborn Screening: Increasing Options and Awareness,'' during the session of the Senate on Friday, June 14, 2002, at 9:30 a.m.

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

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Madam President, I ask unanimous consent that Steven Dettelbach, a detailee to the Judiciary Committee, be granted the privilege of the floor during consideration of the pending matter.

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

RECOGNIZING SUCCESSFUL COMPLETION OF DEMOCRATIC ELECTIONS IN THE REPUBLIC OF COLOMBIA

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 420, S. Res. 283.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 283) recognizing the successful completion of democratic elections in the Republic of Colombia.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Madam President, I ask unanimous consent that the Wellstone amendment, which is at the desk, be agreed to; that the resolution, as amended, be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

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

The amendment (No. 3849) was agreed to, as follows:

On page 2, line 8, strike ''their continuing'' and insert ''encourages their''.

On page 3, line 18, strike ''to continue''.

The resolution (S. Res. 283), as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 283

Whereas on May 26, 2002, the Republic of Colombia successfully completed democratic multiparty elections for President and Vice President;

Whereas these elections were deemed by international and domestic observers, including the United Nations and the Organization of American States, to be free, fair, and a legitimate nonviolent expression of the will of the people of the Republic of Colombia;

Whereas the United States has consistently supported the efforts of the people of the Republic of Colombia to strengthen and continue their democracy;

Whereas the Senate notes the courage of the millions of citizens of the Republic of Colombia that turned out to vote in order to freely and directly express their opinion; and

Whereas these open, fair, and democratic elections of the new President and Vice President of the Republic of Colombia, and the speedy posting of election results, should be broadly commended: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the government and the people of the Republic of Colombia for the successful completion of democratic elections held on May 26, 2002, for President and Vice President;

(2) congratulates President-elect Alvaro Uribe Velez and Vice President-elect Francisco Santos Calderon on their recent victory and encourages their strong commitment to democracy, national reconciliation, and reconstruction;

(3) congratulates Colombian President Andres Pastrana, who has been a strong ally of the United States, a long-standing supporter of peace process negotiations, and a builder of national unity in the Republic of Colombia, for his personal commitment to democracy;

(4) commends all Colombian citizens and political parties for their efforts to work together to take risks for democracy and to willfully pursue national reconciliation in order to cement a lasting peace and to strengthen democratic traditions in the Republic of Colombia;

(5) supports Colombian attempts to—

(A) ensure democracy, national reconciliation, and economic prosperity;

(B) support human rights and rule of law; and

(C) abide by all the essential elements of representative democracy as enshrined in the Inter-American Democratic Charter, Organization of American States, and United Nations principles;

(6) encourages the government and people of the Republic of Colombia to continue their struggle against the evils of narcotics and all forms of terrorism;

(7) encourages the government of the Republic of Colombia to promote—

(A) the professionalism of the Colombian Armed Forces and Colombian National Police; and

(B) judicial and legal reforms; and

(8) reaffirms that the United States is unequivocally committed to encouraging and supporting democracy, human rights, rule of law, and peaceful development in the Republic of Colombia and throughout the Americas.

ORDER FOR RECORD TO REMAIN OPEN UNTIL 1:30 P.M.

Mr. REID. Madam President, I ask unanimous consent that the RECORD remain open today until 1:30 p.m., notwithstanding the adjournment of the Senate, for the submission of statements and the introduction of legislation.

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

ORDERS FOR MONDAY, JUNE 17, AND TUESDAY, JUNE 18, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 2 p.m. on Monday, June 17; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the terrorism insurance bill; that when the Senate completes its business on Monday, it stand in adjournment until Tuesday, June 18, at 9:30 a.m.; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the terrorism insurance bill, with the time until 9:45 a.m. equally divided between the two managers of the bill for debate only, prior to the cloture vote on the terrorism insurance bill; further, that the live quorum with respect to the cloture motion be waived; that Senators have until 3 p.m. on Monday to file first-degree amendments and until 9:40 a.m. on Tuesday to file second-degree amendments; and that the Senate stand in recess on Tuesday, June 18, from 12:30 p.m. to 2:15 p.m. for the weekly party conferences.

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

ORDER FOR ADJOURNMENT

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the statements of Senator BYRD of West Virginia.

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

The Senator from West Virginia.

NATIONAL FLAG DAY

Mr. BYRD. Madam President, the first national observance of Flag Day occurred on June 14, 1877, when Congress ordered that the flag be flown over public buildings every June 14. June 14 officially became National Flag Day when President Truman signed an act of Congress on August 3, 1949. This year marks the 225th anniversary of the signing of the Flag Act resolution on June 14, 1777. What a historic day this is, June 14. The resolution was a model of simplicity in just 32 words:

Resolved that the flag of the United States be made of 13 stripes, alternative red and white; that the Union be 13 stars, white in a blue field, representing a new constellation.

Thus, was our national flag established. The last phrase ''representing a new constellation'' carries tremendous weight in just four words. The new United States of America was truly a new constellation in the firmament of nation states, and it blazes just as brightly today, 225 years later.

The poet, Joseph Rodman Drake, said it best, in the ''American Flag.''

When freedom from her mountain height
Unfurled her standard to the air,
She tore the azure robe of night,
And set the stars of glory there.
She mingled with its gorgeous dyes
The milky baldric of the skies.
Then from his mansion in the sun
She called her eagle bearer down,
And gave into his mighty hand
The symbol of her chosen land.

So our flag, our standard, is known throughout the world and beyond. No other flag flies on the face of the Moon. Our flag is instantly recognizable in every capital and in the emptiest quarters of the world. Even those who revile that flag, even those who would attack that flag in our Nation, recognize America's dominant, even preeminent, role in world affairs, symbolized by that flag.

There it stands. For over 200 years, the American flag has led the way. It took us west to California, a great State—one of whose Senators at this moment presides over the Senate with a degree of decorum, aplomb and dignity that is so rare as a day in June.

Yes, it took us west to California, north to Alaska. It led brave men to the North and South Poles. It has flown atop Mount Everest. It has been emblazoned in the sides of deep-diving submarines. It has led charges. It has held fast against terrible odds, and it has risen from the ashes to soar over Iwo Jima and the World Trade Towers. In every bleak hour, the snap and the crack of that mighty banner has rallied our courage and given us hope.

Without words, the American flag instantly sums up all that is best about our Nation: Our courage, our leadership, our generosity, our determination, our freedom.

That first Flag Act forever shaped our flag, but in the early years of the Nation, several variations existed for the Flag Act was not precise about the exact arrangement of the stars. As new States joined the Union, additional stripes, as well as additional stars, were added to the flag.

An act passed in 1794, for example, provided for 15 stripes and 15 stars after May 1795. By 1818, the flag was growing unwieldy, and a subsequent act of April 4, 1818, signed by President Monroe, provided for 13 stripes for the original 13 colonies and one star for each State to be added to the flag on the 4th of July following admission of each new State to the Union.

Almost a century later on June 24, 1912, which is the year the great Titanic went down—1,570 people lost their lives that year on April 15, 1912—

an Executive Order of President Taft established the proportion of the flag and set the arrangement of the stars in six horizontal rows of eight each, a single point of each star to be upward.

The continued expansion of the United States required further modification to the flag, and an Executive Order of President Eisenhower, dated January 3, 1959—I was here at that time—provided for the arrangement of the stars in seven rows of seven stars each staggered horizontally and vertically.

A quick schoolchild who knows his or her multiplication table, sometimes referred to as the times table, knows that 7 times 7 is 49.

With the addition of Hawaii to the Union in 1959, a further Executive Order on August 21, 1959, was required to establish the flag as we know it today with the stars in nine rows staggered horizontally, and 11 rows staggered vertically.

Will the flag change again as it has in the past? I do not know. But some things will never change. The love and respect that patriotic Americans have for this chosen symbol of our native land will never die, so long as the Government remains true to the spirit and the words of this Constitution, which I hold in my hand.

Equally immutable is the power of our flag to lift our hopes and our morale. The blossoming of flags across the Nation on and after September 11 has proved that Old Glory, Old Glory, Old Glory, the Stars and Stripes, by any name, is our own beloved flag. And there it stands in all its glory, beside the Presiding Officer of the Senate.

Madam President, hats off to the flag! That is the appropriate response to the sight of an American flag passing by. To my mind, no one has ever said it better than Henry Holcomb Bennett, in his stirring poem ''The Flag Goes By.'' Let it be my salute and birthday salutation to the American flag. Long my she wave!

THE FLAG GOES BY

Hats off!
Along the street there comes
A blare of bugles, a ruffle of drums,
A flash of color beneath the sky:
Hats off!
The flag is passing by!

Blue and crimson and white it shines,
Over the steel-tipped, ordered lines.
Hats off!
The colors before us fly;
But more than the flag is passing by.

Sea-fights and land-fights, grim and great,
Fought to make and save the State:
Weary marches and sinking ships;
Cheers of victory on dying lips;

Days of plenty and years of peace;
March of a strong land's swift increase;
Equal justice, right, and law,
Stately honor and reverend awe;

Sign of a nation, great and strong
To ward her people from foreign wrong:
Pride and glory and honor,—all
Live in the colors to stand or fall.

Hats off!
Along the street there comes
A blare of bugles, a ruffle of drums;
And loyal hearts are beating high:
Hats off!
The flag is passing by!

FATHER'S DAY

Mr. BYRD. Madam President, the Bible commands us to ''honor thy father and thy mother.'' Last month, we honored mothers. It was mother's day. This month, this Sunday, it is the fathers' turn. On that day, we honor men in their role as fathers, not as any of the many other titles they may wear: not for their accomplishments at work, though that is how many men define themselves; not for their accomplishments at home that are not family related, such as in their role as gardeners or home builders or mechanics; but as fathers.

Fatherhood requires no special training, no advanced degree, but it does require a long commitment and a considerable level of effort. It is not always easy. It requires a certain warmth. It is not for the faint-hearted or the self-centered. Though it has its hero moments, it is not a popularity contest. As a father, a man will hunt buggers, as they used to say; buggers or monsters in closets on dark nights, investigate all strange sounds, and kill a lot of bugs and spiders. Just ask any father. He will be expected to know how to make volcanoes out of plaster of Paris and 2-liter soda bottles. He will become the instant authority in all manner of arcane subjects like sports rules. He will become the ultimate authority in all matters of discipline. Father will set, and enforce, limits and intimidate all prospective suitors of his daughters. He becomes the man by whom all other men are judged. It is difficult to over-estimate the importance of a father figure.

If you ask a child what he or she likes best about their father, they likely will not mention the father's job. They won't comment on how nicely he mows the lawn, or how the car gleams, the chromium shines, those fenders which mirror themselves. It is more likely to be that dad makes funny faces—yes, that is what they will comment on, dad makes funny faces—plays catch, makes waffles on Saturday mornings, or gives pony rides on his shoulders. Maybe dad does a great cannonball jump into the pool, maybe he cooks the best hamburgers on the grill, or maybe he takes his kids fishing. It is those times that a father is most engaged with his children that makes a moment special to a child. As we grow older, we can appreciate the effort that fathers put into their jobs, so that they might provide for their families, but that appreciation only sweetens the treasured times when dad plays with his kids.

I have spoken many times about my dad. He was not my biological father. But he was my biological father's sister's husband. He and my aunt raised me as my mother died when I was a year old, a little less than a year old, in the great influenza epidemic of 1918.

I was just reading last night a Senate hearing by the Appropriations Committee on a resolution appropriating $1 million to fight influenza in 1918. That hearing was conducted in September of 1918. Less than 2 months later, my mother died of that influenza.

So she asked, per her wish, that my father's sister—he had eight or nine sisters, two or three brothers; there were large families in those days—my mother's wish was that one of my father's sisters who had married Titus Dalton Byrd take me, the baby. I had three older brothers and a sister, but take me, the baby, and rear that baby. And so because of a mother's wish, my uncle, Titus Dalton Byrd, and his wife, my aunt, Vlurma Byrd, took me to West Virginia from North Carolina, and there in the coal fields of West Virginia they reared me. They took care of me. They loved me. My memories are of that tall man, with a red mustache and the black hair, who went to the mines every day and worked hard for me and for his wife, my aunt—the only mother I ever knew. And he was the only father I ever knew.

As a matter of fact, I didn't know that he wasn't my father until I was a high school senior. In that year, 1934, this man whom I called my dad took me and sat me down and told me the story of how the influenza had taken away my angel mother and how he and his wife, whom I knew as my mom, had taken me as an infant, just a few days under 1 year old, and raised me.

And I can remember him, that old coal miner, honest as the day is long. He had no enemies. When he died, he didn't owe any man a penny. He was honest, as I say, as the day is long. He worked hard in the bowels of the Earth.

I never heard him use God's name in vain in all the years that I was with him—never. I never heard him talk about his neighbor. I never saw him sit down at the table and grumble at whatever was on the table, whatever it was—never, ever a grumble.

As I say, I didn't know for a long time that Titus Dalton Byrd was not my father. I called him Pap. He was my dad.

He was a quiet, hard-working man, worn down by the strenuous life of a coal miner in the days before the mechanized and much safer practices of modern mining. He would come home—I see the coal dust sometimes in his eyes. I see him coming down the railroad tracks. I see him coming home from a hard day's work in the mines.

Many times in those mines the roof was so low that the miners had to walk on their knees. They had knee pads and they would walk on their knees, sometimes working in waterholes, lifting that slate and lifting the shovels of coal and heaving them into the coal car. They worked hard.

There was little hope for them, not much to look forward to in that coal miner's life. Day after day, day after day, the same old grind, lifting that

coal, shoveling that coal into the coal car.

I would see him coming down the railroad tracks from afar. I would run to meet him. As I came to him, I could see that tall man with the red mustache and the black hair set down his dinner pail on a crosstie. As I came near, he would lift off the lid from that dinner pail. And when I came up to him, he would reach into that dinner pail and bring out a cake that my mom had bought, a 5-cent cake—a 5-cent cake from the company store. He had taken it to work. He had taken it to eat for himself, but he didn't eat it. He always saved the cake for me. He always saved the cake for me.

What a man that was. I have met Presidents and Governors and Senators, Members of Congress and Kings and Shahs and Ambassadors—all the great people of the Earth. In my time as majority leader, I met with the Shah of Iran, the old Biblical country of Persia, just a few weeks before he left Iran forever. I met with him in his palace, just he and I and his wife and my wife.

I met with the King of Saudi Arabia, the great royal family of Saudi Arabia. I met with President Sadat, one on one. I met with Prime Minister Begin of Israel; President Assad of Syria; the King of Jordan. I knew the King's father. I met with Vice Premiere Deng, the real leader in Communist China. I met with President Brezhnev, down in the Crimea, just he and I sitting across the table, he with one person who was an interpreter, I with an interpreter and one assistant, that was all, sitting down, in the Crimea. Brezhnev, he reminded me of an old county commissioner back in West Virginia. I bet there are some of those county commissioners in Missouri, just oldtimers, people of the soil, people of the Earth.

So I met with these people: Margaret Thatcher, the King of Spain, I met with all this great array of world leaders.

Who was I? I was a country boy from southern West Virginia, a coal miner's son. But the greatest of all these people that I have met on Earth, one of the greatest—I knew he was great because I lived with him—the greatest was my old coal miner dad, coal miner dad.

Well, I would walk along with him, kind of feeling grown up, you see. Here I was, a little old boy. He saved me a cake and then I would walk on down to the house with him. I felt pretty grown up, walking with my dad.

So he always saved the cake for me. He never forgot to save me something. He would always give it to me with one of his quiet smiles. Those short walks were a special time just for us, and the memory of them gives me a warm feeling to this day.

I have no doubt that there is a Heaven. I have no doubt that in that Heaven right today is that mother who died on the evening before November 11, 1918. And because of her wish, I am here today. If it hadn't been for her wish, that I be taken by Titus Dalton Byrd and his wife, I probably would have grown up in North Carolina. It is hard to tell what I might have amounted to but because of a mother's wish.

My dad was the one who gave me pencils and paper, drawing books and watercolors at Christmas. He didn't give me a cowboy suit or a cap buster. He gave me drawing tablets and watercolors, urged me to learn how to draw and how to write and how to read. He was the one who bought a violin for me and encouraged me to play.

The fiddle was a big gift in a day and place where there wasn't much money for frills. I got a lot of enjoyment out of that fiddle playing. And because of that fiddle, I really had a political advantage, and I was advised by a Republican—as I told some of these fine pages here, earlier today—a Republican lawyer advised me to take that fiddle. He said: You take that fiddle, BOB, and everywhere you go you make that fiddle your briefcase. You play a tune or two and then you put that fiddle down and you give them a straight story on why you want to go to the West Virginia Legislature. And quote a little poem or two, but they will remember you because of that fiddle. Nobody else who is running can play a fiddle. They will remember you not because of the fiddle but because it got their attention and caused them to remember you. But it is what you say that really counts.

I ran my first campaign for elected office. I was an underdog. I was very young. I was unknown. I was untested. But my fiddle playing at campaign stops got people's attention and left them with a memory associated with my name. They were willing to listen to me talk as the price for getting to hear me play.

So in that way you could say that my dad helped me to win an election—my first election. He did, because he bought that fiddle for me. Without that fiddle, I wouldn't have won that first campaign, and probably wouldn't have been reelected when I ran for the West Virginia Senate. I had to go into additional counties, and I took the fiddle there. When I ran for the House of Representatives, there were additional counties. I took the fiddle around.

So that was what my dad gave me—that fiddle. It was because of his and my mother's wish, you see, that I am here today. It is how far I was influenced.

My dad also encouraged me in school. He did not want me to follow him into the mines. He knew the dangers too well. He had seen those dangers up close. He had seen too many of his fellow coal miners killed. He had seen the men on the floor of the house with a piece of canvass stretched over them who had been run over by a motor, or executed by a fallen cable, or killed by falling slate. He had seen those dangers up close. So he pushed me to do well in school. He wanted me to do well in school. He encouraged me. He always wanted to see that report card. And there was one category on the report card entitled ''deportment.'' He always looked at that deportment. How well did Robert do in school? How well does he mind the teacher? Does he do what the teacher says? Is he a rowdy or is he not? He always watched that.

From him and from my aunt, I developed a love of learning that has lasted my whole life.

I was the first in all of my family—going back many generations to William Sayle who settled in Virginia in 1657 on the banks of the Rappahannock River. He was the ancient forbear of my father, my real father, my biological father—I was the first in my family, going all the way back to England, to go to college.

I am proud to say that my children and my children's children have excelled in challenging academic fields. My grandson, Frederick, is a physicist, following in his father's footsteps. I may be biased, but at the rate my family is going I wouldn't be surprised if one of my great-granddaughters won a Nobel Prize, thanks to the academic legacy inspired by my dad who himself had practically little or no schooling whatsoever.

I know he must look down and be proud of all of us, just as we strive to make him proud.

I have another grandson who is a physicist also, Darius. I have a grandson who is on one of the appropriations committees as a staff person. I have a granddaughter who works in the Senate. I have a granddaughter who lives in Leesburg. She is a wonderful granddaughter. These daughters of mine and the grandchildren and now three great-grandchildren—three are great-granddaughters—I have no doubt that they will win some Nobel Prize or something even more worthy.

I know that I am not alone today in cherishing the memories of my dad—the man who raised me. Nor am I alone in seeing the reach that a father's encouragement can have through many generations who cannot feel the warm touch of that long-gone father's smile. History books are replete with the stories of famous men and women who owed their start to some early encouragement from their fathers or their mothers.

Benjamin West, an early American painter, said, as I understand it, that he owed his becoming a great painter to his mother—his angel mother—who, when he was a little infant, a little child, came to her with his child's drawings of flowers and birds and showed his mother. She would take him upon her knee and say, Benjamin, you will grow up to be a great painter. And Benjamin West grew up to be a great painter. He said he was made a great painter by a mother's kiss. That is the way it is.

It is what we celebrate on Father's Day. It is not the work, it is not the accomplishments, it is not the titles, it

isn't the bank account that bring children home to visit with their father and share a meal with him or send him a funny yet sentimental card. The moments of a father's love made manifest—these are the pieces of gold in memory's treasure chest. Those moments of joy, of laughter, of mutual pride at being in the same family make the labors of the week drop away like a heavy winter coat in the warm rays of the summer sun.

For myself, of course, and also for all fathers, I hope that this Sunday is filled with family and with laughter and with warm feelings. Let us all look upon, think upon, and remember our fathers and our father's father, and glory in their greatest and most lasting achievement—happy families.

Let us not forget that Biblical admonition, honor thy father and thy mother. We only have one of each. That is it. That is the sum total—only one.

I close with the words of an unknown who wrote the ''Little Chap Who Follows Me.''

I am sure that my dad, although he never had the luxury of sitting in a schoolroom reading that poem, the ''Little Chap Who Follows Me,'' certainly in his life typified that poet's thought as a father who thinks of the ''Little Chap Who Follows Me.''

Many of the poems, like these simple little poems, have a message:

A careful man I ought to be;
A little fellow follows me;
I do not dare to go astray
For fear he'll go the self-same way.
I must not madly step aside,
Where pleasure's paths are smooth and wide,
And join in wine's red revelry
A little fellow follows me.

I cannot once escape his eyes;
Whate'er he sees me do, he tries—
Like me, he says, he's going to be;
The little chap who follows me.

He thinks that I am good and fine,
Believes in every word of mine;
The base in me he must not see,
The little chap who follows me.

I must remember as I go,
Through summer's sun and winter's snow,
I'm building for the years to be,
A little fellow follows me.

Madam President, I yield the floor. 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. BYRD. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

ADJOURNMENT UNTIL MONDAY, JUNE 17, 2002, AT 2 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 2 o'clock p.m., Monday, June 17, 2002.

Thereupon, the Senate, at 12:47 p.m., adjourned until Monday, June 17, 2002, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate June 14, 2002:

FARM CREDIT ADMINISTRATION

NANCY C. PELLETT, OF IOWA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION FOR A TERM EXPIRING MAY 31, 2008, VICE ANN JORGENSEN, TERM EXPIRED.

CORPORATION FOR PUBLIC BROADCASTING

CHERYL FELDMAN HALPERN, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2008, VICE HEIDI H. SCHULMAN, TERM EXPIRED.

DEPARTMENT OF STATE

J. ANTHONY HOLMES, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BURKINA FASO.

AURELIA E. BRAZEAL, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

W. SCOTT RAILTON, OF VIRGINIA, TO BE A MEMBER OF THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING APRIL 27, 2007, VICE GARY L. VISSCHER, TERM EXPIRED.

WITHDRAWAL

Executive message transmitted by the President to the Senate on June 14, 2002, withdrawing from further Senate consideration the following nomination:

CHERYL FELDMAN HALPERN, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 31, 2004, WHICH WAS SENT TO THE SENATE ON NOVEMBER 9, 2001.