United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, FIRST SESSION

Vol. 147 WASHINGTON, WEDNESDAY, MARCH 7, 2001 No. 29

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable GEORGE ALLEN, a Senator from the State of Virginia.

PRAYER

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

Gracious Father, we need You. It is not for some specific blessing we ask but for the greatest of all blessings, the one from which all others flow. We dare to ask You for a renewal of the wonderful friendship that makes the conversation we call prayer a natural give-and-take, a divine dialog. In this sacred moment, we open ourselves to receive this gift of divine companionship with You. Why is it that we are so amazed that You know us better than we know ourselves? Show us what we need to ask of You so that You can demonstrate Your generosity once again.

Open our minds so that we may see ourselves, our relationships, our work, the Senate, and our Nation from Your perspective. Reveal to us Your priorities, Your plan. We spread out before You our problems and perplexities. Help us to listen attentively to the answers that You will give. We ask You to be our unseen but undeniable Friend. Place Your hand on our shoulders at our desks, in meetings, and especially here in this historic Chamber. May our communion with You go deeper as the day unfolds. This is the day You have made; we will rejoice and be glad in it.—Psalm 118:24. Amen.

PLEDGE OF ALLEGIANCE

The Honorable GEORGE ALLEN 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. THURMOND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 7, 2001.

To the Senate:

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

STROM THURMOND,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

SCHEDULE

Mr. NICKLES. Mr. President, today the Senate will be in a period for morning business until 11:30 a.m. Following morning business, the Senate will resume consideration of the Bankruptcy Reform Act. Amendments to the bill will be offered during today's session. Those Members with amendments should work with the bill managers in an effort to finish the bill in a timely manner. Senators will be notified as votes are scheduled. I thank my colleagues for their cooperation.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I want to direct a question to the assistant majority leader. There is an important mission this week to Colombia. There are a number of Senators and a number of Members from the House traveling to Colombia. I ask that the majority leader give us some indication as to how he can work with us regarding tomorrow afternoon. They want to leave sometime tomorrow afternoon, if possible. We may have the ability, because of all the many amendments being talked about to be offered, to debate a number of these tomorrow, maybe even Friday. If that is not possible, the Senators want to know so they can rearrange their travel plans.

Mr. NICKLES. I appreciate the comments of my colleague and friend. We want to be cooperative with Members on both sides. We also want to finish the bankruptcy bill. I will work with the Senator from Nevada to see if we can coordinate schedules and amendments and bring the bill to a close in the not too distant future and also facilitate the trip to Colombia which is an important trip as well.

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

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

The legislative clerk proceeded to call the roll.

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

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

Before the Chair recognizes the Senator from New York, the Chair will state what the order of events will be this morning.

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

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

Printed on recycled paper.

of morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for up to 10 minutes.

Under the previous order, the Senator from New York, Mrs. CLINTON, is recognized to speak for up to 15 minutes.

Mrs. CLINTON. I thank the Chair.

(The remarks of Mrs. CLINTON pertaining to the introduction of S. 476 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BIDEN. I ask unanimous consent to proceed in morning business for up to 15 minutes.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Delaware, Mr. BIDEN, is recognized to speak up to 15 minutes.

NORTH KOREA

Mr. BIDEN. Mr. President, I rise today to talk about the situation in North Korea. Today President Kim Dae-jung of South Korea is meeting with President Bush as part of his official state visit. His visit occurs against a hopeful backdrop of the third round of family reunions on the divided Korean peninsula. Fathers are greeting their grownup sons; sisters are hugging their sisters they haven't seen for a generation. Grandmothers are meeting their grandchildren who they have never met.

Tomorrow the distinguished chairman of the Senate Foreign Affairs Committee and I will host the President of South Korea for coffee here on Capitol Hill. Kim's visit will give us a chance to renew the close bonds forged in blood in the common struggle against the forces of oppression which unite our people in the United States and South Korea.

I rise today to talk a little bit about the Korean peninsula and the important role the United States can play in concert with our South Korean allies and other friends to help build lasting peace on that peninsula.

Yesterday the New York Times published an article by veteran defense correspondent Michael Gordon which suggests that a missile deal with North Korea may have been within reach last year. As fascinating as this rendition of events was and as fascinating as the policies were, we now have a new President. The failure or the judgment to not proceed with negotiations into the month of January of this year on the part of the new President is in fact at this moment irrelevant. We have a new President and a new administration. The question squarely now is not whether President Clinton should have gone to North Korea; the question is whether this administration, the Bush administration, is going to build on the progress made over the past 5 years since we narrowly averted a nuclear showdown on the Korean peninsula.

I was pleased to see Secretary of State Powell quoted in a Washington Post article today, suggesting this administration was going to pursue the possibilities of a better relationship with North Korea and was going to leave nothing on the table. I was slightly dismayed to read of an informed source in the administration who chose not to be identified, demonstrating a great deal more of what seemed to me in the article to be not only skepticism, which I share about the intentions of North Korea, but willingness to pursue vigorously the possibilities of further negotiations. Hopefully, I am misreading that unidentified highly placed administration official.

In my view, there is only one correct answer and that is the one Secretary Powell has indicated today. For it would be irresponsible not to explore to discover whether North Korea is prepared to abandon its pursuit of long-range missiles in response to a serious proposal from the United States, our friends, and our allies.

North Korea confronts the United States with a number of security challenges. North Korea maintains a huge army of more than 1 million men and women in uniform, about 5 percent of its entire population. Many of that army are poised on the South Korean border. The threat that North Korea opposes extends well beyond the Korean peninsula. Its Nodong missile can not only strike all of South Korea but can also threaten our ally, Japan. North Korea sells those same missiles to anyone who has the cash to buy them. North Korean missile exports to Iran and Pakistan have guaranteed, unfortunately, that any future war in the Middle East or South Asia will be even more dangerous and more destructive than past conflicts in that region.

North Korean missiles and the very real concern that North Korea might even build longer range missiles capable of striking the United States are a driving force behind our plans to build a national missile defense system.

If we can remove that threat, that is, the threat from North Korea long-range missile possibility, the impact will be huge, not only on the security of Northeast Asia but also on our own defense strategy as we debate how best to deal with our vulnerability to weapons of mass destruction.

For most of the past 50 years, U.S. soldiers of the 2d Infantry Division have looked north from their positions along the DMV at North Korean adversaries that appeared unchanging—a hermit kingdom, locked in a Stalinist time warp. Indeed, 2 or 3 years ago if I had spoken to the American people about landmines, the 38th parallel, and the armies of North and South Korea, it would have been to discuss the latest northern incursion along what remains the most heavily armed border in the world. The troops of the 2d Infantry Division are still standing shoulder to shoulder with our South Korean allies. The landmines are still there. And much of the tension along the DMZ remains unabated, at least for now.

But maybe, just maybe, things are beginning to change.

The United States should end our ''prevent defense'' and go on the offensive to advance our vital interests—particularly the dismantlement of North Korea's long-range missile program. Now is not the time for lengthy policy reviews or foot-dragging on existing commitments. Now is the time to forge ahead and test North Korea's commitment to peace.

A few weeks ago what had been unthinkable—the opening of direct rail transport across the DMZ—became a near term achievable objective. The militaries of North and South Korea will soon begin to reconstruct the rail links connecting Seoul not only to Pyongyang, but also to China, Russia, and Western Europe.

I remember vividly the moment when the people of East and West Berlin decided to tear down the Berlin Wall.

The Berlin Wall had become a true anachronism: a graffiti-strewn relic of a morally, politically, and economically bankrupt Soviet regime. Once the East German people had torn down the ideological walls in their own minds, tearing down the concrete was a piece of cake.

The people of North and South Korea are not there yet. But the walls are under siege. The establishment of direct rail links will represent a major breach in the walls of fear, insecurity, and isolation which have built up over the past 50 years.

Last October, I spoke to this body about testing North Korea's willingness to abandon its pursuit of weapons of mass destruction. At that time, I pointed to some of the hopeful signs that North Korea was interested in improving its relations with its neighbors—a missile launch moratorium now more than 2 years old, summit meetings with South Korea, Russia, and China, and the first tentative steps toward economic reform.

I attributed these North Korean actions to the ''Sunshine Policy'' crafted by South Korean President Kim Dae-jung, and to the hard-headed engagement strategy implemented by former Secretary of Defense William Perry on behalf of the Clinton administration.

Since last fall, evidence has mounted steadily that North Korea's leader Kim Jong-il has indeed decided that nothing short of a major overhaul of his economic system and diplomatic relations is likely to pull his country back from the brink of starvation and economic collapse.

In addition to the progress on rail links, here are some of the other recent developments:

North Korea has expanded cooperation to search for the remains of Americans missing in action from the Korean war. Uniformed U.S. military personnel are working along side their North Korean counterparts, searching the rice paddies, often in remote areas, in an effort to solve 50-year-old mysteries.

The North has continued modest steps to allow family reunions across the DMZ, exposing people from the North to the quality of life enjoyed by their brothers and sisters in the South. More than 300 families have enjoyed reunion visits, and more are scheduled.

The North has toned down its customary harsh rhetoric about the U.S. and South Korea, substituting a steady diet of editorials outlining the North's plans to make economic revitalization its top priority.

North Korea for the first time last November opened its food distribution system to South Korean inspection and also provided a detailed accounting of food aid distribution.

North and South Korea have held defense talks at both the ministerial level and subsequently at the working level, and have agreed, at the urging of South Korea, to improve military to military communications. This is the first step toward confidence building measures that can reduce the likelihood that a relatively minor incident along the DMZ might escalate into war.

North and South have established an economic cooperation panel and launched a joint study of North Korea's energy needs.

North and South Korean flood control experts met last month in Pyongyang for talks on cooperation in efforts along the Imjin River, which crosses the border between the two countries.

The North Koreans have dispatched a team of financial experts to Washington to examine what it would take for North Korea to earn support from international financial institutions once it has taken the steps necessary to satisfy U.S. anti-terrorism laws.

And, as I mentioned above, the North has not test-fired a missile for more than 2½ years, and has pledged not to do so while negotiations with the United States on the North's missile program continue.

Five years ago when people spoke of ''North Korean offensives,'' they were referring to the threat of a North Korean assault across the DMZ.

Today, Kim Jong-il is mounting an offensive, but it is a diplomatic and economic offensive, not a military one. Over the past 12 months, North Korea has established diplomatic relations with almost all of the nations of Western Europe. Planning is underway for an unprecedented trip by Kim Jong-il to Seoul to meet with President Kim Dae-jung later this year.

Finally, Kim Jong-il's has publicly embraced China's model of economic reform. His celebrated January visit to Shanghai and his open praise of Chinese economic reforms indicates that Kim is driving North Korea toward a future in which it would be more closely integrated economically and politically to the rest of East Asia and the world.

What are we to make of all of this? How should we respond?

I want to be clear about why I find these developments so promising. I am not a fan of Kim Jong-il. No one should think that his motives are noble or humanitarian.

Over the years, Kim Jong-il has shown himself willing to go to any length—including state-sponsored terrorism—to preserve his regime.

I have no reason to believe he has abandoned his love of dictatorship in favor of constitutional democracy. Far from it.

Kim Jong-il is betting that he can emerge from a process of change at the head of a North Korean society that is more prosperous, stable, and militarily capable than it is today, but still a dictatorship.

But frankly, the reasons why Kim Jong-il is pursuing economic reform and diplomatic opening are not as important as the steps he will have to take along the way.

If North Korea's opening is to succeed, the North will have to address many of the fundamentals which make it so threatening—especially the gross distortion of its domestic spending priorities in favor of the military. The North cannot revitalize its economy while spending 25 percent of its gross domestic product on weaponry.

The North cannot obtain meaningful, sustained foreign investment without addressing the lack of transparency in its economy as well as the absence of laws and institutions to protect investors and facilitate international trade.

North Korea's pursuit of economic reform and diplomatic opening presents the United States with a golden opportunity, if we are wise enough to seize it.

We should welcome the emergence of North Korea from its shell not because North Korea's motives are benign, but because we have a chance, in concert with our allies, to shape its transformation into a less threatening country.

If we play our cards right, North Korea's opening can lead to a less authoritarian regime that is more respectful of international norms—all without any shots being fired in anger.

I point out, a number of old Communist dictators had thought they could move in an easy transition from the Communist regime that has clearly failed to a market economy, or integration with the rest of the world, and still maintain their power.

None, none—none has succeeded thus far. I believe it is an oxymoron to suggest that North Korea can emerge and become an engaged partner in world trade without having to fundamentally change itself and in the process, I believe, end up a country very different from what we have now.

I am delighted that Secretary Powell has expressed his support for this hard-headed brand of engagement with North Korea. As he testified before the Senate Foreign Relations Committee last month:

> We are open to a continued process of engagement with the North so long as it addresses political, economic, and security concerns, is reciprocal, and does not come at the expense of our alliance relationships.

This is precisely the kind of engagement I have in mind. I think we should get on with it.

North Korea knows that under our nonproliferation laws it cannot gain unfettered access to trade, investment, and technology without first halting its development and export of long-range ballistic missile technology and submitting its nuclear program to full-scope safeguards under the auspices of the International Atomic Energy Agency.

North Korea knows it won't get World Bank loans as long as it remains on our list of nations that condone international terrorism or provide sanctuary for terrorists. In order to get off that list, North Korea must end all support for terrorist organizations and must cooperate fully with the Japanese government to resolve the question of Japanese citizens abducted from Japan—some more than 20 years ago.

In other words, Mr. President, if North Korea is to turn around its moribund economy and fully normalize relations with its neighbors, it will have to take steps which are demonstrably in our national interest and in the national interests of our allies.

We should do everything in our power to ensure that North Korea does not diverge from the path it is now on.

Specifically, we should continue to provide generous humanitarian relief to starving North Korean children. Nothing about the situation on the peninsula will be improved by the suffering of North Korean children racked by hunger and disease.

We should continue to abide by the terms of the Agreed Framework, so long as North Korea does the same. We should not unilaterally start moving the goal posts. The Agreed Framework has effectively capped the North's ability to produce fissile material with which to construct nuclear weapons. Under the terms of Agreed Framework, North Korea placed its nuclear program under International Atomic Energy Agency safeguards and halted work on two unfinished heavy water nuclear reactors in exchange for the promise of proliferation-resistant light water nuclear reactors and heavy fuel oil deliveries for electric power generation. Without the Agreed Framework, North Korea might already have sufficient fissile material with which to construct dozens of nuclear bombs.

MISSILE AGREEMENT POSSIBLE—PATIENCE REQUIRED

Finally, Mr. President, we should engage North Korea in a serious diplomatic effort aimed at an iron-clad agreement to end forever the North's pursuit of long range missiles.

In discussions with U.S., Russian, and Chinese officials, North Korea has signaled its willingness to give up the export, and possibly the development, of long-range missiles, in response to the right package of incentives. Such

an agreement would remove a direct North Korean threat to the region and improve prospects for North-South reconciliation. It would also remove a major source of missiles and missile technology for countries such as Iran.

Getting an agreement will not be easy, but it helps a lot that we are not the only country which would benefit from the dismantlement of North Korea's missile program. Our allies South Korea and Japan, our European allies who already provide financial support for the Agreed Framework, the Chinese, the Russians, all share a desire to see North Korea devote its meager resources to food, not rockets. The only countries which want to see North Korea building missiles are its disreputable customers.

A tough, verifiable agreement to eliminate the North's long-range missile threat might be possible in exchange for reasonable U.S. assistance that would help North Korea feed itself and help convert missile plants to peaceful manufacturing.

Some people are impatient for change in North Korea. They want to adopt a more confrontational approach, including rushing ahead to deploy an unproven, hugely expensive, and potentially destabilizing national missile defense system.

I understand their frustration and share their desire for action against the threat of North Korean ballistic missiles.

But foreclosing diplomatic options by rushing to deploy NMD is not the right antidote. Sure, a limited ground-based national missile defense might someday be capable of shooting down a handful of North Korean missiles aimed at Los Angeles, but it will do nothing to defend our Asian allies from a North Korean missile attack.

Nor will it defend us from a nuclear bomb smuggled into the country aboard a fishing trawler or a biological toxin released into our water supply. NMD will not defend U.S. forces on Okinawa or elsewhere in the Pacific theater. It will do nothing to prevent North Korea from wielding weapons of mass destruction against Seoul, much of which is actually within artillery range of North Korea.

Moreover, a rush to deploy an unproven national missile defense, particularly absent a meaningful strategic dialog with china, could jeopardize the cooperative role China has played in recent years on the Korean Peninsula. Given our common interest in preventing North Korea from becoming a nuclear weapons power, the United States and China should work in concert, not at cross purposes.

OPENING NORTH KOREAN EYES

North Korea's opening has given the North Korean people a fresh look at the outside world—like a gopher coming out of its hole—with consequences which could be profound over the long haul. Hundreds of foreigners are in North Korea today, compared with a handful just a few years ago.

Foreigners increasingly are free to travel widely in the country and talk to average North Koreans without government interference. North Korea has even begun to issue tourist visas. The presence of foreigners in North Korea is gradually changing North Korean attitudes about South Korea and the West.

One American with a long history of working in North Korea illustrated the change underway by describing an impromptu encounter he had recently.

While he was out on an unescorted morning walk, a North Korean woman approached him and said, ''You're not a Russian, are you? You're a Miguk Nom aren't you?''

Her expression translates roughly into ''You're an American imperialist bastard, eh?''

The American replied good-naturedly, ''Yes, I am an American imperialist bastard.''

To which the woman replied quite sincerely, ''Thanks very much for the food aid!''

Another American, a State Department official accompanying a World Food Program inspection team, noted that hundreds of people along the road waved and smiled, and in the case of soldiers, saluted, as the convoy passed.

He also reports that many of 80 million woven nylon bags used to distribute grain and emblazoned with the letters ''U.S.A.'' are being recycled by North Koreans for use as everything from back-packs to rain coats. These North Koreans become walking billboards of American aid and generosity of spirit.

North Korea is just one critical challenge in a region of enormous importance to us. We cannot separate our policy there from our overall approach in East Asia.

We cannot hope that decisions we make about national missile defense, Taiwan policy, or support for democracy and rule of law in China will be of no consequence to developments on the Korean Peninsula. To the contrary, we need to think holistically and comprehensively about East Asia policy.

Our interests are vast. Roughly one-third of the world's population resides in East Asia. In my lifetime, East Asia has gone from less than 3 percent of the world GDP in 1950 to roughly 25 percent today.

Four of our 10 largest trading partners—Japan, China, Taiwan, and South Korea, are in East Asia.

Each of those trading partners is also one of the world's top ten economies as measured by gross domestic product. China, Japan, and South Korea together hold more than $700 billion in hard currency reserves—half of the world's total.

East Asia is a region of economic dynamism. Last year Singapore, Hong Kong, and South Korea grew by more than 10 percent, shaking off the East Asian financial crisis and resuming their characteristic vitality. U.S. exports to the region have grown dramatically in recent years. U.S. exports to Southeast Asia, for instance, surpass our exports to Germany and are double our exports to France. U.S. direct investment in East Asia now tops $150 billion, and has tripled over the past decade.

And of course these are just a few of the raw economic realities which underscore East Asia's importance. The United States has important humanitarian, environmental, energy, and security interests throughout the region.

We have an obligation, it seems to me, not to drop the ball. We have a vital interest in maintaining peace and stability in East Asia. We have good friends and allies—like President Kim Dae Jung of South Korea—who stand ready to work with us toward that goal. It is vital that we not drop the ball; miss an opportunity to end North Korea's deadly and destabilizing pursuit of long range missiles. I don't know that an agreement can be reached. In the end North Korea may prove too intransigent, too truculent, for us to reach an accord.

But I hope the Bush administration will listen closely to President Kim today, and work with him to test North Korea's commitment to peace. We should stay the course on an engagement policy that has brought the peninsula to the brink, not of war, but of the dawning of a brave new day for all the Korean people.

I yield the floor.

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

THE ISRAELI ELECTION AND ITS AFTERMATH

Mrs. FEINSTEIN. Mr. President, today a new government has been formed in Israel under the leadership of Prime Minister Ariel Sharon, with Shimon Peres as Foreign Minister and the broad-based participation of many across Israel's political spectrum.

I would like to take a few minutes today to share my assessment of the present situation, where things stand, and what this may mean for U.S. policy in the region. I rise today as one who has supported the peace process, believed that a peace agreement was possible, and who has worked in the Senate, along with many of my colleagues, to see that the United States played an active role in helping Israel and the Palestinians seek peace.

Prime Minister Ehud Barak was elected two years ago to make peace and to bring about an ''end of the conflict'' with both Syria and the Palestinians. He was elected with a mandate to complete the Oslo process, a goal at the time supported by the majority of the people of Israel.

Over the past two years Prime Minister Barak tried, heroically and energetically, to achieve a comprehensive peace with both parties.

Indeed, it has been said I believe, that Prime Minister Barak went further than any other Israeli Prime Minister in an attempt to reach a comprehensive agreement with the Palestinians which includes:

The creation of a Palestinian state;

Palestinian control of all of Gaza;

Palestinian control of approximately 94 to 95 percent of the West Bank, and territorial compensation for most of the other five percent;

A division of Jerusalem, with Palestinian control over the Arab neighborhoods in East Jerusalem and the possibility of a Palestinian capitol in Jerusalem; and

Shared sovereignty arrangements for the Temple Mount.

The issue of Palestinian refugees, was addressed with tens of thousands of Palestinians to be allowed into Israel as part of a family reunification program, and compensation in the tens of billions of dollars provided to other Palestinian refugees as well.

Not only was the Palestinian response to these unprecedented offers ''no,'' but, even as Prime Minister Barak attempted to engage Chairman Yasser Arafat at the negotiation table, the Palestinians took to a campaign of violence in the streets, and threatened to unilaterally declare an independent Palestinian state:

When the violence began, the Fatah's militia, the Tanzim, fired upon Israelis with submachine guns. The Fatah and the Tanzim have been active in the violence—even encouraging its escalation—to this day;

Chairman Arafat freed a number of Hamas terrorists who instantly turned around and vowed violence against Israel;

The Palestinian media, under the control of the Palestinian Authority, has been used to disseminate inciting material, providing encouragement to damage holy Jewish sites, to kill Israelis, and carry out acts of terror; and,

Palestinian schools were closed down by the Palestinian Authority allowing Palestinian children to participate in the riots and violence.

And in reaction, all too often, Israel, too, has resorted to violence in an effort to protect its security and safeguard the lives of its people.

This new Intifadah has been characterized by a level of hate and violence that, frankly, I did not believe possible in view of the extensive concessions Israel had offered.

And it is clear, I believe, that much of this campaign of violence, this new Intifadah which continues to this day, has been coordinated and planned.

Because I was at the World Economic Forum meeting in Davos two months ago which was also attended by Shimon Peres and Yasser Arafat, I read with great interest Tom Friedman's op-ed in The New York Times 3 weeks ago.

As Mr. Friedman's column reports, when Mr. Peres extended the olive branch to Mr. Arafat at Davos, ''Mr. Arafat torched it.''

I urge all of my colleagues to read Thomas Friedman's op-ed article: ''Sharon, Arafat and Mao,'' which I ask unanimous consent to have printed in the RECORD.

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

[From the New York Times, Feb. 8, 2001]

SHARON, ARAFAT AND MAO

(By Thomas L. Friedman)

So I'm at the Davos World Economic Forum two weeks ago, and Shimon Peres walks by. One of the reporters with him asks me if I'm going to hear Mr. Peres and Yasir Arafat address the 1,000 global investors and ministers attending Davos. No, I tell him, I have a strict rule, I'm only interested in what Mr. Arafat says to his own people in Arabic. Too bad, says the reporter, because the fix is in. Mr. Peres is going to extend an olive branch to Mr. Arafat, Mr. Arafat is going to do the same back and the whole love fest will get beamed back to Israel to boost the peace process and Ehud Barak's re-election. Good, I'll catch it on TV, I said.

Well, Mr Peres did extend the olive branch, as planned, but Mr. Arafat torched it. Reading in Arabic from a prepared text, Mr. Arafat denounced Israel for its ''facist military aggression'' and ''colonialist armed expansionism,'' and its policies of ''murder, persecution, assassination, destruction and devastation.''

Mr. Arafat's performance at Davos was a seminal event, and is critical for understanding Ariel Sharon's landslide election. What was Mr. Arafat saying by this speech, with Mr. Peres sitting by his side? First, he was saying that there is no difference between Mr. Barak and Mr. Sharon. Because giving such a speech on the eve of the Israeli election, in the wake of an 11th-hour Barak bid to conclude a final deal with the Palestinians in Taba, made Mr. Barak's far-reaching offer to Mr. Arafat look silly. Moreover, Mr. Arafat was saying that there is no difference between Mr. Peres and Mr. Sharon, because giving such a speech just after the warm words of Mr. Peres made Mr. Peres look like a dupe, as all the Israeli papers reported. Finally, at a time when Palestinians are starving for work, Mr. Arafat's subliminal message to the global investors was: Stay away.

That's why the press is asking exactly the wrong question about the Sharon election. They're asking, who is Ariel Sharon? The real question is, who is Yasir Arafat? The press keeps asking: Will Mr. Sharon become another Charles de Gaulle, the hard-line general who pulled the French Army out of Algeria? Or will he be Richard Nixon, the anti-Communist who made peace with Communist China? Such questions totally miss the point.

Why? Because Israel just had its de Gaulle. His name was Ehud Barak. Mr. Barak was Israel's most decorated soldier. He abstained in the cabinet vote over the Oslo II peace accords. But once in office he changed 180 degrees. He offered Mr. Arafat 94 percent of the West Bank for a Palestinian state, plus territorial compensation for most of the other 6 percent, plus half of Jerusalem, plus restitution and resettlement in Palestine for Palestinian refugees. And Mr. Arafat not only said no to all this, but described Israel as ''fascist'' as Mr. Barak struggled for re-election. It would be as though de Gaulle had offered to withdraw from Algeria and the Algerians said: ''Thank you. You're a fascist. Of course we'll take all of Algeria, but we won't stop this conflict until we get Bordeaux, Marseilles and Nice as well.''

If the Palestinians don't care who Ariel Sharon is, why should we? If Mr. Arafat wanted an Israeli leader who would not force him to make big decisions, which he is incapable of making, why should we ask whether Mr. Sharon is going to be de Gaulle and make him a big offer? What good is it for Israel to have a Nixon if the Palestinians have no Mao?

The Olso peace process was about a test. It was about testing whether Israel had a Palestinian partner for a secure and final peace. It was a test that Israel could afford, it was a test that the vast majority of Israelis wanted and it was a test Mr. Barak courageously took to the limits of the Israeli political consensus—and beyond. Mr. Arafat squandered that opportunity. Eventually, Palestinians will ask for a makeup exam. And eventually Israelis may want to give it to them, if they again see a chance to get this conflict over with. But who knows what violence and pain will be inflicted in the meantime?

All we know is that for now, the Oslo test is over. That is what a vast majority of Israelis said in this election. So stop asking whether Mr. Sharon will become de Gaulle. That is not why Israelis elected him. They elected him to be Patton. They elected Mr. Sharon because they know exactly who he is, and because seven years of Oslo have taught them exactly who Yasir Arafat is.

Mrs. FEINSTEIN. Mr. President, Mr. Friedman makes a simple but profound point. He writes that many ''are asking exactly the wrong question about the Sharon election. They're asking, who is Ariel Sharon? The real question is, who is Yasser Arafat?''

He continues, ''the press keeps asking: Will Mr. Sharon become another Charles de Gaulle . . . or will he be Richard Nixon, the anti-Communist who made peace with Communist China?''

So we naturally ask the question, will Ariel Sharon reach out to the Palestinians? As Tom Friedman points out, this is exactly the wrong way to look at Ariel Sharon or the recent election.

Why? Because Israel just had its de Gaulle. His name was Ehud Barak. Mr. Barak was Israel's most decorated soldier. He abstained in the cabinet vote over the Oslo II peace accords. But once in office he changed 180 degrees. He offered Mr. Arafat 94 percent of the West Bank for a Palestinian state . . . plus half of Jerusalem . . . and Mr. Arafat not only said no to all this, but described Israel as ''fascist'' as Mr. Barak struggled for re-election.

Mr. Friedman continues to state what has become clear: ''What good is it for Israel to have a Nixon if the Palestinians have no Mao?''

As someone who has been a supporter of the Oslo process from the start, I say this with a great deal of regret. And I wish this were not the case. But we have seen Israel make the offer, an historic offer, only to have it rebuffed. The consequences of this could, in fact, be devastating.

In his victory speech, Prime Minister Sharon called on the Palestinians ''to cast off the path of violence and to return to the path of dialogue'' while acknowledging that ''peace requires painful compromises on both sides.''

Mr. Sharon has said that he favors a long-term interim agreement with the Palestinians since a comprehensive agreement is not now possible because the Palestinians have shown they are not ready to conclude such an agreement.

He has stated that he accepts a demilitarized Palestinian state, is committed to improving the daily lives of the Palestinians, and has reportedly indicated that he does not plan to build new West Bank settlements.

Whatever happens, there can be little doubt that it will have a profound impact on United States strategic interests in the Middle East. And because of that, the United States must remain an interested party in the region.

I believe that it is critical that both parties need to make every effort to end the current cycle of provocation and reaction, with a special responsibility that is incumbent upon the Palestinian Authority to seek an end to the riots, the terror, the bombings, and the shootings. There must be a ''time out'' on violence before the situation degenerates further into war.

We can all remember the images, from last fall, of the Palestinian child hiding behind his father, caught in the cross-fire, shot to death, and then the images, a few days later, the pictures of the Israeli soldier who was beaten while in custody and thrown out of a second floor window of the police station, to be beaten to death by the mob below.

It is easy to understand how passions can run high, and frustration and fear can drive violence.

But it is also easy to see how these feelings—even these feelings, that are based in legitimate aspiration—can get out of control and lead to ever deeper, and never-ending, cycles of violence.

The Palestinian leadership must make every effort to end this cycle, to quell the attitude of hate that has been fostered among the Palestinian people, and to act to curb the violence, and to convince Israel that they are indeed serious and sincere about pursuing peace.

But until there is evidence that the violence is ending, the United States cannot be productively engaged between the two parties.

If both Israel and the Palestinians can make progress in curbing or ending the violence, the United States can play an important role in helping to shape intermediate confidence-building measures between Israel and the Palestinians. The current environment makes a comprehensive agreement impossible, but proximity gives the Israelis and the Palestinians no choice but to learn to live together. The alternative is clearly war.

And the United States must continue to work together with Israel to strengthen the bilateral relationship, to ensure that Israel has the tools it needs to defend itself, and to enhance security in the region.

There are those who now believe that the Palestinians don't want peace; that, in fact, they want to continue the violence, and force Israel into the sea; to take back Jaffa; to take back Haifa.

There is a segment of the population that believes this is true. But I say, how realistic is this? Can there be any doubt that Israel has the ability to defend itself, and will? Or that should there be an effort to attack Israel, to end this democracy, that the United States would be fully involved? There is no doubt of that.

So the ball is now in the Palestinian court, to show that Palestinians are interested in ending violence and bloodshed. Israel, under Barak, has shown how far it will go to search for peace, much further than I ever thought possible. The concessions offered at Camp David, and after, are testament, I believe, to Israel's desire and commitment for peace. But to seek to force peace in light of hostility and hatred on the streets is neither realistic nor sustainable.

The Sharon election, I believe, can be seen as a referendum on Arafat's actions and policies, and the Palestinian violence, and it must be taken seriously by the Palestinians if the peace process is to ever get back on track.

Just last summer, the 7-year-old peace process seemed on the verge of success, but the chairman walked away from the deal at the last moment.

I hope that someday soon Chairman Arafat will realize the profound disservice that he has done his people, and the people of the world, that he will realize that the framework for peace was on the table, that he will realize that continued violence is not the way to achieve the legitimate aspirations of the Palestinian people, and that continued violence will not gain him or his people additional concessions at the negotiating table.

And I believe that if and when he does realize this, when he takes action to bring the current violence to an end, he will find that Israel remains a partner in the search for peace in the Middle East, with the United States as a facilitator.

Until then, however, the United States must be clear that we continue to stand with Israel, an historic ally and partner in the search for security and peace in the Middle East.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Arkansas.

AGRICULTURE DISASTER ASSISTANCE

Mrs. LINCOLN. Mr. President, I rise today to bring attention to an issue Washington, and the American public, too often take for granted—something that is near and dear to my heart, and a part of my heritage. I am talking about American agriculture. This country needs a wake-up call. Americans believe that their bacon, lettuce, and tomatoes are raised somewhere in the back of the local grocery store. As the daughter of a seventh generation Arkansas farm family, I know where our food supply is produced. It is grown in rural communities by families working from dusk until dawn to make ends meet. Unfortunately, too many in Washington continue to pay lip-service to our Nation's agricultural industry without actually providing them the tools and assistance they need to sustain their way of life.

I recognize the hurt that is evident in our agricultural communities. I know that commodity prices are at record lows and input costs, including fertilizer, energy, and fuel, are at record highs. No corporation in the world could make it today receiving the same prices it received during the Great Depression, yet, we are asking our farmers to do just that.

I am here to enlighten this body on the needs of our agricultural community. And it is my intention to come to the Senate floor often this year to highlight various issues affecting our Nation's farmers and ranchers.

In the interest of fairness, I will give credit where credit is due. In recent years, Congress has recognized that farmers are suffering, and we have delivered emergency assistance to our struggling agricultural community. Arkansas' farmers could not have survived without this help. Nearly 40 percent of net farm income came from direct Government payments during the 2000 crop year. The trouble with this type of ad hoc approach is that farmers and creditors across this country never really know how or when the Government is going to step in and help them.

Many of my farmers are scared to death that the assistance that has been available in the past will be absent this year because the tax cut and other spending programs have a higher priority.

I will highlight my frustration with our Nation's farm policy in the near future, but today I want to bring the Senate's attention to a matter that should have been handled long ago, yet still remains unaddressed. Our farmers need the disaster assistance that Congress provided last Fall. President Clinton signed the FY 2001 Agriculture Appropriations Act on October 28, 2000. Included in this legislation was an estimated $1.6 billion in disaster payments for 2000 crop losses due to weather-related damages. These payments are yet to arrive in the farmer's mailbox. My phone lines are lit up with calls from farmers and bankers asking me when these payments are going to arrive. In the South, our growing season begins earlier than many parts of the country, and our farmers could head to the field right now to begin work on the 2001 crop, if they just had their operating loan. The trouble is, many of them are unable to cash flow a loan for 2001 because they still await USDA assistance to pay off the banker for last year's disaster.

I reference the South's growing season because many of our farm State Senators are from the Midwest, and

they may not be hearing the same desperation that I am hearing. Their farmers are in no better shape, but they are not yet trying to put the 2001 crop in the ground. Arkansas farmers have been wringing their hands all winter trying to determine if it is worth it to try one more year. They are literally on the brink of bankruptcy and are weighing whether it is worth exposing themselves to more potential financial loss. These are not bad businessmen. They have survived the agricultural turmoil of the 1980s because they practice efficient production techniques and are sound managers. They have simply been dealt an unbelievably difficult hand and are trying to figure out how they can stay in the game. Some have already lost the battle. I have heard of more respected Arkansas farmers closing their shop doors and selling the family farm than ever before. Farm auction notifications fill the backs of agricultural publications.

Established, long time farmers are crying for help. A typical example, a farmer from Almyra, Arkansas recently wrote to me asking for help. He has been farming rice and soybeans in southeast Arkansas for almost 30 years. Like many others, he wanted Congress to know that government assistance is vitally needed. He and other farmers would prefer to get their income from the marketplace, but most of all, he just wants to stay in business.

The repercussions of losing people like this good farmer will have a drastic effect on our rural communities. To ignore agriculture's plight is to ignore rural America. Without farmers, the lifeblood of small towns like Almyra, Arkansas will be lost, and I fear never regained.

Around 800 to 1,100 farmers apply for Chapter 12 bankruptcy each year. The average age of the American farmer is getting older every year because young men and women simply do not see a future in agriculture production. I am reminded of a joke that my father used to tell me about the farmer who won the lottery. When a reporter asked him what he was going to do with all that money, he replied ''Farm 'til it's gone!'' Unfortunately, that joke is not too far from the truth these days.

We have a responsibility to provide a better agricultural policy for our nation's producers. As I stated earlier, I will address my specific frustrations with the current farm bill at a later date. Today, I am pleading that the disaster assistance we passed last Fall be delivered to the farmers as soon as possible.

I have written and urged President Bush to expedite this situation. I stressed the importance of quick action on this issue to Secretary Veneman in both private meetings and during her confirmation hearing. I contacted the Office of Management and Budget (OMB) urging them to act promptly on the rules that must be finalized to begin the payment process. For all the farmers listening out there, don't hold your local FSA offices accountable. Their hands are tied just like yours. They await the rules and procedures for disaster assistance distribution just like you do. The responsibility lies right here in Washington, DC. Specifically, OMB, is responsible for finalizing the rules. I'm sure they are working hard to get the ball rolling, but we need action today. Not tomorrow, not next week, but today!

I call upon the Administration to deliver the disaster assistance to the farmers. Congress did its part last fall. It is now imperative that the Administration take care of things on their end. Unfortunately, this situation is nothing new. The last Administration was less than quick about implementing disaster programs as well. But that is no excuse, farmers need the help now. Dotting the ''i's'' and crossing the ''t's'' in the required paper work should not take months to accomplish.

For countless farmers across the nation, I call on the President to please expedite this matter.

I look forward to many further discussions on the Senate floor about the plight of the American farmer.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business, notwithstanding the previous agreement. I thank the chairman of the Budget Committee for his courtesy.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, with this agreement, what is the time arrangement after he finishes?

The PRESIDING OFFICER. The Senator from New Mexico was to be recognized at 10:30. He was to be recognized for 10 minutes. Under a unanimous consent request, Senator FEINSTEIN took an additional 5 minutes. If the Senator from New Mexico objects to it, then he will be recognized at 10:30. If he doesn't, the Senator from Wisconsin will be recognized for 10 minutes.

Mr. DOMENICI. I had only 10 minutes in any event, did I not?

The PRESIDING OFFICER. The Senator has 15 minutes.

Mr. DOMENICI. I ask unanimous consent that I be permitted to object at this point, and I ask unanimous consent that I be permitted to speak for 15 minutes when my time comes.

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

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the distinguished chairman of the Budget Committee.

WEST AFRICA'S CRISIS

Mr. FEINGOLD. Mr. President, I rise today to draw my colleagues attention to the continuing crisis in West Africa, where a deeply disturbing trend has emerged in strong-man politics. In the model emerging in that region, violent regimes hold entire civilian populations hostage in order to win concessions, and even the guise of legitimacy, from the international community.

At the heart of this trend, is Liberian President Charles Taylor. While the Liberian Embassy here and the man himself are currently trying to persuade the world of their good intentions, no one who has followed Africa in recent years should be deceived. Taylor has absolutely no credibility. All reliable reports continue to indicate that he is manipulating the situation in West Africa for personal gain, at the expense of his own Liberian people, the people of Sierra Leone, and now the people of Guinea.

Some of the responsibility for the terrible abuses committed in the region must fall upon his shoulders. I believe that Liberian President Charles Taylor is a war criminal.

Having secured the presidency essentially by convincing the exhausted Liberian people that there would be no peace unless he was elected, he proceeded to provide support for the Revolutionary United Front, Sierra Leone's rebel force perhaps best known for hacking off the limbs of civilian men, women, and children to demonstrate their might, although their large-scale recruitment of child soldiers—a page borrowed from Taylor's book—is also notorious. By funneling diamonds that the rebels mined in Sierra Leone out through Liberia, and providing weapons in exchange, Taylor has profited from terrible bloodshed. And after the capture of RUF leader Foday Sankoh last year, many RUF statements suggested that Taylor was directly in control of the force. The U.N. has found ''overwhelming evidence that Liberia has been actively supporting the RUF at all levels.''

An international sanctions regime has been proposed, but regrettably postponed, at the United Nations. Sanctions are the correct course. And while many fear the impact on the long-suffering Liberian people, the unfortunate truth is that they are living in a state of total economic collapse even without the sanctions, largely because their head of state has no interest in the well being of his citizens.

Mr. President, I raise these issues today because I was in Sierra Leone just a few days ago. Previously, I had traveled in Nigeria, the regional giant in transition. Although I am more convinced than ever before, in the wake of my trip, that Nigeria's leadership must take bold steps to confront that country's difficult resource distribution issues and to hold those guilty of grand corruption accountable for their actions, I came away from my visit to Nigeria more optimistic than I had been when I arrived. From Port Harcourt to Kano, in Lagos and in Abuja, I met with dedicated, talented individuals in civil society and in government, who are absolutely committed to making the most of their historic opportunity

to chart the course of a democratic Nigeria.

I also visited Senegal, which is truly an inspirational place. In a neighborhood plagued by horrific violence, where even the most basic human security is in jeopardy, Senegal is moving in the opposite direction. Last year they experienced a historic and peaceful democratic transition. Senegal continues to be a global leader in AIDS prevention.

Both of these countries—one still consolidating its transition, another forging ahead in its quest for development and concern for the condition of its citizens—affected by the crisis in Sierra Leone, Liberia, and Guinea. The entire region is. Refugees flee from one country to the next, desperately seeking safety. States fear they will be the next target of the syndicate of thugs led by Charles Taylor and personified by the RUF, and for Guinea, this fear has become a reality. Many, most notably Nigeria but also including Senegal, are undertaking serious military initiatives to bolster the peacekeeping forces in Sierra Leone.

Some will ask, why does it matter? Why must we care about the difficult and messy situation of a far-away place. We must care because the destabilization of an entire region will make it all but impossible to pursue a number of U.S. interests, from trade and investment to fighting international crime and drug trade. We must care because, if we do not resist, the model presented by the likes of Charles Taylor will surely be emulated elsewhere in the world. We must care because atrocities like those committed in Sierra Leone are an affront to humanity as a whole. We are something less than what we aspire to be as Americans if we simply turn our heads away as children lose their limbs, families lose their homes, and so many West Africans lose their lives.

What is happening in West Africa is no less shocking and no less despicable than it would be if these atrocities were committed in Europe. The innocent men, women, and children who have borne the brunt of this crisis did nothing wrong, and we must avoid what might be called ignorant fatalism, wherein we throw up our hands and write off the people of Sierra Leone and Liberia and Guinea with some groundless assertion that this is just the way things are in Africa. Africa is not the problem. A series of deliberate acts carried out by forces with a plan that is, at its core, criminal—that is the problem. And these are forces that we can name, and we should. And Mr. President, the leadership of these forces should be held accountable for their actions.

That leads me to the next question—what can we do?

We can help the British, who are working to train the Sierra Leonean Army and whose very presence has done a great deal to stabilize Sierra Leone. Their commitment is admirable; their costs are great. When they need assistance, we should make every effort to provide it.

We can reinforce the democracies in the region, like the countries of Senegal, Ghana, and Mali, to help them pursue their positive, alternative vision for West Africa's future.

We can continue our efforts to bolster the peacekeeping forces in Sierra Leone through Operation Focus Relief, the U.S. program to train and equip seven West African battalions for service in Sierra Leone. And we can urge the UN force in Sierra Leone to develop their capacity to move into the rebel controlled areas, and then to use that capacity assertively.

We can work to avoid the pitfalls of the past. We must not forget that the welfare of the people of Sierra Leone is the responsibility of that beleaguered government. I met with President Kabbah, and with the Attorney General and Foreign Minister. I know that they want to do the right thing. But the point is not about which individuals are holding office. The point is that we must work to enhance the capacity and the integrity of Sierra Leone's government, and it must work on that project feverishly as well. The people of Sierra Leone need basic services, they need to have their security assured, they need opportunities. Ending the war is not enough.

In the same vein, we must not tolerate human rights abuses no matter who is responsible. When militia forces that support the government of Sierra Leone abuse civilians, they should be held accountable for their actions. And we must work to ensure that our involvement in the region is responsible, and collaborate with regional actors to ensure that we monitor the human rights performance of the troops we train and equip. West Africa must break the cycle of violence and impunity, and all forces have a role to play in that effort.

And that leads me to a crucial point, one that is particularly important for this new Administration and for this Congress. We must support the accountability mechanisms being established in the region. There has been consistent, bipartisan support for accountability in the region. The Administration should find the money needed to support the Special Court for Sierra Leone, and it should find it now. And this Congress should commit to contributing to that court in this year and the next.

The Special Court will try only those most responsible for terrible abuses—the very worst actors. Others who have been swept up in the violence will be referred to the Truth and Reconciliation Commission, another entity which deserves international support. The Court and the Commission are two elements of the same strategy to ensure accountability without leaving the rank-and-file no incentive to disarm and demobilize. They are vital to Sierra Leone's future, and they will serve as a crucial signal of a changing tide, and an end to impunity, throughout the region.

Finally, we must join together to isolate Charles Taylor and his cronies and to tell it like it is. There was a time when some believed that he could be part of the solution in West Africa. At this point, we should all know better. And we must speak the truth about the role played by the government of Burkina Faso, the government of Gambia, and the others involved in the arms trade in the region.

Mr. President, these issues do matter. I have looked into the faces of amputees, refugees, widows and widowers and orphans. I have seen the tragic consequences of the near total disruption of a society—the malnourishment, the disillusionment, the desperation. Some people are getting rich as a result of this misery. I have heard the people of neighboring countries speak of their fears for the region's future. I implore this body and this Administration to take the steps I have described. It is in our interest and it is right. And if we fail to do so, I fear that the terrible crisis will only get worse.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 472 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mr. BUNNING). Under the previous order, the distinguished Senator from Kansas, Mr. ROBERTS, has the floor.

Mr. ROBERTS. I thank the distinguished Presiding Officer.

(The remarks of Mr. ROBERTS pertaining to the introduction of S. 478 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ROBERTS. 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. THOMAS. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

ENERGY

Mr. THOMAS. Mr. President, I am going to be joined shortly by my friend from Texas. In the meantime, I want to comment for a moment on the statement of the Senator from New Mexico on energy. We need to take a long look at where we are with respect to energy. The Vice President with his working group is putting together a national policy on energy, as are many groups. We have an oil and gas forum, which I cochair. We will be taking a look at where we want to be on energy and energy production in this country over a period of time.

We have not had an energy policy in the United States, I am sorry to say, for the last 8 years. As a result, we did not look at what the demand was going to be, where the supply was going to be, and, indeed, have found ourselves depending almost 60 percent on imported oil, depending on foreign countries and OPEC to manage that. So we need to take a long look.

I was pleased with what the Senator from New Mexico had to say about diversity. We need not only to take a look at our need to increase domestic production in oil and gas, but we also need to look at diversity, to where we can continue to use coal. You may have noticed on his chart that coal now produces over 50 percent of our electric energy. We need to do some research with respect to air quality so coal becomes even more useful. We need also to look at coal and its enrichment, getting the Btu's out of low-sulfur coal so transportation costs will not be so high.

Nuclear, I am sure, has a role in our future as a very clean and very economical source of electric energy. However, before we do that, we are going to have to solve the question of the storage of nuclear waste, or begin to use it differently, as they do in some other countries, recycling the waste that is there.

We have great opportunities to do these things. We also need, along with this, of course, to take a look at conservation to make sure we are using all the conservation methods available to us. Certainly we are not now. We have to be careful about doing the kinds of things that were done in California, to seek to deregulate part of an industry—in this case electric energy—however keeping caps on the retail part. Obviously, you are going to have increased usage and reduced production, which is the case they have now.

It is really a test for us at this time. One of the issues is going to be the accessibility to public lands. Most of the States where gas and oil is produced in any volume are public land States, where 50 percent to 87 percent of the State belongs to the Federal Government. Much of those lands have been unavailable for exploration and production.

We need to get away from the idea that the multiple use of lands means you are going to ruin the environment or, on the other hand, that we need to do whatever we need to do and we do not care about the environment. Those are not the two choices. The choice we have is to have multiple use of our lands, to preserve the environment and to have access to those lands as well. We can do that, and we have proven that it can, indeed, be done.

That is one of the real challenges before us during this Congress, although, of course, Congress only has a portion of involvement—it is really the private sector that will do most of it.

One of the most encouraging things is Vice President CHENEY and his working group have brought in the other agencies. Too often we think about the Department of Energy being the sole source of involvement with respect to energy, and that is not the case. The Department of the Interior is certainly just as important, in many cases more important regarding where we go, as well as the EPA—all these are a real part of it.

One of the difficulties, of course, in addition to the supply, is the transportation. Whether we have an opportunity to have pipelines to move natural gas from Wyoming to California—a tough job, of course—whether we have a pipeline that economically can move gas from Alaska down to the continental United States, those are some of the things with which we are faced. In the case of California, people were not excited about having electric transmission lines and therefore it was very difficult and time consuming to get the rights-of-way to do these things.

We have to take a look at all of those issues to bring back domestic production and be able to support our economy with electric and other kinds of energy.

It is going to be one of the challenges. The Senator from Alaska, chairman of the Energy and Natural Resources Committee, has introduced a rather broad bill that deals with many parts of the energy problem. I am pleased to be a sponsor of that bill. Obviously, it will create a great deal of debate and discussion because it has all those items in it, but we need to move. We need to have a policy that will encourage production. But I say again, not only should we be looking at production but we should be looking at opportunities to, indeed, conserve and find efficient ways to use it.

THE BUDGET AND TAX RELIEF

Mr. THOMAS. We are going to debate lots of issues. We went on an issue yesterday which was passed. We are going to go to bankruptcy today. We will talk about a lot of issues. But the real issue we need to work towards and keep in mind, it seems to me, is the budget and the tax relief issue we have and that the President has promised and that we, I hope, will be able to support. We will be looking at spending, budgets, taxes, and the size of tax relief. It is going to be one of the most important things we do.

One important aspect of it is the American people are suffering under a record level of taxation, which is 20.6 percent of the gross national product. They deserve some relief. The individual tax burden has doubled from where it was. We really need to take a long look and encourage the private sector that has people who are paying excessive amounts of taxes to have those taxes returned and at the same time pay down the debt and be able to have a budget that pays for the increases we are looking for in education and national security with the military, as well as have some reserves. The President's plan does all of those things. It puts a limit on spending, which we very badly need.

It takes care of paying down the debt. That can be paid down between now and 2011. It has a reserve for the kinds of things that come up unexpectedly and at the same time returns $1.6 trillion in overpaid taxes to those people who in fact have paid the dollars.

We have a lot of important things to look forward to in this Congress. I am glad we are now beginning to get to where we are able to deal with these issues. I think yesterday was an example of that. I am certain we will move forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

TAX RELIEF

Mrs. HUTCHISON. Mr. President, I thank my colleague from Wyoming for talking about taxes because I don't think we can talk about tax relief enough. There is no question but that we have the chance of a lifetime to bring tax relief to every working American and also give increased benefits to earned-income tax credit recipients. It is in everyone's best interest that we do this.

I thank my colleague from Wyoming for starting this debate and starting the process of educating everyone about the importance of this tax relief.

Let me say that when we talk about the tax relief package, we really are talking about good stewardship of our tax dollars. We have a projected $5.6 trillion surplus. We have a bright red line between the Social Security surplus and income tax withholding surplus. We are taking half of the $5.6 trillion—roughly $3 trillion—that is in Social Security surplus, and we are going to leave it intact in a lockbox so that Social Security will be totally within itself, solid and firm.

The other half of the $5.6 trillion—the $2.6 trillion or so—is the income tax withholding surplus. That is very different from people who are paying into Social Security and expect that money to go to Social Security. But people who are sending $2.6 trillion in income taxes above and beyond what government reasonably needs to operate should have some relief. That is money coming right out of the pocket of every American and going to Washington which we know it does not need for legitimate government expenditures.

It is our responsibility to be careful how we spend taxpayer dollars. With that $2.6 trillion surplus in income tax withholding, we have a proposal that takes $1.6 trillion and gives it back to the people so they don't even have to send it to Washington. We have $1 trillion remaining. That $1 trillion is going to be for the added expenditures that we know we need in priority areas to do the right thing.

So what are the priority areas?

We are going to spend more for public education because we know public education is the foundation of our freedom and our democracy. If we allow public education to fail, or not produce, then we are taking away the strength that has been the foundation of our Nation.

We are going to spend more on public education.

No. 2. We are going to spend more on national defense.

Our national security forces have been deteriorating. We do not have a solid plan to upgrade the quality of life for those serving in our military. These are people who are pledging their lives to protect our freedom. We owe them a quality of life that allows them to do their job. We are going to increase their housing quality and health care quality. We are going to increase salaries. We are going to increase education for military children, spouses, and military personnel. All of these will add to the quality of life.

We are going to invest in the technological advances that will keep us ahead of any adversary we might have and also make sure that our allies are strong.

We are going to increase spending in national defense.

No. 3. We must address the prescription drug issue in this country.

Ten years ago, you would have to go in the hospital and have surgery for an ailment that today can be treated with prescription drugs. Hospital stays are much shorter. Sometimes it is just an office visit because prescription drugs are so much more effective. They are also more expensive. We need to treat prescription drugs as one of the mainstays of quality health care, just as hospital stays and surgery used to be the avenue for treatment of a major problem.

We have to deal with this big expense and this big part of health care that has changed our quality of life in America, but which many people cannot afford or they have to make such tough choices that it just isn't right. People on fixed incomes cannot afford a $400-a-month prescription drug bill. Some people are making other kinds of choices. We are going to have to have more benefits and more options for prescription drug help for people who need it.

These are the areas where we want the ability to have added income, to make sure we can do the job we are expected to do. I certainly think $1 trillion should be plenty if we are running the Government efficiently and making sure taxpayer dollars are not being wasted or misused.

I think the tax relief plan is much more than tax relief. It is good stewardship of your taxpayer dollars and my taxpayer dollars. It is a balanced approach that pays down the debt, protects Social Security, and adds spending in the priority areas where we must add spending. And it lets people keep more of the money they earn in their own pocketbooks because we believe they can make better decisions for their families than someone in Washington, DC, can do.

What is in the marriage penalty relief? What is in the tax bracket lowering? What is in the inheritance tax relief?

The biggest part of the tax cut is an across-the-board lowering of each tax bracket, so if you pay in the 15-percent bracket today, you will either pay no taxes at all or you will go to a 10-percent level. The most benefit of this tax relief is at that level. And then you go to a 15-percent bracket, a 25-percent bracket, and a 33-percent bracket. So everyone gets a lowering of their bracket.

We believe no one should pay more than 33 percent of their income in Federal taxes. That is a fair tax. It could be lower, but at least that is a fair cap on taxes for any individual. That is the biggest part of the tax cut plan.

It will also increase the earned-income tax credit for people who are not paying taxes at all but get a refund because we want them to have the incentive to work rather than be on welfare. This is a good incentive, and it works.

In essence, the earned-income tax credit is a rebate of the payroll tax. For people who do not pay income taxes but they do pay payroll taxes, they are going to get a bigger rebate. So that is the big part.

The next part of this tax relief plan is relief from the marriage penalty tax. Why on Earth should two single people, earning the incomes they earn, who get married, be thrown into a higher bracket and pay more in taxes just because they got married—not because they got a pay raise but because they got married? That is wrong. It is a wrong incentive in this country, and it was never meant to be that way. This was a quirk in the Tax Code, and we must fix it.

You should not have to pay a marriage penalty. Today—and this is in my legislation I have introduced—if you take the standard deduction, you do not get the standard deduction if you get married. You do not get it doubled. In fact, the standard deduction is $4,550 for a single person. For a married couple, it is $7,600. Under my bill, the standard deduction for married couples will increase by $1,500 to $9,100, which is double the single standard deduction. So if you do not itemize and you take the standard deduction, we want you to have double the single rate when you get married.

Secondly, we want to widen every bracket so you will not have to pay more in income taxes because you go into a higher bracket just because you combined incomes. We want to widen the brackets so your combined income will be taxed at the same rate as if you were single making two incomes that added up to that. So we are going to try to widen the brackets.

And third, on the earned-income tax credit, we will increase the adjustment on the income levels and make the earned-income tax credit also come in at the same level as if they were two single people rather than penalizing people who get the earned-income tax credit when they get married.

It is very important that we relieve the pressure on 21 million American couples who pay the marriage penalty tax. This is not right, and we are going to change it. That is another major part of the tax relief bill that will be before us in the coming weeks.

The third area is doing away with the death tax. There is no reason for someone to have to sell a family farm, a ranch, or a small business in order to pay taxes to the Federal Government. We must take the lid off the death tax.

The people of America understand the death tax as being unfair. Even if they are not going to have to pay the death tax or their heirs will not have to pay the death tax, they still have a fundamental sense of fairness that it is wrong to tax money that has already been taxed when it was earned and when it was invested. There is a sense of fairness in the American people.

There is also a sense of hope. Every parent hopes that his or her child is going to do better than they have done. So they want their children to have that opportunity to be able to keep the family business and to do better. And they most certainly do not want a family business to be sold off to pay taxes because they know that not only affects their own families but the jobs of the people who work for a family-owned business.

Fifty percent of the family-owned businesses in this country do not make it to the second generation, largely because of the inheritance tax. Eighty percent do not make it into the third generation.

Do we want to be a country that does not have family-owned businesses? Do we want everything to be a big international conglomerate? I do not think so. I think we want the family farm to succeed in this country because we know that family farmers are contributing citizens to the community; they are contributing to the agricultural greatness of this country; and they are a stability for our country to make sure that we control our own resources.

I do not want a big international conglomerate to take the place of the family farm in this country. And that is what death taxes produce. It is in our interest that we have small family-owned hardware stores. It is in our interest that we have small family-owned service companies that contribute to a community.

I hope we will eliminate the death tax, or at least modify it greatly so that any reasonable description of a family-owned business would be covered, so that there will not have to be a sale of assets that would break up that business, that farm, or that ranch.

The fourth major area of our tax relief plan is to double the child tax credit. Whether you have child care or not,

we believe you should have more than the $500-per-child tax credit because we know how much it costs to raise a family. So we would double that to $1,000 per child.

A $1,000-per-child tax credit isn't nearly enough to offset the costs of raising children. We know that. But we do not have children to get tax credits; we have children because we love them and we want them to be strong, to continue the great heritage that we have in this country. But we should give tax relief that is focused on helping families raise their children in as conducive an environment as we can possibly give them.

That is our tax relief plan. It is our stewardship of tax dollars to give more money back to the people who earn it, and to pay down the debt at the most rapid rate that we possibly can. Over 10 years we will have paid down the debt to the absolute minimum. And to help people with prescription drug benefits, to rebuild our national defenses, and to make bigger investments in public education, we are saving $1 trillion back from the surplus. And last, and most important, we are keeping Social Security totally intact. That is good stewardship of our tax dollars.

I am proud to support a tax relief plan that saves Social Security, and keeps it secure, that adds spending where we need it, and makes absolutely sure that we give back to the people who earn it more of the tax dollars they deserve to keep in their pocketbooks, rather than sending it to Washington for decisions to be made that they will probably never realize.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY REFORM ACT OF 2001—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 420, which the clerk will report.

The bill clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I am pleased to be here today to support S. 420, the Bankruptcy Reform Act of 2001. I know this bill has cleared the Senate on at least three different occasions, as I recall, and with large majorities. I know a number of people have amendments they would like to offer.

As a courtesy to the Members who had concerns about the legislation, Majority Leader LOTT allowed the bill to go to the Judiciary Committee. We had amendments and debate there for a good bit of time. It is now on the floor. It is appropriate for amendments that are to be offered to be offered now.

I urge my fellow Senators who have amendments they would like to offer to this legislation to bring them to the floor. This is the time that has been set aside and announced for that purpose. It certainly would not be courteous to the work of this body if people have amendments and don't take advantage of the chance to bring them forward.

I see the chairman of the Judiciary Committee, Senator HATCH, has arrived. Perhaps he will have some opening remarks at this time. If he does, I would be pleased to yield to Senator HATCH. Senator GRASSLEY had asked that I start this off. I believe we have a good piece of legislation that has been examined. Every jot and tittle of it has been looked at. Compromises and improvements have been undertaken time and again. I believe the act will withstand scrutiny. It will eliminate a number of the abuses that have been occurring under the new modern-style bankruptcy.

The time has come, and I am confident that as this debate goes forward, this bill will pass and become law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am happy to be here and finally get this bankruptcy bill underway. We have done it year after year after year. It certainly is time to pass this bill. I hope there won't be any frivolous amendments or amendments trying to kill the bill or amendments trying to make points rather than solve the problems we have regarding bankruptcy.

As I have indicated before, the bankruptcy reform legislation we are considering today, is the same legislative language that was contained in the conference report passed by the Senate in December by a vote of 70–28. In addition, the language was marked up in the Judiciary Committee, and has added several provisions sought by Democratic members of the committee.

I am asking that Members recognize and respect the compromises and agreements that have already been made with respect to this bill. While I do not believe that further amendments are necessary, I recognize that it is the right of any Member to offer amendments. It is my sincere hope that Members will exercise reasonableness in the offering of any amendments.

This being said, If Members do have amendments, I ask them to come down and offer them now, so that we can avoid any further undue delays and move forward.

While we are waiting for them, let me talk about the bankruptcy reform proconsumer provisions. This bill requires extensive new disclosures by creditors in the area of reaffirmations and more judicial oversight of reaffirmations to protect people from being pressured into agreements against their interests.

It includes a debtor's bill of rights with new consumer protections to prevent the bankruptcy mills from preying upon those who are uninformed of their legal rights and needlessly pushing them into bankruptcy.

It includes new consumer protections under the Truth in Lending Act, such as new required disclosures regarding minimum monthly payments and introductory rates for credit cards. It protects consumers from unscrupulous creditors with new penalties on creditors who refuse to negotiate reasonable payment schedules outside of bankruptcy.

It provides penalties on creditors who fail to properly credit plan payments in bankruptcy. It includes credit counseling programs to help people avoid—we go that far—the cycle of indebtedness. It provides for protection of educational savings accounts, and it gives equal protection for retirement savings in bankruptcy.

S. 420 contains improvements over current law for women and children. We have heard people complain that the bankruptcy laws do not take care of women and children. We have tried to do that in this bill, and we have accomplished it.

It gives child support first priority status, something that has not existed up until now. Domestic support obligations are moved from seventh in line to first priority status in bankruptcy, meaning they will be paid ahead of lawyers and other special interests. It includes a key provision that makes staying current on child support a condition of getting a discharge in bankruptcy. It makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony.

It makes domestic support obligations automatically nondischargeable without the costs of litigation. It prevents bankruptcy from holding up child custody, visitation, and domestic violence cases. It helps eliminate administrative roadblocks in the current system so kids can get the support they need. These are all valuable additions and changes in the bankruptcy laws that this particular bill makes. It is in the best interests of women and children to pass this bill.

That is not all. Let me cite a few more improvements over current law for women and children. The bill makes the payment of child support arrears a condition of plan confirmation. It provides better notice and more information for easier child support collection. It provides help in tracking down deadbeats. It allows for claims against a deadbeat parent's property. It allows for payment of child support with interest by those with means. It facilitates wage withholding to collect child support from deadbeat parents.

All of that is critical. All of that amounts to needed changes in the bankruptcy laws that we have worked very hard to bring about.

As I have said before, the compromise bill we passed 70–28 was an effective compromise among Democrats and Republicans, among conservatives and liberals and independents. It was a bill that basically brought almost everybody into the picture. Even after having done that, having introduced that bill this year in the committee, we made some additional compromises to satisfy our colleagues on the other side. Those compromises were difficult to make, but we have made them. We have made every effort to try and bring as many people on to this bill as we possibly can and to try and resolve the various conflicts and difficulties that have existed in the past.

It is a very good bill. It is time we pass it. I hope people will come and bring their amendments to the floor so we can begin the amendment process and get this bill passed.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 13

(Purpose: To provide priority in bankruptcy to small business creditors)

Mr. LEAHY. Mr. President, the Senate last night voted for a resolution of disapproval of the new ergonomics regulations. Supporters of the resolution said the ergonomics rules would hurt small businesses and would cost millions in revenues each year. In fact, some claimed it would actually force them out of business.

I disagreed with that analysis of the ergonomics rule, but I do agree with the underlying principle that the Senate should be passing legislation to foster small businesses across the country. I am going to offer an amendment to protect small business creditors from losing out in the bankruptcy reform process. I assume all those who are speaking strongly in favor of small businesses would be supportive of this.

The bankruptcy bill today puts the multibillion-dollar credit card companies ahead of the hard-working small business people from Utah, Alabama, Nevada, Kentucky, or Vermont in collecting outstanding debt from those who file for bankruptcy. My amendment corrects that injustice by giving small business creditors a priority over larger businesses when it comes to distribution of the bankruptcy estate. The amendment provides a small business creditor has priority over the larger for-profit business creditor.

My amendment does not affect the bill's provision giving top priority in bankruptcy distribution to child support and alimony payments, but we should be helping small businesses navigate through the often complex and confusing bankruptcy process. Small businesses cannot afford the high-priced bankruptcy lawyers corporate giants can afford. Small business creditors need some kind of priority just to keep even with the big companies. Small businesses are the backbone of this Nation's economy.

Take a look at this chart. The total number of businesses nationwide is 5,541,918. Of those 5.5 million businesses, almost 5 million are small businesses, or 90 percent of all businesses in this country are small businesses.

Small business, for the purpose of this report, incidentally, is defined as a company with 25 or fewer full-time employees. That is the same definition of small business used in my amendment, which is very similar to the Leahy Press and Printing business in Montpelier, VT.

In full disclosure, my family sold that business when my parents retired. It is gone. This was a small printing business. We actually lived in the front of the store. Our house was in the front. The printing business was in the back, but it was typical of small businesses that are the backbone of my own State of Vermont.

In Vermont, we have 19,000 businesses. Almost 17,000 of them are small businesses, again following the national model.

In virtually every State, 90 percent of the businesses are small. The bill, as it is written, will help the huge multibillion-dollar credit card companies, and they have far more of a priority than these small mom-and-pop stores.

We can do right. It is not fair for us to ask these small businesses, again, to hand over everything they have to the lawyers and accountants of these huge megabusinesses when it comes to collecting outstanding debt. Large credit card corporations have thousands of employees. They rake in billions of dollars of profit every year. Small businesses struggle every day just to pay their bills and their employees' salaries.

Let us put these small businesses on an equal footing with big businesses by adopting the Leahy small business amendment.

In that regard, I appreciate what our distinguished majority leader, Senator LOTT, said on the floor last Wednesday. He spoke about the hardships his parents suffered when they tried to run a small business. His parents ran a furniture business, and most of the business was done on credit. One of the reasons they were forced to leave that business was that some people just would not pay their bills, according to the majority leader.

I mentioned earlier Leahy Press in Montpelier. My parents did an awful lot of business on credit. I know they faced some of the same problems the majority leader's parents did. I have always remembered that. It is not easy for a small business owner to make an honest living, whether during our parents' time or today, and it is not fair now to allow large corporate giants to grab their share first in this bankruptcy bill ahead of hard-working small businesspeople.

Many of the most controversial proposals in this bankruptcy bill are to benefit the credit card industry and then to use taxpayer money to help them support their debt collection of billions of dollars, but they also want tax dollars to help them in the collection of their debts.

Business Week recently reported that Dean Witter estimated this bill would boost the earnings of credit card companies by 5 percent a year. In other words, we as taxpayers would increase the credit card companies' business by 5 percent. One credit card company alone, MBNA, will make a net profit of $75 million a year more if we, on behalf of the taxpayers in this country, pass this bill as it is written.

Across the industry, credit card company after credit card company will reap millions of dollars in profits because of the changes this bill makes to the bankruptcy code.

I understand credit card companies are worried about collecting debts because their credit extended is typically unsecured, especially when they send credit cards, in some instances, to somebody's dog—I know of that happening—or send a credit card to someone's 4-year-old child with an unsecured credit line.

If one were cynical, one might say that some of this problem is of their own doing, but we should understand most small businesses face this peril. It is not fair to carve out a special exemption for the multibillion-dollar credit card companies but leave the small businesses of Provo, UT, or Middlesex, VT, to fend for themselves. That is why I am offering this amendment to put small business owners at least on an equal footing with large credit card companies.

Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 13.

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

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

The amendment is as follows:

At the end of title IV, add the following:

SEC. 446. PRIORITY FOR SMALL BUSINESS CREDITORS.

(a) CHAPTER 7.—Section 726(b) of title II, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)'';

(2) by striking ''paragraph, except that in a'' and inserting the following: ''paragraph, except that—

''(A) in a''; and

(3) by striking the period at the end and inserting the following: ''; and

''(B) with respect to each such paragraph, a claim of a small business has priority over a claim of a creditor that is a for-profit business but is not a small business.

''(2) In this subsection—

''(A) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(i) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(ii) is engaged in commercial or business activity; and

''(B) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(i) a parent corporation; and

''(ii) any other subsidiary corporation of the parent corporation.''.

(b) CHAPTER 12.—Section 1222 of title 11, United States Code, is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(e) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

(c) CHAPTER 13.—Section 1322(a) is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(f) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

On page 67, line 4, strike ''inserting '; and' '' and insert ''inserting a semicolon''.

On page 67, line 13, strike the period and insert ''; and''.

On page 69, line 13, strike ''inserting '; and' '' and insert ''inserting a semicolon''.

On page 69, line 22, strike the period and insert ''; and''.

Amend the table of contents accordingly.

Mr. LEAHY. Mr. President, we owe the millions of small business owners across America, who are the backbone of our economy, adequate protection from unforeseen bankruptcy losses. I urge my colleagues to support the Leahy small business amendment to provide small business creditors with a simple priority in bankruptcy proceedings. They deserve it.

Remember what this does: It gives small business creditors priority over larger for-profit business creditors in the order of distribution under chapters 11, 12, and 13 of the bankruptcy code. It defines small business as any business with 25 or fewer full-time employees. That same definition of small business is already used in the bill for small business creditors. It does not affect the bill's provisions giving top priority in bankruptcy distributions to child support and alimony payments.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, we have an amendment on which we are prepared to vote. I mention this only because I have heard constantly on the other side how anxious they are to move this bill forward. I brought this amendment up, proposed it, and am ready to go to vote all within 7 or 8 minutes. I don't want anyone to think we are trying to hold anything up. Frankly, I think this whole bill would have been finished this afternoon if we had not been interrupted for the ergonomics.

Mr. HATCH. Mr. President, we are looking at the amendment. It is the first time I have seen it. We will look at it and see if this is an amendment we can support. We would like to continue to call up amendments and stack them.

There is Habitat for Humanity and a funeral today, but we will stack the votes and this will be the first vote.

Mr. LEAHY. Mr. President, I was not aware of the funeral.

Perhaps this is a plea the Senator from Utah would join; that if other Senators from both sides have amendments that are available, we urge them to get down here. The Senator from Utah and I will work to the extent that people are here, probably go back and forth with amendments and start voting soon.

On our side of the aisle, I urge all Democrats who have amendments to get to the floor, show them to the Republican side and this side, and start moving on amendments.

Mr. HATCH. I agree with the Senator. We will stack the amendments until we can have a reasonable chance of getting Members here to vote. We would like to move ahead on amendments and vote on them later today.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. REID. Mr. President, we now have an amendment that is pending on which the yeas and nays have been ordered. I know there is some urgency in moving this bill along. The Senator from Utah and the Senator from Vermont have worked on this bill for years.

I know there are a couple of Senators who have gone to a funeral; the Governor of their State died. I think we have to start moving legislation. If going to a funeral is not an excuse for missing a vote, there isn't much we can do to make an excuse for missing it. I don't think we have to have everybody here to have a vote. If we are going to move this legislation along, my experience dictates the way to get it moving is you have to have something voted on. It seems to stimulate interest in legislation.

I hope the leadership will allow us to move forward and vote on this amendment. We can place in the RECORD that the Senators are not here, that they are attending a funeral. If that were ever used against them in an adversarial way in a campaign, that it was wrong to miss votes to go to a funeral, I would be happy to say that was wrong—and it would not be done anyway.

I hope we can move this legislation along by voting on this amendment. We have Senators who, I understand, are coming over to offer other amendments, but I repeat, my experience indicates the way to move legislation is to start voting on amendments. Probably by the time this is over we will have 15 or 20 amendments offered and we will have to vote on them. The longer we wait, the more time we will take.

As I indicated when we opened business in the Senate this morning, we have a very important meeting where Senators and House Members are traveling together to Colombia where we appropriated lots of money. These are members of the Intelligence Committee. They have reasons for going that are within the confines of the Intelligence Committee—I don't know why they are going. But there are other things that will hold up this legislation.

I say to my friend from Utah, I hope we can get permission to go ahead and start voting on this legislation. The fact that there are two Senators who have a valid excuse—they are attending a funeral for one of their colleagues who died, the Governor of the State—this amendment, while an important piece of legislation, is not going to be determined by these two Senators who are not here today. I hope we do not have a requirement in the Senate that every Senator has to be here to be able to vote on amendments.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. If the Senator will yield, I do not disagree with my good friend and colleague from Nevada. I think we need to find out who is here. We know a lot of Senators are working in the Habitat for Humanity Senate home they are building, and I surely have to get some time for that. We also will try

to be fair to our colleagues who had to be necessarily absent to go to a funeral.

On the other hand, we do have one amendment up. We are prepared to vote on that. I think we probably will before the afternoon is up. We should stack the other amendments. I am requesting that those who have amendments get here and let's argue the amendments and then stack them and we will vote at the earliest convenience, and hopefully we will be able to move this bill forward.

Mr. President, let's get over here and offer our amendments, debate them, and do the orderly legislative process. Then we will vote at our earliest possible convenience. We are working on just when those votes will start because of the inconveniences to a wide variety of Senators right now. We will try to start those votes as soon as we can, but we can stack them and debate them right now and not waste this time.

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. HATCH. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. HATCH. Mr. President, I do request Senators get over here. As far as I know, there may be one or two amendments on this side. Most of the amendments are on the Democrat side. We can move this quickly if they will get here and offer their amendments.

I am requesting Republicans, if there are any Republican amendments—I am only aware of one on the Republican side. I am aware of probably 27 on the Democratic side. So I am requesting Republicans and Democrats, if they have amendments, to get over here and let's get it done. But I only know of one on this side.

Mr. REID. Will the Senator yield?

Mr. HATCH. I am happy to yield.

Mr. REID. The Senator is right; there are a number of amendments to be offered on this side. Senator WELLSTONE has five amendments, maybe more. He is trying to get here. He is in an Education markup. He told us this last night.

Mr. HATCH. I understand he is at a markup—here he is.

Mr. REID. I say the same thing the Senator from Utah says. We need to move this along. I see my friend from Minnesota has arrived. I will suggest the absence of a quorum——

Mr. HATCH. If the Senator will withhold, I appreciate the Senator's comments. I note the presence of the distinguished Senator from Minnesota. As he prepares to offer his amendments, I suggest the absence of a quorum to give him a little bit of time to do so.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I apologize to the chairman of the Judiciary Committee, my friend from Utah, Senator HATCH, for delaying my arrival. We have a markup in the Committee on Health, Education, Labor, and Pensions on the pension education bill. I have a number of amendments. That is the reason I did not come earlier. I am going to lay down an amendment in a moment.

Mr. HATCH. Mr. President, if the Senator will yield, we should lay the Leahy amendment aside so the Senator may call up his amendment.

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

Mr. WELLSTONE. Mr. President, I also know Senator DODD wants to speak on this amendment, and other colleagues may want to speak as well.

This amendment says if you file for bankruptcy because of medical bills, none of the provisions of this bill will affect you. This is a very simple and straightforward amendment.

AMENDMENT NO. 14

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 14.

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

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

The amendment (No. 14) is as follows:

(Purpose: To create an exemption for certain debtors)

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) IN GENERAL.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the reason for the filing was a result of debts incurred through medical expenses, as defined in section 213(d) of the Internal Revenue Code of 1986, unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

Mr. WELLSTONE. Mr. President, I have been working with my colleague, Senator DODD. I will not include him as an original cosponsor because I want to hear from him. But I believe he will be down here debating this amendment.

One of the reasons I started out with this amendment—I will need to give this amendment some context—is that the proponents of this bill made the argument that we need to have ''bankruptcy reform'' because you have all of these people gaming the system. I will cite a number of different independent studies, including the American Bankruptcy Institute, that say it is maybe 3 percent of the people.

This amendment says, wait a minute; we know that about 50 percent of the people who file for bankruptcy do so because of medical bills that put them under. They are not gaming the system, so some of the really onerous provisions of this legislation should not apply to these families.

It will take me some time to give this amendment some context. I think, if this amendment should pass, it would make this piece of legislation a much better piece of legislation and far less harsh and far less imbalanced.

Let my right away give this some context. I have, perhaps among Senators, been strong and vociferous in my opposition. I want to have an opportunity to lay out the reasons why. I will talk about this bill, and then we will go to the amendment.

First of all, I think this piece of legislation is—I know it sounds strong. I hate to say it because I like my colleague from Utah so much. It has nothing to do with a dislike or a like. It has to do with policy issue. I think it will have a very harsh effect on a whole lot of people and a whole lot of families who are not able to file chapter 7, for whom the bankruptcy law has been a major safety net—not just low-income families but middle-income families as well.

I find it bitterly ironic that this legislation is coming on the heels of the vote for a resolution that overturned 10 years of work for an ergonomics rule to provide protection for working men and women, mainly women in the workplace, for what has become the most widespread disabling injury—repetitive stress injury.

Yesterday we did that. The Senate did it with no amendment, with limited debate; it overturned that rule.

Today we say if you are working—believe me, trust me. I will say it on the floor of the Senate, and if my colleagues prove me wrong I will be delighted to be proven wrong—there will not be a substantial rule or any substantial piece of legislation providing people with protection at the workplace for repetitive stress injury for a long time.

Basically what we are doing is saying OK, there won't be the protection. Now you are injured. Now you are disabled. Now you are not able to work. Now you have earned little income. Now you come to file chapter 7 because you find yourself in very difficult circumstances, and you are not going to be able to do so.

But your home could be foreclosed. Your car could be repossessed. And a lot of people are going to get ground into pieces, in my opinion.

It says a lot about the priorities of the majority party—that the first

major piece of legislation we bring to the floor is an unjust, imbalanced bankruptcy bill which is great for the big banks and it is great for the credit card companies. I am sure Senator FEINGOLD will have more to say about this.

There was a piece in Business Week, which is not exactly a bastion of liberalism about, I guess, one of the largest credit card issuers, MBNA Corporation. By the way, I cannot make the assumption that because Senator HATCH or anyone else disagrees with me they are doing it because of campaign contributions. I refuse to make the one-to-one correlation. You can't do it. But you can say at the institutional level some people have certainly a lot more clout than other people, and it just so happens that the people who find themselves in terrible economic circumstances through no fault of their own—major medical bills, they have lost their jobs, or there has been a divorce—it is my view as a former political scientist and now a Senator for the State of Minnesota that those people do not have the same kind of clout that MBNA Corporation has, which, by the way, contributed $237,000 to President Bush, according to the Center for Responsible Politics; and on the soft money side, MBNA chipped in nearly $600,000, about two-thirds going to the GOP, and the other part going to the Democratic Party. There are a whole lot of heavy hitters and well-connected folks who are for this.

We have an unjust and imbalanced bankruptcy bill that is great for big banks, and great for credit card companies, with hardly a word about any accountability calling for these companies to stop their predatory lending practices.

I am going to have an amendment on payday loans. I hope we can adopt it. There is not a word about the ways in which they pump the credit on our kids in such an irresponsible way, but it is very harsh. When it comes to many working families—low- and moderate-income families—it says a lot about our priorities. It says that a special interest boondoggle, a bailout for big banks and credit card companies, is ahead of education, is ahead of raising the minimum wage, is ahead of providing affordable drug coverage, prescription drug coverage for seniors, and is ahead of expanding health care coverage for people.

Remember, 50 percent of the people who file for bankruptcy do it because of major medical bills. But this bankruptcy bill —perfect for big banks and credit card companies—comes ahead of all those priorities.

I believe what the majority party is trying to do is to sort of say: Look, here are the differences between President Clinton, who vetoed this bill, and President Bush, who said he will sign it.

I hope the bill does not get to President Bush's desk in its present form. I think the odds of my succeeding with some of my amendments, and other Democrats and other Republicans perhaps succeeding with their amendments, are not good. But we will try.

I say to my colleagues I welcome the contrast. I say what a difference an election makes. The civil rights community, the labor community, children, women, consumers, all have said this bill is too harsh and this bill is too one-sided. President Clinton stood up for them. He stood up for ordinary people. I give him all the credit in the world, as a Senator who has not always agreed with former President Clinton. Indeed, the differences do make a difference.

I have no doubt that President Bush will sign this bill. In many ways, the financial services industry, the credit card companies, are part of his constituency.

My question is, What about unemployed taconite workers in northeast Minnesota? My question is, What about struggling family farmers in greater Minnesota? My question is, What about a lot of low- and moderate- and middle-income people in Minnesota who, through no fault of their own—especially as the economy begins to take a turn downward—may find themselves in these difficult circumstances?

I am interested in representing them. That is why I am out here today. That is why I am fighting this legislation. That is why I have been fighting this legislation for 2½ years or more.

Let me talk a little bit about the history of this legislation. First of all, this bill was negotiated by only a small group of Members, out of the public eye. Second of all, up until this year, it had never been here in an amendable fashion. Third of all, until a hearing was held by the Judiciary Committee on February 8, there had been no hearings on this legislation. In fact, the Senate had not conducted its own hearing on bankruptcy since 1998. Finally, we had a hearing.

So I see a compelling reason for some lengthy and important statements and debate on this bill. The bill deserves scrutiny. It should be held up to the light of day so that citizens can see what an ill-made, misshapen attempt at reform this legislation is.

Colleagues in this body need to understand what bad legislation really is, how terrible an impact a piece of legislation such as this can have on America's most powerless families, and what a complete giveaway this piece of legislation is to banks, to credit card companies, and to other lenders.

Bankruptcy ''reform'' is not being taken up out of any kind of urgency. Indeed, while the supporters of this bill have cited the high number of bankruptcy filings in recent years as a reason to move forward with this so-called reform, there has been a dramatic drop in the last 2 years in the number of bankruptcies. Over the past 2 years, any pretense that this legislation is urgently needed has evaporated. The number of bankruptcies has fallen steadily over the past year. Charge-offs on credit card debt are significantly down, and delinquencies have fallen to the lowest level since 1995.

Proponents and opponents agree that nearly all debtors resort to bankruptcy not to game the system but, rather, as a desperate measure of economic survival, and that only a tiny minority of chapter 7 filers—as few as 3 percent—could afford any debt repayment. But through this legislation, we are going to make it well nigh impossible for families in our country to rebuild their economic lives.

But the true outrage is that now the bankruptcies are projected to increase because of a slowing economy and high consumer debts that are overwhelming families. Proponents of this bill are using this as an excuse to curb access to bankruptcy relief. Because there will be more economic misery, because there will be more financial stress, because more American families will succumb to their debts, the proponents of this measure argue we should make it harder for them to get a fresh start. Let me make that clear. That is what this is about.

Now the economy is going to turn down. We know there is high consumer debt. We know there is going to be more people struggling. We know there is going to be more financial distress. We know there is going to be more economic misery. And the proponents of this bill are now arguing that we need this measure to make it harder for these families in Minnesota and this country to get a fresh start. I reject that proposition. We are trying to address yesterday's headlines.

But I have already stated that this really shouldn't be any wonder. The credit card industry wants this bill. They want to be able to protect the risky investments they have made, and so the Senate does their bidding. They want to be able to pump credit out there. They want to be able to engage in irresponsible lending practices. They are not held accountable at all. They want to make sure that people, in one way or another, are squeezed and squeezed and squeezed, so they can get as much money back as possible. This is a carte blanche blank check for the credit card industry.

I have been proud to fight this bill. I am proud of the fact that it has taken many years for this bill to get through, and still it is not through yet. I hope we will be able to stop it or make it significantly better.

Let me outline some of my reasons for opposing this bill, and then I will move to our first amendment.

First of all, this legislation rests on faulty premises. The bill addresses a crisis that does not exist. Increased filings are being used as an excuse to harshly restrict bankruptcy protection, but filings have actually fallen in the last 2 years.

In addition, the bill is based upon the myth that people feel no stigma; that they find it easy to declare bankruptcy, and there is widespread fraud

and abuse. By the way, if you think there is widespread abuse, then you should be all for the amendment I am going to offer which says when people are going under because of medical bills, they should be exempt from the provisions of this legislation.

Two, abusive filers are a tiny minority. Bill proponents cite the need to curb ''abusive filings'' as a reason to harshly restrict bankruptcy protection. But the American Bankruptcy Institute found that only 3 percent—if my colleagues have other data, they can present it—only 3 percent of chapter 7 filers could have paid back more of their debts. Even bill supporters acknowledge that, at most, 10 to 13 percent of filers are abusive. Surely you would want to support this amendment that says when people have to declare bankruptcy because of major medical bills, they should be exempt because they could not be in any Senator's category of people who have been dishonest or have abused the system.

Three, the legislation falls heaviest on the most vulnerable. This troubles me. The harsh restrictions in this bill will make bankruptcy less protective, more complicated and expensive to file. This will make it much more difficult for low- and moderate-income people to be able to effectively file. Unfortunately, the means test and safe harbor will not be a shield from a majority of those provisions that have been written in such a way that they will capture many debtors who truly have no ability to pay off any significant debt. As a result of this legislation, they are going to be put under.

Four, the bankruptcy code is a critical safety net for America's middle class. Low- and moderate-income families, especially single parent families, are those who most need the fresh start that is provided by bankruptcy protection. This bill will make it much more difficult for people to get out from under the burden of crushing debt. That should matter to us. I know these folks don't have a lot of clout. I know they don't lobby every day. I know they are among the most vulnerable citizens. I know they don't have a lot of income, but they should matter.

Five—and this should bother all of my colleagues—the banking and credit card industry gets a free ride. Why is there not more balance in this bill? The bill, as drafted, gives a free ride to banks and credit card companies that deserve much of the blame for the high number of bankruptcy filings because of their loose credit card standards.

Any of us who have children know the kind of stuff that gets sent to them in the mail. Lenders should not be rewarded for reckless lending. That is what we are doing in this bill. We are just giving them a blank check.

Six, this legislation may cause increased bankruptcies and defaults. Several economists have suggested that restricting access to bankruptcy protection will actually increase the number of filings and defaults because banks will be more willing to lend money to marginal candidates. Indeed, it is no coincidence that the recent surge of bankruptcy filings began immediately after the last major ''procreditor reforms'' were passed by Congress in 1984.

I say to the Senator from California: I have sent an amendment to the desk which says we ought to go after people who are gaming the system, but if a family is filing for bankruptcy, chapter 7, because of a major medical bill, they should be exempt from the provisions of this legislation. I am now putting this in a broader context.

I welcome discussion by any other Senators on the floor, and I do not intend to monopolize. It will take me some time to go through the amendment.

Mrs. BOXER. Mr. President, will my friend yield?

Mr. WELLSTONE. I am pleased to yield.

Mrs. BOXER. Let me first assure my friend that I was not intending to take any time. I want to thank him for his work on this issue. We know in this country one of our biggest problems is lack of health care and the fact that the burden of disease sometimes falls on the family to an amazing extent. If they are hit by hard times, it could well be because of these medical bills. People are driven into bankruptcy because of that. Then to have the double horror of having that not be exempted from the eventual resolution would be a real disaster for people.

I thank the Senator not only for this amendment but for the many amendments that I will be supporting that he will be introducing to make this a bill that has at least a semblance of fairness.

Right now, it hurts people. I am really waiting with anticipation for a moment when we do something that helps people. So far I haven't seen one thing we have done to help people.

Yesterday, we repealed a measure that would have protected people in the workplace from repetitive motion illness.

Does the Senator know when we are finally going to get something done, such as an education bill, that helps people? I haven't seen anything to date that actually does.

Mr. WELLSTONE. Mr. President, I had said earlier that I find it bitterly ironic that on the heels of yesterday's action by the Senate, where in 10 hours we overturned 10 years of work to provide some protection to the workforce—men and women, mainly women—for the most serious disabling injury right now, repetitive stress injury, we now turn to the first major piece of legislation in this 107th Congress, a bankruptcy bill which is so imbalanced and so harsh in its effect, especially on middle income, low- and moderate-income people, many of whom, again, are women and children. It speaks volumes about our disordered priorities, which we will speak to.

I ask unanimous consent to go into a quorum call for 30 seconds, and then I will regain the floor and go forward with the amendment.

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

The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, I have much more to say about the bill, but I will get to the first amendment I want to introduce today, which I think goes to the heart of what is a fundamental problem with this legislation. This legislation purports to go after abuse in the bankruptcy system, but it casts a wide net that captures all debtors who file for bankruptcy, regardless of their circumstances. This is a simple amendment. This is what it says. If you file for bankruptcy because of medical bills, none of the provisions of this bill will affect you.

I know Senator DODD has been working on a very similar amendment, and he and Senator CHAFEE have been working on an amendment. I think as the debate goes forward, we will probably join forces.

The reason I introduce this amendment—and other Senators also are interested in the same kind of amendment—is, in the vast majority of cases, the people who file for bankruptcy do it because of desperate financial circumstances and do it because they are overburdened by debt. Specifically, we know that nearly half of all debtors report that high medical costs force them into bankruptcy. This is an especially serious problem for the elderly. Just think about prescription drug costs and the increased medical bills one has as they become older.

A medical crisis is a double whammy for a family. First, there are the high costs associated with the treatment of a serious health problem, costs that may not be covered by insurance. Certainly, for some 40 million people in the country who have no health insurance whatsoever, it can put them under. And please remember, anyone who has spent one second in any coffee shop back in their States knows that the health care crisis is not just people with no health insurance at all. It is also people who are underinsured. They have some coverage, but it is by no means comprehensive.

The other thing that happens is, if it is a serious accident or illness, then for a time, if you are the primary earner in the household, the income is not coming in. And even if it isn't the person who draws the income, a parent, if I am working and my child is very ill, you know what—many of us know this now—or if your parent is very ill, then you may need to be caring for that elderly parent. This means a loss of income. It means more debt and more of an inability to pay back the debt.

I am kind of surprised, frankly, that the proponents of this legislation did

not at least have some sort of clear exemption and, if you will, some compassion for people who end up filing for bankruptcy because of a major medical illness that has put them under.

Are the people in our country—the families in Minnesota —who were overwhelmed with medical debt or sidelined with an illness and therefore they can't work, are they deadbeats? This bill assumes they are. For example, it would force them into credit counseling before they could file for bankruptcy, as if a serious illness or disability is something that can be counseled away. Colleagues, that is not what it is about.

Both of my parents had Parkinson's disease. My father had severe Parkinson's disease. I believe, ultimately, it is the reason my dad passed away. We helped take care of him, and I saw him struggle. I can assure you that the cost of the drugs to treat those diseases is not something that can be counseled away. It has nothing to do with these citizens and these families being bad managers of their budget. It is, ''There but for the grace of God go I.'' People, through no fault of their own, are stricken with illnesses and disabling injuries and, therefore, major medical bills can put them under. When these families need to file for bankruptcy, they should be exempt from the harsh and restrictive provisions of this bill.

A study published in May of 2000 by professors Melissa Jacoby, Teresa Sullivan, and Elizabeth Warren determined that:

> Hundreds of thousands of middle class families declare bankruptcy each year in the financial aftermath of an encounter with the American health care system.

The study goes on to note:

> The data reported here serve as a reminder that self-funding medical treatment and loss of income during a bout of illness or recovery from an accident make a substantial number of middle class families vulnerable to financial collapse. They also demonstrate that the American social safety net is composed of interwoven pieces, including government subsidies for medical care, private insurance and personal bankruptcy. For middle class people, there is little government help, so that when private insurance is inadequate, bankruptcy serves by default as a means for dealing with the financial consequences of a serious medical problem.

Let me translate that into ordinary language. There are many people in our country, families in our States, who are either not old enough for Medicare—and even if they are, it doesn't cover prescription drug costs, catastrophic expenses—or they are not poor enough for Medicaid and they are not fortunate enough to be working for an employer where they have any coverage, or for an employer that gives them comprehensive coverage that is affordable. Therefore, when the private insurance is inadequate and people are faced with a major medical catastrophe, bankruptcy serves by default as a safety net, a way in which these families can deal with these medical consequences. This piece of legislation takes that support away.

Again, this is the point I have been trying to make over and over again in this debate: Bankruptcy is a critical safety net for middle-class Americans. Yet we have a bill which rolls the safety net back.

A study conducted by Ian Domowitz and Robert Sartain found that the presence of medical debt had ''the greatest single impact of any household condition in raising the conditional probability of bankruptcy . . . households with high medical debt exhibit a filing probability greater than 28 times that of the baseline.''

Come on. A lot of people who file for chapter 7 bankruptcy do it because of major medical bills. This amendment says exempt them.

The figures I have cited so far speak to all bankruptcies. But the statistics become even more troubling if you look specifically at seniors or single women with children who file for bankruptcy. Single women with children are 50 percent more likely to file because of medical bills than single men. You know what. There is a reason for that. Unfortunately, in many families—maybe 50 percent now—there is a divorce, and quite often in the large percentage of the cases the single parent who has the most responsibility for taking care of the children is the woman. That is one of the reasons why so many of the women's organizations and children's organizations are adamantly opposed to this legislation.

There was another way we could have gone after this problem because for these folks the problem isn't the bankruptcy system; it is the health care system. I will concede that to my good friend from Alabama. It is a shame that this has to be the way in which people can get some support for major medical bills.

The United States of America is the only advanced economy in the world that does not have some form of universal health care coverage.

The United States paid a third more per capita for health care than any other nation, and we spend a greater percentage of our gross domestic product—14 percent—and we get far less for our money, according to the World Health Organization report.

There are about 44 million people in our country who have no health insurance whatsoever, and there are about the same number of people who are underinsured.

We could have gone after this problem in another way. I could be on the floor right now—I would love it—advocating for senior citizens and, for that matter, other working families, saying we ought to have affordable prescription drug coverage. But that is not our priority. We have to consider this bankruptcy bill. I could be out on the floor arguing for health security for all citizens, that we could, as a national community—in fact, maybe this will be one of the amendments. Maybe I can have a vote on the following amendment, a sense of the Senate that the people we represent should have as good a health care coverage as we have. We could be out here talking about health security for every citizen. We could be talking about the ways in which we can agree nationally on a package of benefits as good as what we have and that there should be patient protection.

The Presiding Officer was one of the first people in the Senate to talk about patient protection. We could be talking about how we can make it affordable for families. We could be talking about how to get to universal coverage. We could talk about how we could decentralize health care so the different States can make a lot of decisions about cost containment and delivery of care. That would be a way of dealing with this problem. We could be talking about expanding the children's health care plan to include their parents. We could be talking about more support for community health care clinics.

But that is not what we are doing. You might ask, PAUL, why is this amendment even necessary given what the author of the bill, my friend, Senator GRASSLEY from Iowa, said just recently:

> So that I am crystal clear, people who do not have the ability to repay their debt can still use the bankruptcy system as they would have before.

On the one hand, PAUL, if you are telling me this bill is incredibly harsh and will punish working families who need a fresh start, but the proponents of the bill say this bill will not affect people who are gaming the system, how do you explain that?

If you listen carefully to their statements, you will hear that they only claim such debtors will not be affected by the bill's means test. Not only is that claim, I think, subject to much debate—the means test and the safe harbor have been written in a way that will capture working families who are filing for chapter 7 relief in good faith—but it ignores the vast majority of this legislation which will impose needless hurdles and punitive costs on all families who file for bankruptcy, regardless of their income. Nor does the safe harbor apply to any of these provisions.

Do not take my word for it. Here is how an article in the conservative Wall Street Journal on February 22 characterized this bill:

> In most cases, the bill, which is almost identical to the one that President Clinton vetoed, will make filing for bankruptcy more costly and more of a hassle. That's the point: It will increase lenders leverage to pressure consumers to pay bills instead of going to court to void them.

That is exactly right. The article concludes on this point:

> The bill is so full of hassle-creating provisions, some reasonable, some prone to abuse by aggressive creditors trying to get paid at the expense of others. In a thicket of compromises, Congress risks losing sight of the goal: making sure that most debtors pay their bills while offering a fresh start to those who honestly can't.

That is what this amendment does: to make sure we offer a fresh start for those people put under by medical bills who honestly cannot pay back.

Again, this is the Wall Street Journal, hardly a bastion of populist sentiment, but that is the net effect of the bill: to make it harder for families who have hit financial ruin, who have hit financial bottom to get a fresh start. That is what is wrong with this legislation.

The proponents of this bill have said that all these provisions are necessary to curb abuse. OK, let's take them at their word. If that is true, then I assume the proponents of this bill will support this amendment.

If the proponents mean what they say, that the whole point of this legislation is to curb abuse, then my colleagues will want to support this amendment because this amendment just exempts those families who are filing for bankruptcy because of major medical bills. They are not slackers. They are not cheaters. They have not gamed the system.

If the sponsors are serious about just taking on deadbeats, not ordinary Americans who file bankruptcy because they simply have no other choice to rebuild their lives, then they should be rushing to the floor to cosponsor this amendment.

I repeat that. If the sponsors are serious about going after the deadbeats but making sure ordinary people, hardworking people who file bankruptcy because they have no other choice, are going to be able to rebuild their lives, then they should be rushing to the floor to cosponsor this amendment.

I hope I will get support from my colleague from Utah. Surely no one will argue that families that are drowning in debt as a result of medical bills are gaming the system. These are the people who need the safety net the most. These are the people who need to make a fresh start.

Here are a number of examples of what I am talking about:

The prebankruptcy credit counseling requirements at the debtor's expense is a requirement that people have to go to prebankruptcy counseling. The debtor pays for it, as if, again, people who have been put under because of cancer, diabetes, or some kind of horrible injury, can counsel away these conditions. They are not in financial difficulty because they need credit counseling.

New limits on repeat filings, again, regardless of personal circumstances; revocation of automatic stay relief for failure to surrender collateral; changes to existing cram-down provisions in chapter 13, making it more difficult for debtors to keep their car; the new presumption of abuse of credit card if the debt is incurred within 3 months of the bankruptcy.

We have all of these new burdens, all of these hurdles. Why do we want to make it so horrible difficult for people who find themselves in horrible financial circumstances because of a major medical illness, a major medical bill, to file chapter 7 and rebuild their lives? They are not slackers. They are not gaming the system.

This amendment says let us have a good bill, and one of the ways to do it is to at least have an exemption for these families.

Again, some of these onerous hurdles, requirements, that I mentioned might be useful to get the deadbeats or go after the irresponsible people—I am all for that. The problem is that all of these changes also affect working families who file for bankruptcy through no fault of their own. Should a person who files because of medical bills be treated with the same presumption of abuse as wealthy slackers? That is what this bill does.

I repeat that. Should a person who files because of major medical bills be treated with the same presumption of abuse as wealthy slackers who are gaming the system? That is what this bill does.

I cite two specific examples of how this bill will hurt debtors who file for medical reasons, and I hope my colleagues on the other side of the issue will come to the floor—I know the distinguished Senator from Utah is here—to refute this, if they can. Both of these families were talked about in an excellent Time magazine story last year which was called ''Soaked by Congress.'' My colleagues may remember this.

Allen Smith is a resident of Delaware, which has no homestead exemption. In other words, he cannot shield his home from his creditors. Ironically, under this bill, wealthy scofflaws can shield multimillion-dollar mansions from their creditors with little planning, but not Mr. Smith. It is 2 years in advance. If you know you are facing trouble and you are a multimillionaire, you can hire your lawyers and then buy your real estate in Florida or wherever.

There is no such break for Mr. Smith. As a result, when the tragic medical problems described in the Time article befell his family, he could not file a chapter 7 case without losing his home. There was no homestead exemption. Instead, he filed a chapter 13 case which requires substantial payments in addition to his regular mortgage payments for him to save his home. Ultimately, after his wife passed away and he himself was hospitalized, he was unable to make all these payments and his chapter 13 plan failed.

Had Delaware had a reasonable homestead exemption and had Mr. Smith been able to simply file a chapter 7 case to eliminate his other debts, he might have been able to save his home. He lost his home.

Mr. Smith's financial deterioration was caused by unavoidable medical problems. Before he thought about bankruptcy, he went to consumer credit counseling to try to deal with his debts. However, it appears he went to consumer credit counseling just over 180 days before the case was filed, and he did not receive a ''briefing.'' The new bill would have required him to go again. This would have been very difficult considering his medical problems. In fact, his attorney demonstrated a dedication to his client that sharply contrasts with the creditor propaganda picture of bankruptcy lawyers just out to make a buck. He made several home visits to Mr. Smith and his wife, who was a double amputee. The new bill would also have required a great deal of additional time and expense for Mr. Smith and his attorney, through new paperwork requirements and a requirement that he attend a credit education course. Such a course would have done nothing to prevent the enormous medical problems suffered by Mr. Smith and his wife.

He did not get into financial trouble through failure to manage his money. He is 73 years old and had never before had any debt problems. The bill makes no exceptions for people who cannot attend the course due to exigent circumstances. Mr. Smith might never have been able to get any relief in bankruptcy under the new bill.

Under the new bill, this bill, Mr. Smith would also have had to give up his television and VCR to Sears which claimed a security interest in the items. Under the bill, he would not be permitted to retain possession of these items in chapter 7 unless he reaffirms the debt or redeemed the items. Sears may demand reaffirmation of his entire $3,000 debt under the bill, and to redeem, Mr. Smith would have to pay the retail value. After his wife died and her income was gone, Mr. Smith did not have the money to pay the amounts to Sears. Since he is largely home bound, loss of these items would have been devastating.

Sadly, this is a real person, about real people. Mr. Smith's medical problems continue. Under current law, if he again amasses medical and other debts he cannot pay, he could seek refuge in chapter 13 where he would be required to pay all he could afford. Under the new bill, Mr. Smith cannot file a chapter 13 case for 5 years, when he is 78 years old.

The time for filing a new chapter 7 has also been increased from 6 to 8 years. What will happen to people such as him?

Charles and Linda Trapp were forced into bankruptcy by medical problems. Their daughter's medical treatment left them with medical debts well over $100,000, as well as a number of credit card debts. Because of her daughter's degenerative condition, Linda Trapp had to leave her job as a mail carrier about 2 months before the bankruptcy case was filed to manage her care. Before she left her job, the family's annual income was about $83,000 a year or $6,900 per month.

Under the bill, close to that amount, $6,200, the average monthly income from the previous 6 months is deemed

their current monthly income, even though their gross monthly income at the time of filing was only $4,800. Based on the fictitious deemed income, the Trapps would have been presumed to be abusing the bankruptcy code since allowed expenses under the IRS guidelines amounted to $5,339. The difference of $850 per month would have been deemed available to pay unsecured debts and was over the $6,200 a month, triggering a presumption of abuse. The Trapps would have had to submit the detailed documentation to rebut this presumption, trying to show their income should be adjusted downward because of special circumstances and that there was no reasonable alternative to Linda Trapp leaving her job.

Because their current monthly income, although fictitious, was over the median income, the family would have been subject to motions for abuse, filed by creditors who might argue Linda Trapp should not have left her job and that the Trapps should have tried to pay debts in chapter 13. That is the same problem for taconite workers.

I will be proposing an amendment I hope will get 100 votes that will say LTV, the large company that laid off 1,400 workers, if they file for bankruptcy, chapter 7, should not be able to walk away from their health care obligation to retirees. The working men and women are out of work. You will do their average income over a 6-month period and then determine whether or not they are eligible for chapter 7. How are they able to rebuild their lives? They will not be able to do it. Their average income over the last 6 months might look pretty good. That doesn't do you much good if you were laid off 2 months ago. Where in the world does this test come from?

The Trapps wouldn't have been protected by a safe harbor. The Trapps would have paid their attorney to defend the motion, and if they could not have afforded the $1,000 or more it would have cost, the case would have been dismissed and they would not have received relief. If they prevailed, it is unlikely they would recover attorney fees from a creditor who brought the motion, since recovery of fees is permitted only if the creditor's motion was frivolous and could not arguably be supported by any reasonable interpretation of law.

That is a much weaker standard than the original Senate bill. In fact, we have had better bills. This bill has gotten worse and worse. We once had a bill that passed 99–1. I was the only Senator opposing it.

Because the means test is so vague and ambiguous, any creditor could argue it would simply make a good faith attempt to apply the means test which created a presumption of abuse.

Mrs. Trapp's medical problems continue and are only getting worse. Under current law, if the Trapps amass medical and other debts, they could seek refuge in chapter 13 where they would be required to pay all they could afford. Under the new bill, the Trapps could not file a chapter 13 case for 5 years. Even then the payments would be determined by the IRS expense account and they would have to stay in the plan for 5 years rather than 3 years required under current law. The timing for filing chapter 7 would be increased by the bill from 6 to 8 years.

What does this bill do to keep people who undergo these wrenching experiences out of bankruptcy? Nothing. Zero. Tough luck. Instead, this legislation just makes the fresh start of the bankruptcy harder to achieve. This doesn't change anyone's circumstances. This doesn't change the fact that these folks don't earn enough any longer to sustain their debt. There is not one thing in this bankruptcy ''reform'' bill that would promote health security in working families.

I conclude this way: I came to this issue almost by accident. I am not on the Judiciary Committee. I am not a lawyer. My colleague from Utah, Senator HATCH, is a very able lawyer. It is complicated. With all of the fine print and all of the detail, the more you go through it, the more you are able to realize this piece of legislation lacks some balance. This amendment gives this legislation badly needed balance. What this amendment says is, go ahead, let's not let anyone game the system. Whether it is the 3 percent the American Bankruptcy Institute or the 10 to 13 percent that others talk about, don't let people game it. Don't let people be slackers. Don't let people get away with murder. When people go under—50 percent of the bankruptcy cases are because of a major medical illness—give them an exemption from the onerous requirements, give them the opportunity to rebuild their lives. They didn't ask for the illness. They didn't ask for the major medical bill. They didn't ask for the disabling injury. They didn't ask to be put under.

The bitter irony is that just yesterday we passed a motion that emasculated 10 years of work to get a rule to provide protection for people, many of them women, against repetitive stress injury, disabling injuries, in the workplace.

Now we turn around today and say, and you know what, not only don't you have the protection—and I said earlier, I made the prediction we will not see an ergonomics standard passed by this Congress for years now. If I am wrong, I will be pleased to be wrong. Now what we say is there is not the protection and now, if you have a disabling injury and now you do not have the income coming in and now you are in a desperate financial situation, we are going to make it impossible for you to file chapter 7 and rebuild your life.

It is not a good week for working people, not a good week for ordinary citizens. What we could have done—and I conceded this point earlier in the debate. I really apologize that chapter 7 in bankruptcy is one of the ways people can deal with major medical bills because, frankly, it is a pretty poor excuse for what we should be doing. We should not have 44 million people without any coverage. We should not have at least that number of people who are underinsured. We should be able to have comprehensive health care reform.

I think one of the amendments I should offer is to make sure all the people we represent have as good health coverage as we have. We should be doing that, but we are not. Instead, we are going to make it impossible for some good, honest people to rebuild their lives when they find themselves in desperate financial circumstances through no fault of their own.

I hope there will be support for this amendment that just says if you file for bankruptcy because of major medical bills, none of the provisions in this bill will affect you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, listening to my colleague, I wonder if he has read this bill because most of what he said is untrue. I have respect for him as a former professor of political science, but on the other hand, this bill has been around for a long time; we have worked on it with virtually everybody in the Congress, everybody in the Senate.

We provide for people right and left and provide the means of taking care of women and children. We have made it so that people who owe their debts and who can pay really ought to; the game is over.

Sometimes I get the impression some of our colleagues on the other side think the Federal Government is the last answer to everything and it is the only answer to everything. It is the last answer sometimes, but it is not the only answer. I have to tell you, this amendment of the distinguished Senator is unnecessary.

Let me just say one thing about ergonomics. I distinctly stayed away from the debate yesterday because we had plenty of good people on both sides arguing that debate. The distinguished Senator from Minnesota, his side lost. The reason they lost is that anybody who has any brains at all knows we do not need to create a Federal welfare system or Federal workers compensation system. Everybody who has any brains knows the minute you start doing that, there is going to be a plethora of people who will take advantage of it. It is just human nature.

We do need to come up with a really workable, nonbudget-busting, ergonomic-stress-related bill that I think will work. Certainly that regulation was way out of line and should not have been supported. I was amazed there were as many Democrats who supported it as did. It was a bipartisan rejection of those regulations.

If the Senate of the United States had any guts or any consideration for its own power at all, that is what had

to be done. We just can't let bureaucrats go do whatever they want to regardless of what the law says, and that is why we came up with that particular act, to provide a means whereby we can get rid of regulations such as that, that really are improperly written, way excessive in their tone and their delivery and in their practicality. It is, frankly, very detrimental to the country in the long run. They would cause a lot of difficulty.

The thing I can remember that best reminds me of that kind of legislation was the catastrophic bill a few years ago—just take care of everybody's catastrophic illness. It was wonderful to hear that and find out the Federal Government was going to take care of everybody, until the people found out they had to pay for it. Then they were jumping on top of Danny Rostenkowski's car, the chairman of the Ways and Means Committee, because they weren't about to pay the kind of rates that would have been required of them to have the kind of catastrophic coverage we Members of Congress were going to give them because we know it all.

Let me say, this amendment is unnecessary, the amendment of the distinguished Senator from Minnesota. There is a means test in S. 420 that takes care of it and already accounts for 100 percent of a person's medical expenses. Thus, if their medical expenses prevent them from being able to repay their debts, they don't have to under the means test. It takes care of the truly poor. We have taken great pains to take care of the truly poor.

But there are some people in our society who are using the bankruptcy rules, the bankruptcy laws, the current laws, to get around debts for which they are very capable of paying. Or they run up huge bills and then expect society to pay for them. It is costing the average family $550 a year because of the inadequacies of our current bankruptcy laws which this bill cures.

The means test takes care of the poor. But if the Senator gets his way and this amendment is agreed to, let me tell you who will benefit from it. Donald Trump is going to benefit from it. Bill Gates will benefit from it. Anybody who is wealthy who goes into bankruptcy and has medical bills, they are going to be able to avoid those; they will not have to pay them.

The way I read this, if a wealthy person files for bankruptcy and the reason they filed was to extinguish their debts from medical expenses, then the means test will not apply to them even if they are fully capable of paying their medical expenses, paying their debts. What this provision of the distinguished Senator from Minnesota does is it puts hospital creditors at the head of the line. That is not what we want to do.

The amendment says the entire act and amendments do not apply if you file for bankruptcy because of medical expenses. This means the new protections in the bill for women and children don't apply—or don't apply to them. Credit counseling provisions don't apply that we have put in here. Homestead provisions don't apply.

I know the distinguished Senator is trying to do right here, and I know he is well intentioned. I respect that. But we thought of these problems, and I think we have solved them, cured them in this bill. This bill does an awful lot to cure the problems of our country in bankruptcy. It does an awful lot to stop the fraud that is going on in bankruptcy. It does an awful lot to reduce the annual cost of every family in America—now estimated at $550 a year. It does a lot to alleviate those problems and reduce those costs of every American citizen. It does an awful lot to help people be more responsible for their debts. It sends a message to everybody that you must be responsible, even if you are having trouble paying your debts. We provide all kinds of mechanisms so that they can pay their debts—maybe not in full but at least can get discharged in bankruptcy after having made a good-faith effort to live up to the terms of the law we would pass.

I sometimes get the impression that our colleagues on the other side believe that Government is the last answer to everything. I know not all of them do, but it just seems as though more and more that seems to be the argument, that only the Government can take care of health care, only the Government can take care of savings and investment, only the Government can take care of education—only the Federal Government, that is. We all know the Federal Government's share is only about 6 percent or 7 percent of the total cost of education in this society. Yet they can come up with this idea that only the Federal Government has the last answers and can solve all these problems.

The Federal Government isn't any brighter than the State governments. I have to say the State and local governments are closer to the people and, as a general rule, do a better job than we do. But we can do a good job. This bill is a very good bill. Is it perfect? I have to say I have never—well, maybe not never but hardly ever—seen a bill around here that is perfect because we have to satisfy 535 people, and more; we have to satisfy the administration. We have to satisfy a lot of people out there. This bill takes care of a lot of problems in the current bankruptcy system that need taking care of. We can argue these matters until we are blue in the face, but it is time to vote on it.

Frankly, I respect anybody for their sincerely held opinions. I know the opinions of the distinguished Senator from Minnesota are sincerely held. He is a very bright man, and he raises some interesting issues from time to time. But on this one, he is just dead wrong.

Very frankly, the only people who are going to benefit from this amendment are the rich who can afford to pay for their medical expenses because we take care of those who are poor under the means test. This particular bill resolves that problem.

I wonder if we can go on to another amendment. I suggest we stack this amendment behind the Leahy amendment and go to the next amendment. I hope our colleagues are prepared.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I also want to explain to my colleague from Utah what I said earlier this morning is that we have a markup. My understanding from Senator LEAHY is that other Senators will come down with amendments. I have a markup also going on at the same time with amendments in committee. I will have to go back and forth.

First of all, when my colleague from Utah says there has been an adjustment in the means test for medical bills, I hope Senators' staffs will take a look. When my colleague says, Wait a minute, we have taken care of problems with major medical bills, we don't do an adjustment to the means test. This is the part of the bankruptcy bill that deals with that. Here is the whole bill.

There are lots of other very harsh provisions in this bill that go way beyond this. I am talking about the whole bill. There are prebankruptcy credit counseling requirements at the debtor's expense. Why in the world do you want people who have been put under because of a major medical bill to have to go to credit counseling? What kind of presumption do you make? Then they have to pay for their counseling. What is that doing in here? You think people can credit counsel their way out of having to deal with cancer and the bill they incur?

Again, my colleague from Utah talks about one little part of the bill.

The revocation of the automatic stay relief from failure to surrender collateral is another provision. Now at least when you file for bankruptcy, there is some time that goes by. This means that Sears can come and repossess. There is no time.

There are changes to existing cramdown provisions in chapter 13, making it more difficult for debtors. You end up paying for the full loan, not the value of the car.

How about this one? You can't file a new chapter 7 case for 8 years or a new chapter 13 case for 5 years—again, making it more difficult.

What happens if a family is put under with a major medical bill and then there is another illness? You say this period of time has to go by? You have to go 7 or 8 years from 6 years in chapter 7, and from 6 years under chapter 13 to 5 years. There is no limit under current law.

There are lots of provisions in this piece of legislation that are very harsh. I do not understand.

I think this is a very challenging vote for Senators. I say to the Senator

from Iowa and other Senators who are on the floor right now that this amendment concedes the point that we certainly ought to have some legislation that deals with people who game the system—again, I think it is about 3 percent—people who really game the system, people who really do not need to file chapter 7. But surely with this bill there are many harsh provisions, and we would want to at least have an exemption for people who go under because of major medical bills.

Let's just concede the point that people in Minnesota, Iowa, Nebraska, and around the country who are having to file for chapter 7 because of a major medical bill that put them under ought to be exempt from all of these loopholes.

Talk about bureaucracy, and ways of discouraging people from filing, and making it difficult for people to get relief. Why wouldn't you at least have an exemption?

I have opposed this bill with all my might for several years. I find it interesting that there are articles in Business Week and the Wall Street Journal. There was a piece last night on ABC News; Time magazine, a long piece—all of which say—I don't think this is necessarily the tradition of blaming liberal media—that this bill is imbalanced and it is a dream come true for the credit card industry and for the financial services industry. There is no question about it. But it is too harsh for many ordinary citizens in the country.

I say to my colleagues again: We represent people, too many of whom don't have anywhere near the health care coverage we have. We represent people who, through no fault of their own, wind up with a major illness or injury that puts them under financially.

Maybe I feel strongly about it. I think it took my mother and father, as I remember, 20 years to pay off a medical bill in our family. I think it took them 20 years, as I remember. That still remains one of the great fears and sources of insecurity of the people we represent—that there is going to be a major medical bill that puts them under.

We do not come out here on the floor of the Senate and make prescription drugs more affordable. We don't come out here on the floor of the Senate and introduce and debate legislation that would provide more health security for the people we represent and that would make health care coverage more comprehensive and more affordable. We don't come out here in the Senate and dedicate ourselves to the proposition that the people we should represent should have as good a coverage as we have.

I think that would be a good amendment to vote on, on this bill. Then we take what is a safety net, given the fact that we haven't done any of that in public policy and given the fact, therefore, that over 50 percent of the people who file for bankruptcy do it because of major medical bills, and we tear the safety net apart.

I will tell you, I have some good friends on the other side of the aisle on this issue. One of them is about to speak. I have said publicly that whatever the Senator from Iowa says and whatever he advocates is what he honestly believes. Political truth can be elusive. One person's solution can be another person's horror. People in good faith can disagree.

So what I am about to say now is not directed personally. But again I finish this way at least for the moment. I will tell you, I don't like the feel of this at all. I don't like the feel of this bill at all. I think when you look at the lobbying coalition and the campaign contribution, because there is not one Senator—I need to say some of us aren't good at this if we aren't careful. We can't make a one-to-one correlation because a Senator received one contribution. That is not fair to do. But what you can say is that the families I talked about, the unemployed Taconite workers on the Range—I say to the Presiding Officer, the Senator from Nebraska, that farmers who are facing the price crisis and barely hanging on—and a whole lot of middle-class families who were doing well, they were doing well. My folks were doing well. I do not know if they were middle class—what definition you would use; they did not have a lot of money—but they were doing fine. But then there was a major medical illness.

I am saying, you should exempt those families who file for bankruptcy from the provisions of this legislation. That way you get the cheaters and you get the slackers, but you do not make it impossible for a lot of people who are in a whole lot of physical pain and a whole lot of economic pain to rebuild their lives.

I cannot understand, for the life of me, why I am not getting colleagues on both sides of the aisle sponsoring this amendment.

I yield the floor.

I am sorry, I saw the Senator from Iowa. I thought he would want to speak.

Mr. GRASSLEY. Is the Senator from Minnesota done?

Mr. WELLSTONE. I am not finished with my final remarks on this amendment, but I always defer to the Senator from Iowa.

Mr. GRASSLEY. If the Senator yields the floor, then I will ask for the floor.

The PRESIDING OFFICER. Does the Senator yield to the Senator from Iowa?

Mr. GRASSLEY. First of all, I think the Senator from Minnesota thinks that he has not made any impact on this legislation over the last 4 years. This bill is a statement of considerable impact that the Senator from Minnesota has made on it because of his hard work. His work goes beyond just improving the bill. He obviously does not want the improved bill to pass.

But the Senator from Minnesota is a legislator. He obviously believes in the legislative process. He knows how to use the legislative process to accomplish good from his point of view. And we have a bill that has changed considerably since the recommendations in the Commission on Bankruptcy report.

Senator DURBIN and I introduced that bill two Congresses ago. It went through the process of subcommittee, full committee, to the floor of the Senate, through the House of Representatives, through conference, through the House a second time but not having enough time to get it through the floor of the Senate that second time to get it to the President.

Then, in the last Congress, it went through the same process: subcommittee, full committee, the floor of the Senate, the House of Representatives subcommittee, full committee, the floor of the House of Representatives, to conference and out of conference, passing the House of Representatives by a veto-proof margin, and through the Senate, passing the Senate by a veto-proof margin, and going to President Clinton for his signature.

Obviously, with veto-proof margins in both Houses, the President knew if he vetoed it, we would be able to override it. The President waited until we adjourned last December, and at that point did what, under the Constitution, is called a pocket veto. We obviously were not in session and did not have an opportunity to override.

But I said: The Senator from Minnesota has had an opportunity to make considerable changes in this legislation. Maybe I do not like all those changes, but I would have to look at this piece of legislation that has my name on it as the principal sponsor, with Senator TORRICELLI of New Jersey, and say this bill has improved a lot in ways that we probably should have recognized when it was first introduced.

But you reach a point, in any legislative process, where you eventually come to the conclusion that perfection in the way we do business in the Government is never a possibility. And you get the best possible vehicle you can to get the job done—the best possible job.

I think the Senator from Minnesota would like to have me yield. I will yield for the purpose of a question.

Mr. WELLSTONE. I just want to thank my colleague. Sometimes a distinguished Senator can go on and on and on, and it is not sincere. I thank the Senator from Iowa for his graciousness. I have never doubted his commitment to this legislation. I have never doubted his conviction on it. And I want to apologize. I have a markup on an education bill, so I am going to leave now. The amendment will be laid aside. I will be back in a while. I did not want to appear to be impolite. I just have to go to the markup.

Mr. GRASSLEY. The Senator from Minnesota does not have to apologize.

There are always demands upon our time. There are four or five places we could be at one time. I did not get a chance to hear all of the Senator's speech because I was chairing the Senate Finance Committee on the issue of giving tax relief to working American men and women, a bill that will probably pass here in the month of May.

Anyway, I plead with the Senator from Minnesota that he has had a tremendous impact upon this legislation, and it is a better bill in the sense that a lot of things that were brought to our attention are now changes in this bill. But you cannot have perfection.

I think the Senator from Minnesota would say he really does not want this bill to pass. So I think it is fair to say he, and other Members who do not want it to pass, will be offering amendments, maybe because they believe in them, but partly it is a process of slowing the legislation down so, again, it may never pass.

But I think, unlike 4 and 2 years ago—or maybe more accurately, 3 and 1 year ago—we are starting out with this bill on the floor of the Senate in the first year of a 2-year Congress, where one or two Members of this body are not going to frustrate the will of almost all 535 Members of Congress. And they do not have a President now that is going to veto the bill. So this legislation is going to become law. President Bush will sign this legislation.

So now, if I could—we do have an amendment before us from the Senator from Minnesota—I want to address that amendment very directly. It brings me to the means test.

By the way, I have a chart here speaking about how flexible this means test is, what it takes into consideration, so that it is not just a quantifiable formula with no humanity to it. There is plenty of humanity involved in this means test, whereby the means test determines whether somebody has the ability to repay some of their debt. And if they do, they then go into chapter 13, and they never get off scot-free.

So I see the amendment from the Senator from Minnesota as gutting the means test, ignoring the means test. That would be very bad. And we have had 70 Senators vote for this bill. By the way, 70 Senators represents a bipartisan vote.

If you believe this bill should be passed, and we should have strong improvements in bankruptcy law, then you will want to keep the means test; you will not want to gut the means test, as Senator WELLSTONE's amendment does.

It sounds very humanitarian to talk about taking medical expenses into consideration as to whether or not you ought to be granted access to having your debts discharged. I have stated before on this floor, that in calculating a debtor's income, under this means test, 100 percent of medical expenses are deducted.

I have also said to my colleagues, including the Senator from Minnesota, that if we offer you a bill where, in determining whether or not you should be in bankruptcy court—and 100 percent of your medical expenses can be taken into consideration in that determination—how much better than 100 percent can we do? If I gave you 101 percent or 102 percent would that be better? But with 100 percent deduction for some expense, I do not know how you can do much better than that.

That is what this means testing formula does. And Senator GRASSLEY does not say that, the General Accounting Office confirmed that. I have a page from the General Accounting Office report in relation to that part of this legislation. This is the title page, if people are interested in the entire book. But it lists what is deductible under the IRS standards, in determining the ability to repay if you go into bankruptcy.

Here, under ''other necessary expenses,'' the description of the IRS guidelines, as stated by the General Accounting Office, includes such expenses as charitable contributions, child care, dependent care, health care, payroll deductions, including taxes, union dues, life insurance. There it is, under ''other necessary expenses,'' health care, 100-percent deductible in making that determination. If you can pay off some portion of your debt under the means test, then you should have to do so. The means test takes into account these reasonable expenses and others than what I listed, including 100 percent of medical expenses.

If one is concerned about whether or not 100 percent of medical expenses is clear enough as to what you can deduct, because the Senator from Minnesota used the term ''catastrophic'' medical expenses, the test also allows, under our legislation, for special circumstances to be taken into account when determining if a debtor can repay his or her debt.

That means that after you have taken the IRS guidelines, as I have stated, the General Accounting Office saying 100 percent of medical expenses—and that is not enough to satisfy the Senator from Minnesota so he talks about catastrophic medical expenses; whether they are catastrophic or minor, 100 percent of medical expenses is 100 percent of medical expenses—but just in case, then under the special circumstances provisions of our legislation, that debtor can go before the judge and plead a case beyond what the IRS regulations allow.

This bill preserves a fresh start for people who have been overwhelmed by medical debt or unforeseen emergencies. The bill thus allows full 100-percent deductibility of medical expenses before examining the ability to repay.

The amendment of the Senator from Minnesota says that if one files for bankruptcy because of medical expenses, then he or she does not have to go through this very flexible means test we are presenting in our legislation. His amendment doesn't take into account whether or not a person can repay or not. Making it possible to go into bankruptcy without some determination of the ability to repay or not is just not right. It means you have a gigantic loophole for somebody to game the system and to do what we are trying to prevent with this legislation—not hurting the principle of a fresh start, but if you have the ability to repay, you are not going to use the bankruptcy code for financial planning. You are not going to get off scot free.

What the Wellstone amendment does is create a loophole for those who can repay their debts. Our bill does it right. We allow all medical expenses, if they are catastrophic or not, to be taken into account. So the amendment offered by the Senator from Minnesota creates this huge loophole in the bill. That is why I have to urge my colleagues to oppose this amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I would like to proceed on the bankruptcy bill in reference to the amendment offered by the Senator from Minnesota, Mr. WELLSTONE.

I know Senator WELLSTONE opposes this bill for any number of reasons, but I think we ought to analyze carefully what he is saying to consider actually what the impact of the amendment he offered would be. I think when we do that, we find it would be a curious thing for him to offer and certainly would not be good public policy.

Basically, the Senator's amendment would say that if a person files bankruptcy because of health care expenses—I believe the words are ''as a result of medical losses or expenses''—he would then be exempted from the new bankruptcy law. I think that is an odd thing to say, and I think it focused more of his concern about people filing bankruptcy as a result of medical expenses than the remedy that he would effect by the amendment.

We know that a number of people do get in financial trouble as a result of medical expenses. But, first, I say without fear of contradiction, those medical expenses will not impact a person in a way that would require him to pay any of those back, unless he or she—the person filing bankruptcy—made below the median income. Probably 80 percent, I would guesstimate, of the people who file personal bankruptcy make below the median income. So they would not be impacted by the means test requirement that they pay back some of the medical expenses that they have incurred.

Also, I think we ought to ask ourselves what expenses is he or she not being required to pay back. Hospital expenses? Now, let's say a person makes $150,000 a year—and people such as that are filing bankruptcy today. They are quite capable of paying back a substantial portion of their debts—maybe all of them. But they can file chapter 7 and wipe out all of their debts, with very little fear of any alternative consequences occurring to them. It is done every day.

As I read this amendment, it basically says that hospitals are the big losers. You don't have to pay them back. If you owe hospitals a big debt, and you are making above the median income, and you could easily pay 25 percent of that back to the hospital, and a judge would require you to do so, Senator WELLSTONE says, no, you can't be made to pay your hospital back. But if you owe some disreputable person—say, your liquor distributor, or somebody who has done those kinds of things—under his amendment they would all be required to be paid back. Just not the hospitals.

I have visited 20 hospitals this year in Alabama. I have talked to administrators, nurses, and doctors. They are having a tough time with their budgets. I am concerned about them. They do not believe in having people try to pay debts. They write off debts every day that people can't pay. It is one of the things they share with me—that bankrupts and others are just not able to pay their debts and they write them off.

The Federal Government has some form to help to compensate for that. Probably not enough. At any rate, the question simply is, Why should a person, if he is capable of paying back some debts, not pay his community hospital? It was a hospital that served him, presumably, or his family, and took care of their health needs; it exists to serve other people in the community—a good, noble, valuable institution. Why should that be the institution that doesn't get paid, when you can pay certain debts?

I think the amendment is rather odd, and it makes it less likely that there would be good health care in the community. There is a concern about, well, if you got continuing medical expenses, and this is going to leave you in debt, well, the way we wrote the bill—and we thought about this very subject—what about a person who had substantial medical expenses on a recurring basis?

How should that factor into your median income or special circumstances? We created two situations that deal with that.

If a family of four has a median income of around $50,000, and if they had $2,000 of recurring medical expenses for some reason and had to pay it every month, under IRS standards, which we adopted in this bill, that $2,000 adds on to the median income. The median income would not be $50,000, it would be $2,000 a month—$24,000 more, $74,000. If the income then was $70,000, the family could wipe out all debts, hospital and otherwise, without any problem because the median income calculated under IRS standards would not prevent them from going straight into chapter 7 and wiping out the debt, rather than being put in chapter 13 where the judge will say you pay back some of the debt as you are able over a period of years.

We also have a provision referred to as ''special circumstances.'' A bankruptcy judge can find special medical hardship or circumstances and exempt it from the bankruptcy.

I do not think this is particularly good. The Senator says just because your bankruptcy filing was a result of medical expenses, you should be exempted from all the law. What does that do? That eliminates the great benefits we placed in this bill for women and children who, under current law, rank down in the list of priority payments of limited debts from the bankruptcy estate. Under this new bill, they go to No. 1.

If the bankruptcy was the result of medical expenses and the bankrupt individual could pay his alimony and child support, it would not be the first priority on the estate like it is under present law. The women and children would lose that benefit.

We have had some discussion about the homestead provisions. There is a much stricter standard under this current law under homestead to stop the abuse of people putting their money into large homesteads in States that have unlimited homestead exemptions. Tightening of that provision would not apply here, leaving other people to lose more significantly.

This amendment is more out of the Senator's frustration over medical care in America. I know he wants the Government to take care of everything that it can in that regard and more. I am willing to debate that under a different circumstance. It does not apply here.

This bill makes provisions for people who have high medical expenses. Indeed, historically the bankruptcy law does not question why someone is in debt. One can be in debt because one made a risky investment. One can be in debt because one messed up on some contract and then was sued. They were wrong, badly wrong, perhaps. One can be in debt because of health care. One can be in debt because of gambling or alcohol. Maybe just a lack of personal discipline drives people into bankruptcy.

We have never, and should not in my view, turn the bankruptcy court into some sort of social institution that starts to evaluate everybody's personal conscience to see whether or not they were justified or unjustified into going into debt.

Remember, what we are crafting today is simply a procedure in a Federal court, a bankruptcy court, by which people who are unable to pay their debts can wipe those debts out all or in part. Basically, the law says that if you are below median income, then you do not have to pay any of them back. If you make above median income and you are able to pay some of those debts back, you should do so.

That is a reasonable approach. The Senator's amendment, whereas it might be well-intentioned, is curious and I do not believe is helpful to this bill. I oppose it.

I thank the Chair. I yield the floor and 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. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. DURBIN. Mr. President, I rise today in opposition to the current bankruptcy reform bill, S. 420, as written and reported out of the Judiciary Committee last week. Let me say from the outset that I support many aspects of bankruptcy reform. I support the right of financial service companies to have reasonable protection from spurious claims of bankruptcy, from outlandish loopholes that leave some assets untouchable. I support the right of consumers to have better protection from aggressive credit card solicitations and other offers of easy credit that can easily trap people into massive debt. I support reforms that strike the proper balance—and that is the key word, balance—between the needs of business in America and the needs of consumers. That is why I oppose this bankruptcy bill in its current form. I sincerely hope the Members of the Senate will be open to some of the amendments offered in a good faith effort to make this a better bill.

A little over 4 years ago, I served on the Judiciary subcommittee and was ranking Democrat when my chairman, Senator CHUCK GRASSLEY of Iowa, joined with me in preparing a bipartisan bill which passed on the floor of the Senate with an overwhelming vote. If my memory serves me, over 97 Members voted in support of that bankruptcy reform. I was proud to join in that vote because I believed that the bill was balanced, was honest, would reform the system, and do it in a sensible fashion.

Sadly, the conference committee that was called between the House and the Senate after passage of that bill literally did not allow participation by every Senator. Figuratively, there was a sign outside the door that said, ''Democrats not allowed.'' Then the bill came back from the conference committee with no input from the Democratic side of the aisle, was brought to the floor, President Clinton threatened a veto, and the bill basically languished in the Senate.

Two years later, another effort was made. This time, I was not part of the committee process. Senator TORRICELLI

of New Jersey played that role. He and Senator GRASSLEY also worked on a bill with amendments added that I believed could be supported again. It received a substantial vote on the floor of the Senate, went into the meat grinder of the conference committee, and came out loaded with provisions which, frankly, were unfair to consumers across America. President Clinton threatened a veto of that bill, and it basically sat on the calendar until it was far too late for any action to be taken.

That is an indication of the history of an effort to modify and reform the bankruptcy system but to do it in a bad way. I believe my colleague, Senator GRASSLEY, who is on the floor at this moment, and other Senators have come to this process in good faith. I think we have a chance with this bill, and some good amendments to it, to bring forth a piece of legislation that may not please everyone in the credit industry—it certainly won't please everyone who is fighting for the rights of consumers across America—but tries to strike a balance, a fair balance so both sides give something and ultimately justice is served.

This constant theme has guided me through the years in the bankruptcy debate—balanced reform. I do not believe you could have meaningful bankruptcy reform without addressing both sides of the problem: Irresponsible debtors and irresponsible creditors.

I agree that many people who go into bankruptcy court file to abuse the system, to game the system, to avoid their responsibility to pay their just debts. I believe that is the case, and this is certainly an area in need of responsible reform.

Particularly urgent is the need to address abuses by those who have considerable assets and are using bankruptcy with impunity as a financial shield. I am thinking here of those infamous cases where wealthy homeowners sink their assets into properties that are protected from discharge during bankruptcy, or criminals who declare bankruptcy to escape financial penalties they brought on themselves by their crimes.

But there are abuses and imbalances on the other side of the ledger as well. Financial abuses are certainly not limited just to those who owe money. Those who make it their business to extend credit can step over the line as well: Financial service companies extending credit well beyond a debtor's ability to pay and then expecting Congress to bail them out from their unsound lending practices; special interests who seek protection for their specific piece of the assets pie without considering issues of basic fairness or the need to leave some debtors with enough assets for critical family obligations such as paying child support. I think we are all aware of this situation. I don't believe we should ration credit in America.

I believe that we have a moral and legal obligation to inform consumers of their responsibilities and let them make sensible, well-informed decisions about their credit limits.

Those of us who go home regularly and open mail to find another credit card solicitation understand that this industry literally showers America with billions of solicitations for new credit card debt virtually every year. Many people who are being offered credit cards, frankly, shouldn't take another credit card. They are in over their heads. Many of these companies that are trying to lure them into their credit operation don't think twice about it. They, frankly, don't care how many credit cards you have. They would like to see you take another two credit cards and pile them on their own credit card, even if you had a turn of bad events—lost your job, went through a divorce, or maybe incurred some medical bills you never expected.

Financial predators praying on the most vulnerable members of society using deceit to lure them into usurious transactions should not be rewarded in this law.

Central to the debate on this issue must be the question, What are we really trying to solve? If the problem is the increase in filing of personal bankruptcies, then we ought to take a look at the numbers. Perhaps this problem is starting to resolve itself.

When we began the bankruptcy debate several years ago, bankruptcy filings were not only up but they had reached record-setting levels.

When the credit industry first came to me with their issue, they said: We just can't understand why we are having 25 or 30-percent increases of bankruptcy filings every year. In a situation where the prosperity of this country is well documented, why are so many people going to bankruptcy court? Many of them should not. There were 1.44 million bankruptcy filings in calendar year 1998, of which 1.39 million, or 96.3 percent, were consumer bankruptcies.

Let me see if I can find the chart to show that.

This shows the national bankruptcy data by chapters of those filing. You can see by this number that the filings in 1997 under chapter 7 were 989,372, reaching a higher level of over 1 million in 1998, coming down in 1999, and down further still in the year 2000. The same trend can be found in the same filings for chapter 11 and chapter 13 as well.

What we see then is that over time, this problem, without the passage of Federal legislation, has started to resolve itself. I can't predict what the year 2018 will show. If this slowdown in the economy results in more filings, it is fairly predictable. If we were worried about people who were taking advantage of the bankruptcy system in good times who really didn't need to—we can see that there has been a decline in the number of filings even before we consider the current legislation—no one can say what the future is going to bring in terms of filings. We all recognize that the economic climate is uncertain.

Nevertheless, the data on hand suggests that the so-called explosion of personal bankruptcies has come to an end even without this legislation.

As I said a moment ago, there are areas of bankruptcy law that are still in need of reform. Three years ago, I worked to develop a bipartisan, balanced bankruptcy bill that addressed irresponsible debtors and irresponsible creditors. Ninety-eight Senators voted for it. They agreed that that legislation eliminated abuses on both sides of the ledger while making available information that permitted consumers to make an informed financial decision. That bill was decimated in conference, as I mentioned.

Our bill in the 105th Congress included debtor-specific information that would enable credit card holders to examine their current credit card debt in tangible, real, and understandable terms driving home the seriousness of their financial situation.

My idea was very basic and simple. Every credit card statement ought to say that if you make the minimum monthly payment required by this company, it will take you x number of months to pay off the balance. When you pay it off, this is how much you will have paid in interest and how much you will have paid in principal.

When I made this suggestion, the credit card industry said that it was impossible for them to calculate their information; and if they had to do this on every monthly statement, it was well beyond their means.

I find this incredible, in the day and age of technology and computers, when calculations are being made instantaneously, that they could not put on each monthly statement how many months it would take to pay off the balance if only the minimum monthly payment was made. I don't believe it; never have. I think they are ducking their responsibility. They don't want consumers to know if they make that minimum monthly payment, they are never going to pay off the balance. It might take 8 years. They end up paying a lot more interest than principal.

Why is this important for consumers? Frankly, so they will be informed. They may think twice about making the minimum monthly payment if they cannot afford it. They may think twice about adding more credit to their card. They will be informed consumers making judicious decisions instead of people making decisions without the information available.

I don't think the credit card industry is showing good faith. This is an amendment which they should accept. It would be a good-faith indication to me that they are prepared to go that extra step not to issue credit but to inform creditors. They have been refusing to do it.

This bill also fails to close the homestead loophole. The homestead loophole is a State-by-State creation. In

each State, the decision is made as to what they can really accept from bankruptcy; in other words, what can be protected for you personally if you file for bankruptcy.

One of the areas is the so-called homestead exemption for your home; your residence. Each State has a different standard. Some States are very strict and some are wide open.

Under this bill, someone renting or someone with less wealth will get to keep nothing. But a home owner who has equity in a home that has existed prior to the 2-year cutoff can keep all of his equity. Failing to put a real hard cap on this provision only benefits the rich.

My colleague, Senator KOHL of Wisconsin, has said on many occasions that we ought to get rid of this exemption because fat cats go out and buy magnificent homes, ranches, and farms and call it their home and plow everything they have into them and say to the creditor that they have nothing to put on the table. It is a mistake. Simply to say if they owned it 2 years they are off the hook, I don't believe that is enough.

There is another provision in this bill relative to a system known as cram-down. The cram-down provision we have in the current bill as written is not final. Not only does it go too far, but it actually goes beyond the well-targeted provision originally proposed by the credit card industry. This is a very complex area of bankruptcy.

I note the two people in the rear of the Chamber. One is Natacha Blaine, an attorney on my staff, and Victoria Bassetti on my staff, who have spent several years trying to make sure I understood this provision. It is complicated. But it is very important.

There is an area where we shouldn't let complexity mask the unbalanced nature of the cram-down provision currently in the bill.

Take a look at current law. Under the bankruptcy code, a secured creditor is given favored treatment for the value of the collateral that secures the claim. Further, many nonpurchase money security interests—where credit was not extended to purchase a specific item—can be eliminated.

Or claims of abuse. When we first began the bankruptcy debate, the credit card industry came to us with claims that debtors were intentionally taking on secured debt for items such as automobiles, which experience a rapid decrease in value once they are driven off the lot, and immediately declaring bankruptcy.

In order to address this issue, the industry initially proposed that secured creditors would be protected for the amount of the loan if the bankruptcy was declared within 6 months of such purchase. Thus, as an automobile loses value when being driven off the lot, to the extent such abuse was taking place, the 6-month period would fully protect the creditor.

Congress listened to the credit card industry concerns with respect to cram-down, and adopted the original proposal incorporated in earlier versions of the bill. Although I opposed the amendment in the provision in the committee markup, the language was unfortunately unchanged.

What does the current bankruptcy bill do? The cram-down provision as written in the current bill would prohibit the use of cram-down chapter 13 for any debt incurred within 5 years before bankruptcy for purchase of a motor vehicle, and for any debt incurred within 12 months of bankruptcy for which there is any other collateral. This provision is unjustly tipped in favor of the credit industry, providing little or no protection for debtors.

Let me try to put all of this legal language into simple terms.

You buy a car. You don't have much money, but you need a car to go to work. As soon as you drive the car off the lot—whether it is new or used—it starts depreciating in value. You reach a time later on where your debts have mounted to the point where you can't make your car payment or a lot of other payments. You are not going to file in chapter 7 to try to be absolved of all your debts; you go to chapter 13. You say: I am going to try to pay back what I can pay back. One of the things I want to keep in this bankruptcy is my car because I can't go to work without my car, and I can make money to pay back other creditors under chapter 13.

The court takes a look at the car and says: You might have paid $10,000 for it, but that was several years ago. Now that car is only worth $8,000. So if the company you bought it from took repossession of the car, the most they could get out of it is $8,000. So we will give that company a secured interest, preference in bankruptcy, for the $8,000 value, and the fact that you still owe $2,000 on it will be in the unsecured claims—a little harder to collect on. You end up with your car. You end up paying the credit card company back the value of the car as you have it, and you go to work. I think it makes sense.

You are a person in chapter 13 who said: I am going to try to pay back my debts. But now the credit industry has come in and said: Not good enough. If you bought that car within 5 years of filing for bankruptcy, then you have to pay the entire balance on your secured claim. We are not going to look at the real value of the car; we are going to look at the paper value of your debt.

So a person who wants to keep their car and go to work ends up being a loser.

A 5-year period is totally unreasonable. That is why I think this provision does not really recognize creditors who are stuck and trying to get themselves out of a bad situation.

Keep in mind, the average person filing for bankruptcy has an annual income of around $22,000, $23,000 a year. These are not wealthy people throwing money around, by and large. They are people who have gotten into circumstances they cannot control because of medical bills or a divorce and a lost job. If they go to chapter 13, they are doing their level best to pay off the debts. This bill, as presented to us today, penalizes those people. I think that is wrong. I am going to offer a provision to change that.

Let me tell you of another area——

Mr. LEAHY. Mr. President, will the Senator from Illinois yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. LEAHY. I heard the Senator earlier speaking about the problem the credit card companies say they have in declaring that if you pay the minimum amount what ultimately you are going to owe. I recall the Senator from Illinois made the same point in the Judiciary Committee markup. It struck me that the Senator from Illinois was correct in saying this will be a good thing to put on the credit card.

So I asked a couple people who do programming in computers. I said: The Senator from Illinois has been told they can't extrapolate this; they can't put it on the bill. They said: Bull feathers. That's not the case at all. They said: This is the easiest thing to do. They have teenage interns in their company who would be glad, if you just gave them a couple access codes in the credit card companies, to show them how to program that.

If you can program what the minimum payment is—and the minimum payment might come out to something like $118.39, because it is a certain percentage of the overall, which might be $1,229.81—you are dealing in such strange numbers; every credit card bill is different, every minimum payment is different, but they said with the same program that set that up, you can basically put in a couple more lines of code and it can be figured out.

I mention this because I think that is the same experience the Senator from Illinois has had. I mention it because he is so absolutely right on this. This is not going to add any burden to the credit card companies. It is not going to be an additional cost to them because they already have the computers making the basic computations that are necessary.

Frankly, my question is this: Is it not the studied position of my friend from Illinois that if the credit card companies want to let you know how much you are on the hook with them for, they can easily do it?

Mr. DURBIN. That is exactly right. The Senator from Vermont understands, as I do, that occasionally people find themselves in a difficult position where they can only make the minimum monthly payment in a given month. They have bad circumstances and they are having a tough time of it. I understand that. I think that is something that may happen to any family. But you ought to do it with your eyes wide open, so you realize if you do this repeatedly, making the minimum

monthly payment month after month, you will never get out of the hole; the hole may be there for 7 or 8 years.

Now, why is the credit card industry so reluctant to tell consumers the truth? There was a law passed several decades ago called Truth in Lending. This credit card provision that I am supporting is ''truth in credit cards,'' so they will at least give consumers the information so they can decide what is best for them and their families. They may decide they had better pay off all the balance. Maybe they do not need an extra credit card. They can make a responsible decision.

This whole debate about bankruptcy got started when the credit industry came to my office and said they thought bankruptcy had lost the moral stigma it once had: Too many people are flooding the bankruptcy courts, and they are not very embarrassed by it.

I can tell you, the attorneys and the trustees and the judges to whom I have spoken dispute that. They find people showing up in these courts very sad about the circumstances that surround them. They have done their level best with small businesses and their families, and they are in over their heads and have nowhere to turn. They have a family tragedy they didn't anticipate—usually a medical bill they can't pay—and they wish they never had to be in bankruptcy court.

I also turned to the credit card industry and said: If we are talking about a moral stigma, what is your moral responsibility when it comes to flooding America with credit card applications? When it comes to young people in America, who do not have any source of income, receiving solicitation after solicitation for credit cards, don't you have some responsibility to make sure you are not extending credit beyond a person's ability to pay? They will not accept that responsibility.

Why is it that they focus on college students, for example? They believe in brand loyalty. They think if you are in college and you decide to take a Visa card, or a MasterCard, or a Discover card, or an American Express card, that is going to be your favorite brand of credit. They want to get you early. And some sad things have resulted.

Senator FEINSTEIN of California and I are going to offer an amendment a little later. The amendment is going to set a cap on the total amount of credit available to young people through their credit cards. It is a sensible measure that protects college students and other young adults who are at an age when many are getting their first taste of personal and financial independence. It protects the companies issuing the credit cards from having their customers assume far more debt than they are able to handle.

I do not need to tell you there is an epidemic of credit card default among young people today, especially on college campuses. I can go to a University of Illinois football game in Champaign. I go into the stadium, go up the ramp, and at the top of the ramp someone is waving a T-shirt at me that says ''University of Illinois.'' And I can say: What is this all about? They say: If you will sign up for a University of Illinois credit card, we will give you a free T-shirt. They are doing everything they can to lure students to these credit cards.

Then you go to places such as the University of Indiana, and the dean of students says more students drop out due to credit card debt than to academic failure.

What are the statistics on young people filing bankruptcy in America? In the early 1990s, only 1 percent of all personal bankruptcies were filed by people under the age of 25. By 1996—just a few years later—that figure increased to 8.7 percent—more than an eightfold increase in the proportion of young, college-age people filing for bankruptcy.

Remember, my friends, student loans are not dischargeable in bankruptcy. So if you go into a bankruptcy court because you are in over your head with a credit card, you still have your student loan hanging after you have left the court. That, to me, says we have a scandalous situation on our hands that the credit card industry is exploiting. The amendment Senator FEINSTEIN will offer a little later addresses it.

Let me give you one illustration. Sean Moyer got his first credit card at age 18, when he was a student at the University of Texas. Sean committed suicide at age 22, after he ran up more than $14,000 in debt on his credit cards. His mother told CBS News the following:

> It just did not occur to me that you . . . would give a credit card to an 18-year-old, who was . . . making minimum wage [at a job]. I never thought that he would end up with, I think it was two Visas, a Discover, a MasterCard. When [Sean] died, he had 12 credit cards.

Sean was a smart kid, a National Merit Scholar winner. He was on his way to law school. But in many ways he was a young boy who succumbed to the temptation of easy credit.

As his mother went on to say:

> Anybody that has 18-year-olds knows they are not adults [many times]. I don't care what the law says. They are 18 one minute. They are 13 the [next]. Here they are in college, their first time away from home. They're learning to [try to] manage their money.

We ought to keep people such as Sean Moyer and these young men and women in our mind as we talk about bankruptcy reform. That is why Senator FEINSTEIN's amendment makes so much sense. It sets a reasonable credit cap for all credit cards. We are not saying a young person can't have a credit card. We are talking about unlimited credit, that we get a young person with literally no job with debt of $14,000 or more. This is a reasonable extension of credit for these young credit card holders. It is indexed to the consumer price index to adjust to inflation.

As a further protection, we have in the amendment the statement that if you happen to have the cosignature of your parent or guardian, you might have more credit offered to you.

These simple measures would protect our young people from getting in over their heads with multiple credit cards. It is no surprise that the credit industry hates this like the Devil hates holy water. The idea that they can't go out and lure and hook in all of these young people at a vulnerable point in their lives is something of which they are frightened. They are going to oppose the Feinstein amendment.

Let me talk for a moment about moral stigma, the moral stigma of people with an average income of $22,000 a year going to bankruptcy court, heartbroken over medical bills or divorce or loss of job. How about the moral stigma of these credit card companies, wallpapering college campuses with credit cards the kids just can't keep up with. I know Senator FEINSTEIN plans to reoffer her amendment on the floor. Senator JEFFORDS and I are cosponsors of this sensible, bipartisan amendment. I urge my colleagues to support it.

Balance is certainly the order of the day in this debate. We are a new Congress with a balanced 50/50 Senate. We have a new President, faced with the challenge of uniting an evenly divided electorate. We have a new and real opportunity to work together to pass genuine bankruptcy reform, reform that is balanced, meaningful, and fair.

In a few moments I will send to the desk an amendment to the bankruptcy bill aimed at another area of abuse which should be resolved. It is directed particularly to what is known as predatory lending practices. Much of our discussion concerning reform of the Nation's bankruptcy laws is focused on the perceived abuses of the bankruptcy system by consumers and debtors. Much less discussion has occurred with regard to abuses by creditors who help usher the Nation's consumers into bankruptcy.

I believe there are abuses on both sides and that bankruptcy reform is incomplete if it does not address both sides. Studies have identified a host of predatory financial practices directed at the Nation's financially vulnerable. These studies suggest that many low-income Americans participate in a virtual fringe economy. They may lack access to mainstream banks and financial institutions. They may lack the collateral or the credit rating needed to secure loans for a home, to buy a car, pay for home repairs, or other essential needs. This vulnerable segment of our economy is at the mercy of a variety of credit practices by a variety of offerors that can lead to financial ruin.

High-pressure consumer finance companies have bilked unsophisticated consumers out of substantial sums by aggressively marketing expensive loan insurance products, charging usurious interest rates, urging repeated refinancing, and loading their products

with hidden fees and costs. High cost mortgage lenders have defrauded millions of older Americans with modest income but substantial home equity of their lifelong home ownership investments. Senator GRASSLEY of Iowa, who has been the chairman of the Senate Special Committee on Aging, has held hearings, heartbreaking stories of elderly people, usually women living alone, who are preyed upon by these companies that come in and lure them into signing documents they barely understand for repair of their homes with terms and conditions that are unfair by any standard.

Some auto lenders in the used car industry have gouged consumers with interest rates as high as 50 percent, with assessments for credit insurance, repair warranties, and hidden fees, adding thousands of dollars to the cost of an otherwise inexpensive used car. Pawnshops in some States have charged annual rates of 240 percent or more to customers who have nowhere else to turn for small short-term loans. Abusive credit practices of every stripe harm millions of older and low-income Americans every single year.

During the committee debate on S. 1301, I offered an amendment designed to address and curtail just one bad practice among many predatory high-cost mortgage loans targeted at the low-income elderly and the financially unsophisticated. This amendment was adopted unanimously on a previous bill and was stripped out in conference. The credit industry did not want us to even go after the bottom feeders in their business, the people who prey on the elderly and uninformed.

I will reoffer this language today as an amendment to this bankruptcy bill. This is the exact same language that was in the 1998 bankruptcy bill that passed the Senate 97–1. It is also the same language that many of my colleagues, including Senator Grassley and Senator SPECTER, voted for in the 106th Congress. It is my hope that they will join me in supporting this amendment again.

In recent years there has been an explosion on the market for this type of home mortgage, generally for second mortgages that are not used to fund the purchase or construction of a home. The market is known as the subprime mortgage industry. The subprime mortgage industry offers home mortgage loans to high-risk borrowers, loans carrying far greater interest rates and fees than conventional loans and carrying extremely high profit margins for the lenders.

According to the Mortgage Market Statistical Annual for the year 2000, subprime loan originations increased from $35 billion in 1994 to $160 billion in 1999.

As a percentage of all mortgage originations, the subprime market share increased from less than 5 percent in 1994 to almost 13 percent in 1999. This is not an isolated incident. This is a trend, a trend where people are preying on vulnerable consumers across America, usually widows, usually elderly women, ultimately trying to take away their homes in bankruptcy court.

We are considering a bankruptcy reform bill where we are supposed to be eliminating abuses? For goodness' sake, should we not eliminate the use of the predatory lending which we see is growing by leaps and bounds in this country?

By 1999, outstanding subprime mortgages amounted to $370 billion. Home Mortgage Disclosure Act data shows a substantial growth in subprime lending. The number of home purchase and refinance loans reported under HMDA by lenders specializing in subprime lending increased almost tenfold between 1993 and 1998, from 104,000 to 997,000. I will relate a few stories in a moment that will illustrate the kinds of loans, the kinds of, what I consider, extremely corrupt practices by the credit industry that are rewarded in bankruptcy court.

You will see when this amendment comes up for a vote if the credit industry itself, which prides itself on being a major financial institution in America, is willing to step forward and point out the wrongdoers within its own ranks. Sadly we have seen over the last several years they were not.

The growth of the subprime lending industry is of concern to us for two reasons: First, because of their reprehensible practices called predatory lending practices, which some of these companies use to conduct their business; second, because of the vulnerable people involved, senior citizens, low-income people, the financially unwary to whom they often target their loans.

According to 1998 Home Mortgage Disclosure Act data, low-income borrowers accounted for 41 percent of subprime refinance mortgages. African-American borrowers accounted for 19 percent of all subprime refinance loans. In 1998, when Senator GRASSLEY held the hearing I referred to earlier with the Special Committee on Aging, several people came forward to tell their stories.

William Brennan, director of the Home Defense Program of the Atlanta, GA, Legal Aid Society, put a human face on this issue and this amendment. He told us of the story of Genie McNab, a 70-year-old woman living in Decatur, GA.

Mrs. McNab is retired. She lives alone on Social Security and retirement. In November of 1996, a mortgage broker contacted her and, through this mortgage broker, she obtained a 15-year mortgage loan for $54,000 from a large national finance company. Her annual percentage rate was 12.85 percent. Listen to the terms of the mortgage. She will pay $596.49 a month until the year 2011, when she will be expected, and required, to make a final payment of $47,599.14—a balloon payment for an elderly lady living on Social Security. By the time she is finished with this mortgage that this fellow convinced her to sign for, her $54,200 loan will have cost her $154,967, and she faces a balloon payment of almost $48,000 at the end.

When Ms. McNab turns 83 years old, she will be saddled with this balloon payment that she will never be able to make. She will face foreclosure of probably the only real asset in her life—something she has worked for her entire life—and she will be forced to consider bankruptcy. She will face the loss of her home and her financial security, not to mention her dignity and sense of well-being. Ironically, she had to pay this mortgage broker a $700 fee to find her this ''wonderful'' loan—a mortgage broker who also collected a $1,100 fee from the mortgage lender.

Unfortunately, Ms. McNab is a typical target of the high-cost mortgage lender—an elderly person, living alone, on a fixed income. She is just the kind of person who may suddenly have encountered the death of a spouse and the loss of income, a large medical bill, an expensive home repair, or mounting credit card debt. All of these things could push her over the edge, just making regular monthly payments, not to mention a $48,000 balloon payment, at the age of 83.

These are all real-life circumstances which make her an irresistible target for some of the most unscrupulous members of the mortgage industry in America.

According to a former career employee of this industry who testified anonymously at a hearing before Senator GRASSLEY's committee, ''My perfect customer would be an uneducated woman who is living on a fixed income—hopefully from her deceased husband's pension and social security—who has her house paid off, is living off credit cards but having a difficult time keeping up with her payments, and who must make a car payment in addition to her credit card payments.''

This industry professional candidly acknowledged that unscrupulous lenders specifically market their loans to elderly widowed women, people who haven't gone to school, who are on fixed incomes, have a limited command of the English language, and people who have significant equity in their homes.

They targeted another such person right here in Washington, DC, by the name of Helen Ferguson. She also testified before Senator GRASSLEY's committee. She was 76 years old at the time. This is what she told us: As a result of predatory lending practices, she was about to lose her home. In 1991, she had a total monthly income of $504 from Social Security. With the help of her family, she made a $229 monthly mortgage payment on her home. However, on a fixed income she didn't have enough money for repairs. She started listening to radio and TV ads about low-interest home improvement loans. She called one of the numbers. She thought she had signed up for a $25,000

loan. In reality, the lender collected over $5,000 in fees and settlement charges for a $15,000 loan.

Again, describing the predatory cases, Ms. Ferguson decided she needed to take out a loan. She thought she was borrowing $25,000. After the fees, she was borrowing $15,000. She was living on $500 a month in Social Security. The interest rate the lender charged her was 17 percent. Her mortgage payments went up to $400 a month—almost twice her original payment. Over the next few years, this lender repeatedly tried to lure Ms. Ferguson into more debt. He called her at home, called her sister at home and at work, and he sent her letters, and, God bless him, he even sent a Christmas card. In March of 1993, she gave in to this lender, borrowing money to make home repairs.

By March of 1994, she could not keep up with her mortgage payments. She signed for a loan with another lender, unaware that it had a variable interest rate and terms that caused her payments to rise to $600 a month and eventually to $723 a month. Remember, $500 a month was her Social Security income. She is now up to $723 a month in mortgage payments. For this loan, she paid $5,000 in broker fees and more than 14 percent in total fees and settlement charges. The first lender also continued to solicit her. She eventually signed up for even more loans. Each time, the lender persuaded her that refinancing was the best way out of her predicament.

Ms. Ferguson was the target of a predatory loan practice known as loan flipping.

Why is this an important discussion in the middle of a bankruptcy bill? Because, frankly, these bottom feeders make terrible loans to vulnerable people who ultimately end up in bankruptcy court, taking away the homes of people such as Ms. Ferguson.

I have tried to convince my colleagues on the committee that if we are going to reform the bankruptcy code, for goodness' sake, why would we reward people who are making these terrible arrangements with elderly, low-income people, with limited education, and taking away the only thing they have on Earth—their homes?

When I say this to the financial industry and the credit card industry, they say, ''You just don't understand the free market.'' The free market? This isn't a free market. This is some of the worst corruption, worst credit practices in America. We are about to protect them with this bill.

Let me tell you what Senator GRASSLEY said about it when he held this hearing back in 1998. My colleague from Iowa has a lot of Midwestern wisdom to share here:

> What exactly are we talking about when we say that equity predators target folks who are equity rich and cash poor? These folks are our mothers, our fathers, our aunts and uncles, and all people who live on fixed incomes. These are people who often times exist from check to check and dollar to dollar, and who have put their blood, sweat, and tears into buying a piece of the American dream and that is their own home.

He goes on to say:

> Before we begin this hearing, I want to quote a victim—a quote that sums up what we are talking about here today. She said the following: ''They did what a man with a gun in a dark alley could not do: they stole my house.''

That is Senator GRASSLEY talking about predatory lenders, who are protected by this bankruptcy bill. That is why I am offering this amendment. They don't deserve this protection. Ms. Ferguson was eventually obligated to make more than $800 monthly payments, although her income was $500—and the lenders knew it from the start. In 5 years, the debt on her home—this elderly lady living on Social Security—increased from $20,000 to over $85,000.

She felt helpless and overwhelmed. It was only after contacting AARP that she realized these lenders were violating the Federal law.

Lump-sum balloon payments on short-term loans, loan flipping, the extension of credit with a complete disregard for the borrower's ability to repay—these aren't the only abusive mortgage practices. Lenders on these secondary mortgages sometimes include harsh repayment penalties in the loan terms, or rollover fees and charges into the loan, or negatively amortize the loan payment so the principal actually increases over time—all of which is prohibited by law, although ordinary homeowners are unlikely to even know that. Some of these homeowners will make it to a lawyer and get help before it is too late. Many of them will be forced into bankruptcy court. They will walk into that court, and this slimy individual and his company, which has given them this terrible loan that violates the law, will stand up proudly, through his lawyer, and take it all away.

This bill will not even address that issue unless the Durbin amendment is adopted.

On March 5, US News & World Report featured a telling article in their business & technology section entitled: ''Sometimes a deal is too good to be true: Big-bank lending and inner-city evictions.'' In the article Jeff Glasser describes two cases that originate from my home state of Illinois that I want to share with you.

The first involves Goldie Johnson. The lender was Equicredit, a subsidiary of Bank of America:

Goldie Johnson is a 71-year-old homeowner who lives on the Westside of Chicago with her daughter and 4 grandchildren. Her income is $1,270 a month from Social Security and pension. Between June 1996 and March 1999, Ms. Johnson entered into at least three refinancing agreements with various subprime lenders and brokers.

In March, Ms. Johnson was contacted through a phone solicitation by a mortgage broker, who promised Ms. Johnson that she could get a new loan that would refinance her two existing mortgages, provide her with $5,000 in extra cash and lower her monthly mortgage payments. Ms. Johnson was in desperate need of cash to repair her kitchen. She agreed to meet with the broker.

She met with broker twice. On second visit she was presented with a myriad of papers to sign.

Ms. Johnson, who suffers from glaucoma was not able to read the documents carefully. In fact, after looking over only a few of the papers she stopped because her eyes became too tired to continue.

Nonetheless, based on the broker's promises and representations that the loan would provide her with cash to repair her kitchen and lower her mortgage payments, Ms. Johnson signed the loan documents. She was not provided with copies of any of the documents.

The mortgage documents created a loan transaction between Ms. Johnson and Mercantile for the principal amount of $90,000 with an annual percentage rate of 14.8 percent.

The transaction created a 15-year loan with monthly mortgage payments of $994.57, excluding taxes and insurance, with a balloon payment on the 180th month of $79,722.61.

The monthly mortgage payment was 80 percent of this retired lady's income.

The final balloon payment—the amount of principal owed after Ms. Johnson pays the lender approximately $1,000 a month over 15 years—was greater than the secured debt on her home before she entered into this agreement.

Ms. Johnson received no proceeds from the transactions. The broker and lender received at least $9,760 in points and fee from the loan. Equicredit is now attempting to foreclose on Ms. Johnson's home.

Then the case of James and Clarice Mason, the lender was Fieldstone, then Household.

James Mason, age 62, with his wife Clarice who died on June 8, 1999, owned and lived in his home on the west side of Chicago since 1971.

In 1991, the Masons successfully paid off the original mortgage on their home.

In 1993, Mrs. Mason became disabled due to diabetes and arthritis.

In 1995, Mr. Mason became disabled due to a stroke. The stroke has left Mr. Mason with brain damage that has impaired his memory and thinking.

In November 1998, Mr. and Mrs. Mason's home was free and clear of all liens.

On or about the end of November 1998, they were repeatedly solicited for home repair work. Mrs. Mason eventually agreed to meet with home repair company and later mortgage broker. They promised the necessary repairs would cost $15,000 and that the broker would help them find financing.

On December 6, 1998, about a week after completing the loan application, Mrs. Mason was hospitalized for complications arising from her diabetes.

On December 7, 1998, Mrs. Mason was visited at the hospital by a broker who explained that he had come to visit Mrs. Mason and to help her complete her loan transaction. What a wonderful person. He then present Mrs. Mason with numerous documents and told Mrs. Mason to sign them. The agent of the company provided Mrs. Mason with no opportunity to review the documents, but assured her that this was the loan she had ''discussed'' with New Look that would allow her home to be repaired.

Mrs. Mason, although unclear about what she was signing, signed all the documents provided by the agent because she trusted him. She believed he was trying to help.

At the time she signed the loan documents, Mrs. Mason was in a disoriented state due to her severe illness. At the time she signed the loan documents, Mrs. Mason's vision was impaired because of a cataract on one of her eyes. At no time was Mr. Mason, co-owner of the home, asked to sign any of the loan documents. Nonetheless, Mr. Mason's forged signature appears on the mortgage agreement. The documents that were ''signed'' created a 30-year loan agreement, with a principle of $70,000.

Under the terms of the loan, Mr. and Mrs. Mason's monthly mortgage payment was to start at $601.41 and adjust upward to $697.

Remember, this is an elderly couple retired with their home all paid for, and to get $15,000 worth of repairs on their home, they signed on to a mortgage that cost them about $700 a month.

Under the terms of the loan, Mr. and Mrs. Mason were charged at least $7,343 in prepaid finance charges.

The home contractor received $35,000.

The Masons received no money.

Work was barely started and never completed.

A suit was filed against the home repair company, broker, and two lenders.

After the suit, the home was severely damaged by a suspicious fire.

Mr. President, I ask unanimous consent that this US News & World Report article be printed in the RECORD.

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

[From U.S. News & World Report, March 5, 2001]

SOMETIMES A DEAL IS TOO GOOD TO BE TRUE

(By Jeff Glasser)

CHICAGO.—One day in March 1999, mortgage broker Mark Diamond arrived on Goldie Johnson's west-side doorstep, his portable photocopier in tow. Here's the 72-year-old retiree's version—from court papers and interviews—of how Diamond's promise to save her thousands of dollars may end up costing Johnson her home: He told her that if she refinanced her mortgage, he could cut her debts and get her up to $8,000 in cash. With the money, she could fix her rotting kitchen floors and replace the rickety basement beams. But to get the cash, she had to act fast. (She believed him. He said he was ''in the business of helping senior citizens.'') He handed her a thick stack of loan papers. Johnson, who suffers from glaucoma, says she could barely read them. ''Don't worry about it,'' he said. So she signed, 13 times.

Johnson says she never saw any cash. The loan she signed saddled her with monthly payments of $994.57—about $200 more than she had been paying—and consumed about 80 percent of her fixed income. A balloon payment of $80,000 would be due the year Johnson turns 86. Meanwhile, Diamond's company fee for selling the loan came to $9,010. ''I've heard of sticking people up with guns, not with pens,'' says Johnson, who cannot pay the mortgage and is fighting to save her home from foreclosure in court. Diamond disputed her account and denied wrongdoing through his lawyer.

What's unusual about the case of Goldie Johnson is that she wasn't simply the alleged victim of a fast-talking predator. Her loan was sold to a company called EquiCredit, a subsidiary of the Bank of America, a prestigious institution not often linked to inner-city evictions. But Bank of America is one of a number of the nation's top commercial banks, including Citigroup and J. P. Morgan Chase, that have recently inked deals with subprime lenders—companies that offer loans to people with less than perfect credit. Subprime loans promise profit margins far greater than do low-interest conventional mortgages.

This foray by the big banks coincides with a surge in the number of subprime loan defaults. Certainly not all subprime loans are predatory. But foreclosures in the Chicago area by subprimes have risen from 131 in 1993 to 4,958 in 1999, according to the National Training and Information Center, a watchdog group. Consumers in other areas are also complaining about lending abuses, causing more than 30 states and dozens of cities to consider curbs on predatory lending.

The upswing in defaults poses a double challenge for the big banks: They must fend off hundreds of lawsuits brought against their subsidiaries. As they do so, they will be asked to bring better practices to an industry derided as ''legalized loan sharking'' by detractors.

The tactics are all too familiar. Critics call one the ''bait'' scam: In Philadelphia, where the 3,226 foreclosures last year were almost double the number in 1997, a poor veteran named Leroy Howard says in bankruptcy papers that he was lured into refinancing his mortgage with an offer of $4,000 in cash and debt relief. When he accepted, his mortgage doubled in size to $40,000, including $9,040 in new fees and charges. Howard's attorney charges the lender made the loan even though it was aware Howard could not repay it; a notation in his file says he would use the cash for food. Citigroup, which acquired the loan's servicing rights, settled the case.

There's the hard sell: In Chicago, it is alleged in court that a home improvement contractor, along with a mortgage broker, went to a local hospital and persuaded a woman admitted there to refinance on unfavorable terms. ''You couldn't tell him no that day,'' says Valerie Mason, daughter of the woman, who has died.

The banks don't condone these tactics. ''Small, unscrupulous lenders don't have to follow the rules,'' says Howard Glaser, chief lobbyist for the Mortgage Bankers Association. The responsible lenders ''get tainted by what the bad actors do.'' The major lenders—including Citigroup and Bank of America—argue that subprime lending doesn't bilk the innocent or gut neighborhoods. Far from it, they say: The vast majority of the loans help people with bad credit to repair their homes and settle their debts. A decade ago, homeowners with imperfect credit would have paid 5 to 10 percentage points more for loans, they say, if they could get a loan at all. The banks also claim that the number of predatory lending cases is minuscule, though consumer advocates disagree. (There are no national data to resolve that dispute.)

Flipping and packing. The taint of predatory lending hasn't deterred major banks from entering the growing subprime market. There were 856,000 subprime loans issued in 1999, six times as many as in 1994. Those loans often produce margins eight times those of conventional mortgages, although there's a greater risk of default and higher servicing costs. Banks can make more money by packaging subprime loans as mortgage-backed securities and selling them to mutual funds.

But can the major banks help curb bad practices? Citigroup will be the largest test case. In November, the company completed a $27 billion acquisition of Associates First Capital, which was spending $19 million to fight more than 700 lending lawsuits. The suits spotlight more questionable tactics. For example, Associates established quotas for refinancing loans over and over, or ''flipping'' them, with no benefit to the consumer, former company employees testified. (Its motto, according to the court papers: ''A loan a day or no pay.'')

Another common practice, employees said, was the ''packing'' of costly insurance products into the price of a loan. Consider the testimony of Rick McFadden, a branch manager in Tacoma, Wash. When he failed to tack on the insurance, the boss would crumple a piece of paper into the phone. ''You hear that?'' the boss would say. ''That's your loan. It doesn't have any insurance on it. . . .'' And into the trash it would go. A Citigroup spokesman declined to comment on the testimony but said the issues ''have been addressed in the pledges we've made.'' Citi settled a Georgia class-action ''packing'' lawsuit in January for $9 million and, U.S. News has learned, a similar suit in Pennsylvania. In reforms announced last fall (including caps on fees and improved training), the company condemned the practices of ''packing'' and ''flipping.''

Still, victims seeking restitution are having a hard time figuring out who is to blame. In Goldie Johnson's case, her loan was solicited by Diamond but ended up in EquiCredit's portfolio. The Bank of America subsidiary then tried to foreclose on Johnson. The company claimed in court, however, that it was not responsible for tactics used to sell the original mortgage. (Since the lawsuit was filed, the loan has been sold again.) The insulation of the banks rankles legal-aid lawyers. ''At some point, the ostrich defense doesn't work,'' says Johnson's attorney, Ira Rheingold.

While lawyers and lenders duke it out, once stable neighborhoods in places like Maywood, Ill., a working-class Chicago suburb, are filled with boarded-up houses resulting from foreclosures. Resident Delores Rolle, 51, says gang members from the Latin Kings took over an abandoned house, put up drapes, and used it for drug dealing. ''This has been a nightmare,'' says Rolle. ''It's Beirut around here.''

Mr. DURBIN. As demonstrated in these cases, the people soliciting these loans have won their trust and confidence, and the homeowners are reluctant to believe that they have been so ruthlessly taken in.

Just this morning the Washington Post reported that the Federal Trade Commission sued the Associates, a lending unit of Citigroup, for its predatory lending practices.

This is not just an occasional storefront operation. The growth of these

predatory loans tells us we are dealing with a national phenomenon. This is what they said at the FTC about this group from Citigroup called Associates:

''They hid essential information from consumers, misrepresented loan terms, flipped loans [repeatedly offering to consolidate debt into home loans] and packed optional fees to raise the costs of the loans,'' said Jodie Bernstein, director of the FTC's Bureau of Consumer Protection. The practices, she said, ''primarily victimized . . . the most vulnerable—hardworking homeowners who had to borrow to meet emergency needs and often had no other access to capital.''

Mr. President, I ask unanimous consent that this article from today's Washington Post be printed in the RECORD.

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

[From The Washington Post, March 7, 2001]

FTC SUES LENDING UNIT OF CITIGROUP

ASSOCIATES ACCUSED OF ''ABUSIVE'' ACTS

(By Sandra Fleishman)

The Federal Trade Commission yesterday sued a recently acquired arm of financial giant Citigroup Inc., accusing it of deceiving often cash-strapped home-equity borrowers through ''systematic and widespread abusive lending practices.''

The case is the largest ever brought for abusive or predatory lending by the FTC, the government's chief consumer-protection agency. If the case is proven, the FTC estimates that it could result in hundreds of millions of dollars in refunds to tens or hundreds of thousands of borrowers.

The suit filed in U.S. District Court in Atlanta names New York-based Citigroup, CitiFinancial Credit Co. and the acquired companies, Associates First Capital Corp. and Associates Corp. of North America, collectively known as Associates.

Associates, which specialized in loans to higher-risk borrowers, was one of the nation's largest home-equity lenders when Citigroup bought it in November for $31 billion. It was then wrapped into the bank's CitiFinancial unit.

Yesterday's action was sought by consumer activists, who for years labeled Associates as the worst predatory lender in the country.

The FTC has been investigating Associates since at least 1998, when the company was a subsidiary of Ford Motor Co. Ford eventually spun it off.

In a statement issued yesterday, Citigroup said, ''We regret that we have been unable to resolve the FTC claims regarding past practices of the Associates without litigation.''

The statement also said: ''From the time we announced our intent to acquire Associates, we indicated our full commitment to resolve concerns that had been raised about their business. To date, we have reached out to nearly a half-million customers including every Associates home loan customer, and we will continue these outreach efforts.''

According to the FTC suit, Associates' aggressive marketing ''induced consumers to refinance existing debts into home loans with high interest rates, costs and fees and to purchase high-cost credit insurance.''

''They hid essential information from consumers, misrepresented loan terms, flipped loans [repeatedly offering to consolidate debt into home loans] and packed optional fees to raise the costs of the loans,'' said Jodie Bernstein, director of the FTC's Bureau of Consumer Protection. The practices, she said, ''primarily victimized . . . the most vulnerable—hardworking homeowners who had to borrow to meet emergency needs and often had no other access to capital.''

The suit seeks financial redress but doesn't specify an amount, ''If all of the charges are proven [the amount] could be much more than $500 million,'' Bernstein said. That number is drawn from the Associates financial reports, which show earnings of more than $500 million from 1995 to 1999 in single-premium credit life insurance premiums alone.

Single-premium credit life insurance, which enrages consumer groups, is paid upfront through a home loan, rather than monthly.

Because such insurance was factored into the loans, it added ''hundreds or thousands of dollars to consumers' loan costs,'' and in many instances ran out years before the home loan did, the FTC said. Credit life insurance is a way to cover the borrower's loan payments in the case of death, illness or loss or employment. But the FTC said Associates employees did not always mention or explain products and discouraged consumers from refusing them.

Federal and state regulators cleared the way for the Citigroup-Associates merger last year despite consumer groups' pleas that Citigroup first be required to agree to specific steps to protect consumers.

Yesterday, consumer groups welcomed the FTC suit but sought further action.

''The FTC case backs up what we've been saying, that Associates has been ripping off homeowners across the country,'' said Maude Hurd, president of the Association of Community Organizations for Reform Now.

Citigroup's stock closed yesterday at $48.63, up 38 cents, on the New York Stock Exchange. John Wimsatt, who tracks Citigroup for Friedman, Billings, Ramsey Group Inc., said strong investor confidence in the company reflects ''consensus estimates that it will earn about $15.8 billion'' in 2001 and the belief that the company, aware of the FTC investigation, either put money into reserves to cover the litigation ''or factored it into the purchase price.''

Most of the other 14 predatory lending cases the FTC has brought since 1998 have been settled. One case still in litigation involves Washington-based Capital City Mortgage Corp.

Mr. DURBIN. The problem of predatory financial practices in the high-cost mortgage industry is relevant to bankruptcy because it is driving vulnerable people into bankruptcy. These people are not entering bankruptcy in order to abuse the system. They are filing bankruptcy because the reprehensible tactics of unscrupulous lenders have driven them into insolvency and threatens their homes, cars, and other necessities; frankly, everything they own on Earth.

My amendment prohibits a high-cost mortgage lender that extended credit in violation of the provisions of the Truth-In-Lending Act from collecting its claim in bankruptcy.

I repeat this because the credit industry which opposes this amendment, opposes the following: A suggestion by me that if you have made a high-cost mortgage loan and in doing so violated the provisions of the Truth in Lending Act, you cannot go into bankruptcy court and be protected by the laws of the United States. If you violated the law to create this mortgage, then the bankruptcy court law will not protect you. It is that simple. You wonder why these major credit companies and financial institutions oppose this amendment. They say: If you get your nose under the tent, DURBIN, we don't know where you are going next.

I suggest to them that they ought to look outside their tent for a moment at some of the scummy practices of people who say they are also their brothers and sisters in the mortgage credit industry. They should not make excuses for them and expect the American people to trust the mortgage credit industry when they tell us they have the best interest of consumers in America in their hearts.

The result of my amendment will be that when individuals like Genie McNab, Helen Ferguson, Goldie Johnson, or the Masons, goes to the bankruptcy court—seeking last-resort help for the financial distress an unscrupulous lender has caused her—the claim of the predatory home lender will not be allowed.

If the lender has failed to comply with the requirements of the Truth in Lending Act—a law created by Congress and signed by the President—for high-cost second mortgages, the lender will have absolutely no claim against the bankruptcy estate.

My amendment is not aimed at all subprime lenders or all second mortgages. Indeed, it is only aimed at the worst, most predatory scum-sucking bottom feeders in this industry. My provision is aimed only at practices that are already illegal under the law. It does not deal with technical or immaterial violations of the Truth in Lending Act. Disallowing the claims of predatory lenders in bankruptcy cases will not end these predatory practices always. But for goodness sake', why should we come to this floor and pass a law to protect these people? It is one step we can take to curb credit abuse in a situation where the lender bears primary responsibility for the deterioration of a consumer's financial situation.

AMENDMENT NO. 17

Mr. President I send my amendment to the desk.

The PRESIDING OFFICER. Is the Senator seeking consent to set aside the pending amendment?

Mr. DURBIN. Yes, I ask unanimous consent.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Illinois [Mr. DURBIN], proposes an amendment numbered 17.

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

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

The amendment is as follows:

(Purpose: To make an amendment with respect to predatory lending practices, and for other purposes)

At the end of subtitle A of title II, add the following:

SEC. 204. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) the claim is based on a secured debt, if the creditor has failed to comply with any applicable requirement under subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

Mr. DURBIN. Mr. President, I represent to Members of the Senate that my description of this amendment is very simple. Senator GRASSLEY is on the floor, and I can say his hearings before the Select Committee on Aging regarding predatory lending have inspired us to offer this amendment. Some of the statements he made during the course of those hearings about the abuses of predatory lending and the victims across America have led us to offer an amendment on the floor of the Senate to the bankruptcy bill to say these people who are taking advantage of otherwise good citizens should not be allowed the protection of the bankruptcy court. If they violate the law in creating this debt, they shouldn't be able to hide behind the bankruptcy law when they go to court.

I hope even my friends in this Chamber who feel very strongly about the credit and financial industry, during the course of the consideration of this debate on this amendment, will at least find some sympathy and understanding for people such as those I have described—good, hard-working Americans living in retirement who have been victimized by people engaged in illegal practices. I hope we can adopt this amendment as part of the reform of our bankruptcy system to keep in mind some of the victims of the credit system from some of the worst perpetrators.

I yield the floor.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate resume consideration of the pending Leahy amendment No. 13 at 5:30 pm and there be up to 20 minutes equally divided in the usual form.

I further ask consent that at the conclusion of this debate, the amendment once again be laid aside and the Senate resume consideration of the Wellstone amendment No. 14 and there be up to 60 minutes equally divided in the usual form.

I further ask consent that at the conclusion of the debate on the Wellstone amendment, the Senate proceed to vote in a stacked sequence on or in relation to the Wellstone amendment, to be followed by a vote on or in relation to the Leahy amendment, and that no amendments be in order to either amendment.

Further, I ask that there be 2 minutes equally divided for closing remarks prior to the second vote in the series.

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

Mr. HATCH. As a result of this agreement, at least two back-to-back votes will occur at 6:50 this evening. So I put all colleagues on notice that we will have at least two back-to-back votes.

AMENDMENT NO. 17

Mr. President, as I understand it, the amendment of the distinguished Senator from Illinois, the predatory lending amendment, takes away the lender's right to satisfy a claim to get paid on the debtor's bankruptcy if there was any ''material'' Home Ownership Equity Protection Act violation. The Home Ownership Equity Protection Act is not a predatory lending law. Any attempt to characterize it as such is misleading and inflammatory.

Many legitimate lenders—banks, community banks, and finance companies—make home equity loans which fall under this act, codified section 129 in the Truth in Lending Act. Section 129 recognizes a legitimate sector of the home lending market, certainly one that is not ''predatory'' and already provides ample protection for consumers, both in the form of disclosures and substantive prohibitions and remedies for violations of this act.

First, this is a banking amendment. This is outside the jurisdiction of this committee. Second, and more importantly, this amendment is problematic in its effect in a number of ways. For instance, it will adversely affect the availability of credit to certain consumers, many of whom may be low income and minorities whom this amendment purports to protect. Moreover, the secondary markup for such mortgages will also be affected, thereby placing upward pressure on the pricing of such loans.

A number of the horror stories given are already covered by current law, and we should be enforcing those laws.

It appears this amendment, though seemingly well meaning, might create more problems than it might remotely solve. Already there are numerous protections and built-in super-remedies afforded the borrowers under the Homeownership and Equity Protection Act. For example, a consumer can rescind any loan that violates the provision. This alone takes care of any conceivable problem in bankruptcy. Furthermore, all material violations result in civil liability under the Home Ownership Equity Protection Act and enhance civil remedies such as ''an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material,'' in addition to actual damages, statutory damages, attorney's fees, and costs.

Furthermore, to justify the harsh punishment it creates, in addition to those penalties already available in the Home Ownership Equity Protection Act, this amendment does not even require any finding that such a violation was the cause of the debtor going into bankruptcy.

That is not good law. That is not the way we should be making law. Nor does it require that a violation of the Home Ownership Equity Protection Act had to have been found for this draconian remedy to take place.

The result, I am afraid, will be litigation within a bankruptcy proceeding and a bankruptcy judge passing judgment on Federal lending laws. Furthermore, I don't know why every debtor will not allege a violation of the Home Ownership Equity Protection Act in the hopes of winning this lottery of getting your home mortgage wiped out for even minor violations which did not contribute in any way to the bankruptcy of the debtor.

This is just plain bad policy. We can't permit this type of an amendment on this bill. It is one thing to use rhetoric about predatory lenders, but I believe the current law takes care of that, and, frankly, I don't think we should try to disturb it with an amendment that doesn't do the job and, in fact, can do an awful lot of harm.

We have to oppose the sincere amendment of the distinguished Senator. I hope our colleagues will vote it down. It would cause tremendous problems.

Last, but not least, I know my colleague is not trying to do this—or at least I believe he is not trying to do this—but this would lead to all kinds of unnecessary litigation, unnecessary failures, to be able to resolve problems as they arise and, frankly, fly in the face of good bankruptcy legislation.

I think the bill and current law in the bill, combined, do take care of some of the problems about which the distinguished Senator is concerned. But his amendment would cause an awful lot of problems. In the end I think all it would do is lend a lot of solace to a lot of lawyers who want to make a lot of money off what clearly are not reasons for the bankruptcy.

We have to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I briefly respond to say to my friend from Utah, keep in mind the people you are protecting by opposing this amendment. Keep in mind the institutions which you are trying to protect by opposing this amendment.

These are people who are preying on our parents and grandparents, living in their retirement, subjected to loan terms and conditions that are outrageous by any moral standard.

We are saying is, after they have perpetrated these frauds to the public, after they have literally threatened to take away a home from a retired person with a loan that is unconscionable and violates the law, we want them to have free rein in bankruptcy court to pursue their claim.

I don't think that is right. Why in the world is this Senate spending its good time and the money of taxpayers on hearings involving predatory lending, coming up with all of these wonderful speeches about how terrible these people are, and when we have a chance in the bankruptcy law to finally do something to stop these awful

predatory lending practices, we refuse? We refuse.

All of the moral indignation we were able to muster in these committee hearings about the outrageous examples of what is happening to senior citizens and low-income people, we forget as soon as we come to the floor and start talking about a bankruptcy law.

I don't care about committee jurisdiction. That may be an issue to some; it is not to me. I am more concerned about the people who expect bankruptcy code reform to be sensitive to borrowers as well as lenders. I hope my colleagues in the Senate will support my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. HATCH. Will the Senator from Florida yield for one last comment?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, when we had this amendment in the committee, it had to be a substantive violation. The current amendment, as we view it, would provide for triggering with even a technical violation. That would be catastrophic in bankruptcy law. We just cannot support this amendment.

I know the distinguished Senator is trying to do something worthwhile, and I do not believe there should be predatory lending any more than he does, but I do think we take care of it in this bill. But under this current amendment, it is even worse than the amendment he was prepared to offer in committee because even a technical violation would trigger what he wants to do. So I just need to make that point for the record, and I am happy to yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as in morning business.

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

Mr. GRAHAM. Mr. President, I ask, immediately upon the completion of my remarks, my colleague, Senator CORZINE, be recognized.

Mr. HATCH. Reserving the right to object, I ask Senators how much time they intend to take?

Mr. GRAHAM. We will take approximately 15 minutes apiece.

Mr. HATCH. I have no objection.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM and Mr. CORZINE pertaining to the introduction of S. 481 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

AMENDMENT NO. 17, AS MODIFIED

Mr. LEAHY. Mr. President, I send to the desk a modification of the amendment by the Senator from Illinois, Senator DURBIN. I am advised that this modification has been cleared with Senator HATCH and his side.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, reads as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) the claim is based on a secured debt, if the creditor has materially failed to comply with any applicable requirement under subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

Mr. LEAHY. Mr. President, I know we are waiting for other Members to come to the floor. It is interesting. I have listened to the outpouring of grief following the tragic events in Southern California, the shooting in the high school. As a parent, I obviously look at that and can only begin to imagine the terror that was in the hearts of the parents of all the children there—not knowing from the initial reports whether their child was alive or injured. And then, of course, it had to be the worst grief any parent could feel to find out their children had been killed.

I could not help but think of my own son, who teaches high school in that area. But one has to think of anybody, whether they know them, are related to them or not, in such a case because the whole country is involved. It is almost a John Donne reference in this case, and I think of this body having intense debate a couple of years ago after the tragedy at Columbine. It was actually one of our better debates. We discussed—both Republicans and Democrats—the fact that there are a number of different causes—no one magic thing, no one cause that sends a young person out to do such a terrible, almost inexplicable deed; and in each of these instances when they have happened, and in those instances where the police have caught somebody prior to it happening, there is not a common denominator.

If there was some matrix that you could apply to each one of these, it would be, I suppose, easy enough to stop them. But there isn't. It is not just a question of stricter laws, not just a question of more teachers, not just a question of more security; it is not just a question of gun laws. But there are parts of each of those. What was so good about the debate on the juvenile justice bill, which became the Hatch-Leahy juvenile justice bill, is that we referred to each aspect and we debated and voted on everything from counseling for juveniles to stricter laws on juveniles, closing the gun show loophole, providing tools for teachers and communities. We passed the bill by overwhelming margin. It got 73 votes. I think we can all feel that we had done something for the country.

But the bill never came back. It was never voted on again. It went into a conference committee and never came out. There was never a vote there. Yet I wonder, if you are a parent, and you see a child killed, and you think that at least some things could be done to stop this from happening somewhere else, if you would not think that would be a top priority. We obviously thought it was at a time when this Senate was probably embroiled in the most partisan divisions that I have seen in 25 years. You would think that it would because we had 73 votes. This was a case where Democrats, Republicans, liberals, and conservatives, came together and we passed this bill.

But then a decision was made somewhere, and it never came back. It was never voted on again and was never signed into law because the Congress decided never to act on it again. It was a hollow promise to the parents and the teachers and the children of America. We lost any sense of urgency on this bill that got 73 votes.

But we passed the bankruptcy law—a flawed bankruptcy law, in my view—last year. That got 70 votes, less votes than juvenile justice and, by God, we have to bring it right back up here again—not because the owners of the credit card companies are being shot at or their children are being shot at, not because they are all going out of business. In fact, they have record profits and will have greater ones under this bill because the commercial interests have been heard rather than the interests of parents, children, and teachers.

I mention this in passing. I know there are others on the floor seeking recognition, and I will yield in a moment.

If the Senate is to be the conscience of this Nation, don't we have to sometimes ask ourselves what are our priorities? How can any parent, how can any Senator, how can any American, with the carnage in our schools or on our streets, look at some of the terrible things happening with our youth and ask, Why are we in such a hurry to pass a piece of commercial special interest legislation and we cannot bring ourselves to take the final step across the finish line on the juvenile justice bill?

I cannot accept that, and, frankly, it is not that sense of priority that brought me from my State of Vermont to serve in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, today we are debating an extremely complicated and extremely important piece of legislation, the bankruptcy reform

bill. With the exception of a small number of amendments adopted by the Judiciary Committee last week, S. 420, the bill before us, is the same bill that President Clinton vetoed last year. The passing of a few months, and the change of Presidents has not made this bill any better, or more fair, or more balanced, or more worthy of this Congress than was the one we passed last year. It is still a bad bill and I urge my colleagues to oppose it.

Supporters of the bill have put enormous pressure on the Congress to act quickly and pass the bill again because President Bush has indicated he will sign it. The majority wanted to bring the bill directly to the floor without going through committee, notwithstanding the fact that we have a very different Senate after the last election. We had to fight for every moment of committee consideration. We did succeed in convincing the majority that the Judiciary Committee should consider the bill in committee. We had a quick hearing, and a markup, and I think the bill was improved in the process. Then, the same day that we voted the bill out of committee, the majority leader sought consent to bring the bill up on the floor. I am sorry this rush to judgment is happening. I believe this bill is bad policy, and I believe we will come to regret passing it.

I respectfully suggest that having a new President who is inclined to sign the bill ought to put more pressure on the Senate to do its job in a thoughtful and balanced way, not less. In the past two Congresses, it has been my impression that the Republican majority has made decisions on the substance of this bill in order to stake out a negotiating position vis-a-vis the White House. Twice it has ignored the work done by the Senate on the floor and come up with a conference vehicle that was designed to provoke a veto. In 1998, for example, we passed a bill through the Senate by a vote of 97–1. That is the way bankruptcy reform should be done and has been done in the past. But the majority ignored that bill and brought what was essentially the House bill back from conference, and it failed to become law. Again last year, on issue after issue, including two crucial points—Senator KOHL's homestead amendment and Senator SCHUMER's clinic violence amendment, where the Senate had spoken by clear bipartisan majorities—the bill that came back from the shadow conference was tilted more to the House bill, and the bill was vetoed.

This time there is no administration to push back in negotiations. This time, the bill will not be a product of compromise with the administration. This time the majority will bear responsibility for what it produces and passes. This time for sure we should listen to the experts who have been telling us to slow down and be careful.

Amending the bankruptcy code used to be a nonpartisan exercise, where the Congress listened to experts—practitioners and law professors and judges and trustees, and made careful considered judgments about how the law should work. Now it seems as if we ignore the experts and instead do what the credit industry wants us to do. We use parliamentary tactics to avoid reasoned consideration. Those tactics harm the bill, and discredit the Senate.

Let me now turn to the substance of this legislation. I believe S. 420 will do terrible damage to the bankruptcy system in this country, and even more importantly, to many hard-working American families who will bear the brunt of the unfair so-called ''reforms'' that are included in this bill. This is a harsh and unfair measure pushed by the most powerful and wealthy lobbying forces in this country, and it will harm the most vulnerable of our citizens.

First, let me talk about what is not in this bill, which is directly related to the fact that powerful special interests have shaped it. As I have said a number of times, this bill is not a balanced piece of legislation. The interests that are the strongest supporters of this bill, the credit card companies and the big banks, succeeded in limiting the provisions that will have any effect on the way they do business. These interests gave us and our political parties millions of dollars of campaign contributions and they like the results they achieved in this bill.

If we are going to pass a credit card industry bailout bill, the least we can do is to help save the industry from itself by taking some steps to make sure that consumers are made more aware of the consequences of taking on ever increasing amounts of debt. We have the chance in this bill to require credit card companies to be more open with consumers about the consequences of running a balance on a card, but so far we have not done it. We need more prevalent and more detailed disclosures on credit card statements and solicitations. There are limited disclosure requirements in this bill, but they don't go nearly far enough in my opinion. I am afraid the main reason they do not is the power of the credit card companies.

I will speak about this topic again because I am sure there will be amendments offered to improve the disclosure provisions in the bill. And at that time, I will also call the bankroll on this bill, because the political contributions made by the industry supporters of this bill are truly extraordinary.

There is another thing missing in this bill. Remember, this bill is supposedly designed to end abuses of the bankruptcy system by people who really can afford to pay off more of their debts. But the biggest abuses, and all the experts agree on this, come when wealthy people in certain states file for bankruptcy by taking advantage of very large or even unlimited homestead exemptions that are available in their States. Some people with large debts even move to a State like Florida or Texas where there is an unlimited homestead exemption, specifically for the purpose of filing for bankruptcy.

The National Bankruptcy Review Commission and virtually all leading academics believe that homestead exemptions are being abused and a national standard is needed. And by a vote of 76–22, the Senate adopted in the last Congress an amendment from my colleague the senior Senator from Wisconsin to close the loophole. That amendment would have put a $100,000 cap on the amount of money that a debtor can shield from creditors through the homestead exemption.

That amendment was stripped out of the bill during last year's secret conference and replaced by a weak substitute. The bill limits the homestead exemption to $100,000, but only for property purchased within two years of filing for bankruptcy. That means that wealthy debtors can plan for bankruptcy by moving to an unlimited homestead exemption state, buying a palatial estate, and then just put off their creditors for two years before filing bankruptcy. If they do that, they can continue to shield millions of dollars in assets and throw off their debts with a bankruptcy discharge. The bill will have no effect on this abuse of the bankruptcy system. This bill does not close the homestead exemption loophole that people like Burt Reynolds and Bowie Kuhn have famously used in the past.

Once again, supporters of this bill chose to ignore reforms that would give this bill some balance. Somehow the interests of wealthy debtors who use the homestead exemption to abuse the bankruptcy system are more important than the interests of hard-working Americans who through no fault of their own—whether from a medical catastrophe, or the loss of a job, or a divorce, are forced to seek the financial fresh start that bankruptcy has made possible since the beginning of our Republic. I will, of course, support Senator KOHL when he offers his original and stronger amendment on the homestead exemption. Any bankruptcy bill that does not deal with homestead exemption abuse is simply not worthy of being called bankruptcy reform.

It is interesting and very revealing to contrast the treatment by this bill of wealthy homeowners who abuse the bankruptcy system with how the bill that was introduced treats poor tenants who need the protection of the bankruptcy system to keep from being thrown out on the street while they try to get their affairs in order. As I mentioned, the provision dealing with the homestead exemption is virtually meaningless. At the same time, the bill President Clinton vetoed includes a draconian provision that denies the bankruptcy stay to tenants trying to hold off eviction proceedings, even if they are able to pay their rent while

the bankruptcy is pending. I think this provision is purely punitive. It will have no impact at all on getting debtors to pay past due rent. It will result in the eviction of people who are not abusing the bankruptcy system, but who are trying to use it for exactly the purpose for which it was intended—to get a fresh start and become once again productive members of our society.

When the bankruptcy bill was before the Senate in the last Congress, I tried very hard to pass an amendment that would have made the bill less harsh on tenants while at the same time denying the protection of the automatic stay to repeat filers who are abusing the system. I modified the amendment to take account of some reasonable hypothetical situations that the Senator from Alabama came up with. But the realtors strongly opposed my amendment. And the Senate rejected it by a nearly party line vote. That was unfortunate. It confirmed my view that this bill is not balanced. It is not rational. It's about punishing people, not just stopping the abuses that we all agree should be stopped.

So I offered my amendment again in Committee this year, and with the help of Senator FEINSTEIN, we actually succeeded in committee in eliminating the unfair and harsh provision of the bill section of the bill and replacing it with a provision that is fair to both landlords and tenants. Mr. President, I sincerely hope that my colleagues will oppose any attempt to eliminate the Feingold-Feinstein amendment that the Judiciary Committee adopted.

Now let me turn to what proponents view as the central feature of this bill, the means test. After much work, I believe this feature of the bill is still flawed and unfair. The means test is the mechanism that the bill's proponents believe will force people who can really manage to pay some portion of their debts into Chapter 13 repayment plans instead of Chapter 7 discharges. The means test requires every debtor to file detailed information on their expenses and income which is then analyzed according to a formula. Those who pass the means test can file a Chapter 7 case; those who fail would have to file under Chapter 13.

The bill includes an important ''safe harbor'' for debtors who are below the median income. The means test does not apply to them. That is a good thing, since studies show that only 2 or 3 percent of debtors would be required to move from Chapter 7 to Chapter 13 under the means test. But even with that ''safe harbor,'' the bill has significant problems. First, the bill specifies that for purposes of determining the safe harbor, the median income for each individual state should be used, rather than the higher of the state or national median income. This will unfairly disadvantage people who live in high cost areas of low median income states. Furthermore, in the Senate bill in the last Congress, we included a safe harbor from creditor motions that applied to people with income less than either the national or the median income. The people who drafted the final bill that President Clinton vetoed and that has been reintroduced ignored that standard. I doubt they really believe it will mean that more abusers of the system will be caught by the means test. But they did it anyway, giving further evidence of the arbitrary nature of this bill.

In addition, the means test still employs standards of reasonable living expenses developed by the Internal Revenue code for a wholly different purpose. These standards are too inflexible to be fair in determining what families can live on as they go through a bankruptcy. They are arbitrary. And they are also ambiguous with respect to things like car payments because they were not designed to be used in this context. We have pointed this out repeatedly over the past few years, but the sponsors of the legislation have insisted on using these inflexible IRS standards.

The safe harbor from the means test also inexplicably counts a separated spouse's income as income available to a mother with children who has filed for bankruptcy, even if the spouse is not paying any child support. This can't be fair. Mothers filing for bankruptcy because their spouses have left them are treated for purposes of the safe harbor as if the spouse's income is still available to them. That is what this bill does. It makes no sense. It's arbitrary and punitive. And while I have heard that there may be some interest in fixing this problem, I understand that the credit industry objected when they tried to do that in the House. So we will see just how strong the industry is here in the Senate when an effort is made to correct this terrible injustice in the bill.

Perhaps the thing that is most curious about the means test is that while we now have a safe harbor for lower income people, they still have to fill out all the same paperwork, doing all of means test calculations using the IRS expense standards. Why is that? If the intent is to exempt lower income debtors from the means test, why have them go through the means test anyway? The burden of the means test for these people is not the result—a tiny percentage would ever be sent to Chapter 13 because of it. No, it's the burdensome paperwork that is the problem. In our hearing, Bankruptcy Judge Randall Newsome made this point very powerfully. He said:

> If S. 220 must contain the means test as presently drafted, then debtors whose incomes are below the applicable median should be entirely insulated not only from its application, but from its paperwork requirements as well.

Here is an example of the problem of making people go through the means test even though they are exempt from it. This bill would deny the protection of bankruptcy to a single mother with income well below the state median income if she doesn't present copies of income tax returns for the last three years, even if those returns are in the possession of her ex-husband. I can see no justification for this result whatsoever.

So for those supporters of the bill who trumpet the safe harbor, I ask you: Why doesn't the bill apply the same safe harbor to creditor motions as the Senate bill did, and why doesn't it exempt people who fall within the safe harbor from the paperwork requirements? I have yet to hear reasonable answers to those questions, which leads me to believe that there are no reasonable answers. This bill is arbitrary, and it is punitive.

This bill also includes a number of ''presumptions of nondischargeability'' provisions, which basically say, ''these debts can't be discharged in bankruptcy because we think they look like people are running up bills in contemplation of bankruptcy.'' In other words, they are abusing the system. They are accumulating debt with no intention of paying it off.

The problem is that these presumptions are unfair. So instead of being a deterrent to abuse of the system, they are simply a gift to the credit industry, and a harsh punishment to hard working people trying to do the best they can to meet their obligations to their families. One such provision creates a presumption of nondischargeability if a debtor takes $750 of cash advances within 70 days of bankruptcy. And $750 in a little more than two months is not much. I think all of us can imagine a single mother with children who loses her job or has unexpected medical bills for her kids and has to use cash advances to buy food for her family or pay her rent. But if that woman files for bankruptcy, the debt to the credit card company is presumed to be fraudulent. That means that the debt from those cash advances will not be discharged by bankruptcy. It will still hang over her head as she tries to get back on her feet and support her family after the bankruptcy proceeding is over. That is not balanced reform. Once again, this bill gives special treatment to credit card companies at the expense of the most vulnerable members of our society. It is arbitrary and punitive.

This example shows how empty the proponent's arguments are when they claim that the bill gives first priority to alimony and child support. Over 100 law professors wrote the Senate last year to contest that claim. Let me quote from their letter:

> Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

The law professors continued:

Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. . . . . As a matter of public policy, this country should not elevate credit card debt to the preferred position of taxes and child support.

What the law professors point out so convincingly is that the key issue is not how the limited assets of a debtor are distributed in bankruptcy but what debts survive bankruptcy and will compete for the debtors income when the bankruptcy is over. In a variety of ways, this bill will encourage reaffirmation agreements, and increase nondischargeability claims, which will lead to more debtors having more debt that continues after bankruptcy.

That is what hurts women and children, not the priority of child support claims in the bankruptcy itself. The priority of claims in the bankruptcy itself is almost meaningless since in the vast majority of bankruptcy cases there are no assets to distribute. People are broke and they don't have anything to sell to satisfy their creditors. That is why they file for bankruptcy. You can't squeeze blood from a stone.

One of the interesting things about this bill is the almost Orwellian names of some its provisions. There are a number of them. For example, there is a title of this bill with the name: ''Enhanced Consumer Protection.'' But many of the provisions in this title actually offer little if any protection at all. The weak credit card disclosure provisions are one example. Yes, those may be ''enhanced'' consumer protections, enhanced from nothing, but they aren't considered sufficient by any organization whose primary concern is consumer protection.

There is another section within the so-called ''Enhanced Consumer Protection title called ''Protection of Retirement Savings in Bankruptcy.'' Sounds pretty good. But what the provision does is put a cap on the amount of retirement savings that are put out of reach of creditors in a bankruptcy proceeding. You see, before this bill, there was no limit at all on the amount of retirement savings that can be protected. So this bill is not an enhanced consumer protection at all. It is a step backward for consumers and hard-working Americans who have tried to put aside some money for their golden years.

Incidentally, this provision was nowhere to be found in either the bankruptcy bill that passed the Senate last year or the bill that passed the House in 1999. This is one of those provisions that appeared out of nowhere. In fact, before a firestorm of criticism forced him to reconsider, the Senator who proposed this provision wanted to let consumers waive the existing protection of retirement savings in boilerplate consumer credit agreements. So the $1 million cap is an improvement over what the sponsors of this bill tried to do, but it is hardly a ''protection.'' I understand that Senator KENNEDY may offer an amendment to eliminate this cap, and I will support it.

Here is another Orwellian title. Section 306 is called ''Giving Secured Creditors Fair Treatment Under Chapter 13.'' It ought to be called ''Giving Certain Secured Creditors Preferred Treatment Under Chapter 13,'' because it favors those who make car loans over other secured creditors and over unsecured creditors.

Here is how it works: There is a concept in bankruptcy law currently called ''cramdown'' or ''stripdown.'' It recognizes the fact that the collateral for some kinds of loans can lose value over time, so that it may be worth significantly less than the debt owed. Remember that in a bankruptcy proceeding, secured creditors get paid first. But the cramdown concept says to those creditors, you only get paid first up to the amount of the value of the collateral for the loan. After that, if you are still owed money, you get in line with other unsecured creditors.

To give a more tangible example, if someone owes $10,000 on a car loan, but the car which is collateral for that loan is worth only $5,000, then only $5,000 of that loan is considered secured in a bankruptcy. That makes perfect sense, since the maker of that loan has the right to repossess the car, but if it does that it can only get $5,000 when it sells the car.

What the bill does is to eliminate the cramdown for any car that is purchased within 5 years of bankruptcy. That means that even though the vehicle that secures the loan has lost much of its value, the entire amount of the debt must be repaid in a Chapter 13 plan. This gives special treatment to the lender, but more importantly, it will make it much more difficult for a Chapter 13 plan to work. And that will hurt people who want to pay off their debts in an organized fashion under Chapter 13.

In answer to my written question, Bankruptcy Judge Randall Newsome supplied a detailed example that shows how the elimination of the cramdown option will hurt both debtors and creditors. In his example, a debtor with a seven year old car who files under Chapter 13 under current law will be able to pay off his car loan up to the value of the car with interest and make a meaningful payment of his unsecured debts over the 3 year duration of his Chapter 13 plan. But with the elimination of the cramdown in the bill, he would, he would have no choice but to file in Chapter 7 and allow the car lender to repossess his vehicle. And his unsecured creditors would get nothing. I ask that Judge Newsome's letter to me providing the details of this example be printed in the RECORD.

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

UNITED STATES BANKRUPTCY COURT,
NORTHERN DISTRICT OF CALIFORNIA,
Oakland, CA, February 22, 2001.

Senator RUSS FEINGOLD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINGOLD: This letter will serve as my response to the written questions you submitted to me on February 20, 2001. Your first question asks whether S. 220 ''will essentially destroy Chapter 13 as an option for debtors who wish to keep their cars. . . .'' As I stated in both my written and oral testimony, I believe that the ''anti-cramdown'' provision in §306(b) of the bill will destroy the incentive for many debtors to file a chapter 13 case. When §306(b) is combined with §314(b), which eliminates the enhanced discharge presently afforded by chapter 13, only those debtors seeking to save a home from foreclosure will find chapter 13 a reasonable option.

A hypothetical will illustrate why §306(b) will hurt both debtors and creditors. Suppose in 1998 Mr. Jones, who is single and lives in an apartment, purchased a 1994 Dodge for $15,000 on credit. At the time he bought the car, its fair market value was only $12,000, but because of his poor credit rating, he was forced to pay substantially over market. Because he can't afford the payments on the Dodge along with his other monthly payments, he files a chapter 13 case in 2001. At the time he files, he still owes $10,000 on the car, and he has other unsecured debts totaling $4,000. Without counting payments on his debts, his monthly income exceeds his monthly expenses by $240 per month. The real fair market value of the car at the time of filing is $5,000. Under present law Mr. Jones could write down the value of Dodge to $5,000 in his chapter 13 plan. Assuming he proposes a plan to pay $240 a month over 36 months, he would be able to pay $5,000 plus interest to the secured creditor, and repay a meaningful portion of his unsecured debt over the life of the plan. But under §306(b) of S. 220, Mr. Jones would be forced to pay all $10,000 of the remaining contract price on the car, because he bought it within five years of filing his chapter 13 case. This is true even though the car is now 7 years old, and the creditor would get substantially less than its present value of $5,000 if the car were repossessed and sold. Depending on the interest rate on the Dodge debt and the chapter 13 trustee's commission, Mr. Jones might not even be able to propose a plan that would pay off the car, pay nothing to his unsecured creditors, and be completed within the 60-month time limit for chapter 13 plans. He would be much better off allowing the secured creditor to repossess the Dodge, file a chapter 7 case, and attempt to buy a newer car, even though the interest rate undoubtedly would be exorbitant. Thus, neither the secured nor the unsecured creditors are paid what they're owed, and the debtor is back in a debt trap. No one benefits.

Your second question concerns the problem of repeat filers. I view this as one of the most serious abuses of the bankruptcy system. It has been most severe in the Central District of California. Nonetheless, I would urge caution in attempting to correct it. No one would seriously argue against amending the bankruptcy code to target those who file repeatedly just to stop a foreclosure or an eviction. But many repeat filers are forced to file a second petition because their first case was dismissed for reasons beyond their control, such as the incompetence of a bankruptcy petition preparer. I have read your proposed

amendment to S. 220, and believe it strikes the appropriate balance. It protects the rights of innocent tenants, while preserving the right of a landlord to rid themselves of a bad tenant without the legal expense of seeking relief from the automatic stay in bankruptcy court.

Please don't hesitate to contact me if I can be of further assistance.

Very truly yours,

RANDALL J. NEWSOME.

Mr. FEINGOLD. Most people file Chapter 13 cases because they want to keep their cars. The cramdown allows them to reduce their car payments to a reasonable amount, leaving enough money to pay off other secured creditors and make a repayment plan work. According the Chapter 13 trustees, who know what they are talking about since they deal with these cases day in and day out, this single provision of the bill will increase the number of unsuccessful Chapter 13 plans by 20 percent. And Judge Newsome states that if this bill becomes law, Chapter 13 will essentially be eliminated as an option for people who wish to hold on to their cars. He writes: ''When § 306(b) is combined with §314(b), which eliminates the enhanced discharge presently afforded by chapter 13, only those debtors seeking to save a home from foreclosure will find chapter 13 a reasonable option.''

Making it more difficult for debtors to get Chapter 13 plans confirmed will lead to more repossessions of cars, and ultimately to more Chapter 7 filings. And even where a Chapter 13 plan can be confirmed and is successful, the anti-cramdown provision will reduce the amount that a debtor can pay to unsecured creditors or for child support or alimony. In essence, under this bill, car payments, on a car worth far less than the debt owed, are given priority over child support. Another example of how this bill is arbitrary and punitive and how the claims of the bill proponents that the bill will help women and children are empty indeed.

The anti-cramdown provision undermines the efficacy of Chapter 13. All the experts tell us that. And I have to point out the irony here. The avowed purpose of proponents of this bill is to move people from Chapter 7 discharges to Chapter 13 repayment plans, yet the bill undermines Chapter 13. I will support an amendment to eliminate this particular provision that is really a gift to the auto industry at the expense of other secured creditors.

There is another provision in this bill that undercuts Chapter 13. The small group of Senators who shaped this bill in a shadow conference accepted a provision from the House bill that says that for those debtors with income above their state's median income, Chapter 13 plans must extend over 5 years, rather than three. That's a 66 percent increase in payments required to complete the plan. In view of the fact that the majority of three year plans fail, the requirement that the debtor go two more years without an income interruption or unexpected expenses will inevitably lead to an even higher rate of Chapter 13 plan failures and discourage even more debtors from filing voluntarily under Chapter 13. I will support the amendment that Senator LEAHY may offer to correct this problem.

I will also support another amendment that may be offered by Senator LEAHY to deal with the damage this bill does to Chapter 13. The bill makes people who voluntarily file under Chapter 13 go through what amounts to a means test using the same wooden and arbitrary IRS standards to determine how much disposable income they have available to pay off their secured creditors. Anyone who has more than the median income will have to limit their monthly expenses to those permitted under the IRS standards. That is going to discourage Chapter 13 filings. If we want to encourage debtors to use Chapter 13 rather than Chapter 7, we have to get rid of that provision.

As I have said before, this bill is at war with itself. Bankruptcy experts from around the country say it will not work. This bill will destroy Chapter 13 as an option for many debtors. If we pass it, I'm convinced that we will be back here trying to fix it once it starts to take its toll on the American people. In the meantime, how many lives will we make harder, how much more heartache are we going to inflict on hard-working Americans?

Mr. President, I will offer an amendment to address another provision of the bill that is bound to inflict heartache on families and children. Section 313 of the bill includes a definition of ''household goods.'' The effect of this definition is to limit the ability of debtors to avoid non-purchase money liens on personal property. I consider the practice engaged in by many finance companies of taking a security interest in personal property that was not purchased with the loan to be highly questionable. The FTC in the early '80s prohibited taking these nonpurchase money security interests in certain household property. But because the list of what constitutes household goods in the FTC regulation is outdated and limited, many finance companies put a lien on every other type of personal property that they can identify. Those liens give them leverage to try to collect on their loans, even if the property is of minimal value. And they have a leg up on getting reaffirmation in bankruptcy if the liens can be enforced.

The Bankruptcy Code of 1978 allows debtors to avoid these liens as long as the property is exempt from foreclosure under the applicable state or federal personal property exemption. But the section 313 definition of household goods would limit the liens that can be avoided to a narrow list of certain goods. The list is based on the FTC regulation from the early 1980s. So essentially, if this provision becomes law, the liens that can be avoided in bankruptcy are mostly the ones that the FTC has already said should be. But anything else that's not on the list can be foreclosed on things like garden equipment, and family heirlooms or paintings of a debtor's parents.

Now remember, the liens we are talking about here are non-purchase money liens, they aren't loans taken out to buy a particular item. There is no evidence that the power to avoid these non-purchase money liens is being abused. It can't be abused, because personal property exemptions are quite limited. No one can shield thousands of dollars of fancy stereo equipment in a bankruptcy. So the definition of household goods in the bill is just a gift to the finance companies who prey on people living at the edge. This bill facilitates these kinds of borderline unethical lending practices. I will have an amendment to substitute for the limited and counterproductive definition in the bill, a broad definition of household goods that many courts are already employing.

I have spoken for quite awhile here about the problems with this bill. In fact, I have probably only scratched the surface. This is an immensely complicated bill about a very technical area of the law. There are provisions in this bill that I would venture to guess that no one in the Senate really understands. We are hearing every day about new problems with this bill, particularly in the business bankruptcy provisions that few people have paid much attention to.

Before I close, I have to mention one provision that was slipped into this bill in the shadow ''conference'' and remains in it today section 1310 barring enforcement of certain foreign judgments. This provision is an example of lawmaking at its worst. It has nothing to do with bankruptcy law whatsoever. It is a provision designed to assist about 200 to 300 investors in Lloyds of London who lost money in the 1980s. These individuals tried to avoid their responsibilities in the British courts and failed, and they have repeatedly failed to have the judgments against them thrown out by American courts. In fact, eight circuit courts have ruled that these investors' disputes with Lloyds should be settled in British courts. So they have been seeking special treatment from the Congress, and if President Clinton didn't veto the bill last year they would have got it.

This provision is opposed by the State Department that rightfully worries about the impact of a law on international economic transactions that gives the back of the hand to respected foreign courts. It also will make it harder to enforce U.S. court orders in foreign courts. The Organization for International Investment, the National Association of Insurance Commissioners, and the Council of Insurance Agents and Brokers oppose the provision because of their concern over its impact on the international insurance market.

Worst of all, this provision smacks of the kind of special interest giveaway

that pervades this bill. But this one is worse because we have had no hearings on this provision, it did not come out of this committee, it did not come out of the Senate or the House, it was just slipped into the bill at the last minute. There is a lot of legislation that I would like to slip into this bill since it does appear that it is on the way to the President's desk. I would like to do something about mandatory arbitration of employment disputes. I would like to require that DNA testing be made available to all inmates on death row. I would like to end racial profiling or pass campaign finance reform. But the interests that support me on these issues don't have an in with the people who are writing this bill. They can't get their pet legislation inserted in this bill in a conference committee. But these investors in Lloyd's did, so they stand to get their way. That's not right. So I may offer an amendment to strike section 1310 and I certainly look forward to seeing it removed from the bill.

It is important to note that if we do our job here and pass some amendments to improve the bill, the fight is not over. Because there is a long record of the conference committees simply ignoring the Senate's work and sending back to us a much worse bill. So I have to say to my colleagues, if you support the bill after the Senate completes its work you must fight to demand that the conference respect the changes that the Senate made. The House has done virtually nothing on this bill. It basically rubber-stamped the conference report from last year. And our rights as Senators to offer and pass amendments are worthless if the conference committee simply returns the bill to the form in which it was introduced.

To conclude, this is the kind of bill where we need to rely on the experts to guide us. And we just haven't done that here. Once again, we have a letter from over 100 law professors, from all across the country. They aren't debtors lawyers, they aren't all Democrats, they don't have an ideological agenda, they just understand the law and care about how it operates. And they plead with us, let me quote from their letter again: ''Please don't pass a bill that will hurt vulnerable Americans, including women and children.''

This is extraordinary. The experts beg us to listen to them. They don't have a financial interest here. They don't represent debtors. None of them is in danger of declaring bankruptcy. They just hate to see this Congress make such a big mistake in writing the laws. They don't want us to ruin the bankruptcy system, which dates back to the earliest days of our country, by passing a bill that is so unbalanced, so arbitrary and so punitive.

I assure my colleagues that I am not opposed to reform of the bankruptcy laws. I know there are abuses that need to be stopped. I voted for a bill in 1998 that passed this Senate with only a handful of votes in opposition. There are things we can do to improve the bankruptcy system. There are loopholes we can close and abuses we can address. We can do it in a bipartisan way. We can write a balanced bill that the Senate and the country can be proud of. We can rely on the advice of experts as we always have in the past. We didn't do that here. We relied on the credit card industry, which has showered Senators and the political parties with campaign contributions, and it shows.

Before we barrel forward on a fast track to pass this bill just because it is where the process ended last year, we have one more chance to listen to the experts. One last chance to step back from the brink of passing a very bad law, a law that I believe we will come to regret. It is a matter of simple fairness and simple justice.

S. 420 is an unfair bill, Mr. President. The Senate can do better. The Senate must do better, for the sake of hard-working people who need our help.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). THE SENATOR FROM DELAWARE IS RECOGNIZED.

Mr. BIDEN. Mr. President, I listened with great interest to my friend from Wisconsin when he talked about showering money by special interests. Yesterday, he and I voted on a bill on ergonomics where the outfit that most wanted that bill not stripped away was the labor community which, if we take his definition broadly, showered money on everyone here. I don't even accept PAC money. Yet I did not hear anybody stand up yesterday and say the reason we voted for ergonomics was that labor showered money upon this body. I find it somewhat unusual that there is such selective judgment about how money is showered on this body.

I wish the Senator was still here. I am also interested in what he constantly refers to as the arbitrary nature of this bill. It seems to me the definition of arbitrary is whatever the Senator from Wisconsin doesn't like, because such an arbitrary bill as this passed with 70 votes last year, and it has been improved even further than last year. It passed with 306 votes just a couple of days ago over in the House of Representatives. It must mean that two-thirds of the Senate last year—and I realize it has changed by several votes on this side now—and 306 of 435 Members over there are obviously very arbitrary. This bill is supposedly so partisan that it has had broad bipartisan support in both the House and the Senate.

I also point out that, having been involved with President Clinton relative to his veto of the bill last year, the single most important thing the President wanted done through the help of Senator SCHUMER—and, through the leadership of Senator SCHUMER, it was done in this bill—was that he was very concerned about a provision that possibly would allow someone who had violated the so-called FACE—that is, bomb an abortion clinic or do physical damage to the building or to persons working in there—to then come along and declare bankruptcy on the grounds that they should not have to pay the civil judgments against them. That meant a great deal to President Clinton, to me, and to a lot of other people.

That was the primary reason President Clinton vetoed this bill last year. That provision is no longer exempted from this bill. It is part of the bill. One of the nondischargeable debts under bankruptcy in this legislation is for someone who has a judgment against them for violating the rule. That is called the FACE law, relating to intimidating or doing damage to abortion clinics or persons who work in them.

I also find interesting one thing the Senator said. I think he is correct. He pointed out that mothers filing bankruptcy even though their husbands are gone must still count their husbands' income.

That is not what was intended in the bill. I will give you an example. On the section from which the Senator from Wisconsin read, there was a drafting error here in all the provisions save one that I am aware of. It says:

> . . .if the current monthly income of the debtor, or in a joint case the debtor and the debtor's spouse. . . .''

That means that if the debtor is all by herself and has not filed for bankruptcy jointly, then you do not count the husband's income. That was not intended. But there is a section where it is written differently and could be read differently. That is in section (7), on page 17 of the bill.

Section 7, in subsection (2) says:

> . . . if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal less than. . . .

It should read: if the current monthly income of the debtor, or in the case of a joint filing by the debtor and their spouse. . . .

It is my intention, as one of the people who supports this bill, to see that it is changed in the managers' amendment, so it reads as it was intended.

But after that, what I heard added up to an awful lot of—how can I say this—well, I will not characterize it. I do not think it was particularly accurate. So since this is the first time I have spoken to this bill on the floor, let me go into a little more detail. But I am going to go into a great deal of detail on each of these amendments that are about to be offered.

First, the idea of a fresh start is absolutely fundamental to the American way of life. Bankruptcy must remain available for those who really need it. And it does. Let's put in perspective what we are talking about. If you listened to the critics of the bill on the floor, it would sound as if we are eliminating bankruptcy. The only issue at stake here is whether or not someone files bankruptcy in chapter 7 or chapter 13. Right now, I might point out to

you, bankruptcy judges are supposed to lay out in chapter 7—chapter 7 is one of those places where you eliminate all your debt. Chapter 13 is where you say: I want to eliminate most of my debt, but I can pay back some of it. I can pay back some small percentage of it. And they set out a schedule to pay back some small percentage of it.

What we are talking about is a situation where someone who files in chapter 7, who is able to pay some of their debt, and should be filing in chapter 13 right now—a bankruptcy judge or a master must, in fact, look at that circumstance and say: This is an abusive filing. He really should be filing in chapter 13. But guess what. There is no uniform standard nationwide. It is left up to every bankruptcy judge to determine what is abusive and what is not abusive.

So what are do we doing here? The essence of what we are doing is laying out the standard at which a bankruptcy judge must look to determine whether or not the filer is abusing the system going into chapter 7 as opposed to chapter 13.

Why are we doing that? We are doing that because a lot of the very people I represent, and that my friend from Wisconsin and others talk about all the time—working-class folks—are getting hurt by the way bankruptcy is abused now. Because what simply happens is, all those debts that they incur—and they never filed bankruptcy before—cost them more money. It costs them more money at Boscov's when they go buy a $100 item because people have declared bankruptcy who could be paying back something. It costs them more money.

The average person in America, the person who really is in a crunch, is hurt the most because interest rates go up, the cost of financing, buying the new bed or refrigerator goes up.

You don't have to just listen to me about this. Unnecessary and abusive bankruptcy costs everyone. The Clinton administration's own Justice Department concluded that our current system costs the economy $3 billion a year. And they made the pursuit and prosecution of bankruptcy abuse a high priority.

This is not an imaginary problem. It is not going away. This week we are taking up a bill that is identical to the conference report that enjoyed strong bipartisan support in the House and the Senate—70 in the Senate and 308 in the House. During the debate, we have already heard from some of my colleagues who claim that they support the general idea of eliminating abuse in bankruptcy, but they oppose the particulars.

Now, again, this costs every single solitary consumer. If you are making $300,000 a year, you don't have to buy your sofa bed on time. If you are making $300,000 a year, you don't have to buy your refrigerator on time. Where I come from—my family —you buy them on time. And it costs them money. It costs them money—a lot more money—because these folks do not write off this debt and say: I didn't get paid. I didn't get paid back for all that was owed me here, so forget it. I will just take it out of my bottom profit line. They say: No. I have to make it up.

So what do they do? They charge my mother and father more money to buy the refrigerator because they can't buy it other than buying it on time.

So I am having it about up to here with how this is hurting so many poor people. I will get to that in just a minute.

During this debate, we have had raised many charges against the legislation. I think it is fair to say that the concerns I have heard so far—and over the last 4 years that we have been dealing with this legislation—I find it fascinating my friend from Wisconsin and others have said that we were going to bring this bill right to the floor. The reason it did not get brought to the floor is yours truly, me. I made it clear they would get none of my support, no one would get my support on this bill if, in fact, it did not go back through the committee system, if it did not go back to the Judiciary Committee, if it did not go through the normal procedure.

As I said, this is the same bill, by and large, with a couple improvements, that passed with 70 votes last year. The biggest charge you hear is this is antiwoman and antichildren who depend on child support, and that it is unfair to low-income families which need the full protection of chapter 7 or straight bankruptcy. I want to briefly address both of these concerns. And I will go into more detail when my colleagues want to come and debate this issue.

First, I want to point out a significant achievement reached in the Judiciary Committee on the question of those who have tried to hide in bankruptcy from the penalties imposed on them for violating the Fair Access to Clinic Entrances Act. Senator SCHUMER, as I mentioned earlier, first brought this issue to our attention. We finally reached an agreement in the committee with this major step forward. The compromise that we put forward is part of the bill that no one—no one—who violates the FACE Act, the Fair Access to Clinic Entrances Act, can, in fact, avoid their responsibility in bankruptcy.

Now as to those specific charges of unfairness. First, there is the claim that the bill will leave women and children who depend on child support worse off than they are today. This is perhaps the easiest charge to refute because the legislation before us today has the endorsement of the National Child Support Enforcement Association. The National Child Support Enforcement Association—they are all the folks in all of our States who sit there behind counters, working for the State, who are trying to collect support payments and child support from deadbeat husbands. These are people on the side of the women and children who need their support payments made to them. They support this bill.

The National District Attorneys Association—and specifically because of the important new protection for women and children who depend on family support payments—and other professionals whose job it is to enforce family support payments every day, from the California Family Support Council to the Corporation Counsel for the City of New York, have endorsed these new protections as well. That is because there are new specific protections for family support payments in this bill.

Let's go through how it currently works. One thing the Senator said is correct: Bankruptcy is a complicated issue. Hopefully, the vast majority of Americans will never have to become acquainted with it.

Under current law, we tell creditors they can't collect debts owed them starting right away, as soon as someone files bankruptcy. Put another way, I go in and file bankruptcy. I owe child support and support payments. I file for bankruptcy. In the vast majority of States, immediately all creditors have to back off, including mom and the kids. That means a woman owed alimony or child support can't collect either.

I am one of the authors of the deadbeat dad legislation to put more pressure on States to go after deadbeat dads. All of a sudden, once somebody files bankruptcy, in most States in America now, mom is out, the kids are out. Bankruptcy stays the proceeding.

All those hard-working folks in the family court in Delaware trying to see to it that Johnny and Mary and Alice get something to eat and mom gets a support payment, they can do nothing. They have to stand back, instead of bringing that deadbeat dad in and arresting him and garnishing his wages. That is why the national child support agencies support this bill. That is why they want it. It improves the plight of women and children who, by the way, can't wait 1 week, 2 weeks, 3 weeks, 10 weeks, 5 months while the bankruptcy is proceeding, as they have to now.

This bill gives child support and alimony the first and highest priority among any claim able to be made in bankruptcy. Do you know where they are under present law, the law my friend seems to love so much? They rank No. 7, S-E-V-E-N. This bill says you have to be fully paid up on child support and alimony before you can be released from bankruptcy. You have to be fully paid up or you don't get out of anything via bankruptcy. A woman collecting child support or alimony must, under section 219 of this bill, be notified of the full array of family support enforcement rights and available options to her under Federal law, including the kind of wage attachments that will trump every other claim in and out of bankruptcy.

So there is an affirmative requirement under this bill. If a woman did not know she had additional rights, she is required, under this law, if we pass it—and I am confident we will—to be notified by the bankruptcy court: By the way, you have these additional rights, and we will help you attach this deadbeat's wages.

All other parties to bankruptcy, from her spouse's creditors to the court that monitors the bankruptcy plan, are notified that the full force of the Federal support enforcement law is part of the bankruptcy proceeding, which it is not now. Under this bill, the fact that other creditors with perhaps deeper pockets might be looking for repayment from her spouse is an asset, not a liability. Those other creditors must provide her and the support enforcement officials this bill recruits, by the way, to assist her with the last known address of her spouse who owes her the support and payments.

I used to be a family court lawyer. Do you know how it works now? The court can't find where Charlie Smith is. The woman is going into court day after day. Charlie Smith has a job. Everybody knows Charlie Smith has a job, but they can't find him. So Charlie Smith files bankruptcy in another State, another place, another time. What happens now? Nothing. What happens under this bill? The creditors who go in saying, I want to repossess Charlie's car, I am going to take Charlie's house, I am going after Charlie's bank account because he owes me money, have to notify the spouse.

Give me a break. No protections? It doesn't exist in present law.

These are concrete, positive steps from start to finish, and even beyond bankruptcy, to assure that payments are made to those who need them. These are real, tangible improvements over the current bankruptcy and child support laws. My friends who talk so much about child support ought to go practice it as I did. They ought to go back home and check, go sit in that family court and find out how it works right now.

Against them we will hear the vague assertion that those payments will compete with ''more powerful creditors.'' The fact is, in actual practice now, and more certainly under this bill, those payments will be accomplished by wage attachments and could not be reached by any other creditor during or after bankruptcy, no matter how powerful or how devious the creditor is.

I heard a little flip on this. I may hear from my friend from Wisconsin and others: Even though that is true, even though in this bankruptcy proceeding you can go out and attach the wages of this deadbeat father, what is going to happen is the devious creditor will still win. Do you know why? Because the deadbeat father will quit his job to spite payment. Then the creditor that repossesses the automobile or goes after whatever debt he has will be ahead of the mother because bankruptcy is over. Come on. If a father is going to do that, he ''ain't'' paying anybody anything. Those payments come out of the deadbeat dad's paycheck before he even sees it. He cannot be forced to choose between child support and other debts. He doesn't have the choice. Those payments are made automatically, straight from the employer to the woman and children who need them. Those who claim otherwise are simply ignorant of the way Federal family support law currently operates. Some of them simply misrepresent the way this legislation protects family support payments in bankruptcy.

Next, we have the assertion that this legislation unfairly locks the door of chapter 7—liquidation or so-called straight bankruptcy—for those low-income families that need it the most. Let's get a few things straight about how the current code operates.

Today, bankruptcy judges are required as a matter of Federal law to dismiss petitions for chapter 7—that is straight bankruptcy—for substantial abuse, particularly if the debtor really has the ability to pay his bills. This reform legislation will provide those judges with specific criteria for determining if the debtor can, in fact, pay some of the bills he or she is asking to be forgiven. If the debtor can pay some of those bills, at least $10,000 or 25 percent of those debts—that is the threshold—then asking for chapter 7 is presumed to be an abuse of the system and you get bumped into chapter 13.

I will bet that most Americans would be very surprised that there is no systematic way for asking the basic question about the ability to pay, no actual means test that exists now under the current code, and it is up to every different bankruptcy judge to decide how he or she wants to make that judgment. That is how our sentencing laws used to be until I wrote and we passed the Sentencing Reform Act. Every judge could have a different sentence.

What did we find out there? We found out that black folks who committed the same crime that white folks committed went to jail longer because there was no standard.

We have national sentencing guidelines and other standards that guide the decisions of judges. This bill simply tells judges how they should go about making the decision that current law requires them to make.

But won't that means test disadvantage those of limited means who truly need and deserve to fully get a chapter 7 liquidation?

Look at the facts. First, this bill will affect, at most, 10 percent of the people who currently file under chapter 7, and only those who have a demonstrable ability to pay.

One of the main reasons for that small number—10 percent—is the means test in this bill would not even apply to anyone who earns less than the median income in his or her State, and for those with less than 150 percent of the median income, there is only a cursory calculation on the ability to pay.

Let's go through what that means. Mr. President, in my State of Delaware, a family with a $46,000 income would not even be subject to the means test—you got that?—not even subject to the means test. They are out. They can immediately go to chapter 7, no questions asked, nothing—even if they had the ability to pay.

That is exactly as it is today. In California, a family with a $43,000 income will have the exact same access. In Massachusetts, a family with $44,000 in income will have no change in access to chapter 7; Illinois, $46,000; in Wisconsin, $45,000, no change. That is because this legislation, I might add, at my insistence and that of Senator TORRICELLI, contains a safe harbor for those people. Only if you have more than 1½ times the median income in your State will you be subject to a serious examination about your ability to pay. And even then, if you face what the bill calls ''special circumstances,'' that reduces your income or increases your regular expenses. You will still enjoy the full protection of chapter 7. Specifically—I don't know how many times I have heard this on the floor—if you have ongoing medical expenses, that means you don't have any money left over to pay creditors, you can go straight to chapter 7.

One of the most basic misunderstandings about this bill is that folks with medical bills will have their circumstances ignored, as my friends are saying on the floor here. That is just flat wrong. The standard this bill uses for calculating someone's ability to pay under the means test specifically includes not just medical bills but health insurance, and it even includes union dues.

AMENDMENT NO. 13

The PRESIDING OFFICER. Under the previous order, the hour of 5:30 having arrived, there will now be 20 minutes of debate on the Leahy amendment No. 13.

Who yields time?

Mr. BIDEN. Mr. President, nobody is here to yield time. I will be happy to begin the debate on the Leahy amendment. Obviously, I can't yield time from Senator GRASSLEY or Senator LEAHY's time on this point.

Mr. President, parliamentary inquiry: Since nobody is here to debate the Leahy amendment, is it appropriate to be able to proceed on the bill for another few minutes?

The PRESIDING OFFICER. The Senator may ask unanimous consent to do that.

Mr. BIDEN. Mr. President, I have just been told by the majority and minority staff that I can yield myself some time off of Senator HATCH's time on this amendment. I will cease and desist the moment either Senator LEAHY or Senator HATCH comes forward to debate the amendment.

Back to medical expenses.

One of the most basic misunderstandings is that people with medical bills will have that circumstance ignored. Not only are those expenses explicitly allowed but any other expenses that make sense are allowed. That is under the IRS standards. On top of that, the bill allows additional expenses, including medical expenses for everybody from your nondependent children to your grandparents and your grandchildren.

There are no reasonable medical expenses, from contact lenses to cancer therapy, from yours to your wife's to your grandchild's, that would not be counted as a necessary expense in calculating someone's ability to pay.

So much for this idea that these poor people who have these exceedingly high medical expenses—and they really do—will not be able to declare bankruptcy and do straight bankruptcy in chapter 7.

Again, if you are under the median income in your State, you are not even subject to the calculations anyway. So much for the charges that this legislation is unfair to women and children and to those of limited means. It improves protections for those who depend on alimony and child support, and those below the median income are explicitly excluded from the means test. The means test for those who are above the median income permits all forms of medical and other expenses to be considered in calculating the ability to pay.

Next, often cited is the ''failure'' of this legislation to deal with what is supposedly a major abuse of the current system, the unlimited homestead exemption now permitted in a handful of States.

Let me make this clear. I agree with my friend from Wisconsin that we should have an absolute cap on the homesteading expense. We should not have it like Texas, Florida, and other States that allow the abuse of someone going out and buying a $6 million or $8 million home and then declaring bankruptcy and the home being out of reach of the creditors. That is unfair. I think it should be capped in the $100,000 to $150,000 range nationwide. We tried that. It didn't work. What we did do is this.

Everyone should be outraged at those who thumb their nose and move to Florida or Texas and buy multimillion-dollar homes. As outrageous as these cases might be, this is quite rare. I am afraid those who made the treatment of the homestead exemption the grounds for their rejection of this bill have based their votes on a pretty weak foundation. Here is a GAO report from 1999 in which they found, first, that only 52 percent of bankruptcy cases from a sample in Texas involved a homestead in any way.

Second, only 1.2 percent of those cases involved homesteads—that is homes—of more than $100,000—not a lot of multimillion-dollar homesteaders there, Mr. President. A similar sample from Florida, the other supposedly big offender on this issue, found that .8 percent—less than 1 percent—of the cases with any kind of homestead involved a homestead of more than $100,000—not a lot of multimillion-dollar bankruptcy bungalows there.

Again, Mr. President, as far as I am concerned, a single abuse of the homestead exemption by a filer is one too many. But let's not pretend this bill has turned a blind eye to a major problem. There is not a major problem, but the bill, in fact, does make a major advance over current law.

If I had my choice, it would be a $100,000 cap. If you buy a house within 2 years of filing for bankruptcy, the cap is $100,000, which we have in this bill before us. No change in current law? Well, I will take this bill over current law. Let me explain in more detail what I mean.

Right now, if in fact you go out and buy yourself an $8 million home 2 years before you file bankruptcy, that home is liable to be possessed. Now, if they buy it 2 days before and it is exempt—I am talking about .8 percent of all the filers who claimed the homestead exemption in Florida. For example, I know I am going to file for bankruptcy in 2 years, so now I am going to go out and buy an $8 million home. Let me be clear. I think there should be a flat prohibition of hiding assets in homes above 100,000 bucks. Very few have ever done it. It should be changed, but very few have done it, and we have made a significant change among those who may have done it or who are intending to do it.

Finally, I want to say something about a number of other amendments I expect we are going to see in the course of this debate.

The truth in lending legislation is not a bankruptcy law. There is no evidence presented by anyone here that anyone has gone bankrupt or declared bankruptcy because they have been falsely or not honestly lent money. There is no evidence of that. These amendments are not about bankruptcy law; they are about banking law.

I support more disclosure, and they are clearly within the jurisdiction of the Banking Committee, as I am sure Senator GRAMM will tell us, but I know a number of my colleagues have felt it is essential to require, as they say, some balance in bankruptcy reform legislation by demanding more on the part of lenders as we demand more of debtors.

Fair enough. I support the idea. Last session, I offered, along with Senator TORRICELLI and Senator GRASSLEY, an important amendment that required additional disclosure by lenders. That amendment was added on the floor last Congress.

These new disclosures include a strong notice, a warning that making minimum payments will stretch out the time it will take to pay off the loan and that a 1–800 number must be put on there for you to call to find out how long it would take you to pay.

Those disclosures include more information on so-called teaser rates on the envelope that come in the mail every week.

This bill before us contains some improvements, but that is not related to bankruptcy. That is related to banking and truth in lending, which I support more of.

Additionally, there is the assumption that lenders, not borrowers, are responsible for bankruptcy. The key assumption here is that a rational businessman, a lender, especially credit card lenders, seek out those who have no hope of repayment and foist unbearable debt upon them just so they can fight with them in bankruptcy.

I do not follow the argument, but we can see if there is anything to it. Fortunately, the Congressional Research Service, a nonpartisan organization in the U.S. Congress, for the last few years has looked into the issue at my request.

I direct my colleagues' attention to the CRS report on March 19, 1988, entitled ''Bankruptcy and Credit Card Debt: Is There a Casual Relationship?'' It is not every day we have such a direct response available to a question that is constantly put forward on this floor. This is not industry propaganda. This is not interest group rhetoric. This has nothing to do with campaign contributions, as alleged by my friend from Wisconsin. This is the Congressional Research Service on which we have all come to rely for expert nonpartisan analysis.

The answer to the question is no, credit card debt cannot be shown to be the cause of bankruptcy.

Here is the conclusion of the report:

> The available aggregate data do not show that credit card debt has caused a major shift in U.S. household financial conditions.

Addressing that underlying assumption I spoke of, the report says:

> Is credit card borrowing a trap for the unwary, bringing disorder into the financial houses of an unspecifiable number of atypical families and individuals? Perhaps, but so are medical expenses, divorce, job loss, casino gambling, narcotics, investment scams, and so on. Anecdotal evidence abounds, statistical evidence is scarce.

That was 1998. What has happened since? Last month, I asked the CRS to update its analysis.

Here is the unchanged conclusion—as of February 20—based on the latest data:

> While credit card debt has been the fastest-growing component of household debt, the size of the debt outstanding does not appear to be so great (especially when rising incomes are considered) that it can be held primarily responsible for the steep rise in consumer bankruptcy filings since 1980. At the same time, the claim that credit card companies are creating financial distress by mass-marketing an expensive form of credit to low-income or financially unsophisticated households finds little support . . . .

I know that for some of my colleagues, blaming lenders for bankruptcies is a matter of faith. Unfortunately, it is not a matter of fact.

That is why I will vote against amendments that are properly the jurisdiction of the Banking Committee.

It is not because I think all lenders act responsibly, or that nobody ever got suckered by a credit card company. It is because the best evidence I have to work with tells me that these amendments are not germane to bankruptcy reform.

In closing, I look at the years of debate, hearings, and floor time we have expended on this issue, and I look at the strong, bipartisan majorities that have consistently supported bankruptcy reform throughout this process, and finally, I look at the 70 votes that this very bill—without the Schumer-Hatch language on clinic violence—received in the Senate last year.

Like every bill that has undergone this much debate and consideration, it is the product of compromise. It is not a root-and-branch overhaul of the current bankruptcy code; it makes incremental but important changes in the operation of the current system.

It will affect perhaps 10 percent of those who currently file under chapter 7, and only those who have the demonstrated ability to pay. It adds important new protections for the women and children who depend on child support. It restores, at the margins, some personal responsibility to a system that that in recent years has been the subject of abuse.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are considering the Leahy amendment. The Senator from Vermont has 10 minutes.

Mr. LEAHY. I thank the Chair. Mr. President, I hope when the time comes to vote this evening on the Leahy small business amendment that all Senators will vote for it. I have not heard the author of this bill, the chairman of the Judiciary Committee, the majority leader, or anybody else speak in opposition to it. Obviously, they can vote any way they want, but I have yet to hear anybody talk in opposition to it. The time used on the other side was not used in opposition to it.

I hope this is an indication that we will look first and foremost at small businesses, those businesses with under 25 people, to give them parity with the multibillion-dollar corporations.

When we voted last night, many said we were helping small businesses by throwing out the ergonomics rule. While I disagree on that particular rule, I do agree that small businesses should be helped. I grew up in the front of a small business store in Montpelier, VT. We lived in the front of the store. My parents had a small business in the back.

Ninety percent of the businesses in Vermont are small but then many of the businesses nationwide are small businesses. If you define them as 25 employees or less, with 5,541,000 businesses in America, nearly 5 million of them are small businesses.

What I want to do is make sure we protect small business creditors from losing out in the bankruptcy reform process. They ought to be protected.

The way the bill is written now—and I hope this was not intentional—but the way it is written puts large multibillion-dollar credit card companies ahead of hard-working small business people—farmers, ranchers, Main Street mom-and-pop stores. It puts these huge companies ahead of them in collecting outstanding debt from those who file for bankruptcy.

I do not think any one of us intended that. I do not think any one of us actually want to go back home and tell all the farmers, ranchers, and small business people in our States that we put the credit card companies ahead of them.

My amendment gives small business creditors a priority over larger businesses when it comes to distributions of the bankruptcy estate. It provides a small business creditor priority over larger for-profit business creditors.

It does not affect the bill's provisions which give top priority in bankruptcy distributions to child support and alimony payments. We already set certain priorities. We do it for alimony payments. We do it for child support. We ought to do it for our Main Street businesses and our farmers and ranchers. We ought to give them the same kind of leg up over a deep-pocket, multibillion-dollar corporation.

If a large credit card company has John Jones or Mary Smith go into bankruptcy, and they owe them, say, $3,000, and they owe the local feed store $3,000, obviously this $3,000 shows up differently on the bottom line of MasterCard than it does on the bottom line of the Jones Feed and Grain Store. It is a much bigger bite for that small store, and they ought to be given priority.

That is all I am asking for in this. I cannot imagine any small business organization that would not be supportive of this. We should actually be helping small businesses navigate the often complex and confusing bankruptcy process because they are not going to be able to afford a galaxy of lawyers and accountants. The huge companies have these people on retainer because they handle bankruptcy matters all over the place. For the small store, this may be their bottom line for the year. It may be the one bankruptcy they are trying to collect for the year, and they could be out of business as a result. They need priority just to keep pace with big business.

Small business is the backbone of our economy. In fact, I use the same definition of a small business creditor that is already in section 102 of the bill.

All I am saying is same rules, but if you are going to give priority, give the priority not to the multibillion-dollar corporation for whom this $3,000, $4,000, or $5,000 claim is nothing. Give the priority to that small store, that small company on Main Street that may have to really do something. I don't want them to have to get in line behind the huge credit card companies. For them, it may mean the difference between going out of business or not, not the difference between whether it means one one-hundred-thousandth of 1 percent.

Mr. BIDEN. Will the Senator yield?

Would this include an automobile dealer with 20 people that grosses $70 million a year?

Mr. LEAHY. Do we have that many?

Mr. BIDEN. We sure do. Check home. Any automobile dealer that has 20 or more people.

Mr. LEAHY. If we talk about grosses, that would be one that is matching a 20-person unit of a credit card company that would gross several billion dollars.

Mr. BIDEN. I am just asking a question. I hope it does include them. I want to know what you are including. That is all. Would that be included?

Mr. LEAHY. I have used the small business definition that the Senator from Delaware has used in the bill he cosponsored.

Mr. BIDEN. That does mean it would include somebody grossing $100 million, $50 million.

Mr. LEAHY. If you had a car dealer that grossed that amount of money, considering the fact they often make only $100 or $200 on a car, although the cars sell at $30,000 or $40,000. By the same token, the collection unit might be 20 people and they get several billions of dollars.

The bottom line: The percentage of what is going to be the net profits is considerably different.

What this is going to affect—which is why I use the Senator from Delaware and his definition of a small business in the bill—these are the same people, in most likelihood, the mom-and-pop store for whom $3,000 or $4,000 may mean making the mortgage payment.

Mr. BIDEN. Would the Senator set an income level to protect them?

Mr. LEAHY. Are we going to change the definition of small business in the bill that the Senator from Delaware cosponsored?

Mr. BIDEN. To accommodate the Senator, I would be happy to do whatever he would like.

Mr. LEAHY. This is the bill that is presently before the Senate.

Mr. BIDEN. Without an exemption.

Mr. LEAHY. Cosponsored by the Senator from Delaware. I am using his definition.

Mr. BIDEN. But you are using it out of context.

Mr. LEAHY. I think not.

Let me talk about what this does: 5 percent to the small feed and grain store could be the difference for them for the year and whether they make it or don't make it.

Dean Witter said this bill gives just one credit card company alone, MBNA, an increase in net profits of 5 percent. That is $75 million. With most of these small businesses we are talking about, 5 percent is not 5 percent of MBNA.

What we want to do—we carve out a special exemption for credit card companies but leave small business owners fending for themselves—is put the small business owners on at least an equal footing.

The credit card companies say they need an exemption because their debts are typically unsecured. Most of these small businesses are exactly the same.

I yield the floor.

AMENDMENT NO. 14

The PRESIDING OFFICER. Under the previous order, all time having expired, the Leahy amendment is laid aside and there is now 60 minutes of debate evenly divided on the Wellstone amendment No. 14.

Mr. WELLSTONE. Mr. President, I had a chance this afternoon to speak about this amendment at great length and may not need all of my time. I respond to some of the arguments made while I was off the floor. They were not made because I was off the floor; I had to go to markup on an education bill, and another Senator spoke.

Let me take some of the arguments and respond as colleagues sort this out and decide how to vote.

First of all, this amendment provides that no provision of the bankruptcy bill will affect a debtor who files for bankruptcy if the court determines that the debtor filed as a result of overwhelming medical bills, unless the debtor elects to have a particular provision apply.

We are really saying if the goal of this bill is to go after those that have gamed the system—again, I cite the American Bankruptcy Institute's report that, at best, that is 3 percent of the people; there are others who say 10 or 13 percent. Surely in those cases where the court determines that the debtor who files for bankruptcy has filed for bankruptcy because of a major medical bill, we would want to exempt them from the provisions of this legislation. This is somebody who is now going under because of cancer or because of a disabling injury. There, but for the grace of God, go I. These are not people gaming the system.

I also pointed out earlier today—and I think it is important to give this amendment some context—it is unfortunate we are not spending more of our time trying to figure out how to legislate so we can cover the 43 or 44 million people with no insurance, or people who are underinsured, people who go under because of catastrophic expenses.

Sad but true, being able to file for chapter 7 is one of the ways people can rebuild their lives. It is one of the ways people can get back on their feet when they have been knocked down by a major medical bill.

Why is it necessary? The bankruptcy bill purports to target abuses of the bankruptcy code by wealthy scofflaws and deadbeats who, as I said, according to the American Bankruptcy Institute, make up about 3 percent. Yet hundreds of thousands of Americans file bankruptcy every year. They don't file bankruptcy to game the system. They file bankruptcy because of medical bills. That can happen to any of us.

Unfortunately—and I went through these this afternoon—there are at least 15 provisions in S. 420 that make it harder to get a fresh start, regardless of whether the debtor is a scofflaw or a person who must file because they have been made insolvent by medical debt. In the case of those families made insolvent by medical debt, they ought to be exempt from some of the onerous provisions in this bill.

Some of the provisions in the bill include but go beyond the means test. I said this to my colleague from Iowa this afternoon. An analysis in the Wall Street Journal last week said: The bill is full of hassle-creating provisions. Some reasonable, some prone to abuse by aggressive creditors trying to get paid at the expense of others. In a thicket of compromises, Congress risks losing sight of the goal, making sure that most debtors pay their bills, while offering a fresh start to those who honestly can't.

My amendment makes sure we do not deny a fresh start to people who really won't be able to do that with the bill the way it is written. This amendment preserves the fresh start for those debtors who honestly can't because they are drowning in medical debt. That is what this amendment is about.

Let me go through some of the arguments that were made. Is the Wellstone amendment made redundant by the means test in the bill? Absolutely not. Neither the means test nor the safe harbor in the bill applies to the vast majority of new burdens placed on debtors.

I held up the whole bill. The bill is more than just the means test. The bill is this size and the means test is this size.

Under S. 420, debtors will face those hurdles to filing, regardless of the circumstances. Let me give some examples of some of these hurdles. One is the prebankruptcy counseling requirements at the debtor's expense, as if medical debts can be counseled away. Why would you want to say to a family that is being put under by a medical bill, that is going through a living hell, that they have to go through credit counseling and they have to pay for it?

No. 1, they wouldn't be filing for bankruptcy if they weren't at the end of their wits; they wouldn't be filing for bankruptcy if they had a lot of extra change, a lot of extra money. This presumption that they are trying to abuse the system or have been bad managers and need to go through prebankruptcy counseling requirements makes no sense at all. It makes no sense at all when families are being put under because of medical bills.

There are no limits on repeat filers, regardless of personal circumstances. There are changes to existing cramdown provisions in chapter 13 making it more difficult for debtors to keep their car and new tax return filing obligations and new administrative burdens that are expected to raise the cost of filing, even in a simple case, by hundreds of dollars.

The point is, if you are going to try to deal with those people who you think are deadbeats or are gaming the system, for God's sake don't do it for families who are going under because of medical bills and for whom chapter 7 gives them a chance to rebuild their lives.

No. 2, does the Wellstone amendment carve out a serious loophole in the means test? No. The debtor can only get an exemption from this bill if the court finds that the debtor was forced to file because of medical debt. A debtor who has carried some medical debt but filed because he ran up a bunch of credit card bills is not going to meet the standard and he is not going to be protected by this amendment.

I need to make that point again. The debtor can only get the exemption from this bill if the court finds that this family was forced to file for bankruptcy because of medical debt.

Where is the burden of proof? On which side do we want to err? Don't we want to err on the side of making sure, when people have been put under because of medical circumstances, they are able to get a carve-out and go forward and file for chapter 7?

No debtor can get an exemption from this bill unless the court finds that the debtor was forced to file because of medical debt. It is not enough to say, ''I had a medical bill,'' and then you see somebody who has run up all kinds of credit card bills.

Mr. BIDEN. Will the Senator yield? Is he talking about his amendment or the bill?

Mr. WELLSTONE. I am talking about my amendment.

Mr. BIDEN. I thank the Senator.

Mr. WELLSTONE. No. 3, does the Wellstone amendment leave hospitals or medical centers at a disadvantage? No. The amendment doesn't make medical debt a lower priority than other debt. The point is, this doesn't change current law. With this bill, you have auto lenders, you have credit card companies, you have all sorts of people who have a claim. But this particular piece of legislation does not affect the dischargeability or nondischargeability of medical debt at all. This is the same protections that people have right now. We are not changing any current law in terms of whether hospitals are able or not able to get reimbursement.

Can I give a real-world example of how the nonmeans test portion of the bill affects medical debt filing? My colleague from Delaware may want to respond to this Time magazine example about Allen Smith, a resident of Delaware, a State which has no homestead exemption. In other words, he can't shield his home from his creditors.

Ironically, under this bill, wealthy scofflaws can shield multimillion-dollar mansions from their creditors with a little planning. All you have to do is, a couple of years in advance, know you are going to be in trouble. A lot of people with high incomes know that. You hire a lawyer and you are fine.

But Mr. Smith doesn't get that break. As a result, when the tragic medical problems described in the Time magazine article befell his family, he could not file a chapter 7 case without losing his home. Instead, he filed a chapter 13 case, which required substantial payments in addition to his regular mortgage payments for him to save his home. Ultimately, after his wife passed away and he himself was hospitalized, he was unable to make all those payments and his chapter 13 plan failed.

Had Delaware had a reasonable homestead exemption and Mr. Smith been able to simply file a chapter 7 case to eliminate his debts, he might have been able to save his home. Mr. Smith's financial deterioration was caused not by his being a spendthrift, not because he was a bad manager of his budget, not because he did anything wrong. His financial deterioration was

caused by unavoidable medical problems.

Before he thought about bankruptcy, he went to consumer credit card counseling to try to deal with his debt. However, it appears that he went to consumer credit card counseling just over 180 days before the case was filed and he did not receive a briefing, so the new bill would require him to go again. This would have been very difficult, considering his medical problems. In fact, his attorney made several visits to Mr. Smith and his wife, who was a double amputee.

The new bill would also have required a great deal of additional time and expense for Mr. Smith and his attorney through new paperwork requirements and a requirement that he attend a credit education course. Such a course would not have done anything to help prevent the medical problems suffered by Mr. Smith and his wife. He did not get into financial trouble through his failure to manage his money. He is 73 years old and he never had any debt problems.

The bill makes no exemptions for people who cannot attend the course that they are supposed to take, this counseling, due to circumstances beyond their control. So Mr. Smith might never have been able to get any relief in bankruptcy under this new bill.

Do we really want to do this to people? Under the new bill, Mr. Smith also would have had to give up his television and VCR to Sears, which claimed a security interest in the items. Under the bill, he would not be permitted to retain possession of these items in chapter 7 unless he affirms the debt or retrieved the item. Sears may demand reaffirmation of the entirely $3,000 debt under the bill, and to redeem, Mr. Smith would have to pay the retail value.

After his wife died and the income was gone, Mr. Smith did not have the money to pay these amounts to Sears. Since he is largely homebound, loss of the items would have been devastating.

The point is, Mr. Smith's medical problems continued. Under the current law, if he again amasses medical and other debts he can't pay, he could seek refuge in chapter 13 where he would be required to pay all that he could afford. Under the new bill, Mr. Smith cannot file a chapter 13 case for 5 years. The time for filing chapter 7 has also been increased.

There have been a bunch of reports about this bill. I know the proponents think they have been unfair. We all have our own definition of right and wrong here. ABC had a tough piece last night. Time magazine had a tough piece. The Wall Street Journal was tough. Business Week had a tough piece.

Personally, as I said about 50 times today, every time I talk about money and the credit card industry, I have to be careful because you cannot make the assumption that because you have an industry, a powerful industry that has poured the money into doing the lobbying, it is a one-to-one correlation to people's positions. You can't do that. I refuse to do it. People can do that to anybody here on any issue.

But that is not the point. Institutionally, I have to say this is, unfortunately, a classic example of an industry with a tremendous amount of financial wherewithal, with an all-out lobbying effort, which I think is probably well satisfied with this piece of legislation because, frankly, there is very little in this legislation that calls for any accountability on the part of this industry.

You will have an amendment tomorrow that deals with some of the predator practices and the ways in which they push credit cards on children.

But there is a whole lot in this legislation going way beyond a means test—too many provisions, too many hurdles which are too harsh—which make it really too difficult for a whole lot of ordinary people who haven't abused anybody or any system to be able to file for chapter 7.

That is what I think this debate is about. Of course, the people most hurt are the people with the least amount of clout.

I think if this amendment passes, it makes this a much better bill because I don't disagree with the premise. I think the legislation is way too broad. Unfortunately, I think the legislation has some very far-reaching and far-ranging serious implications in terms of how it affects people's lives.

If we want to go after people gaming the system, let's do it. Why not just say when you have a family filing for bankruptcy because of medical bills that we exempt them from all of these different tests and provisions and hurdles that will make it impossible for them to rebuild their lives? That is what this amendment is about.

I yield the floor.

Mr. GRASSLEY. Mr. President, I yield 10 minutes to the Senator from Delaware.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Delaware.

Mr. BIDEN. Mr. President, I appreciate what the Senator is trying to do. It is confusing me a little bit, though—not his intention but the way he phrases it.

He talks about the fact that if someone has a serious medical bill that causes them to move into bankruptcy, which I might add is a real problem, and it is the reason why most people move into bankruptcy, it is not credit cards—you can't have it both ways and stand up on the floor and say the reason people go into bankruptcy is credit card debt. There is no evidence of that. The GAO report doesn't say that. The Congressional Research Service doesn't say that—and then point out, which is accurate, that medical bills cause people to go into bankruptcy in considerable numbers. I do not know the exact number. I don't know whether it is 20 percent, 50 percent, or 70 percent. But it is a lot. I understand what he is saying.

By the way, there is one generic point to which I am sympathetic—that people in fact have real serious medical problems and are forced to liquidate everything they have to pay the medical bills. It is an absolute tragedy. I agree with my friend. That is why I support the national health insurance plan and the need to cover all of those folks.

I also appreciate the fact that he is not engaging in and he never has the idea that because a particular group or group of people support a position, and they have power, that anybody who votes with them is because of the power.

My friend and I voted against the position of the Chamber of Commerce yesterday notwithstanding the fact that labor poured tens of thousands of dollars into the campaigns of Members on this side. And I suspect that labor PACs gave my friend from Wisconsin hundreds of thousands of dollars. They did not give a cent to the Senator from Delaware because I don't take PAC money, and I haven't taken PAC money.

I appreciate the honesty that he is exhibiting, but it confuses me on a couple of points. One, I am from Scranton, PA. That is an area of the country that has been on hard times for a long time. My grandfather Finnigan used to have an expression. He would say: When the fellow in Throop—that was a community south of Scranton—loses his job, it means there is an economic slowdown. When your brother-in-law loses a job, it means there is a recession. When you lose your job, it means there is a depression.

I wonder why we don't include people who lose their jobs and have to declare bankruptcy and can't find employment.

I have a little bit of a problem in terms of singling out one type of that debt that is exempt, but not because it has anything to do with any other industry. I don't know any other industry that cares a whole lot about that. My point is, that is a conceptual problem I am having difficulty getting over.

But the second point I wish to make is that his amendment wouldn't affect what this bill is about. It would affect bankruptcy law tremendously, present bankruptcy law, future bankruptcy law, future bankruptcy changes, and present. It would have a profound impact.

But the reason for this bill is to set a standard on the basis of someone moving from chapter 7 to chapter 13. I remind anybody who is listening to this at home that chapter 7 means if you file in that chapter, all your debts are discharged, and you start brand new. You don't owe anybody anything. You don't try to pay anything off. It is done. Chapter 13 means that the vast majority of your debts are discharged,

but you work out a payment plan because you can think you can pay some of it. Most people who chose chapter 13 in the old days chose it to avoid the embarrassment of chapter 7 so they could pay something off in good faith. They had something to pay, but they couldn't pay everybody. They wanted the court to help them figure out how to divvy out what they could pay.

That is what it is about. There is no standard now that a judge uses. There is a generic standard saying substantial abuse. Right now, a bankruptcy court judge or master has to move someone from 7 to 13 if that judge says, look, you are able to pay something so you should be in 13.

My dad always said: Keep your eye on the ball. The ball here is what this is about. This bill is about whether or not there is a standard we are now going to set beyond the broad standard of substantial abuse that says when you must move from chapter 7 into chapter 13 to pay some of your bills.

By the way, you only get moved into that if you have at least $10,000 to distribute after all of your necessities are taken care of, or you are able to pay 25 percent of your debt over 5 years. If you can't meet that standard, you are not in 13 either. You don't get into chapter 13.

Again, keep your eye on the ball. This bill is about whether or not you can pay some of your bills.

Along comes my friend who says—which may be good public policy. I am not disagreeing with the possibility that anybody who declares bankruptcy because of medical bills can discharge those debts outright, period. They are just in chapter 7. They can, in fact, go there.

I point out to my friend about the case in Delaware. The individual filed in chapter 7. He chose to file in chapter 7. He discharged all of his debts. Unfortunately, my State has what I thought the Senator from Minnesota had been saying. You shouldn't have a homestead exemption. My State doesn't. Had he filed 13, he could have kept his home theoretically. He was not required. He filed in chapter 7.

Mr. WELLSTONE. Thirteen.

Mr. BIDEN. Then he would have been able to keep his home in chapter 13. If I am wrong about that, I will correct the record. But in Delaware, under chapter 7, we don't have this way to hide assets in a house. I think you should be able to keep up to $100,000 of the value of your house. But in 13, you get to keep your house as long as you keep your mortgage payments, and you are allowed to have that portion taken out to keep your house just as you can have that portion taken out to pay your medical bills, or pay ongoing expenses that you have—gas for your car to go back and forth to work, et cetera.

That is the case that would not be affected by this legislation. It would not be made better or not be made worse by this will. What would happen is arguably he wouldn't have to go to 13 if he didn't want to because under this bill, the means test in S. 420 establishes a standard. It establishes a standard. And it goes on to point out that in terms of this whole argument about medical bills, which I went into a little while earlier, unless your means test—in my State, by the way, the means test for a family would be $46,000, and you would have to make more than that to even be considered in the means test, but once you are in the means test, then what happens is special circumstances can be counted, whether or not you can still stay in chapter 7 or get bumped to chapter 13. And the special circumstances relate to medical expenses. The medical expenses are your special circumstances.

If you are in a situation where not only do you have medical expenses that you have to meet but you have the medical expenses and other necessary expenses that are not limited to your own medical expenses—for example, the medical expenses you are paying for your mom, the medical expenses you are paying for your adopted child, the medical expenses you are paying for your sister, the medical expenses you are paying for a family member—those get included so you do not get knocked out of chapter 7 under this law. You can count those medical expenses.

So a judge says: OK, look, under the means test, you have this amount of money. You do not make more than $46,000 in Delaware, so you can stay in chapter 7. We are not even going to consider looking at whether or not you have a right to file in chapter 7. And then, by the way, if you are 150 percent above that income, which gets you up to, what, $60,000, or something like that, whatever the exact number is, then you can say: Hey, wait a minute. I have all these medical expenses so I get to stay in chapter 7 anyway.

My confusion is how this amendment relates to this bill. It relates to bankruptcy generally; I acknowledge that. It is a new standard that we are considering, but it does not go to the assertions made by others that people, because of their medical bills, are getting killed with this legislation.

The very example my friend gave already was an example that occurred in Delaware that had nothing to do with this legislation. His medical bills were so high, the poor devil, and his income was so limited, he lost everything. That is tragic. That is why we need national health insurance. But the passage of this bill would not alleviate that problem. So it is kind of a non sequitur. They are not related.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I am trying to respond to some of what my good friend from Delaware has said. It is true that in the example I gave of Allen Smith, he is not affected by the means test. That is my point. There are 200 pages to this bill. I say to my colleague, I went over some of these provisions this afternoon that affect everyone, regardless of income, regardless of whether or not they file for chapter 13 or chapter 7.

Mr. BIDEN. Will the Senator yield?

Mr. WELLSTONE. I will make a couple points, and then I will yield to get the Senator's response.

My point is, why would you want to have these kinds of rules and these kinds of provisions when you have a family being put under because of medical bills?

I am trying to get all my notes together, one by one.

My colleague said, conceptually why not somebody who has lost their job? That could very well be an amendment that I will have on this bill. It is pretty horrible when people lose their jobs. By the way, the next thing they worry about, when they lose their job, is losing their health care coverage. You sort of assume, if somebody loses their job, they can find another job. But what if somebody has been put under because of a medical bill and they themselves are struggling with a disease or a disabling injury? It seems to me this would be the first, if you will, order of exemption.

My colleague says there are sweeping changes to this amendment. That is true. This bill is also cause for sweeping changes. It depends on whether you think the changes are good, whether you think they are the right thing to do or not. That is where we disagree.

Now, it is true—and this is a key point to make—that what I am doing is saying there ought to be some discretion in the system. My colleague talked about the standards. I do not mind having rigorous or even rigid standards, as long as you do not capture the wrong people. But you are capturing the wrong people. The people who pay the price, as I have tried to argue, are people who, again, as determined by the court are filing for bankruptcy because of medical expenses. I think that is about 50 percent of the cases, at least on the basis of what I have seen.

Although, interestingly enough—and I do not want to have a side debate with my colleague on this—although, interestingly enough, in consumer surveys actually people cite credit card companies as the reason they file for bankruptcy before they do for medical expenses.

Mr. BIDEN. Kind of funny. It is wrong, though; isn't it?

Mr. WELLSTONE. To my mind——

Mr. BIDEN. You can't have it both ways.

Mr. WELLSTONE. You can't have it both ways, but it can be interactive. Frankly, there are a number of variables that come into play. I think my colleague from Delaware is right when he talked about job loss. But, I say to the Senator from Delaware—I do not know if he heard my first response,

which was that I absolutely understand conceptually what he was saying when he said: Why not job loss? And I said that could very well be another amendment—as awful as that is, the place to start is the medical expenses.

In relation to job loss, we have this going on right now with 1,300 taconite workers. You go up there and talk to people. The next thing they are frightened of is that in 6 months they will lose their health insurance. If they worked there a little longer, they lose it after a year. And do you know what else. And I am going to try—and this one I am hoping to get support on from a lot of Senators—the other thing I am worried about, I say to Senator BIDEN from Delaware, is that the retirees are terrified—and ''terrified'' is the right word; and too many of them, I would argue, are dealing with cancer—that LTV, the company, is going to file for bankruptcy and they are going to walk away from their health care obligations. That is a huge concern.

Mr. BIDEN. Right. I agree.

Mr. WELLSTONE. But my argument would be that with the medical, it is not just the bills. I am imagining people who have been stricken with illnesses or disabling injuries. So I thought: Look, if there is any group of people—there, but for the grace of God, go I—it applies to them.

Again, I am not arguing that there isn't discretion. Deliberately, we have discretion put in here. I think the rules are too rigid in this bill. I am not arguing that the means test is the issue. In fact, I said this afternoon—and I say tonight—there are a whole bunch of other provisions—I outlined 12, or 13, or 14 provisions—that I think make it difficult for people to rebuild their lives.

That is the point I am making. I do not see why we can't have an exemption. I think it would make the bill a much better bill, and it would accomplish the goal you are trying to accomplish, which is to not let folks game it. But for the families I am talking about, they are not gaming it.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, I yield some of my time. I yield 5 minutes to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. That is very generous of the Senator.

I would like to make three points, and I will try to make them quickly.

One, the point of the Senator's amendment is—and I agree with the thrust of it because there should be no discretion—no discretion—if, in fact, you are bankrupt because of medical bills, then you automatically are out, period. It is done. You do not owe anybody anything; finished, over, done, period. I understand that. And I sympathize with that.

I do not want anybody to mix apples and oranges unintentionally or in listening to this debate. What would be implied from this debate or assumed from this debate is somehow, by the passage of this bill, people with medical bills will be put at a greater disadvantage than they are under the present system. That is not true.

In the broader question of whether or not bankruptcy law—period—should be for people who have no ability to pay their bills because they have medical bills, or have no ability to pay their bills because of the loss of their job, or have no ability to pay their bills because they are deemed to be incompetent, even though they have an estate that exists out there—they are all different things that have nothing to do with the question of whether or not this legislation should pass or should fail. Based on the argument my friend from Wisconsin is making, we should eliminate the bankruptcy law that exists now. We should have no bankruptcy law because this does not exist in the present bankruptcy law.

It doesn't exist in present bankruptcy law. Let's not get confused. If the Senator wishes to make the argument that this is an important exemption that should be written into bankruptcy law as it exists or as it is amended, I understand that; I empathize with it. But if it is to make the case that people with severe medical bills are more disadvantaged under the changes we are proposing than the law that exists now, I don't buy that argument.

I will conclude by saying the only reason I spoke to the question of and agreed with the Senator that I think at least 50 percent of all bankruptcies are filed because of medical bills—at least 50 percent—if that is true, then my friend from Illinois and my other friend from Wisconsin and my friend from Massachusetts are dead wrong when they say the majority of bankruptcies are filed because of credit cards. That means that that can't be true.

Let's just look. I ''ain't'' slow; I did pretty well in math. It is really simple. With fifty percent of 100 percent based upon the fact that you have too many medical bills and you are required to go bankrupt, that means that all other bankruptcies, for whatever reason, amount to 50 percent, which means that credit card bankruptcies must be less than 49 percent—at least less than 49 percent.

According to the study we have gotten, there is no evidence that they have contributed at all to the increase in bankruptcy.

I might add, I am anxious to debate the predatory practice of sending the kids the credit card and all that stuff. With the limits they put on the credit card, those limits that you get when you get that credit card at the front end, these people that can't pay that back are so few that they are not even in the game of declaring bankruptcy. They are not even in the game. The college student who gets a credit card and blows it up and spends $1,000 on the credit card, they don't declare bankruptcy because of a $1,000 debt they don't pay. That is malarkey.

They declare bankruptcy because they run up tens of thousands of dollars in loans to go to college. That is why you should support the Schumer-Biden amendment to make sure that people can deduct the cost of college from their taxes. That is why we should provide for health care for all Americans so we don't have them declaring bankruptcy because of this.

Bankruptcies increase in direct proportion to people losing their health insurance—in direct proportion. Senator KENNEDY stands on the floor—and no one knows more about it than he—and points out that fewer and fewer people have health care coverage since we started this debate on health care because my friends on the other side of the aisle are reluctant to provide for health care for people.

I just want a little truth in advertising here; that is all. It is OK, beat up on the credit card companies, don't like them. Beat up on the big companies, don't like them. This is an ironic position for me to be in after 28 years in the Senate. No one has ever accused me of being a friend of the banking industry. I have been around for a long time. Let's get it straight; you can't have it all ways here.

My friend comes to talk about the predatory practices. There are predatory practices, I acknowledge that. But are they the reason bankruptcies are increasing? Maybe. I see no evidence of it. No one has shown any evidence of that. The only report that was done indicates the opposite. If 50 percent related to health care, then obviously it isn't because of any particular industry.

I thank my colleague for his generosity.

I ask my friend from Iowa—he was not on the floor—I am defending his position. The Senator from Minnesota yielded me 5 minutes of his time. If he needs time, I hope the Senator will lend him the 5 minutes he would have lent me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 13

Mr. GRASSLEY. Mr. President, I believe we can accommodate the Senator from Delaware and the Senator from Minnesota. We have 20 minutes remaining. I will yield myself 5 minutes. Then it is my understanding that Senator HATCH needs some time to respond to the Senator from Minnesota. I will take my time to address an amendment that we are going to be voting on when we vote on two amendments in just a few minutes. That amendment is the amendment by the Senator from Vermont, Mr. LEAHY.

The amendment would allow small businesses to be given special treatment as compared to other businesses. When the words ''small business'' are used around the U.S. Congress, everybody looks up because we know that

small business is the engine of advancement in America, creating the new jobs.

I have to say that albeit his amendment may be well intended because we want small businesses to succeed—and I would be the first one to say that—Senator LEAHY's amendment would be detrimental to this bill and also to many small businesses as well as those he says he is trying to help.

I will explain to the Senate now why I believe his amendment is intended to help small businesses of some very small size and help other businesses that are just a little larger but still very much a small business.

He would do this by creating three categories of unsecured creditors in chapter 7, chapter 12, and chapter 13 proceedings under our bankruptcy code. Priority creditors would be paid first, then small business creditors, and then general business creditors that are not small business creditors are the last in line. I will repeat that. It would give priority creditors the option of being paid first, then small business creditors, and then general business creditors that are not small business creditors are the last in line.

This idea is different from the way bankruptcy has been treated historically where we have only given special treatment to creditors with extraordinary circumstances. What I mean to say is that we have created a priority status for those who have compelling reasons to go first, such as child support, which has dominated this debate on bankruptcy reform for 3 years now. After child support, people who might be killed by drunk drivers is an example, or the importance of high priority for back pay and wages. If you don't have a compelling reason such as these categories I have just listed, then creditors otherwise are given equal treatment.

I have to conclude that this is an antibusiness amendment. It would, for instance, require a law firm or a payday loan shark of five members to be paid before an auto repair shop with 30 employees. Also, the amendment could have an unintended result, such as larger businesses being deterred from offering credit to people who may really need it. Further, this issue has not been examined at all. We don't know for sure what the implications are.

I hope my colleagues will oppose this amendment. Do not be sucked into voting for it because it has a title of small business, because it has small business of a certain category but it hurts small businesses generally.

I yield the floor and yield whatever time Senator HATCH might consume.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 14

Mr. HATCH. Mr. President, I thank my colleague. I appreciate all the work he has done on this bill through the years and here today as well. He and I have walked arm in arm on this bill for a long time.

We have tried to accommodate our friends on the other side in innumerable ways. We have accommodated them. It seems as if we can never quite satisfy some on the other side. I am not finding fault with them; they are very sincere on these amendments, but there is no way we could go with some of the amendments that have been offered.

I am going to talk about the amendment of the distinguished Senator from Minnesota, excepting those with high medical expenses from all provisions of this reform legislation.

The effect of that amendment: If a debtor can demonstrate ''the reason for filing was a result of debts incurred through medical expenses,'' the debtor is exempt from every provision of S. 420, except those they might elect to have covered.

I can imagine that is not going to be much of an election. The amendment would create a major loophole, if we were to accept or vote up the Wellstone amendment. S. 420 already allows all medical expenses to be deducted in determining the ability to pay.

If for some reason a debtor could not deduct them under the IRS guidelines, the debtor can demonstrate that there are ''special'' circumstances. So the only people this amendment would help are well-off people who have the ability to pay but also suffered medical problems.

The amendment unwisely creates two classes of debtors. One class must use the bankruptcy bill as S. 420 would amend it, and another class can use bankruptcy law as it exists today or pick and choose what provisions of this new law apply to it.

To allow some group of citizens, no matter how unfortunate, to pick and choose what parts of the law will apply to them is absolutely unprecedented. But that is what the amendment of the Senator from Minnesota would do. It would allow debtors to evade the child support, alimony, and marital property settlement provisions of this bill that help women and children. The debtor who owed child support could evade his basic responsibilities to pay child support by fitting under the loophole created by this Wellstone amendment.

I have worked long and hard to solve these problems. I have to tell you, I think we have them solved, to a large degree, in this bill. I think people on both sides of the aisle are appreciative we have worked so hard for women and children.

The Wellstone amendment would allow debtors to evade the homestead exemption caps imposed by this bill. His amendment is unworkable. Creditors would not know if they had to make the truth in lending disclosures this bill imposes on them until after the debtor filed for bankruptcy. Yet the disclosures must be given in credit card solicitations and on monthly statements.

The amendment would have the strange effect of apparently exempting creditors from complying with consumer protections in this bill, such as the reaffirmation reforms that we have here, such as the restrictions on creditors who fail to credit plan payments properly, such as the privacy protections, and so forth.

So I hope my colleagues will recognize this amendment for what it is. It is an amendment that will not work. It is not fair. It would benefit only those who could afford to pay their medical bills, and it would not do anything for others. It would allow a loophole so people could pick and choose in legislation that we ought to all be subjected to or have to comply with, or that we ought to all benefit from, depending upon the use of the particular bill because all of those factors are part of it.

I hope our colleagues will vote against this amendment. It is an unwise amendment. It would devastate this bill in many respects, and it would not accomplish what the distinguished Senator would want to accomplish because I know his goal is to help those who are unfortunate. That is our goal, too. That is why we have special circumstances in this bill, to help those who are unfortunate, who should not have to comply with some of the aspects of the bill. His amendment basically helps those who should not be helped, who ought to be able to pay for their own expenses, and who can pay for them.

With that, 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. WELLSTONE. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, I wonder whether my colleague—I think I have 2 minutes—will grant me 2 minutes. I won't need more than 4 minutes.

Mr. GRASSLEY. Yes.

Mr. WELLSTONE. Mr. President, I tried to respond to what colleagues have said. I want to respond to one point my friend from Utah made. The question is whether the amendment carves out a serious loophole in the means test. The answer is no.

The debtor can only get an exemption from this bill if the court finds that the debtor was forced to file because of medical debt. Again, I say to my colleague, I don't have any problem with rigorous standards, or even rigid standards, as long as you don't capture the wrong people. This legislation captures the wrong people. There ought to be some discretion in the system that says, yes, go after those people who are gaming the system—although I think we have very different views about what percentage they are. But for God's sake, when it is a family being put under, through no fault of their own, because of a major medical illness or injury and, therefore, medical bills,

and the court finds that indeed the debtor was forced to file because of a major medical bill, that is where I would argue we ought to have an exemption for these families from any number of the different provisions in this bill that are meant to deal with people involved in gaming the system, which will make it so difficult.

I have listed a lot of these provisions all day. Why would we not, if the purported purpose of this legislation, I say to two good Senators, is to go after people who are gaming the system, to go after some of the abuses, why would we not want to have this very simple exception for people who are filing for bankruptcy because of major medical expenses? That is all this does, as determined by the court.

I yield the remainder of my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I listened to our distinguished colleague from Minnesota. I have to say this bill takes care of people who cannot afford to pay their medical expenses. His amendment would allow those who can afford to pay for them a loophole to get out of paying for them.

The poor really are taken care of in this bill because of the means test we have provided. But the wealthy, even though they have a tremendous capacity to earn money in the future, would be able to get out of all of the provisions of this bill under his amendment if they have medical expenses they can't afford to pay for at that particular time, but they clearly have the ability to pay for it in the future.

This bill is to try to stop that kind of abuse. That is why I cannot support the amendment of the Senator. I know he is trying to do what is right. As a practicality, under bankruptcy law, it would be one of the worst things you could put in this bill. So this is a harmful and unnecessary amendment that would undermine the important reforms in the bankruptcy bill.

Under this amendment, all the debtor who is fully able to repay his debts would have to do to get out of repaying them is to show he filed for bankruptcy because of medical expenses—somebody fully capable of paying his or her bills. S. 420 already allows for unlimited medical expenses to be deducted in determining the ability to pay, and its means test only applies to those who have income above the national median income and have the ability to pay at least 25 percent of their debts over 5 years.

So the amendment of the distinguished Senator is ill-advised. It would be a travesty as part of this particular bill, where we are trying to solve problems and trying to get those who can pay to live up to the responsibilities and not use the bankruptcy laws as a methodology of getting out from under debts they are capable of paying.

I hope our colleagues will vote against this amendment.

Mr. GRASSLEY. How much time remains, Mr. President?

The PRESIDING OFFICER. Five minutes. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the Senator from Minnesota has been building a Potemkin village against this bill over a period of 3 years. We have dealt with many of the houses and buildings that have been put up. First, it was child support. That has quieted down. Then it was the unemployed. That has quieted down. Then it was those who were in a divorce with special problems. That has quieted down.

We have destroyed almost every one of these homes in your village except this one of medical expenses, and it keeps coming up. It started last spring when the Time magazine story came out about how this bill was so unfair to certain families in America.

I assure the Senator that every one of those families mentioned in that story would have been able to take bankruptcy even if our bill were law. Most of those are people who had medical expenses.

This paper house of medical expenses comes up again. I have said so many times in this debate, not just this year but last year, that we allow under this bill 100 percent of the medical expenses to be deducted in determining whether somebody can file under chapter 7 and have the ability to pay. If 100 percent of expenses are not enough, will 101 percent or 102 percent or 110 percent satisfy the Senator? I would almost be willing to give it to the Senator.

I know the Senator says he has to have his amendment or we go through a certain procedure. What does the Senator from Minnesota think the whole process of bankruptcy is about? If we did not have that process, everybody would be gaming the system. We have people gaming the system now.

I just read a story put out by the credit union people about somebody from the Senator's State who had made it very clear why he was going into bankruptcy, and he spent the next 3 months traveling through the South after he retired.

What we are trying to do is bit by bit destroy these faults, these structures built against this bill, and I think we have destroyed them all. I hope this vote on the amendment of the Senator from Minnesota will put this issue of medical expenses to rest once and for all.

The very same people the Senator wants to make sure get a fresh start, I want to make sure get a fresh start, and they are going to be able to do it under our bill. They do not need the amendment of the Senator from Minnesota to do it.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. HATCH. Mr. President, do we have the yeas and nays on both amendments?

The PRESIDING OFFICER. The yeas and nays have only been ordered on the Leahy amendment.

Mr. HATCH. I ask for the yeas and nays on the Wellstone amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 14. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

The result was announced—yeas 34, nays 65, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—34

Akaka	Feingold	Mikulski
Baucus	Graham	Murray
Bayh	Harkin	Nelson (FL)
Boxer	Hollings	Reed
Cantwell	Inouye	Rockefeller
Clinton	Kennedy	Sarbanes
Corzine	Kerry	Schumer
Daschle	Landrieu	Stabenow
Dayton	Leahy	Wellstone
Dodd	Levin	Wyden
Dorgan	Lieberman	
Durbin	Lincoln	

NAYS—65

Allard	Domenici	McConnell
Allen	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Nelson (NE)
Bingaman	Feinstein	Nickles
Bond	Frist	Reid
Breaux	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Byrd	Hatch	Smith (NH)
Campbell	Helms	Smith (OR)
Carnahan	Hutchinson	Snowe
Carper	Hutchison	Specter
Chafee	Inhofe	Stevens
Cleland	Jeffords	Thomas
Cochran	Johnson	Thompson
Collins	Kohl	Thurmond
Conrad	Kyl	Torricelli
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 14) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 13

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate on the Leahy amendment.

Who yields time?

Mr. LEAHY. Mr. President, last week the distinguished majority leader said we needed to pass this bill to help small business creditors in bankruptcy. I agree with him. Tonight we can take a bipartisan step to do just that.

This amendment provides small business creditors with the priority distribution from the bankruptcy estate. They make up 90 percent of the businesses in our country. These are the mom-and-pop stores across the country—the feedstores, the small ranchers, and the small farmers. They are the backbone of our economy.

We are already giving different preferences in this bill. All I am saying is that if you have to have the first preference to a multibillion-dollar credit card company, or the stores on your main street of your hometown, when you list those preferences, give the stores the first preferences. It doesn't let any debtors off their debt, but it helps the small businesses of America.

Mr. HATCH. Mr. President, this amendment would discriminate against any business with more than 25 employees with regard to their ability to collect debts in bankruptcy. Instead of allowing the bankruptcy process to proceed fairly, this amendment would prevent businesses with more than 25 employees from being paid a single penny until smaller businesses were paid in full. It is an improper way to proceed in bankruptcy. We should not discriminate against anybody and let the process takes its course.

I hope our colleagues will vote against this amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—58

Allard	Enzi	Murkowski
Allen	Frist	Nelson (NE)
Bayh	Gramm	Nickles
Bennett	Grassley	Roberts
Biden	Gregg	Santorum
Bingaman	Hagel	Sessions
Bond	Hatch	Shelby
Brownback	Helms	Smith (NH)
Bunning	Hutchinson	Smith (OR)
Burns	Hutchison	Snowe
Campbell	Inhofe	Specter
Carper	Jeffords	Stevens
Chafee	Johnson	Thomas
Cochran	Kyl	Thompson
Collins	Lieberman	Thurmond
Craig	Lott	Torricelli
Crapo	Lugar	Voinovich
DeWine	McCain	Warner
Domenici	McConnell	
Ensign	Miller	

NAYS—41

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

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Kansas.

MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

RULES OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, in accordance with rule XXVI, paragraph 2, of the Standing Rules of the Senate, I ask unanimous consent that there be printed in the RECORD the rules of the Committee on Energy and Natural Resources.

RULES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

GENERAL RULES

Rule 1. The Standing Rules of the Senate, as supplemented by these rules, are adopted as the rules of the Committee and its Subcommittees.

MEETINGS OF THE COMMITTEE

Rule 2. (a) The Committee shall meet on the third Wednesday of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

(b) Business meetings of any Subcommittee may be called by the Chairman of such Subcommittee, Provided, That no Subcommittee meeting or hearing, other than a field hearing, shall be scheduled or held concurrently with a full Committee meeting or hearing, unless a majority of the Committee concurs in such concurrent meeting or hearing.

OPEN HEARINGS AND MEETINGS

Rule 3. (a) All hearings and business meetings of the Committee and its Subcommittees shall be open to the public unless the Committee or Subcommittee involved, by majority vote of all the Members of the Committee or such Subcommittee, orders the hearing or meeting to be closed in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate.

(b) A transcript shall be kept of each hearing of the Committee or any Subcommittee.

(c) A transcript shall be kept of each business meeting of the Committee or any Subcommittee unless a majority of all the Members of the Committee or the Subcommittee involved agrees that some other form of permanent record is preferable.

HEARING PROCEDURE

Rule 4. (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee or any Subcommittee at least one week in advance of such hearing unless the Chairman of the full Committee or the Subcommittee involved determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of all the Members of the Committee or the Subcommittee involved concurs. In no case shall a hearing be conducted with less than twenty-four hours notice. Any document or report that is the subject of a hearing shall be provided to every Member of the committee or Subcommittee involved at least 72 hours before the hearing unless the Chairman and Ranking Member determine otherwise.

(b) Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee or Subcommittee, at least 24 hours in advance of the hearing, a written statement of his or her testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

(c) Each member shall be limited to five minutes in the questioning of any witness until such time as all Members who so desire have had an opportunity to question the witness.

(d) The Chairman and Ranking Minority Member of the Committee or Subcommittee of the Ranking Majority and Minority Members present at the hearing may each appoint one Committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman and the Ranking Majority and Minority Members present may agree. No staff member may question a witness in the absence of a quorum for the taking of testimony.

BUSINESS MEETING AGENDA

Rule 5. (a) A legislative measure, nomination, or other matter shall be included on the agenda of the next following business meeting of the full Committee or any Subcommittee if a written request for such inclusion has been filed with the Chairman of the Committee or Subcommittee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the Committee or Subcommittee to include a legislative measure, nomination, or other matter on the Committee or Subcommittee agenda in the absence of such request.

(b) The agenda for any business meeting of the Committee or Subcommittee shall be provided to each Member and made available to the public at least three days prior to such meeting, and no new items may be added after the agenda is so published except by the approval of a majority of all the Members of the Committee or Subcommittee. The Staff Director shall promptly notify absent Members of any action taken by the Committee or Subcommittee on matters not included on the published agenda.

QUORUMS

Rule 6. (a) Except as provided in subsections (b), (c), and (d), eight Members shall constitute a quorum for the conduct of business of the Committee.

(b) No measure or matter shall be ordered reported from the Committee unless twelve Members of the Committee are actually present at the time such action is taken.

(c) Except as provided in subsection (d), one-third of the Subcommittee Members shall constitute a quorum for the conduct of business of any Subcommittee.

(d) One member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure or matter before the Committee or Subcommittee.

VOTING

Rule 7. (a) A rollcall of the Members shall be taken upon the request on any Member. Any member who does not vote on any rollcall at the time the roll is called, may vote (in person or by proxy) on that rollcall at any later time during the same business meeting.

(b) Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only upon the date for which it is given and upon the items published in the agenda for that date.

(c) Each Committee report shall set forth the vote on the motion to report the measure or matter involved. Unless the Committee directs otherwise, the report will not set out any votes on amendments offered during Committee consideration. Any Member who did not vote on any rollcall shall have the opportunity to have this position recorded in the appropriate Committee record or Committee repot.

(d) The Committee vote to report a measure to the Senate shall also authorize the staff of the Committee to make necessary technical and clerical corrections in the measure.

SUBCOMMITTEES

Rule 8. (a) The number of Members assigned to each Subcommittee and the division between Majority and Minority Members shall be fixed by the Chairman in consultation with the Ranking Minority Member.

(b) Assignment of Members to Subcommittees shall, insofar as possible, reflect the preferences of the Members. No Member will receive assignment to a second Subcommittee until, in order of seniority, all Members of the Committee have chosen assignments to one Subcommittee, and no Member shall receive assignment to a third Subcommittee until, in order of seniority, all Members have chosen assignments to two Subcommittees.

(c) Any member of the Committee may sit with any Subcommittee during its hearings and business meetings but shall not have the authority to vote on any matters before the Subcommittee unless he is a Member of such Subcommittee.

NOMINATIONS

Rule 9. At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any Member, any other witness shall be under oath. Every nominee shall submit a statement of his financial interests, including those of his spouse, his minor children, and other members of his immediate household, on a form approved by the Committee, which shall be sworn to by the nominee as to its completeness and accuracy. A statement of every nominee's financial interest shall be made available to the public on a form approved by the Committee unless the Committee in executive session determines that special circumstances require a full or partial exception to this rule.

INVESTIGATIONS

Rule 10. (a) Neither the Committee nor any of its Subcommittees may undertake an investigation unless specifically authorized by a majority of all the Members of the Committee.

(b) A witness called to testify in an investigation shall be informed of the matter or matters under investigation, given a copy of these rules, given the opportunity to make a brief and relevant oral statement before or after questioning, and be permitted to have counsel of his or her choosing present during his or her testimony at any public or closed hearing, or at any unsworn interview, to advise the witness of his or her legal rights.

(c) For purposes of this rule, the term ''investigation'' shall not include a review or study undertaken pursuant to paragraph 8 of Rule XXVI of the Standing Rules of the Senate or an initial review of any allegation of wrongdoing intended to determine whether there is substantial credible evidence that would warrant a preliminary inquiry or an investigation.

SWORN TESTIMONY

Rule 11. Witnesses in Committee or Subcommittee hearings may be required to give testimony under oath whenever the Chairman or Ranking Minority Member of the Committee or Subcommittee deems such to be necessary. If one or more witnesses at a hearing are required to testify under oath, all witnesses at that hearing shall be required to testify under oath.

SUBPOENAS

Rule 12. No subpoena for the attendance of a witness or for the production of any document, memorandum, record, or other material may be issued unless authorized by a majority of all the Members of the Committee, except that a resolution adopted pursuant to Rule 10(a) may authorize the Chairman, with the concurrence of the Ranking Minority Member, to issue subpoenas within the scope of the authorized investigation.

CONFIDENTIAL TESTIMONY

Rule 13. No confidential testimony taken by or any report of the proceedings of a closed Committee or any Subcommittee, or any report of the proceedings of a closed Committee or Subcommittee hearing or business meeting, shall be made public, in whole or in part or by way of summary, unless authorized by a majority of all the Members of the Committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 14. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open Committee or Subcommittee hearing tends to defame him or otherwise adversely affect his reputation may file with the Committee for its consideration and action a sworn statement of facts relevant to such testimony or evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 15. Any meeting or hearing by the Committee or any Subcommittee which is open to the public may be covered in whole or in part by television broadcast, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the seating, vision, and hearing of Members and staff on the dais or with the orderly process of the meeting or hearing.

AMENDING THE RULES

Rule 16. These rules may be amended only by vote of a majority of all the Members of the Committee in a business meeting of the Committee: Provided, That no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least three days in advance of such meeting.

RULES OF THE SELECT COMMITTEE ON INTELLIGENCE

Mr. SHELBY. Mr. President, paragraph 2 of Senate Rule XXVI requires that not later than March 1 of the first year of each Congress, the rules of each committee shall be published in the RECORD.

In compliance with this provision, I ask unanimous consent that the rules of the Select Committee on Intelligence be printed in the RECORD.

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

SELECT COMMITTEE ON INTELLIGENCE—RULES OF PROCEDURE

RULE 1. CONVENING OF MEETINGS

1.1. The regular meeting day of the Select Committee on Intelligence for the transaction of Committee business shall be every other Wednesday of each month, unless otherwise directed by the Chairman.

1.2. The Chairman shall have authority, upon proper notice, to call such additional meetings of the Committee as he may deem necessary and may delegate such authority to any other member of the Committee.

1.3. A special meeting of the Committee may be called at any time upon the written request of five or more members of the Committee filed with the Clerk of the Committee.

1.4. In the case of any meeting of the Committee, other than a regularly scheduled meeting, the Clerk of the Committee shall notify every member of the Committee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C. and at least 48 hours in the case of any meeting held outside Washington, D.C.

1.5. If five members of the Committee have made a request in writing to the Chairman to call a meeting of the Committee, and the Chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, these members may call a meeting by filing a written notice with the Clerk of the committee who shall promptly notify each member of the Committee in writing of the date and time of the meeting.

RULE 2. MEETING PROCEDURES

2.1. Meetings of the Committee shall be open to the public except as provided in S. Res. 9, 94th Congress, 1st Session.

2.2. It shall be the duty of the Staff Director to keep or cause to be kept a record of all Committee proceedings.

2.3. The Chairman of the Committee, or if the Chairman is not present the Vice Chairman, shall preside over all meetings of the Committee. In the absence of the Chairman and the Vice Chairman at any meeting the ranking majority member, or if no majority member is present the ranking minority member present shall preside.

2.4. Except as otherwise provided in these Rules, decisions of the Committee shall be by a majority vote of the members present and voting. A quorum for the transaction of Committee business, including the conduct

of executive sessions, shall consist of no less than one third of the Committee Members, except that for the purpose of hearing witnesses, taking sworn testimony, and receiving evidence under oath, a quorum may consist of one Senator.

2.5. A vote by any member of the Committee with respect to any measure or matter being considered by the Committee may be cast by proxy if the proxy authorization (1) is in writing; (2) designates the member of the Committee who is to exercise the proxy; and (3) is limited to a specific measure or matter and any amendments pertaining thereto. Proxies shall not be considered for the establishment of a quorum.

2.6. Whenever the Committee by roll vote reports any measure or matter, the report of the Commission upon such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee.

RULE 3. SUBCOMMITTEES

Creation of subcommittees shall be by majority vote of the Committee. Subcommittees shall deal with such legislation and oversight of programs and policies as the Committee may direct. The subcommittees shall be governed by the Rules of the Committee and by such other rules they may adopt which are consistent with the Rules of the Committee.

RULE 4. REPORTING OF MEASURES OR RECOMMENDATIONS

4.1. No measures or recommendations shall be reported, favorably or unfavorably, from the Committee unless a majority of the Committee is actually present and a majority concur.

4.2. In any case in which the Committee is unable to reach a unanimous decision, separate views or reports may be presented by any member or members of the Committee.

4.3. A member of the Committee who gives notice of his intention to file supplemental, minority, or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three working days in which to file such views, and writing with the Clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report.

4.4. Routine, non-legislative actions required of the Committee may be taken in accordance with procedures that have been approved by the Committee pursuant to these Committee Rules.

RULE 5. NOMINATIONS

5.1. Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least 14 days before being voted on by the Committee.

5.2. Each member of the Committee shall be promptly furnished a copy of all nominations referred to the Committee.

5.3. Nominees who are invited to appear before the Committee shall be heard in public session, except as provided in Rule 2.1.

5.4. No confirmation hearing shall be held sooner than seven days after receipt of the background and financial disclosure statement unless the time limit is waived by a majority vote of the Committee.

5.5 The Committee vote on the confirmation shall not be sooner than 48 hours after the Committee has received transcripts of the confirmation hearing unless the time limit is waived by unanimous consent of the Committee.

5.6 No nomination shall be reported to the Senate unless the nominee has filed a background and financial disclosure statement with the Committee.

RULE 6. INVESTIGATIONS

No investigation shall be initiated by the Committee unless at least five members of the Committee have specifically requested the Chairman or the Vice Chairman to authorize such an investigation. Authorized investigations may be conducted by members of the Committee and/or designated Committee staff members.

RULE 7. SUBPOENAS

Subpoenas authorized by the Committee for the attendance of witnesses or the production of memoranda, documents, records or any other material may be issued by the Chairman, the Vice Chairman, or any member of the Committee designated by the Chairman, and my be served by any person designated by the Chairman, Vice Chairman or member issuing the subpoenas. Each subpoena shall have attached thereto a copy of S. Res. 400, 94th Congress, 2d Session and a copy of these rules.

RULE 8. PROCEDURES RELATED TO THE TAKING OF TESTIMONY

8.1 Notice.—Witnesses required to appear before the Committee shall be given reasonable notice and all witnesses shall be furnished a copy of these Rules.

8.2 Oath or Affirmation.—Testimony of witnesses shall be given under oath or affirmation which may be administered by any member of the Committee.

8.3 Interrogation.—Committee interrogation shall be conducted by members of the Committee and such Committee staff as are authorized by the Chairman, Vice Chairman, or the presiding member.

8.4 Counsel for the Witness.—(a) Any witness may be accompanied by counsel. A witness who is unable to obtain counsel may inform the Committee of such fact. If the witness informs the Committee of this fact at least 24 hours prior to his or her appearance before the Committee, the Committee shall then endeavor to obtain voluntary counsel for the witness. Failure to obtain such counsel will not excuse the witness from appearing and testifying.

(b) Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action which may include warning, censure, removal, or a recommendation of contempt proceedings.

(c) There shall be no direct or cross-examination by counsel. However, counsel may submit in writing any question he wishes propounded to his client or to any other witness and may, at the conclusion of his client's testimony, suggest the presentation of other evidence or the calling of other witnesses. The Committee may use such questions and dispose of such suggestions as it deems appropriate.

8.5. Statements by Witnesses.—A witness may make a statement, which shall be brief and relevant, at the beginning and conclusion of his or her testimony. Such statements shall not exceed a reasonable period of time as determined by the Chairman, or other presiding members. Any witness desiring to make a prepared or written statement for the record of the proceedings shall file a copy with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so at least 72 hours in advance of his or her appearance before the Committee.

8.6. Objections and Rulings.—Any objection raised by a witness or counsel shall be ruled upon by the Chairman or other presiding member, and such ruling shall be the ruling of the Committee unless a majority of the Committee present overrules the ruling of the chair.

8.7. Inspection and Correction.—All witnesses testifying before the Committee shall be given a reasonable opportunity to inspect, in the office of the Committee, the transcript of their testimony to determine whether such testimony was correctly transcribed. The witness may be accompanied by counsel. Any corrections the witness desires to make in the transcript shall be submitted in writing to the Committee within five days from the date when the transcript was made available to the witness. Corrections shall be limited to grammar and minor editing, and may not be made to change the substance of the testimony. Any questions arising with respect to such corrections shall be decided by the Chairman. Upon request, those parts of testimony given by a witness in executive session which are subsequently quoted or made part of a public record shall be made available to that witness at his or her expense.

8.8. Requests to Testify.—The Committee will consider requests to testify on any matter or measure pending before the Committee. A person who believes that testimony or other evidence presented at a public hearing, or any comment made by a Committee member or a member of the Committee staff may tend to affect adversely his or her reputation, may request to appear personally before the Committee to testify on his or her own behalf, or may file a sworn statement of facts relevant to the testimony, evidence, or comment, or may submit to the Chairman proposed questions in writing for the cross-examination of other witnesses. The Committee shall take such action as it deems appropriate.

8.9. Contempt Procedures.—No recommendation that a person be cited for contempt of Congress shall be forwarded to the Senate unless and until the Committee has, upon notice to all its members, met and considered the alleged contempt, afforded the person an opportunity to state in writing or in person why he or she should not be held in contempt, and agreed by majority vote of the Committee, to forward such recommendation to the Senate.

8.10. Release of Name of Witness.—Unless authorized by the Chairman, the name of any witness scheduled to be heard by the Committee shall not be released prior to, or after, his or her appearance before the Committee.

RULE 9. PROCEDURES FOR HANDLING CLASSIFIED OR SENSITIVE MATERIAL

9.1 Committee staff offices shall operate under strict precautions. At least one security guard shall be on duty at all times by the entrance to control entry. Before entering the office all persons shall identify themselves.

9.2. Sensitive or classified documents and material shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the Committee offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, and in conformity with Section 10.3 hereof. All documents or materials removed from the Committee offices for such authorized purposes must be returned to the Committee's secure storage area for overnight storage.

9.3. Each member of the Committee shall at all times have access to all papers and other material received from any source. The Staff Director shall be responsible for the maintenance, under appropriate security procedures, of a registry which will number

and identify all classified papers and other classified materials in the possession of the Committee, and such registry shall be available to any member of the Committee.

9.4. Whenever the Select Committee on Intelligence makes classified material available to any other Committee of the Senate or to any member of the Senate not a member of the Committee, such material shall be accompanied by a verbal or written notice to the recipients advising of their responsibility to protect such material pursuant to section 8 of S. Res. 400 of the 94th Congress. The Clerk of the Committee shall ensure that such notice is provided and shall maintain a written record identifying the particular information transmitted and the Committee or members of the Senate receiving such information.

9.5. Access to classified information supplied to the Committee shall be limited to those Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and, under the Committee's direction, the Staff Director and Minority Staff Director.

9.6. No member of the Committee or of the Committee staff shall disclose, in whole or in part or by way of summary, to any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the committee in executive session including the name of any witness who appeared or was called to appear before the Committee in executive session, or the contents of any papers or materials or other information received by the Committee except as authorized herein, or otherwise as authorized by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate. For purposes of this paragraph, members and staff of the Committee may disclose classified information in the possession of the Committee only to persons with appropriate security clearances who have a need to know such information for an official governmental purpose related to the work of the Committee. Information discussed in executive sessions of the Committee and information contained in papers and materials which are not classified but which are controlled by the Committee may be disclosed only to persons outside the Committee who have a need to know such information for an official governmental purpose related to the work of the Committee and only if such disclosure has been authorized by the Chairman and Vice Chairman of the Committee, or by the Staff Director and Minority Staff Director, acting on their behalf. Failure to abide by this provision shall constitute grounds for referral to the Select Committee on Ethics pursuant to Section 8 of S. Res. 400.

9.7. Before the Committee makes any decision regarding the disposition of any testimony, papers, or other materials presented to it, the Committee members shall have a reasonable opportunity to examine all pertinent testimony, papers, and other materials that have been obtained by the members of the Committee or the Committee staff.

9.8. Attendance of persons outside the Committee at closed meetings of the Committee shall be kept at a minimum and shall be limited to persons who appropriate security clearance and a need-to-know the information under consideration for the execution of their official duties. Notes taken at such meetings by any person in attendance shall be returned to the secure storage area in the Committee's offices at the conclusion of such meetings, and may be made available to the department, agency, office, committee or entity concerned only in accordance with the security procedures of the Committee.

RULE 10. STAFF

10.1. For purposes of these rules. Committee staff includes employees of the Committee, consultants to the Committee, or any other person engaged by contract or otherwise to perform services for or at the request of the Committee. To the maximum extent practicable, the Committee shall rely on its full-time employees to perform all staff functions. No individual may be retained as staff of the Committee or to perform services for the Committee unless that individual holds appropriate security clearances.

10.2. The appointment of Committee staff shall be confirmed by a majority vote of the Committee. After confirmation, the Chairman shall certify Committee staff appointments to the Financial Clerk of the Senate in writing. No committee staff shall be given access to any classified information or regular access to the Committee offices, until such Committee staff has received an appropriate security clearance as described in Section 6 of Senate Resolution 400 of the 94th Congress.

10.3. The Committee staff works for the Committee as a whole, under the supervision of the Chairman and Vice Chairman of the Committee. The duties of the Committee staff shall be performed, and Committee staff personnel affairs and day-to-day operations, including security and control of classified documents and material, and shall be administered under the direct supervision and control of the Staff Director. The Minority Staff Director and the Minority Counsel shall be kept fully informed regarding all matters and shall have access to all material in the files of the Committee.

10.4 The Committee staff shall assist the minority as fully as the majority in the expression of minority views, including assistance in the preparation and filing of additional, separate and minority views, to the end that all points of view may be fully considered by the Committee and the Senate.

10.5 The members of the Committee staff shall not discuss either the substance or procedure of the work of the Committee with any person not a member of the Committee or the Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, either during their tenure as a member of the Committee staff at any time thereafter except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such a manner as may be determined by the Senate.

10.6 No member of the Committee staff shall be employed by the Committee unless and until such a member of Committee staff agrees in writing, as a condition of employment to abide by the conditions of the nondisclosure agreement promulgated by the Senate Select Committee on Intelligence, pursuant to Section 6 of S. Res. 400 of the 94th Congress, 2nd Session, and to abide by the Committee's code of conduct.

10.7 No member of the Committee staff shall be employed by the Committee unless and until such a member of the Committee staff agrees in writing, as a condition of employment, to notify the Committee or in the event of the Committee's termination the Senate of any request for his or her testimony, either during his tenure as a member of the Committee staff or at any time thereafter with respect to information which came into his or her possession by virtue of his or her position as a member of the Committee staff. Such information shall not be disclosed in response to such requests except as directed by the Committee in accordance with Section 8 of S. Res. 400 of the 94th Congress and the provisions of these rules, or in the event of the termination of the Committee, in such manner as may be determined by the Senate.

10.8 The Committee shall immediately consider action to be taken in the case of any member of the Committee staff who fails to conform to any of these Rules. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff.

10.9. Within the Committee staff shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards.

10.10 The workplace of the Committee shall be free from illegal use, possession, sale or distribution of controlled substances by its employees. Any violation of such policy by any member of the Committee staff shall be grounds for termination of employment. Further, and illegal use of controlled substances by a member of the Committee staff, within the workplace or otherwise, shall result in reconsideration of the security clearance of any such staff member and may constitute grounds for termination of employment with the Committee.

10.11. In accordance with title III of the Civil Rights Act of 1991 (P.L. 102–166), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, handicap or disability.

RULE 11. PREPARATION FOR COMMITTEE MEETINGS

11.1. Under direction of the Chairman and the Vice Chairman, designated Committee staff members shall brief members of the Committee at a time sufficiently prior to any Committee meeting to assist the Committee members in preparation for such meeting and to determine any matter which the Committee member might wish considered during the meeting. Such briefing shall, at the request of a member, include a list of all pertinent papers and other materials that have been obtained by the Committee that bear on matters to be considered at the meeting.

11.2. The Staff director shall recommend to the Chairman and the Vice Chairman the testimony, papers, and other materials to be presented to the Committee at any meeting. The determination whether such testimony, papers, and other materials shall be presented in open or executive session shall be made pursuant to the Rules of the Senate and Rules of the Committee.

11.3. The Staff Director shall ensure that covert action programs of the U.S. Government receive appropriate consideration by the Committee no less frequently than once a quarter.

RULE 12. LEGISLATIVE CALENDAR

12.1. The Clerk of the Committee shall maintain a printed calendar for the information of each Committee member showing the measures introduced and referred to the Committee and the status of such measures; nominations referred to the Committee and their status: and such other matters as the Committee determines shall be included. The Calendar shall be revised from time to time to show pertinent changes. A copy of each such revision shall be furnished to each member of the Committee.

12.2. Unless otherwise ordered, measures referred to the Committee shall be referred by the Clerk of the Committee to the appropriate department or agency of the Government for reports thereon.

RULE 13. COMMITTEE TRAVEL

13.1. No member of the Committee or Committee Staff shall travel abroad on Committee business unless specifically authorized by the Chairman and Vice Chairman. Requests for authorization of such travel shall state the purpose and extent of the trip. A full report shall be filed with the Committee when travel is completed.

13.2. When the Chairman and the Vice Chairman approve the foreign travel of a member of the Committee staff not accompanying a member of the Committee, all members of the Committee are to be advised, prior to the commencement of such travel, of its extent, nature and purpose. The report referred to in Rule 13.1 shall be furnished to all members of the Committee and shall not be otherwise disseminated without the express authorization of the Committee pursuant to the Rules of the Committee.

13.3. No member of the Committee staff shall travel within this country on Committee business unless specifically authorized by the Staff Director as directed by the Committee.

RULE 14. CHANGES IN RULES

These Rules may be modified, amended, or repealed by the Committee, provided that a notice in writing of the proposed change has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken.

APPENDIX A

94TH, CONGRESS, 2D SESSION

S. RES. 400

[Report No. 94–675]

[Report No. 94–770]

IN THE SENATE OF THE UNITED STATES

MARCH 1, 1976

Mr. Mansfield (for Mr. Ribicoff) (for himself, Mr. Church, Mr. Percy, Mr. Baker, Mr. Brock, Mr. Chiles, Mr. Glenn, Mr. Huddleston, Mr. Jackson, Mr. Javits, Mr. Mathias, Mr. Metcalf, Mr. Mondale, Mr. Morgan, Mr. Muskie, Mr. Nunn, Mr. Roth, Mr. Schweiker, and Mr. Weicker) submitted the following resolution; which was referred to the Committee on Government Operations.

MAY 19, 1976—CONSIDERED, AMENDED, AND AGREED TO

Resolution to establish a Standing Committee of the Senate on Intelligence, and for other purposes

Resolved, That it is the purpose of this resolution to establish a new select committee of the Senate, to be known as the Select Committee on Intelligence, to oversee and make continuing studies of the intelligence activities and programs of the United States Government, and to submit to the Senate appropriate proposals for legislation and report to the Senate concerning such intelligence activities and programs. In carrying out this purpose, the Select Committee on Intelligence shall make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the security and vital interests of the Nation. It is further the purpose of this resolution to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.

SEC. 2. (a)(1) There is hereby established a select committee to be known as the Select Committee on Intelligence (hereinafter in this resolution referred to as the ''select committee''). The select committee shall be composed of fifteen members appointed as follows:

(A) two members from the Committee on Appropriations;

(B) two members from the Committee on Armed Services;

(C) two members from the Committee on Foreign Relations;

(D) two members from the Committee on the Judiciary; and

(E) seven members to be appointed from the Senate at large.

(2) Members appointed from each committee named in clauses (A) through (D) of paragraph (1) shall be evenly divided between the two major political parties and shall be appointed by the President pro tempore of the Senate upon the recommendations of the majority and minority leaders of the Senate. Four of the members appointed under clause (E) of paragraph (1) shall be appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate and three shall be appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

(3) The majority leader of the Senate and the minority leader of the Senate shall be ex officio members of the select committee but shall have no vote in the committee and shall not be counted for purposes of determining a quorum.

(b) No Senator may serve on the select committee for more than eight years of continuous service, exclusive of service by any Senator on such committee during the Ninety-fourth Congress. To the greatest extent practicable, one-third of the Members of the Senate appointed to the select committee at the beginning of the Ninety-seventh Congress and each Congress thereafter shall be Members of the Senate who did not serve on such committee during the preceding Congress.

(c) At the beginning of each Congress, the Members of the Senate who are members of the majority party of the Senate shall elect a chairman for the select committee, and the Members of the Senate who are from the minority party of the Senate shall elect a vice chairman for such committee. The vice chairman shall act in the place and stead of the chairman in the absence of the chairman. Neither the chairman nor the vice chairman of the select committee shall at the same time serve as chairman or ranking minority member of any other committee referred to in paragraph 4(e)(1) of rule XXV of the Standing Rules of the Senate.

SEC. 3. (a) There shall be referred to the select committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

(2) Intelligence activities of all other departments and agencies of the Government, including, but not limited to, the intelligence activities of the Defense Intelligence Agency, the National Security Agency, and other agencies of the Department of State; the Department of Justice; and the Department of the Treasury.

(3) The organization or reorganization of any department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence activities.

(4) Authorizations for appropriations, both direct and indirect, for the following:

(A) The Central Intelligence Agency and Director of Central Intelligence.

(B) The Defense Intelligence Agency.

(C) The National Security Agency.

(D) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(E) The intelligence activities of the Department of State.

(F) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(G) Any department, agency, or subdivision which is the successor to any agency named in clause (A), (B), or (C); and the activities of any department, agency, or subdivision which is the successor to any department, agency, bureau, or subdivision named in clause (D), (E), or (F) to the extent that the activities of such successor department, agency, or subdivision are activities described in clause (D), (E), or (F).

(b) Any proposed legislation reported by the select committee, except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within thirty days after the day on which such proposed legislation is referred to such standing committee; and any proposed legislation reported by any committee, other than the select committee, which contains any matter within the jurisdiction of the select committee shall, at the request of the chairman of the select committee, be referred to the select committee for its consideration of such matter and be reported to the Senate by the select committee within thirty days after the day on which such proposed legislation is referred to such committee. In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed herein, such committee shall be automatically discharged from further consideration of such proposed legislation on the thirtieth day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise. In computing any thirty-day period under this paragraph there shall be excluded from such computation any days on which the Senate is not in session.

(c) Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.

(d) Nothing in this resolution shall be construed as amending, limiting, or otherwise changing the authority of any standing committee of the Senate to obtain full and prompt access to the product of the intelligence activities of any department or agency of the Government relevant to a matter otherwise within the jurisdiction of such committee.

SEC. 4. (a) The select committee, for the purposes of accountability to the Senate, shall make regular and periodic reports to the Senate on the nature and extent of the intelligence activities of the various departments and agencies of the United States. Such committee shall promptly call to the attention of the Senate or to any other appropriate committee or committees of the Senate any matters requiring the attention of the Senate or such other committee or committees. In making such report, the select committee shall proceed in a manner consistent with section 8(c)(2) to protect national security.

(b) The select committee shall obtain an annual report, from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence activities of the agency or department concerned and the intelligence activities of foreign countries directed at the

United States or its interest. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of individuals engaged in intelligence activities for the United States or the divulging of intelligence methods employed or the sources of information on which such reports are based or the amount of funds authorized to be appropriated for intelligence activities.

(c) On or before March 15 of each year, the select committee shall submit to the Committee on the Budget of the Senate the views and estimates described in section 301(c) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

SEC. 5. (a) For the purpose of this resolution, the select committee is authorized in its discretion (1) to make investigations into any matter within its jurisdiction, (2) to make expenditures from the contingent fund of the Senate, (3) to employ personnel, (4) to hold hearings, (5) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (6) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (7) to take depositions and other testimony, (8) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (9) with the prior consent of the government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(c) Subpoenas authorized by the select committee may be issued over the signature of the chairman, the vice chairman or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or any member signing the subpoenas.

SEC. 6. No employee of the select committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed to in writing and under oath to be bound by the rules of the Senate (including the jurisdiction of the Select Committee on Standards and Conduct and of such committee as to the security of such information during and after the period of his employment or contractual agreement with such committee; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of Central Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 7. The select committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such com mittee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 8. (a) the select committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the select committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section.

(b)(1) In any case in which the select committee votes to disclose publicly any information which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, such committee shall notify the President of such vote.

(2) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally in writing, notifies the select committee of his objections to the disclosure of such information as provided in paragraph (2), such committee may, by majority vote, refer the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.

(4) Whenever the select committee votes to refer the question of disclosure of any information to the Senate under paragraph (3), the chairman shall not later than the first day on which the Senate is in session following the day on which the vote occurs, report the matter to the Senate for its consideration.

(5) One hour after the Senate convenes on the fourth day on which the Senate is in session following the day on which any such matter is reported to the Senate, or at such earlier time as the majority leader and the minority leader of the Senate jointly agree upon in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate, the Senate shall go into closed session and the matter shall be the pending business. In considering the matter in closed session the Senate may—

(A) approve the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered to be disclosed.

(B) disapprove the public disclosure of all or any portion of the information in question, in which case the committee shall not publicly disclose the information ordered not to be disclosed, or

(C) refer all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question.

Upon conclusion of the information of such matter in closed session, which may not extend beyond the close of the ninth day on which the Senate is in session following the day on which such matter was reported to the Senate, or the close of the fifth day following the day agreed upon jointly by the majority and minority leaders in accordance with paragraph 5 of rule XVII of the Standing Rules of the Senate (whichever the case may be), the Senate shall immediately vote on the disposition of such matter in open session, without debate, and without divulging the information with respect to which the vote is being taken. The Senate shall vote to dispose of such matter by one or more of the means specified in clauses (A), (B), and (C) of the second sentence of this paragraph. Any vote of the Senate to disclose any information pursuant to this paragraph shall be subject to the right of a Member of the Senate to move for reconsideration of the vote within the time and pursuant to the procedures specified in rule XIII of the Standing Rules of the Senate, and the disclosure of such information shall be made consistent with that right.

(c)(1) No information in the possession of the select committee relating to the lawful intelligence activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to subsection (a) or (b) of this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the Senate except in a closed session of the Senate or as provided in paragraph (2).

(2) The select committee may, under such regulations as the committee shall prescribe to protect the confidentiality of such information, make any information described in paragraph (1) available to any other committee or any other Member of the Senate. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which the committee or which Members of the Senate received such information under this subsection, shall disclose such information except in a closed session of the Senate.

(d) It shall be the duty of the Select Committee on Standards and Conduct[1] to investigate any unauthorized disclosure of intelligence information by a Member, officer or employee of the Senate in violation of subsection (c) and to report to the Senate concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Select Committee on Standards and Conduct[1] shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Select Committee on Standards and Conduct[1] determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the Senate and recommend appropriate action such as censure, removal from committee membership, or expulsion from the Senate, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 9. The select committee is authorized to permit any personal representative of the President, designated by the President to serve as a liaison to such committee, to attend any closed meeting of such committee.

SEC. 10. Upon expiration of the Select Committee on Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress, all records, files, documents, and other materials in the possession,

custody, or control of such committee, under appropriate conditions established by it, shall be transferred to the select committee.

SEC. 11. (a) It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency: *Provided,* That this does not constitute a condition precedent to the implementation of any such anticipated intelligence activity.

(b) it is the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction.

(c) It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

SEC. 12. Subject to the Standing Rules of the Senate, no funds shall be appropriated for any fiscal year beginning after September 30, 1976, with the exception of a continuing bill or resolution, or amendment thereto, or conference report thereon, to, or for use of, any department or agency of the United States to carry out any of the following activities, unless such funds shall have been previously authorized by a bill or joint resolution passed by the Senate during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence activities of the Department of State.

(6) The intelligence activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

SEC. 13. (a) The select committee shall make a study with respect to the following matters, taking into consideration with respect to each such matter, all relevant as pects of the effectiveness of planning, gathering, use, security, and dissemination of intelligence:

(1) the quality of the analytical capabilities of the United States foreign intelligence agencies and means for integrating more closely analytical intelligence and policy formulation;

(2) the extent and nature of the authority of the departments and agencies of the executive branch to engage in intelligence activities and the desirability of developing charters for each intelligence agency or department;

(3) the organization of intelligence activities in the executive branch to maximize the effectiveness of the conduct, oversight, and accountability of intelligence activities; to reduce duplication or overlap; and to improve the morale of the personnel of the foreign intelligence agencies;

(4) the conduct of covert and clandestine activities and the procedures by which Congress is informed of such activities;

(5) the desirability of changing any law, Senate rule or procedure, or any Executive order, rule, or regulation to improve the protection of intelligence secrets and provide for disclosure of information for which there is no compelling reason for secrecy;

(6) the desirability of establishing a standing committee of the Senate on intelligence activities;

(7) the desirability of establishing a joint committee of the Senate and the House of Representatives on intelligence activities in lieu of having separate committees in each House of Congress, or of establishing procedures under which separate committees on intelligence activities of the two Houses of Congress would receive joint briefings from the intelligence agencies and coordinate their policies with respect to the safeguarding of sensitive intelligence information;

(8) the authorization of funds for the intelligence activities of the Government and whether disclosure of any of the amounts of such funds is in the public interest; and

(9) the development of a uniform set of definitions for terms to be used in policies or guidelines which may be adopted by the executive or legislative branches to govern, clarify, and strengthen the operation of intelligence activities.

(b) The select committee may, in its discretion, omit from the special study required by this section any matter it determines has been adequately studied by the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, established by Senate Resolution 21, Ninety-fourth Congress.

(c) The select committee shall report the results of the study provided for by this section to the Senate, together with any recommendations for legislative or other actions it deems appropriate, no later than July 1, 1977, and from time to time thereafter as it deems appropriate.

SEC. 14. (a) As used in this resolution, the term ''intelligence activities'' includes (1) the collection, analysis, production, dissemination, or use of information which relates to any foreign country, or any government, political group, party, military force, movement, or other association in such foreign country, and which relates to the defense, foreign policy, national security, or related policies of the United States, and other activity which is in support of such activities; (2) activities taken to counter similar activities directed against the United States; (3) covert or clandestine activities affecting the relations of the United States with any foreign government, political group, party, military force, movement or other association; (4) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by any department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States, and covert or clandestine activities directed against such persons. Such term does not include tactical foreign military intelligence serving no national policy-making function.

(b) As used in this resolution, the term ''department or agency'' includes any organization, committee, council, establishment, or office within the Federal Government.

(c) For purposes of this resolution, reference to any department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that such successor engages in intelligence activities now conducted by the department, agency, bureau, or subdivision referred to in this resolution.

SEC. 15. (This section authorized funds for the select committee for the period May 19, 1976, through Feb. 28, 1977.)

SEC. 16. Nothing in this resolution shall be construed as constituting acquiescence by the Senate in any practice, or in the conduct of any activity, not otherwise authorized by law.

APPENDIX B

94TH CONGRESS, 1ST SESSION

S. RES. 9

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

Mr. Chiles (for himself, Mr. Roth, Mr. Biden, Mr. Brock, Mr. Church, Mr. Clark, Mr. Cranston, Mr. Hatfield, Mr. Hathaway, Mr. Humphrey, Mr. Javits, Mr. Johnston, Mr. McGovern, Mr. Metcalf, Mr. Mondale, Mr. Muskie, Mr. Packwood, Mr. Percy, Mr. Proxmire, Mr. Stafford, Mr. Stevenson, Mr. Taft, Mr. Weicker, Mr. Bumpers, Mr. Stone, Mr. Culver, Mr. Ford, Mr. Hart of Colorado, Mr. Laxalt, Mr. Nelson, and Mr. Haskell) introduced the following resolution; which was read twice and referred to the Committee on Rules and Administration

Resolution amending the rules of the Senate relating to open committee meetings

Resolved, That paragraph 7(b) of rule XXV of the Standing Rules of the Senate is amended to read as follows:

''(b) Each meeting of a standing, select, or special committee of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meetings may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

''(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

''(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

''(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

''(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

''(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

''(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

''(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is ruired to be kept secret in order to prevent undue injury to the competitive position of such person.

Whenever any hearing conducted by any such committee or subcommittee is open to the public, that hearing may be broadcast by radio or television, or both, under such rules as the committee or subcommittee may adopt.''.

SEC. 2. Section 133A(b) of the Legislative Reorganization Act of 1946, section 242(a) of the Legislative Reorganization Act of 1970, and section 102 (d) and (e) of the Congressional Budget Act of 1974 are repealed.

RULES OF THE COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedures of the committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On March 7, 2001, the Committee on Indian Affairs held a business meeting during which the members of the committee unanimously adopted rules to govern the procedures of the committee. Consistent with standing rule XXVI, today I ask unanimous consent to print in the RECORD the rules of the Senate Committee on Indian Affairs.

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

RULES OF THE COMMITTEE ON INDIAN AFFAIRS

COMMITTEE RULES

Rule 1. The Standing Rules of the Senate, Senate Resolution 4, and the provisions of the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, to the extent the provisions of such Act are applicable to the Committee on Indian Affairs and supplemented by these rules, are adopted as the rules of the Committee.

MEETINGS OF THE COMMITTEE

Rule 2. The Committee shall meet on the first Tuesday of each month while the Congress is in session for the purpose of conducting business, unless for the convenience of the Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

OPEN HEARINGS AND MEETINGS

Rule 3. Hearings and business meetings of the Committee shall be open to the public except when the Chairman by a majority vote orders a closed hearing or meeting.

HEARING PROCEDURE

Rule 4(a). Public notice shall be given of the date, place and subject matter of any hearing to be held by the Committee at least one week in advance of such hearing unless the Chairman of the Committee determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of the Committee involved concurs. In no case shall a hearing be conducted with less than 24 hours notice.

(b). Each witness who is to appear before the Committee shall file with the Committee, at least 72 hours in advance of the hearing, an original and 75 printed copies of his or her written testimony. In addition, each witness shall provide an electronic copy of the testimony on a computer disk formatted and suitable for use by the Committee.

(c). Each member shall be limited to five (5) minutes in questioning of any witness until such times as all Members who so desire have had an opportunity to question the witness unless the Committee shall decide otherwise.

(d). the Chairman and Vice Chairman or the ranking Majority and Minority Members present at the hearing may each appoint one Committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such time as the Chairman and Vice Chairman or the Ranking Majority and Minority Members present may agree.

BUSINESS MEETING AGENDA

Rule 5(a). A legislative measure or subject shall be included in the agenda of the next following business meeting of the Committee if a written request by a Member for such inclusion has been filed with the Chairman of the Committee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the Committee to include legislative measures or subject on the Committee agenda in the absence of such request.

(b). Notice of, and the agenda for, any business meeting of the Committee shall be provided to each Member and made available to the public at least two days prior to such meeting, and no new items may be added after the agenda is published except by the approval of a majority of the Members of the Committee. The Clerk shall promptly notify absent Members of any action taken by the Committee on matters not included in the published agenda.

QUORUM

Rule 6(a). Except as provided in subsections (b) and (c), eight (8) Members shall constitute a quorum for the conduct of business of the Committee. Consistent with Senate rules, a quorum is presumed to be present unless the absence of a quorum is noted by a Member.

(b). A measure may be ordered reported from the Committee unless an objection is made by a Member, in which case a recorded vote of the Members shall be required.

(c). One Member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure before the Committee.

VOTING

Rule 7(a). A Recorded vote of the Members shall be taken upon the request of any Member.

(b). Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only for the date for which it is given and upon the terms published in the agenda for that date.

SWORN TESTIMONY AND FINANCIAL STATEMENTS

Rule 8. Witnesses in Committee hearings may be required to give testimony under oath whenever the Chairman or Vice Chairman of the Committee deems it to be necessary. At any hearing to confirm a Presidential nomination, the testimony of the nominee, and at the request of any Member, any other witness, shall be under oath. Every nominee shall submit a financial statement, on forms to be perfected by the Committee, which shall be sworn to by the nominee as to its completeness and accuracy. All such statements shall be made public by the Committee unless the Committee, in executive session, determines that special circumstances require a full or partial exception to this rule. Members of the Committee are urged to make public a complete disclosure of their financial interests on forms to be perfected by the Committee in the manner required in the case of Presidential nominees.

CONFIDENTIAL TESTIMONY

Rule 9. No confidential testimony taken by, or confidential material presented to the Committee or any report of the proceedings of a closed Committee hearing or business meeting shall be made public in whole or in part by way of summary, unless authorized by a majority of the Members of the Committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 10. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open Committee hearing tends to defame him or her or otherwise adversely affect his or her reputation may file with the Committee for its consideration and action a sworn statement of facts relevant to such testimony of evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 11. Any meeting or hearing by the Committee which is open to the public may be covered in whole or in part by television, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the sight, vision, and hearing of Members and staff on the dais or with the orderly process of the meeting or hearing.

AMENDING THE RULES

Rule 12. These rules may be amended only by a vote of a majority of all the Members of the Committee in a business meeting of the Committee; Provided, that no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least seven (7) days in advance of such meeting.

ADDITIONAL STATEMENTS

TRIBUTE TO ISRAEL BROOKS

• Mr. HOLLINGS. Mr. President, for the past 33 years, Israel Brooks has done all citizens of South Carolina a great favor by working in law enforcement. That is why it is with a degree of sadness that I note his departure from the post of U.S. Marshal for South Carolina after seven years of service. Israel Brooks' career is a testament to the caliber of leadership that his colleagues have learned to expect from him. A native of Newberry, SC, he served for four years in the U.S. Marine Corps where he rose to the rank of sergeant and platoon leader. Then, in 1967, he became South Carolina's first African-American highway patrolman. After a five-year stint as an instructor at the South Carolina Criminal Justice Academy, he continued to climb the ranks of the highway patrol, serving as Major for four years until taking the marshal's post in 1994.

Recently, Marshal Brooks was honored here in Washington for his lifelong commitment to fostering equal opportunities in the workplace as a recipient of the Equal Employment Opportunity Award. He is most deserving of this and the many other accolades that he has received throughout his distinguished career. I am confident that Israel Brooks is one of the finest law enforcement officers in the modern history of South Carolina and my staff and I will miss working with him.•

MESSAGE FROM THE HOUSE

At 2:54 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 724. An act to authorize appropriations to carry out part B of title I of the Energy Policy and Conservation Act, relating to the Strategic Petroleum Reserve.

H.R. 727. An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

The message also announced that pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), the Minority Leader appoints the following individuals to the China Security Commission: George Becker of Pittsburgh, Pennsylvania; Kenneth Lewis of Portland, Oregon; and Michael Wessel of Falls Church, Virginia.

The message further announced that pursuant to section 202(b)(3) of the Goals 2000: Educate America Act (20 U.S.C. 5822), the Minority Leader appoints the following Member of the House of Representatives to the National Education Goals Panel: Mr. GEORGE MILLER of California.

The message also announced that pursuant to 10 U.S.C. 9355(a), the Speaker appoint the following Members of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Mr. YOUNG of Florida and Mr. HEFLEY.

The message further announced that pursuant to 14 U.S.C. 194(a), the Speaker appoint the following Member of the House of Representatives to the Board of Visitors to the United State Coast Guard Academy: Mr. SIMMONS.

The message also announced that pursuant to 10 U.S.C. 6968(a), the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Mr. SKEEN and Mr. GILCHREST.

The message further announced that pursuant to 10 U.S.C. 4335(a), the Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United State Academy: Mr. TAYLOR of the North Carolina and Mrs. KELLY.

The message also announced that pursuant to 46 U.S.C. 1295(h), the Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United State Merchant Marine Academy: Mr. KING.

The message further announced that pursuant to 320(b)(2) of Public Law 106–291, the Speaker appoints the following members on the part of the House of Representatives to the Advisory Committee on Forest Counties Payment: Mr. Robert E. Douglas of California and Mr. Mark Evans of Texas.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 724. An act to authorize appropriations to carry out part B of title I of the Energy Policy and Conservation Act, relating to the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

H.R. 727. An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

Pursuant to 5 U.S.C. 802(a), the Committee on Health, Education, Labor, and Pensions was discharged from the further consideration of the following joint resolution, which was placed on the calendar on March 5, 2001:

S.J. Res. 6. A joint resolution providing for congressional disapproved of the rule submitted by the Department of Labor under charter 8 of title 5, United States Code, relating to ergonomics.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–914. A communication from the Chairman and Chief Executive Officer of the Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled ''Disclosure to Shareholders'' (RIN3052–AB94) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–915. A communication from the Acting Administrator of the Agricultural Marketing Service, Research and Promotion Branch, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Watermelon Research and Promotion Plan'' (Docket No . FV–703–FR) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–916. A communication from the Acting Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tomatoes Grown in Florida; Change in Size Designation'' (Docket No. FV00–966–1FIR) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–917. A communication from the Acting Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Revision of Administrative Rules and Regulations'' (Docket No. FV00–956–1FIR) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–918. A communication from the Acting Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Olives Grown in California; Increased Assessment Rate'' (Docket No. FV01–932–1IFR) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–919. A communication from the Acting Administrator of the Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 2000—2001 Marketing Year'' (Docket No. FV01–982–1IFR) received on March 6, 2001; to the Committee on Agriculture, Nutrition, and Forestry.

EC–920. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the annual report relating to programmatic, managerial, and financial activities for Fiscal Year 2000; to the Committee on Governmental Affairs.

EC–921. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 13–603, ''Title 25, D.C. Code Enactment and Related Amendments Act of 2001''; to the Committee on Governmental Affairs.

EC–922. A communication from the Chairman of the Board of Governors, Federal Reserve System, transmitting, pursuant to law, the Board's report under the Government in the Sunshine Act for calendar year 2000; to the Committee on Governmental Affairs.

EC–923. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, a report concerning the termination of the identity of Serbia as a violator of religious freedom; to the Committee on Foreign Relations.

EC–924. A communication from the Acting Assistant Secretary of Legislative Affairs, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services under a contract in the amount of $50,000,000 or more to Russia; to the Committee on Foreign Relations.

EC–925. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report on the international narcotics control strategy for Fiscal Year 2001; to the Committee on Foreign Relations.

EC–926. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the annual report related to the adherence to and compliance with arms control agreements for the year 1999; to the Committee on Foreign Relations.

EC–927. A communication from the Chairman of the Medicare Payment Advisory Commission, transmitting, pursuant to law, the annual report concerning medicare payment policy for the year 2001; to the Committee on Finance.

EC–928. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''January—March 2001 Bond Factor Amounts'' (Rev. Rul. 2001–10) received on March 5, 2001; to the Committee on Finance.

EC–929. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines: IRC 807 Basis Adjustment—Change in Basis v. Correction of Error'' (UIL807.05–01) received on March 6, 2001; to the Committee on Finance.

EC–930. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appeals Settlement Guidelines:

Qualified Retirement Plan Hybrid Arrangement'' (UIL125.05–00) received on March 6, 2001; to the Committee on Finance.

EC–931. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report concerning the Drinking Water Infrastructure Needs Survey; to the Committee on Environment and Public Works.

EC–932. A communication from the Director of the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of rule entitled ''List of Approved Spent Fuel Storage Casks: VSC–24 Revision, Amendment 3'' (RIN3150–AG70) received on March 6, 2001; to the Committee on Environment and Public Works.

EC–933. A communication from the Associate Division Chief, Common Carrier Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Order'' (Docket No. 94–129) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–934. A communication from the Associate Division Chief of the Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, Third Report and Order and Second Order on Reconsideration'' (Docket No. 94–129) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–935. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 7.3202(b), Table of Allotments, FM Broadcast Stations (Aspen, Colorado)'' (Docket No. 00–215) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–936. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Herver, Snowflake, Overgaard, Taylor, Arizona)'' (Docket No. 00–189, 00–190, 00–91, 00–192) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–937. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotment, FM Broadcast Stations. (Burke, South Dakota; Marietta, Mississippi; Lake City, Colorado, Glenville, West Virginia; Pigeon Forge, Tennessee; and Licolnton, Georgia)'' (Docket No. 00–16, 00–146, 00–147; 00–212, 00–213, 00–214) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–938. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Window Rock, Arizona)'' (Docket No. 00–237) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–939. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Wells and Woodville, Texas)'' (Docket No. 00–171) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–940. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Rapid City, South Dakota)'' (Docket No. 00–177) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

EC–941. A communication from the Special Assistant to the Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Sioux Falls, South Dakota)'' (Docket No. 00–200) received on March 6, 2001; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

From the Committee on Indian Affairs, without amendment:

S. Res. 46: An original resolution authorizing expenditures by the Senate Committee on Indian Affairs.

From the Select Committee on Intelligence, without amendment:

S. Res. 47: An original resolution authorizing expenditures by the Select Committee on Intelligence.

From the Committee on Energy and Natural Resources, without amendment:

S. Res. 49: An original resolution authorizing expenditures by the Committee on Energy and Natural Resources.

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. DOMENICI (for himself, Mrs. LINCOLN, Mr. MURKOWSKI, Ms. LANDRIEU, Mr. CRAIG, Mr. KYL, Mr. CRAPO, Mr. GRAHAM, Mr. THOMPSON, Mr. VOINOVICH, Mr. HAGEL, and Mr. INHOFE):

S. 472. A bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States; to the Committee on Energy and Natural Resources.

By Mr. CRAPO:

S. 473. A bill to amend the Elementary and Secondary Education Act of 1965 to improve training for teachers in the use of technology; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRAPO:

S. 474. A bill to amend the Elementary and Secondary Education Act of 1965 to improve provisions relating to initial teaching experiences and alternative routes to certification; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRAPO:

S. 475. A bill to provide for rural education assistance, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON (for herself, Mr. KENNEDY, Mrs. MURRAY, Mr. LEAHY, Ms. MIKULSKI, Mr. REED, Mr. SCHUMER, and Mr. CORZINE):

S. 476. A bill to amend the Elementary and Secondary Education Act of 1965 to provide for a National Teacher Corps and principal recruitment, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY:

S. 477. A bill to amend the Internal Revenue Code of 1986 to exclude national service educational awards from the recipient's gross income; to the Committee on Finance.

By Mr. ROBERTS (for himself, Mr. KENNEDY, and Mr. BINGAMAN):

S. 478. A bill to establish and expand programs relating to engineering, science, technology and mathematics education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CLELAND:

S. 479. A bill to establish a grant program administered by the Federal Election Commission for the purpose of assisting States to upgrade voting systems to use more advanced and accurate voting devices and to enhance participation by military personnel in national elections; to the Committee on Rules and Administration.

By Mr. DEWINE (for himself, Mr. HUTCHINSON, Mr. HATCH, Mr. VOINOVICH, Mr. BROWNBACK, Mr. ENSIGN, Mr. ENZI, Mr. HAGEL, Mr. HELMS, Mr. INHOFE, Mr. NICKLES, and Mr. SANTORUM):

S. 480. A bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence; to the Committee on the Judiciary.

By Mr. GRAHAM (for himself and Mr. CORZINE):

S. 481. A bill to amend the Internal Revenue Code of 1986 to provide for a 10-percent income tax rate bracket, and for other purposes; to the Committee on Finance.

By Mr. FRIST:

S. 482. A bill to amend the Appalachian Regional Development Act of 1965 to add Hickman, Lawrence, Lewis, Perry, and Wayne Counties, Tennessee, to the Appalachian region; to the Committee on Environment and Public Works.

By Mr. WYDEN:

S. 483. A bill to amend title 49, United States Code, to improve the disclosure of information to airline passengers and the enforceability of airline passengers and the enforceability of airline passengers' rights under airline customer service agreements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. DEWINE, Mr. DODD, Ms. COLLINS, Mrs. LINCOLN, and Mr. BREAUX):

S. 484. A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies; to the Committee on Finance.

By Mr. HOLLINGS (for himself and Mr. MCCAIN):

S. 485. A bill to amend Federal law regarding the tolling of the Interstate Highway System; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. FEINGOLD, Mr. JEFFORDS , Mr. KENNEDY, Mr. CHAFEE, Mr. AKAKA, Ms. MIKULSKI, Mr. DODD, Mr. LIEBERMAN, Mr. TORRICELLI, Mr. WELLSTONE, Mrs. BOXER, and Mr. CORZINE):

S. 486. A bill to reduce the risk that innocent persons may be executed, and for other

purposes; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 487. A bill to amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOND (for himself and Mr. LEAHY):

S. Res. 45. A resolution honoring the men and women who serve this country in the National Guard and expressing condolences of the United States Senate to family and friends of the 21 National Guardsmen who perished in the crash on March 3, 2001; to the Committee on Armed Services.

By Mr. CAMPBELL:

S. Res. 46. An original resolution authorizing expenditures by the Senate Committee on Indian Affairs; from the Committee on Indian Affairs; to the Committee on Rules and Administration.

By Mr. SHELBY:

S. Res. 47. An original resolution authorizing expenditures by the Select Committee on Intelligence; from the Select Committee on Intelligence; to the Committee on Rules and Administration.

By Mr. DAYTON (for himself and Mr. WELLSTONE):

S. Res. 48. A resolution honoring the life of former Governor of Minnesota Harold E. Stassen, and expressing deepest condolences of the Senate to his family on his death; considered and agreed to.

By Mr. MURKOWSKI:

S. Res. 49. An original resolution authorizing expenditures by the Committee on Energy and Natural Resources; from the Committee on Energy and Natural Resources; to the Committee on Rules and Administration.

By Ms. SNOWE (for herself, Mr. BAYH, Mr. CHAFEE, Ms. LANDRIEU, Ms. COLLINS, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. TORRICELLI, Mr. SPECTER, Mr. CARPER, and Ms. STABENOW):

S. Con. Res. 21. A concurrent resolution to express the sense of Congress regarding the use of a legislative ''trigger'' or ''safety'' mechanism to link long-term Federal budget surplus reductions with actual budgetary outcomes; to the Committee on Governmental Affairs and the Committee on the Budget, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. WARNER (for himself, Mr. ALLEN, Mr. GRAHAM, and Mr. NELSON of Florida):

S. Con. Res. 22. A concurrent resolution honoring the 21 members of the National Guard who were killed in the crash of a National Guard aircraft on March 3, 2001, in south-central Georgia; to the Committee on Armed Services.

ADDITIONAL COSPONSORS

S. 29

At the request of Mr. BOND, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 29, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 41

At the request of Mr. HATCH, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 41, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit and to increase the rates of the alternative incremental credit.

S. 70

At the request of Mr. INOUYE, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 70, a bill to amend the Public Health Service Act to provide for the establishment of a National Center for Social Work Research.

S. 198

At the request of Mr. CRAIG, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 198, a bill to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

S. 205

At the request of Mrs. HUTCHISON, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 205, a bill to amend the Internal Revenue Code of 1986 to waive the income inclusion on a distribution from an individual retirement account to the extent that the distribution is contributed for charitable purposes.

S. 234

At the request of Mr. GRASSLEY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 234, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications services.

S. 297

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 297, a bill to put teachers first by providing grants for master teacher programs.

S. 300

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 300, a bill to amend the Higher Education Act of 1965 to provide for an increase in the amount of student loans that are eligible for forgiveness in exchange for the service of the individual as a teacher.

S. 312

At the request of Mr. GRASSLEY, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 312, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes.

S. 323

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 323, a bill to amend the Elementary and Secondary Education Act of 1965 to establish scholarships for inviting new scholars to participate in renewing education, and mentor teacher programs.

S. 345

At the request of Mr. ALLARD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to strike the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 381

At the request of Mr. ALLARD, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 381, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act, the Soldiers' and Sailors' Civil Relief Act of 1940, and title 10, United States Code, to maximize the access of uniformed services voters and recently separated uniformed services voters to the polls, to ensure that each vote cast by such a voter is duly counted, and for other purposes.

S. 388

At the request of Mr. MURKOWSKI, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 388, a bill to protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50% by the year 2011 by enhancing the use of renewable energy resources conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

S. 389

At the request of Mr. MURKOWSKI, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 389, a bill to protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50% by the year 2011 by enhancing the use of renewable energy resources conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

S. 393

At the request of Mr. FRIST, the name of the Senator from Mississippi

(Mr. COCHRAN) was added as a cosponsor of S. 393, a bill to amend the Internal Revenue Code of 1986 to encourage charitable contributions to public charities for use in medical research.

S. 435

At the request of Mrs. BOXER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 435, a bill to provide that the annual drug certification procedures under the Foreign Assistance Act of 1961 not apply to certain countries with which the United States has bilateral agreements and other plans relating to counterdrug activities, and for other purposes.

S. 465

At the request of Mr. ALLARD, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 465, a bill to amend the Internal Revenue Code of 1986 to allow a credit for residential solar energy property.

S. RES. 25

At the request of Mr. CRAIG, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Virginia (Mr. ALLEN), the Senator from Illinois (Mr. FITZGERALD), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. Res. 25, a resolution designating the week beginning March 18, 2001 as ''National Safe Place Week.''

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mrs. LINCOLN, Mr. MURKOWSKI, Ms. LANDRIEU, Mr. CRAIG, Mr. KYL, Mr. CRAPO, Mr. GRAHAM, Mr. THOMPSON, Mr. VOINOVICH, Mr. HAGEL, and Mr. INHOFE):

S. 472. A bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I joined with Senator MURKOWSKI last week when he introduced the National Energy Strategy Act. His Bill addresses the broad range of issues that must underpin a credible approach to our nation's energy needs. It had key provisions for each major source of energy, including nuclear energy.

I rise today to introduce the Nuclear Energy Electricity Assurance Act of 2001, which expands and builds on the National Energy Strategy in the specific area of nuclear energy. It provides a comprehensive framework for insuring that nuclear energy remains a strong option to meet our future needs. It accomplishes for nuclear energy what Senator BYRD's National Electricity and Environmental Technology Act does for clean coal technologies, which I also support.

There is no single ''silver bullet'' that will address our nation's thirst for clean, reliable, reasonably priced, energy sources. That's why the National Energy Strategy Act carefully reinforced the importance of many energy options. Energy is far too important to our economic and military strength to rely on any small subset of the available options.

Both nuclear energy and coal are now major producers of our electricity. In fact, between them they provide over 70 percent. In both cases, their continued use presents significant risks They illustrate a fundamental point, that absolutely every source of energy presents both benefits and risks. It's our responsibility to ensure that citizens are presented with accurate information on benefits and risks, information that is free from any political biases. And where risk areas are noted, it's our responsibility to devise programs that mitigate or avoid the risks. Senator BYRD's bill does this for coal technology, my bill does this for nuclear energy.

Nuclear energy now provides about 22 percent of our electricity from 103 nuclear reactors. The operating costs of nuclear energy are among the lowest of any source. The Utility Data Institute recently reported production costs for nuclear at 1.83 cents per kw-hr, with coal at 2.08 cents per kw-hr.

Through careful optimization of operating efficiencies, the output of nuclear plants has risen dramatically since the 1980's; nuclear plants operated with an amazing 87 percent capacity factor in 2000. Since 1990, with no new nuclear plants, the output of our plants has still increased by over 20 percent. That's equivalent to gaining the output of about 20 new nuclear plants without building any.

Safety has been a vital focus, as evidenced by a constant decrease in the number of emergency shutdowns, or ''scrams,'' in our domestic plants. In 1985, there were 2.4 scrams per reactor, last year there were just 0.03. While some use the Three Mile Island accident to highlight their concerns the fact remains that our safety systems worked at Three Mile Island and no members of the public were harmed.

Another example of the exemplary safety of nuclear reactors, when properly designed and managed, lies with our nuclear navy. They now operate about 90 nuclear powered ships, and over the years, they've operated about 250 reactors in all. In that time, they've accumulated 5,400 reactor-years of operation, over twice the number of reactor-years in our civilian sector. In all that time, they have never had a significant incident with their reactors. They are welcomed into over 150 major foreign ports in over 50 countries.

Interest in our nuclear plants is increasing along with dramatically increased confidence in their ability to contribute to our energy needs. Interest in re-licensing plants, to extend their lifetime beyond the originally planned 40 years, has greatly expanded. The NRC has now approved re-licensing for 5 reactors, and over 30 other reactors have begun the renewal process. Industry experts now expect virtually all operating plants to apply for license extension.

Nuclear energy is essentially emission free. We avoided the emission of 167 million tons of carbon last year or more than 2 billion tons since the 1970's. In 1999, nuclear power plants provided about half of the total carbon reductions achieved by U.S. industry under the federal voluntary reporting program. The inescapable fact is that nuclear energy is making an immense contribution to the environmental health of our nation.

But unfortunately, when it comes to nuclear energy, we're living on our past global leadership. Most of the technologies that drive the world's nuclear energy systems originated here. Much of our early leadership derived from our requirements for a nuclear navy; that work enabled many of the civilian aspects of nuclear power.

Our reactor designs are found around the world. The reprocessing technology used in some countries originated here. The fuel designs in use around the world largely were developed here. This nation provided the global leadership to start the age of nuclear energy.

Now, our leadership is seriously at risk. No nuclear plant has been ordered in the United States in over 20 years. To some extent, this was driven by decreases in energy demand following the early oil price shocks and from public fears about Three Mile Island and Chernobyl. But we also have allowed complex environmental reviews and regulatory stalemates to extend approval and construction times and to seriously undercut prospects for any additional plants.

As a nation, we cannot afford to lose the nuclear energy option until we are ready to specify with confidence how we are going to replace 22 percent of our electricity with some other source offering comparable safety, reliability, low cost, and environmental attributes. We risk our nation's future prosperity if we lose the nuclear option through inaction. Instead, we need concrete action to secure the nuclear option for future generations. We must not subject the nation to the risk of inadequate energy supplies.

My bill is squarely aimed at avoiding this risk. I appreciate that my co-sponsors: Senators Lincoln, Murkowski, Landrieu, Craig, Graham, Kyl, Crapo, Thompson, Voinovich and Hagel share these concerns and support this bill to address them.

There are five broad aspects of this bill. First, it initiates programs to ensure that the operations of our current nuclear plants remain adequately supported. It authorizes expanded research and educational programs to ensure that we have a qualified workforce supporting nuclear issues. It sets up incentives for companies to increase the efficiency of existing plants. And it

assures that the industries supporting our domestic nuclear fuel supplies remain viable.

Second, it encourages construction of new plants, especially Generation IV plants. Technology to build these plants is close at hand. This bill not only supports research and development on these plants, it also supports development of the regulatory framework within the NRC that must be in place before they can be licensed.

Generation IV plants would

be cost competitive with natural gas, have significantly improved safety features with the goal of passive safety systems that would be immune to human errors, have reduced generation of spent fuel and nuclear waste, and have improved resistance to any possible proliferation.

In the U.S., Exelon Corporation has invested in design of a plant in South Africa that has many of these attributes.

Third, this bill has provisions to secure a level playing field for evaluation of nuclear energy relative to other energy sources. It seeks to avoid any scientifically inaccurate stigmas that have been placed on nuclear energy.

Fourth, this bill seeks to create improved solutions for managing nuclear waste. Our current national policy simply requires that we find a permanent repository for spent fuel. But spent fuel has immense residual energy. Our present plan simply assumes that future generations will be so energy-rich that they would have no interest in this major energy source.

I'm not at all sure that view serves our nation and those future generations very well. I've favored study of alternative strategies for spent fuel. As a minimum we should be doing research now to enable future generations to decide if spent fuel should still be treated as waste, or if it should be treated as a precious energy resource.

Advanced technologies for recycling spent fuel and regaining some of its energy value would also allow us to consider approaches to render the final waste form far less toxic then spent fuel. These approaches require transmutation of the long-lived radioactive species into either short-lived or stable species. This bill includes funding for a research project, based on modern accelerators, to study the economics and engineering aspects of transmutation. There is substantial interest in other countries in joining us in collaborative study of this option.

This accelerator project, almost as an added bonus, can also provide a backup source of the tritium required to maintain our nuclear stockpile. The bill provides for this application. The accelerator program, called Advanced Accelerator Applications or AAA, would also produce radioisotopes for medical purposes and would provide a great test bed for study of many nuclear engineering questions.

Before leaving the part of the bill dealing with spent fuel, let me emphasize how very compact these wastes are already and how much more compact they could be. For example, all the spent fuel rods from the last 40 years of our nation's nuclear energy production would only fill one football field to a depth of around 4 yards.

If we had encouraged reprocessing of spent fuel in this country, we would have dramatically less high level waste. In France, they reprocess spent fuel, both to reuse some of the residual energy and to extract some of the more inert components. Through their efforts, a container, smaller than two rolls of film, represents the final high level waste for a French family of four for twenty years.

And finally, the fifth and last part of this bill provides streamlining for a number of Nuclear Regulatory Commission procedures and outdated statutory restrictions.

For example, in a global energy market it makes sense to allow foreign ownership of power and research reactors located in the United States. At the same time, this amendment to the 1954 Atomic Energy Act retains U.S. security precautions in the original law.

Another amendment eliminates time-consuming and unnecessary antitrust review requirements. This section of the bill would also simplify the hearing requirements in a proceeding involving an amendment to an existing operating license or the transfer of an existing license. Further, another provision gives the NRC the authority to establish requirements to ensure that non-licensees fully comply with their obligations to fund nuclear plant decommissioning.

These and other changes to the 1954 Act will assist the NRC in its pursuit of more effective and responsive regulation of our domestic nuclear plants. These changes to the Atomic Energy Act have the support of the leadership of the NRC Chairman.

Mr. President, this bill enables nuclear energy to continue to be treated as a viable option for our nation's electricity needs. It would help ensure that future generations continue to enjoy clean, safe, reliable electricity and the many benefits that this energy source will provide.

Mr. President, I am privileged to take a little bit of the Senate's time to talk about something I think is very important. I have been working on this for a long time, but it just wasn't opportune to bring it up and give serious consideration to this issue. With the energy crisis in the United States, people are going to be able to understand that we truly have a shortage in the capacity to produce electricity, which takes care of our homes, feeds our industry, and provides a substantial portion of America's economic prosperity and growth.

So today I am going to talk about a bill I am introducing, with bipartisan support, which essentially tries to bring back to a level playing field for consideration nuclear energy and new nuclear powerplants.

This bill I am introducing is on my behalf and also for Senators LINCOLN, GRAHAM, THOMPSON, VOINOVICH, HAGEL, MURKOWSKI, LANDRIEU, CRAIG, KYL, and CRAPO, I believe I will have another 10 to 12 cosponsors soon, all of whom see the importance of the United States of America making sure we are taking care of all energy, looking out for and moving in the direction of every energy source we have that is safe and at the right level of risk, and that we proceed to develop those for America's future.

One of those that can't be left out, in my opinion, is the entire field of nuclear energy and what is needed to bring America back to a leading role in the world in terms of nuclear power and future generations of nuclear powerplants.

As a precursor to a few remarks, I want to indicate to the Senate, and those interested, that every American ought to be concerned about the fact that America doesn't have enough energy being produced to keep ourselves going at our current rate, much less at the natural growth rate that everybody expects.

My first little exhibit here is a very interesting evaluation and analysis of America's current sources of electricity at the end of 1999. (We don't have a more current one, but it hasn't changed much.) Everybody should know that in the United States coal-burning powerplants produce 51.4 percent of our electricity. Somehow or another, even though coal provides 51 percent, we aren't building very many coal powerplants because we have not moved fast enough with new technology, and there are many who don't want to build any more coal-burning plants, even if we can get their pollution down to a safe and nonrisky rate.

Then if we look at the next big source of electricity, it is nuclear energy, 19.8 percent. Might I say that while this power crisis has come about, the nuclear powerplants in the United States have been producing at a higher rate. They have produced far more electricity without adding any new plants because the regulatory schemes have become reasonable instead of unreasonable and generating capacity has risen. Capacity used to be 70 percent; it is now up to 90. Incidentally, if we had time, we would show you that even during that period of time, the safety record has become better rather than worse. We have a very interesting chart that would show that.

Let's move on. Natural gas, which we are now rapidly building, everywhere I turn and look, people are building a new powerplant with natural gas. A little bit of electricity comes from oil, 3.1 percent. And then hydroelectricity is 8.3 percent. Others sources are in yellow on the chart—and I am telling it like it is. That yellow represents 2.3 percent, solar, wind, biomass, geothermal, and others. Of that yellow, I believe solar and wind are about a half a percent of the 2.3 percent. So there are those who say we can solve our energy problem with those items that are

in yellow here. I say, good luck. Let's proceed as rapidly as we can. But I have a hunch that to increase those latter sources to a larger ratio within our energy sources, we will have a long way to go.

We would have to produce these wind fields with windmills on them beyond anything Americans expect. They expect this should not be the case if we have another way.

Understand that hydroelectricity is a small amount, but it is pretty important. Even in the last administration, they were talking about knocking down some dams so we would have less of this. Actually, that is pretty risky for America's future.

For those who are wondering where we are in terms of cost, I want to show them something. This is the electricity production costs. My good friend occupying the Chair is from Oklahoma. He produces gas and oil in his State. The best we could do is get information for the end of 1999. The distinguished Senator and those in attendance know that the natural gas price has gone up substantially since 1999. I could not bring more recent cost data because we do not have anything more current.

Since the only thing we want to use is natural gas, we have put an enormous demand on natural gas while those who supply it are struggling to keep pace. So the price of natural gas has gone up in a rather extraordinary manner. I think everybody in this Senate would agree with that. That is because the market is taking hold of a very small portion that is free to be traded and those who own it are saying: What will you pay for it?

That is going up, but even in 1999, here is what it cost Americans. The green line is nuclear power. We see that it is the lowest. In 1999, it is beginning to get even lower than coal-burning powerplants. This next line is oil. One can see it is below natural gas. These are the numbers: Nuclear, 1.83; coal, 2.07; oil, 3.18; and gas, 3.52 cents per kilowatt-hour.

Of course, just because energy is more expensive, it does not mean we should not use it, but I believe the American people over the next 10 to 25 years ought to have a mix so there is a market balance and there is some competition for these various sources of energy. I believe that is why so many Senators have joined in this bill.

I want to quickly tell you what it does. It supports nuclear energy, and it does that in many ways. The Nuclear Energy Research Initiative, called NERI, which is being funded—we are going to authorize it to make sure it continues.

Nuclear energy plant optimization is a few million dollars. This helps certification of these plants for an extended licensure period.

Incidentally, that is happening. We are relicensing them. Those who are doing that are sure they are safe. I wish I had time. I would show you relicensing versus closing them down, which some people would like. This will add an enormous amount of energy over the next 20 to 30 years. I have a chart showing that, but I will not use your time on that.

We also have nuclear energy education support. America used to be not only the leading producer of nuclear power, but we were the leader in all of the science and technology. We moved from the atom bomb to peaceful uses. The great scientists converted it and made nuclear powerplants. These plants are getting more and more modern in the world, yet America is letting our technology and our science sit still. We want to move that ahead in our universities where more people who want to choose engineering and science are given an opportunity to get into the nuclear field because it is important to America's future.

We encourage new plant construction. That will not come overnight, but it is interesting that while the United States debates an issue of what we do with the waste that comes out of the nuclear powerplants—and I am sure the occupant of the chair and most Senators if they study it carefully will clearly come down on the side that this is not a difficult problem—people who do not want nuclear power at all make it a problem. But technically, scientifically, and safetywise, it is not a problem. It is now a problem because the State of Nevada does not want it, so they are using every political means. That is their prerogative. But somehow, somewhere, America will be moving in the direction of getting that problem solved. We are working on a long-term solution.

Incidentally, in this bill we suggest and create waste solutions. We create an Office for Spent Nuclear Fuel in the Department. If you have a Department of Energy for the greatest nation on Earth, you surely ought to have within it, on its domestic side of achievements and activities, an office for research on spent nuclear fuel. Which great country would not have that except us? But we went through 15 years when we threw almost everything nuclear out of the Department of Energy, as if it were not an energy source, as if it would go away.

The spirit and energy of coming back and doing something significant is prompted because the world in the future wants to be free and wants to have production of wealth. People want to be part of a world in which the poor countries should get richer over the next 10, 20, 30 years, not poorer, and America wants to be part of that. We all have to worry about energy supplies.

In South Africa, they are moving ahead with the next generation of a nuclear powerplant that is going to be completely different from the powerplants we have today. We are sending a few people there to help with licensure and regulation, but America should be leading the way. We should be there with the scientists, engineers, and American companies moving to the next generation.

There is a next generation. It is not cooled necessarily by water. There are other ways to cool it. Incidentally, it will have passive safety features so it cannot melt down. That is the one issue everybody puts up when they say do not touch nuclear power because they want to scare us to death—it might have a meltdown. But this new powerplant cannot do that, as a matter of fundamental design parameters.

In this bill, we are going to create waste solutions. We are looking at an advanced accelerator, called AAA. We are also looking at advanced fuel recycling. Ultimately we may have a whole new way to change the quality of high-level waste through a process called transmutation. The end product will mostly no longer be high-level waste; they will be able to dispose of the products from transmutation in a very easy way.

I was talking about waste. I was going to show the Senate a container we received as a demonstration. This holds the waste from a family of four in France for 20 years—a family of four, year round for 20 years. That is the total waste they generate because they have 80 percent nuclear power. But here we are making nuclear waste the most enormous problem in the world, and letting it stop our pursuit of the cleanest, most environmentally friendly source of energy around. If we are looking at balancing environmental needs with energy, nothing beats nuclear.

We also encourage new plant construction in this bill. That means evaluation of options to complete some unfinished powerplants and Generation Four Reactors. These are the next generation. We are funding them to try to catch up.

We are also going to assure a level playing field for nuclear power. By that I mean it has not been entitled to some of the luxuries of credits in terms of clean air and the like that other forms of energy have. That is going to change.

Last, we are going to improve the NRC regulations.

I close by saying the United States has 103 nuclear powerplants producing 20 percent of our energy.

Let me state how safe nuclear power is. First, we have about 90 ships at sea that have as part of their structure one or two nuclear powerplants. I want to make sure those who are interested know about these ships sailing the seas with nuclear powerplants. I am talking about nuclear powerplants that are just like the nuclear powerplants that exist in America on this chart. They might be smaller, but they are the same and produce the same kind of power.

In 1954, we put the first one in the ocean. Today, we have them sailing everywhere with that reactor and nuclear fuel on board. Yet they are permitted to dock all around the world except

New Zealand. Does anybody believe they could dock all over the world if they were unsafe? There would be an outcry to put them 80 miles out, but they are right in the docks. They are welcome because they are absolutely safe. There has never been a nuclear accident since 1954 in the entire nuclear Navy history.

In the end, one of the issues will be what risks we take. Overall, we take fewer risks by using nuclear power than by almost any other source because we produce dramatic environmental consequences on the plus side with nuclear power.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 472

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 ''Nuclear Energy Electricity Supply Assurance Act of 2001''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—SUPPORT FOR CONTINUED USE OF NUCLEAR ENERGY

Subtitle A—Price-Anderson Amendments

Sec. 101. Short title.
Sec. 102. Indemnification authority.
Sec. 103. Maximum assessment.
Sec. 104. Department of Energy liability limit.
Sec. 105. Incidents outside the United States.
Sec. 106. Reports.
Sec. 107. Inflation adjustment.
Sec. 108. Civil penalties.
Sec. 109. Applicability.

Subtitle B—Leadership of the Office of Nuclear Energy, Science, and Technology and the Office of Science

Sec. 111. Assistant Secretaries.

Subtitle C—Funding of Certain Department of Energy Programs

Sec. 121. Establishment of programs.
Sec. 122. Nuclear energy research initiative.
Sec. 123. Nuclear energy plant optimization program.
Sec. 124. Uprating of nuclear plant operations.
Sec. 125. University programs.
Sec. 126. Prohibition of commercial sales of uranium and conversion held by the Department of Energy until 2006.
Sec. 127. Cooperative research and development and special demonstration projects for the uranium mining industry.
Sec. 128. Maintenance of a viable domestic uranium conversion industry.
Sec. 129. Portsmouth gaseous diffusion plant.
Sec. 130. Nuclear generation report.

TITLE II—CONSTRUCTION OF NUCLEAR PLANTS

Sec. 201. Establishment of programs.
Sec. 202. Nuclear plant completion initiative.
Sec. 203. Early site permit demonstration program.
Sec. 204. Nuclear energy technology study for Generation IV Reactors.
Sec. 205. Research supporting regulatory processes for new reactor technologies and designs.

TITLE III—EVALUATIONS OF NUCLEAR ENERGY

Sec. 301. Environmentally preferable purchasing.
Sec. 302. Emission-free control measures under a State implementation plan.
Sec. 303. Prohibition of discrimination against emission-free electricity projects in international development programs.

TITLE IV—DEVELOPMENT OF NATIONAL SPENT NUCLEAR FUEL STRATEGY

Sec. 401. Findings.
Sec. 402. Office of spent nuclear fuel research.
Sec. 403. Advanced fuel recycling technology development program.

TITLE V—NATIONAL ACCELERATOR SITE

Sec. 501. Findings.
Sec. 502. Definitions.
Sec. 503. Advanced Accelerator Applications Program.

TITLE VI—NUCLEAR REGULATORY COMMISSION REFORM

Sec. 601. Definitions.
Sec. 602. Office location.
Sec. 603. License period.
Sec. 604. Elimination of foreign ownership restrictions.
Sec. 605. Elimination of duplicative antitrust review.
Sec. 606. Gift acceptance authority.
Sec. 607. Authority over former licensees for decommissioning funding.
Sec. 608. Carrying of firearms by licensee employees.
Sec. 609. Cost recovery from Government agencies.
Sec. 610. Hearing procedures.
Sec. 611. Unauthorized introduction of dangerous weapons.
Sec. 612. Sabotage of nuclear facilities or fuel.
Sec. 613. Nuclear decommissioning obligations of nonlicensees.
Sec. 614. Effective date.

SEC. 2. FINDINGS.

Congress finds that—

(1) the standard of living for citizens of the United States is linked to the availability of reliable, low-cost, energy supplies;

(2) personal use patterns, manufacturing processes, and advanced cyber information all fuel increases in the demand for electricity;

(3) demand-side management, while important, is not likely to halt the increase in energy demand;

(4)(A) nuclear power is the largest producer of essentially emission-free electricity;

(B) nuclear energy is one of the few energy sources that controls all pollutants;

(C) nuclear plants are demonstrating excellent reliability as the plants produce power at low cost with a superb safety record; and

(D) the generation costs of nuclear power are not subject to price fluctuations of fossil fuels because nuclear fuels can be mined domestically or purchased from reliable trading partners;

(5) requirements for new highly reliable baseload generation capacity coupled with increasing environmental concerns and limited long-term availability of fossil fuels require that the United States preserve the nuclear energy option into the future;

(6) to ensure the reliability of electricity supply and delivery, the United States needs programs to encourage the extended or more efficient operation of currently existing nuclear plants and the construction of new nuclear plants;

(7) a qualified workforce is a prerequisite to continued safe operation of—

(A) nuclear plants;

(B) the nuclear navy;

(C) programs dealing with high-level or low-level waste from civilian or defense facilities; and

(D) research and medical uses of nuclear technologies;

(8) uncertainty surrounding the costs associated with regulatory approval for siting, constructing, and operating nuclear plants confuses the economics for new plant investments;

(9) to ensure the long-term reliability of supplies of nuclear fuel, the United States must ensure that the domestic uranium mining, conversion, and enrichment service industries remain viable;

(10)(A) technology developed in the United States and worldwide, broadly labeled as the Generation IV Reactor, is demonstrating that new designs of nuclear reactors are feasible;

(B) plants using the new designs would have improved safety, minimized proliferation risks, reduced spent fuel, and much lower costs; and

(C)(i) the nuclear facility infrastructure needed to conduct nuclear energy research and development in the United States has been allowed to erode over the past decade; and

(ii) that infrastructure must be restored to support development of Generation IV nuclear energy systems;

(11)(A) to ensure the long-term viability of nuclear power, the public must be confident that final waste forms resulting from spent fuel are controlled so as to have negligible impact on the environment; and

(B) continued research on repositories, and on approaches to mitigate the toxicity of materials entering any future repository, would serve that public interest; and

(12)(A) the Nuclear Regulatory Commission must continue its stewardship of the safety of our nuclear industry;

(B) at the same time, the Commission must streamline processes wherever possible to provide timely responses to a wide range of safety, upgrade, and licensing issues;

(C) the Commission should conduct research on new reactor technologies to support future regulatory decisions; and

(D) a revision of certain Commission procedures would assist in more timely processing of license applications and other requests for regulatory action.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Nuclear Regulatory Commission.

(2) EARLY SITE PERMIT.—The term ''Early Site Permit'' means a permit for a site to be a future location for a nuclear plant under subpart A of part 52 of title 10, Code of Federal Regulations.

(3) NUCLEAR PLANT.—The term ''nuclear plant'' means a nuclear energy facility that generates electricity.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

TITLE I—SUPPORT FOR CONTINUED USE OF NUCLEAR ENERGY

Subtitle A—Price-Anderson Amendments

SEC. 101. SHORT TITLE.

This subtitle may be cited as the ''Price-Anderson Amendments Act of 2001''.

SEC. 102. INDEMNIFICATION AUTHORITY.

(a) INDEMNIFICATION OF NUCLEAR REGULATORY COMMISSION LICENSEES.—Section 170c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

(1) in the subsection heading, by striking ''LICENSES'' and inserting ''LICENSEES''; and

(2) by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

(b) INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.—Section 170d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking '', until August 1, 2002,''.

(c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS.—Section 170k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking ''August 1, 2002'' each place it appears and inserting ''August 1, 2012''.

SEC. 103. MAXIMUM ASSESSMENT.

Section 170b.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)(1)) is amended in the second proviso of the third sentence by striking ''$10,000,000'' and inserting ''$20,000,000''.

SEC. 104. DEPARTMENT OF ENERGY LIABILITY LIMIT.

(a) AGGREGATE LIABILITY LIMIT.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (2) and inserting the following:

''(2) LIABILITY LIMIT.—In an agreement of indemnification entered into under paragraph (1), the Secretary—

''(A) may require the contractor to provide and maintain the financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

''(B) shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.''.

(b) CONTRACT AMENDMENTS.—Section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended by striking paragraph (3) and inserting the following:

''(3) CONTRACT AMENDMENTS.—All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person, shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2001, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection on that date.''.

SEC. 105. INCIDENTS OUTSIDE THE UNITED STATES.

(a) AMOUNT OF INDEMNIFICATION.—Section 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

(b) LIABILITY LIMIT.—Section 170e.(4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by striking ''$100,000,000'' and inserting ''$500,000,000''.

SEC. 106. REPORTS.

Section 170p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended by striking ''August 1, 1998'' and inserting ''August 1, 2008''.

SEC. 107. INFLATION ADJUSTMENT.

Section 170t. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(t)) is amended—

(1) by designating paragraph (2) as paragraph (3); and

(2) by adding after paragraph (1) the following:

''(2) ADJUSTMENT.—The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following the date of enactment of the Price-Anderson Amendments Act of 2001, in accordance with the aggregate percentage change in the Consumer Price Index since—

''(A) that date of enactment, in the case of the first adjustment under this subsection; or

''(B) the previous adjustment under this subsection.''.

SEC. 108. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NONPROFIT INSTITUTIONS.—Section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a) is amended by striking subsection d. and inserting the following:

''d. Notwithstanding subsection a., no contractor, subcontractor, or supplier of the Department of Energy that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Code shall be subject to a civil penalty under this section in any fiscal year in excess of the amount of any performance fee paid by the Secretary during that fiscal year to the contractor, subcontractor, or supplier under the contract under which a violation occurs.''.

SEC. 109. APPLICABILITY.

(a) INDEMNIFICATION PROVISIONS.—The amendments made by sections 103, 104, and 105 do not apply to a nuclear incident that occurs before the date of enactment of this Act.

(b) CIVIL PENALTY PROVISIONS.—The amendments made by section 108(b) do not apply to a violation that occurs under a contract entered into before the date of enactment of this Act.

Subtitle B—Leadership of the Office of Nuclear Energy, Science, and Technology and the Office of Science

SEC. 111. ASSISTANT SECRETARIES.

(a) IN GENERAL.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended in the matter preceding paragraph (1) by striking ''eight'' and inserting ''ten''.

(b) FUNCTIONS.—On appointment of the 2 additional Assistant Secretaries of Energy under the amendment made by subsection (a), the Secretary shall assign—

(1) to one of the Assistant Secretaries, the functions performed by the Director of the Office of Science as of the date of enactment of this Act; and

(2) to the other, the functions performed by the Director of the Office of Nuclear Energy, Science, and Technology as of that date.

Subtitle C—Funding of Certain Department of Energy Programs

SEC. 121. ESTABLISHMENT OF PROGRAMS.

The Secretary shall establish or continue programs administered by the Office of Nuclear Energy, Science, and Technology to—

(1) support the Nuclear Energy Research Initiative, the Nuclear Energy Plant Optimization Program, and the Nuclear Energy Technology Program;

(2) encourage investments to increase the electricity capacity at commercial nuclear plants in existence on the date of enactment of this Act;

(3) ensure continued viability of a domestic capability for uranium mining, conversion, and enrichment industries; and

(4) support university nuclear engineering education research and infrastructure programs, including closely related specialties such as health physics, actinide chemistry, and material sciences.

SEC. 122. NUCLEAR ENERGY RESEARCH INITIATIVE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for a Nuclear Energy Research Initiative to be managed by the Director of the Office of Nuclear Energy, Science, and Technology for grants to be competitively awarded and subject to peer review for research relating to nuclear energy—

(1) $60,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the Nuclear Energy Research Initiative.

SEC. 123. NUCLEAR ENERGY PLANT OPTIMIZATION PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for a Nuclear Energy Plant Optimization Program to be managed by the Director of the Office of Nuclear Energy, Science, and Technology for a joint program with industry cost-shared by at least 50 percent and subject to annual review by the Secretary of Energy's Nuclear Energy Research Advisory Committee—

(1) $15,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the Nuclear Energy Plant Optimization Program.

SEC. 124. UPRATING OF NUCLEAR PLANT OPERATIONS.

(a) IN GENERAL.—The Secretary, to the extent funds are available, shall reimburse costs incurred by a licensee of a nuclear plant as provided in this section.

(b) PAYMENT OF COMMISSION USER FEES.—In carrying out subsection (a), the Secretary shall reimburse all user fees incurred by a licensee of a nuclear plant for obtaining the approval of the Commission to achieve a permanent increase in the rated electricity capacity of the licensee's nuclear plant if the licensee achieves the increased capacity before December 31, 2004.

(c) PREFERENCE.—Preference shall be given by the Secretary to projects in which a single uprating operation can benefit multiple domestic nuclear power reactors.

(d) INCENTIVE PAYMENTS.—

(1) IN GENERAL.—In addition to payments made under subsection (a), the Secretary shall offer an incentive payment equal to 10 percent of the capital improvement cost resulting in a permanent increase of at least 5 percent in the rated electricity capacity of the licensee's nuclear plant if the licensee achieves the increased capacity rating before December 31, 2004.

(2) LIMITATION.—No incentive payment under paragraph (1) associated with any single nuclear unit shall exceed $1,000,000.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2002 and 2003.

SEC. 125. UNIVERSITY PROGRAMS.

(a) IN GENERAL.—The Secretary may, as provided in this section, provide grants and other forms of payment to further the national goal of producing well-educated graduates in nuclear engineering and closely related specialties that support nuclear energy

programs such as health physics, actinide chemistry, and material sciences.

(b) SUPPORT FOR UNIVERSITY RESEARCH REACTORS.—The Secretary may provide grants and other forms of payments for plant upgrading to universities in the United States that operate and maintain nuclear research reactors.

(c) SUPPORT FOR UNIVERSITY RESEARCH AND DEVELOPMENT.—The Secretary may provide grants and other forms of payment for research and development work by faculty, staff, and students associated with nuclear engineering programs and closely related specialties at universities in the United States.

(d) SUPPORT FOR NUCLEAR ENGINEERING STUDENTS AND FACULTY.—The Secretary may provide fellowships, scholarships, and other support to students and to departments of nuclear engineering and closely related specialties at universities in the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $34,200,000 for fiscal year 2002, of which—

(A) $13,000,000 shall be available to carry out subsection (b);

(B) $10,200,000 shall be available to carry out subsection (c) of which not less than $2,000,000 shall be available to support health physics programs; and

(C) $11,000,000 shall be available to carry out subsection (d) of which not less than $2,000,000 shall be available to support health physics programs; and

(2) such sums as are necessary for subsequent fiscal years.

SEC. 126. PROHIBITION OF COMMERCIAL SALES OF URANIUM AND CONVERSION HELD BY THE DEPARTMENT OF ENERGY UNTIL 2006.

Section 3112(b) of the USEC Privatization Act (42 U.S.C. 2297h–10(b)) is amended by striking paragraph (2) and inserting the following:

''(2) SALE OF URANIUM HEXAFLUORIDE.—

''(A) IN GENERAL.—The Secretary shall—

''(i) sell and receive payment for the uranium hexafluoride transferred to the Secretary under paragraph (1); and

''(ii) refrain from sales of its surplus natural uranium and conversion services through 2006 (except sales or transfers to the Tennessee Valley Authority in relation to the Department's HEU or Tritium programs, minor quantities associated with site cleanup projects, or the Department of Energy research reactor sales program).

''(B) REQUIREMENTS.—Under subparagraph (A)(i), uranium hexafluoride shall be sold—

''(i) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or

''(ii) in 2006 for consumption by end users in the United States not before January 1, 2007, and in subsequent years, in volumes not to exceed 3,000,000 pounds U_3O_8 equivalent per year.''.

SEC. 127. COOPERATIVE RESEARCH AND DEVELOPMENT AND SPECIAL DEMONSTRATION PROJECTS FOR THE URANIUM MINING INDUSTRY.

There is authorized to be appropriated to the Secretary $10,000,000 for each of fiscal years 2002, 2003, and 2004 for—

(1) cooperative, cost-shared, agreements between the Department and the domestic uranium mining industry to identify, test, and develop improved in-situ leaching mining technologies, including low-cost environmental restoration technologies that may be applied to sites after completion of in-situ leaching operations; and

(2) funding for competitively selected demonstration projects with the domestic uranium mining industry relating to—

(A) enhanced production with minimal environmental impact;

(B) restoration of well fields; and

(C) decommissioning and decontamination activities.

SEC. 128. MAINTENANCE OF A VIABLE DOMESTIC URANIUM CONVERSION INDUSTRY.

(a) IN GENERAL.—For Department of Energy expenses necessary in providing to Converdyn Incorporated a payment for losses associated with providing conversion services for the production of low-enriched uranium (excluding imports related to actions taken under the United States/Russia HEU Agreement), there is authorized to be appropriated $8,000,000 for each of fiscal years 2002, 2003, and 2004.

(b) RATE.—The payment shall be at a rate, determined by the Secretary, that—

(1)(A) is based on the difference between Converdyn's costs and its sale price for providing conversion services for the production of low-enriched uranium fuel; but

(B) does not exceed the amount appropriated under subsection (a); and

(2) shall be based contingent on submission to the Secretary of a financial statement satisfactory to the Secretary that is certified by an independent auditor for each year.

(c) TIMING.—A payment under subsection (a) shall be provided as soon as practicable after receipt and verification of the financial statement submitted under subsection (b).

SEC. 129. PORTSMOUTH GASEOUS DIFFUSION PLANT.

(a) IN GENERAL.—The Secretary may proceed with actions required to place the Portsmouth gaseous diffusion plant into cold standby condition for a period of 5 years.

(b) PLANT CONDITION.—In the cold standby condition, the plant shall be in a condition that—

(1) would allow its restart, for production of 3,000,000 separative work units per year, to meet domestic demand for enrichment services; and

(2) will facilitate the future decontamination and decommissioning of the plant.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $36,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003, 2004, and 2005.

SEC. 130. NUCLEAR GENERATION REPORT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to Congress a report on the state of nuclear power generation in the United States.

(b) CONTENTS.—The report shall—

(1) provide current and historical detail regarding—

(A) the number of commercial nuclear plants and the amount of electricity generated; and

(B) the safety record of commercial nuclear plants;

(2) review the status of the relicensing process for commercial nuclear plants, including—

(A) current and anticipated applications; and

(B) for each current and anticipated application—

(i) the anticipated length of time for a license renewal application to be processed; and

(ii) the current and anticipated costs of each license renewal;

(3) assess the capability of the Commission to evaluate licenses for new advanced reactor designs and discuss the confirmatory and anticipatory research activities needed to support that capability;

(4) detail the efforts of the Commission to prepare for potential new commercial nuclear plants, including evaluation of any new plant design and the licensing process for nuclear plants;

(5) state the anticipated length of time for a new plant license to be processed and the anticipated cost of such a process; and

(6) include recommendations for improvements in each of the processes reviewed.

TITLE II—CONSTRUCTION OF NUCLEAR PLANTS

SEC. 201. ESTABLISHMENT OF PROGRAMS.

(a) SECRETARY.—The Secretary shall establish a program within the Office of Nuclear Energy, Science, and Technology to—

(1) demonstrate the Nuclear Regulatory Commission Early Site Permit process;

(2) evaluate opportunities for completion of partially constructed nuclear plants; and

(3) develop a report assessing opportunities for Generation IV reactors.

(b) COMMISSION.—The Commission shall develop a research program to support regulatory actions relating to new nuclear plant technologies.

SEC. 202. NUCLEAR PLANT COMPLETION INITIATIVE.

(a) IN GENERAL.—The Secretary shall solicit information on United States nuclear plants requiring additional capital investment before becoming operational or being returned to operation to determine which, if any, should be included in a study of the feasibility of completing and operating some or all of the nuclear plants by December 31, 2004, considering technical and economic factors.

(b) IDENTIFICATION OF UNFINISHED NUCLEAR PLANTS.—The Secretary shall convene a panel of experts to—

(1) review information obtained under subsection (a); and

(2) identify which unfinished nuclear plants should be included in a feasibility study.

(c) TECHNICAL AND ECONOMIC COMPLETION ASSESSMENT.—On completion of the identification of candidate nuclear plants under subsection (b), the Secretary shall commence a detailed technical and economic completion assessment that includes, on a unit-specific basis, all technical and economic information necessary to permit a decision on the feasibility of completing work on any or all of the nuclear plants identified under subsection (b).

(d) SOLICITATION OF PROPOSALS.—After making the results of the feasibility study under subsection (c) available to the public, the Secretary shall solicit proposals for completing construction on any or all of the nuclear plants assessed under subsection (c).

(e) SELECTION OF PROPOSALS.—

(1) IN GENERAL.—The Secretary shall reconvene the panel of experts designated under subsection (b) to review and select the nuclear plants to be pursued, taking into consideration any or all of the following factors:

(A) Location of the nuclear plant and the regional need for expanded power capability.

(B) Time to completion.

(C) Economic and technical viability for completion of the nuclear plant.

(D) Financial capability of the offeror.

(E) Extent of support from regional and State officials.

(F) Experience and past performance of the members of the offeror in siting, constructing, or operating nuclear generating facilities.

(G) Lowest cost to the Government.

(2) REGIONAL AND STATE SUPPORT.—No proposal shall be accepted without endorsement by the State Governor and by the elected governing bodies of—

(A) each political subdivision in which the nuclear plant is located; and

(B) each other political subdivision that the Secretary determines has a substantial

interest in the completion of the nuclear plant.

(f) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than June 1, 2002, the Secretary shall submit to Congress a report describing the reactors identified for completion under subsection (e).

(2) CONTENTS.—The report shall—

(A) detail the findings under each of the criteria specified in subsection (e); and

(B) include recommendations for action by Congress to authorize actions that may be initiated in fiscal year 2003 to expedite completion of the reactors.

(3) CONSIDERATIONS.—In making recommendations under paragraph (2)(B), the Secretary shall consider—

(A) the advisability of authorizing payment by the Government of Commission user fees (including consideration of the estimated cost to the Government of paying such fees); and

(B) other appropriate considerations.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $3,000,000 for fiscal year 2002.

SEC. 203. EARLY SITE PERMIT DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall initiate a program of Government/private partnership demonstration projects to encourage private sector applications to the Commission for approval of sites that are potentially suitable to be used for the construction of future nuclear power generating facilities.

(b) PROJECTS.—Not later than 60 days after the date of enactment of this Act, the Secretary shall issue a solicitation of offers for proposals from private sector entities to enter into partnerships with the Secretary to—

(1) demonstrate the Early Site Permit process; and

(2) create a bank of approved sites by December 31, 2003.

(c) CRITERIA FOR PROPOSALS.—A proposal submitted under subsection (b) shall—

(1) identify a site owned by the offeror that is suitable for the construction and operation of a new nuclear plant; and

(2) state the agreement of the offeror to pay not less than ½ of the costs of—

(A) preparation of an application to the Commission for an Early Site Permit for the site identified under paragraph (1); and

(B) review of the application by the Commission.

(d) SELECTION OF PROPOSALS.—The Secretary shall establish a competitive process to review and select the projects to be pursued, taking into consideration the following:

(1) Time to prepare the application.

(2) Site qualities or characteristics that could affect the duration of application review.

(3) The financial capability of the offeror.

(4) The experience of the offeror in siting, constructing, or operating nuclear plants.

(5) The support of regional and State officials.

(6) The need for new electricity supply in the vicinity of the site, or proximity to suitable transmission lines.

(7) Lowest cost to the Government.

(e) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with up to 3 offerors selected through the competitive process to pay not more than ½ of the costs incurred by the parties to the agreements for—

(1) preparation of an application to the Commission for an Early Site Permit for the site; and

(2) review of the application by the Commission.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2002 and 2003, to remain available until expended.

SEC. 204. NUCLEAR ENERGY TECHNOLOGY STUDY FOR GENERATION IV REACTORS.

(a) IN GENERAL.—The Secretary shall conduct a study of Generation IV nuclear energy systems, including development of a technology roadmap and performance of research and development necessary to make an informed technical decision regarding the most promising candidates for commercial deployment.

(b) UPGRADES AND ADDITIONS.—The Secretary may make upgrades or additions to the nuclear energy research facility infrastructure as needed to carry out the study under subsection (a).

(c) REACTOR CHARACTERISTICS.—To the extent practicable, in conducting the study under subsection (a), the Secretary shall study nuclear energy systems that offer the highest probability of achieving the goals for Generation IV nuclear energy systems established by the Nuclear Energy Research Advisory Committee, including—

(1) economics competitive with natural gas-fueled generators;

(2) enhanced safety features or passive safety features;

(3) substantially reduced production of high-level waste, as compared with the quantity of waste produced by reactors in operation on the date of enactment of this Act;

(4) highly proliferation resistant fuel and waste;

(5) sustainable energy generation including optimized fuel utilization; and

(6) substantially improved thermal efficiency, as compared with the thermal efficiency of reactors in operation on the date of enactment of this Act.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with—

(1) the Commission, with respect to evaluation of regulatory issues; and

(2) the International Atomic Energy Agency, with respect to international safeguards.

(d) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2002, the Secretary shall submit to Congress a report describing the results of the roadmap and plans for research and development leading to a public/private cooperative demonstration of one or more Generation IV nuclear energy systems.

(2) CONTENTS.—The report shall contain—

(A) an assessment of all available technologies;

(B) a summary of actions needed for the most promising candidates to be considered as viable commercial options within the five to ten years after the date of the report with consideration of regulatory, economic, and technical issues;

(C) a recommendation of not more than three promising Generation IV nuclear energy system concepts for further development;

(D) an evaluation of opportunities for public/private partnerships;

(E) a recommendation for structure of a public/private partnership to share in development and construction costs;

(F) a plan leading to the selection and conceptual design, by September 30, 2004, of at least one Generation IV nuclear energy system for demonstration through a public/private partnership; and

(G) a recommendation for appropriate involvement of the Commission.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $50,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

SEC. 205. RESEARCH SUPPORTING REGULATORY PROCESSES FOR NEW REACTOR TECHNOLOGIES AND DESIGNS.

(a) IN GENERAL.—The Commission shall develop a comprehensive research program to support resolution of potential licensing issues associated with new reactor concepts and new technologies that may be incorporated into new or current designs of nuclear plants.

(b) IDENTIFICATION OF CANDIDATE DESIGNS.—The Commission shall work with the Office of Nuclear Energy, Science, and Technology and the nuclear industry to identify candidate designs to be addressed by the program.

(c) ACTIVITIES TO BE INCLUDED.—The research shall include—

(1) modeling, analyses, tests, and experiments as required to provide input into total system behavior and response to hypothesized accidents; and

(2) consideration of new reactor technologies that may affect—

(A) risk-informed licensing of new plants;

(B) behavior of advanced fuels;

(C) evolving environmental considerations relative to spent fuel management and health effect standards;

(D) new technologies (such as advanced sensors, digital instrumentation, and control) and human factors that affect the application of new technology to current plants; and

(E) other emerging technical issues.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $25,000,000 for fiscal year 2002; and

(2) such sums as are necessary for subsequent fiscal years.

TITLE III—EVALUATIONS OF NUCLEAR ENERGY

SEC. 301. ENVIRONMENTALLY PREFERABLE PURCHASING.

(a) ACQUISITION.—For the purposes of Executive Order No. 13101 (3 C.F.R. 210 (1998)) and policies established by the Office of Federal Procurement Policy or other executive branch offices for the acquisition or use of environmentally preferable products (as defined in section 201 of the Executive order), electricity generated by a nuclear plant shall be considered to be an environmentally preferable product.

(b) PROCUREMENT.—No Federal procurement policy or program may—

(1) discriminate against or exclude nuclear generated electricity in making purchasing decisions; or

(2) subscribe to product certification programs or recommend product purchases that exclude nuclear electricity.

SEC. 302. EMISSION-FREE CONTROL MEASURES UNDER A STATE IMPLEMENTATION PLAN.

(a) DEFINITIONS.—In this section:

(1) CRITERIA AIR POLLUTANT.—The term ''criteria air pollutant'' means a pollutant listed under section 108(a) of the Clean Air Act (42 U.S.C. 7408(a)).

(2) EMISSION-FREE ELECTRICITY SOURCE.—The term ''emission-free electricity source'' means—

(A) a facility that generates electricity without emitting criteria pollutants, hazardous pollutants, or greenhouse gases as a result of onsite operations of the facility; and

(B) a facility that generates electricity using nuclear fuel that meets all applicable standards for radiological emissions under section 112 of the Clean Air Act (42 U.S.C. 7412).

(3) GREENHOUSE GAS.—The term ''greenhouse gas'' means a natural or anthropogenic gaseous constituent of the atmosphere that absorbs and re-emits infrared radiation.

(4) HAZARDOUS POLLUTANT.—The term ''hazardous pollutant'' has the meaning given the term in section 112(a) of the Clean Air Act (42 U.S.C. 7412(a)).

(5) IMPROVEMENT IN AVAILABILITY.—The term ''improvement in availability'' means an increase in the amount of electricity produced by an emission-free electricity source that provides a commensurate reduction in output from emitting sources.

(6) INCREASED EMISSION-FREE CAPACITY PROJECT.—The term ''increased emission-free capacity project'' means a project to construct an emission-free electricity source or increase the rated capacity of an existing emission-free electricity source.

(b) TREATMENT OF CERTAIN STATE ACTIONS AS CONTROL MEASURES.—An action taken by a State to support the continued operation of an emission-free electricity source or to support an improvement in availability or an increased emission-free capacity project shall be considered to be a control measure for the purposes of section 110(a) of the Clean Air Act (42 U.S.C. 7410(a)).

(c) ECONOMIC INCENTIVE PROGRAMS.—

(1) CRITERIA AIR POLLUTANTS AND HAZARDOUS POLLUTANTS.—Emissions of criteria air pollutants or hazardous pollutants prevented or avoided by an improvement in availability or the operation of increased emission-free capacity shall be eligible for, and may not be excluded from, incentive programs used as control measures, including programs authorizing emission trades, revolving loan funds, tax benefits, and special financing programs.

(2) GREENHOUSE GASES.—Emissions of greenhouse gases prevented or avoided by an improvement in availability or the operation of increased emission-free capacity shall be eligible for, and may not be excluded from, incentive programs used as control measures on the national, regional State, or local level.

SEC. 304. PROHIBITION OF DISCRIMINATION AGAINST EMISSION-FREE ELECTRICITY PROJECTS IN INTERNATIONAL DEVELOPMENT PROGRAMS.

(a) PROHIBITION.—No Federal funds shall be used to support a domestic or international organization engaged in the financing, development, insuring, or underwriting of electricity production facilities if the activities fail to include emission-free electricity production facility projects that use nuclear fuel.

(b) REQUEST FOR POLICIES.—The Secretary of Energy shall request copies of all written policies regarding the eligibility of emission-free nuclear electricity production facilities for funding or support from international or domestic organizations engaged in the financing, development, insuring, or underwriting of electricity production facilities, including—

(1) the Agency for International Development;

(2) the World Bank;

(3) the Overseas Private Investment Corporation;

(4) the International Monetary Fund; and

(5) the Export-Import Bank.

TITLE IV—DEVELOPMENT OF NATIONAL SPENT NUCLEAR FUEL STRATEGY

SEC. 401. FINDINGS.

Congress finds that—

(1) before the Federal Government takes any irreversible action relating to the disposal of spent nuclear fuel, Congress must determine whether the spent fuel should be treated as waste subject to permanent burial or should be considered to be an energy resource that is needed to meet future energy requirements; and

(2) national policy on spent nuclear fuel may evolve with time as improved technologies for spent fuel are developed or as national energy needs evolve.

SEC. 402. OFFICE OF SPENT NUCLEAR FUEL RESEARCH.

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE DIRECTOR.—The term ''Associate Director'' means the Associate Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Spent Nuclear Fuel Research established by subsection (b).

(b) ESTABLISHMENT.—There is established an Office of Spent Nuclear Fuel Research within the Office of Nuclear Energy Science and Technology of the Department of Energy.

(c) HEAD OF OFFICE.—The Office shall be headed by the Associate Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Nuclear Energy Science and Technology, and compensated at a rate determined by applicable law.

(d) DUTIES OF THE ASSOCIATE DIRECTOR.—

(1) IN GENERAL.—The Associate Director shall be responsible for carrying out an integrated research, development, and demonstration program on technologies for treatment, recycling, and disposal of high-level nuclear radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary.

(2) PARTICIPATION.—The Associate Director shall coordinate the participation of national laboratories, universities, the commercial nuclear industry, and other organizations in the investigation of technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste.

(3) ACTIVITIES.—The Associate Director shall—

(A) develop a research plan to provide recommendations by 2015;

(B) identify promising technologies for the treatment, recycling, and disposal of spent nuclear fuel and high-level radioactive waste;

(C) conduct research and development activities for promising technologies;

(D) ensure that all activities include as key objectives minimization of proliferation concerns and risk to health of the general public or site workers, as well as development of cost-effective technologies;

(E) require research on both reactor- and accelerator-based transmutation systems;

(F) require research on advanced processing and separations;

(G) include participation of international collaborators in research efforts, and provide funding to a collaborator that brings unique capabilities not available in the United States if the country in which the collaborator is located is unable to provide support; and

(H) ensure that research efforts are coordinated with research on advanced fuel cycles and reactors conducted by the Office of Nuclear Energy Science and Technology.

(e) GRANT AND CONTRACT AUTHORITY.—The Secretary may make grants, or enter into contracts, for the purposes of the research projects and activities described in subsection (d)(3).

(f) REPORT.—The Associate Director shall annually submit to Congress a report on the activities and expenditures of the Office that describes the progress being made in achieving the objectives of this section.

SEC. 403. ADVANCED FUEL RECYCLING TECHNOLOGY DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Director of the Office of Nuclear Energy, Science, and Technology, shall conduct an advanced fuel recycling technology research and development program to further the availability of electrometallurgical technology as a proliferation-resistant alternative to aqueous reprocessing in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts, subject to annual review by the Nuclear Energy Research Advisory Committee.

(b) REPORTS.—The Secretary shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate an annual report on the activities of the advanced fuel recycling technology development program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2002; and

(2) such sums as are necessary for fiscal years 2003 through 2006.

TITLE V—NATIONAL ACCELERATOR SITE

SEC. 501. FINDINGS.

Congress finds that—

(1)(A) high-current proton accelerators are capable of producing significant quantities of neutrons through the spallation process without using a critical assembly; and

(B) the availability of high-neutron fluences enables a wide range of missions of major national importance to be conducted;

(2)(A) public acceptance of repositories, whether for spent fuel or for final waste products from spent fuel, can be enhanced if the radio-toxicity of the materials in the repository can be reduced;

(B) transmutation of long-lived radioactive species by an intense neutron source provides an approach to such a reduction in toxicity; and

(C) research and development in this area (which, when the source of neutrons is derived from an accelerator, is called ''accelerator transmutation of waste'') should be an important part of a national spent fuel strategy;

(3)(A) nuclear weapons require a reliable source of tritium;

(B) the Department of Energy has identified production of tritium in a commercial light water reactor as the first option to be pursued;

(C) the importance of tritium supply is of sufficient magnitude that a backup technology should be demonstrated and available for rapid scale-up to full requirements;

(D) evaluation of tritium production by a high-current accelerator has been underway; and

(E) accelerator production of tritium should be demonstrated, so that the capability can be scaled up to levels required for the weapons stockpile if difficulties arise with the reactor approach;

(4)(A) radioisotopes are required in many medical procedures;

(B) research on new medical procedures is adversely affected by the limited availability of production facilities for certain radioisotopes; and

(C) high-current accelerators are an important source of radioisotopes, and are best suited for production of proton-rich isotopes; and

(5)(A) a spallation source provides a continuum of neutron energies; and

(B) the energy spectrum of neutrons can be altered and tailored to allow a wide range of experiments in support of nuclear engineering studies of alternative reactor configurations, including studies of materials that may be used in future fission or fusion systems.

SEC. 502. DEFINITIONS.

In this title:

(1) OFFICE.—The term ''Office'' means the Office of Nuclear Energy, Science, and Technology of the Department of Energy.

(2) PROGRAM.—The term ''program'' means the Advanced Accelerator Applications Program established under section 503.

(3) PROPOSAL.—The term ''proposal'' means the proposal for a location supporting the missions identified for the program developed under section 503.

SEC. 503. ADVANCED ACCELERATOR APPLICATIONS PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to be known as the ''Advanced Accelerator Applications Program''.

(b) MISSION.—The mission of the program shall include conducting scientific or engineering research, development, and demonstrations on—

(1) accelerator production of tritium as a backup technology;

(2) transmutation of spent nuclear fuel and waste;

(3) production of radioisotopes;

(4) advanced nuclear engineering concepts, including material science issues; and

(5) other applications that may be identified.

(c) ADMINISTRATION.—The program shall be administered by the Office—

(1) in consultation with the National Nuclear Security Administration, for all activities related to tritium production; and

(2) in consultation with the Office of Civilian Radioactive Waste Management, for all activities relating to the impact of waste transmutation on repository requirements.

(d) PARTICIPATION.—The Office shall encourage participation of international collaborators, industrial partners, national laboratories, and, through support for new graduate engineering and science students and professors, universities.

(e) PROPOSAL OF LOCATION.—

(1) IN GENERAL.—The Office shall develop a detailed proposal for a location supporting the missions identified for the program.

(2) CONTENTS.—The proposal shall—

(A) recommend capabilities for the accelerator and for each major research or production effort;

(B) include development of a comprehensive site plan supporting those capabilities;

(C) specify a detailed time line for construction and operation of all activities;

(D) identify opportunities for involvement of the private sector in production and use of radioisotopes;

(E) contain a recommendation for funding required to accomplish the proposal in future fiscal years; and

(F) identify required site characteristics.

(3) PRELIMINARY ENVIRONMENTAL IMPACT ASSESSMENT.—As part of the process of identification of required site characteristics, the Secretary shall undertake a preliminary environmental impact assessment of a range of sites.

(4) SUBMISSION TO CONGRESS.—Not later than March 31, 2002, the Secretary shall submit to the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate and the Committee on Science and Committee on Appropriations of the House of Representatives a report describing the proposal.

(f) COMPETITION.—

(1) IN GENERAL.—The Secretary shall use the proposal to conduct a nationwide competition among potential sites.

(2) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate and the Committee on Science and the Committee on Appropriations of the House of Representatives a report that contains an evaluation of competing proposals and a recommendation of a final site and for funding requirements to proceed with construction in future fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROPOSAL.—There is authorized to be appropriated for development of the proposal $20,000,000 for each of fiscal years 2002 and 2003.

(2) RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES.—There are authorized to be appropriated for research, development, and demonstration activities of the program—

(A) $120,000,000 for fiscal year 2002; and

(B) such sums as are necessary for subsequent fiscal years.

TITLE VI—NUCLEAR REGULATORY COMMISSION REFORM

SEC. 601. DEFINITIONS.

Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended—

(1) in subsection f., by striking ''Atomic Energy Commission'' and inserting ''Nuclear Regulatory Commission'';

(2) by redesignating subsection jj. as subsection ll.; and

(3) by adding at the end the following:

''jj. FEDERAL NUCLEAR OBLIGATION.—The term 'Federal nuclear obligation' means—

''(1) a nuclear decommissioning obligation;

''(2) a fee required to be paid to the Federal Government by a licensee for the storage, transportation, or disposal of spent nuclear fuel and high-level radioactive waste, including a fee required under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.); and

''(3) an assessment by the Federal Government to fund the cost of decontamination and decommissioning of uranium enrichment facilities, including an assessment required under chapter 28 of the Energy Policy Act of 1992 (42 U.S.C. 2297g).

''kk. NUCLEAR DECOMMISSIONING OBLIGATION.—The term 'nuclear decommissioning obligation' means an expense incurred to ensure the continued protection of the public from the dangers of any residual radioactivity or other hazards present at a facility at the time the facility is decommissioned, including all costs of actions required under rules, regulations and orders of the Commission for—

''(1) entombing, dismantling and decommissioning a facility; and

''(2) administrative, preparatory, security and radiation monitoring expenses associated with entombing, dismantling, and decommissioning a facility.''.

SEC. 602. OFFICE LOCATION.

Section 23 of the Atomic Energy Act of 1954 (42 U.S.C. 2033) is amended by striking ''; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia''.

SEC. 603. LICENSE PERIOD.

Section 103c. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(c)) is amended—

(1) by striking ''c. Each such'' and inserting the following:

''c. LICENSE PERIOD.—

''(1) IN GENERAL.—Each such''; and

(2) by adding at the end the following:

''(2) COMBINED LICENSES.—In the case of a combined construction and operating license issued under section 185(b), the initial duration of the license may not exceed 40 years from the date on which the Commission finds, before operation of the facility, that the acceptance criteria required by section 185(b) are met.''.

SEC. 604. ELIMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.

(a) COMMERCIAL LICENSES.—Section 103d. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(d)) is amended by striking the second sentence.

(b) MEDICAL THERAPY AND RESEARCH AND DEVELOPMENT.—Section 104d. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(d)) is amended by striking the second sentence.

SEC. 605. ELIMINATION OF DUPLICATIVE ANTITRUST REVIEW.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by striking subsection c. and inserting the following:

''c. CONDITIONS.—

''(1) IN GENERAL.—A condition for a grant of a license imposed by the Commission under this section in effect on the date of enactment of the Nuclear Assets Restructuring Reform Act of 2001 shall remain in effect until the condition is modified or removed by the Commission.

''(2) MODIFICATION.—If a person that is licensed to construct or operate a utilization or production facility applies for reconsideration under this section of a condition imposed in the person's license, the Commission shall conduct a proceeding, on an expedited basis, to determine whether the license condition—

''(A) is necessary to ensure compliance with section 105a.; or

''(B) should be modified or removed.''.

SEC. 606. GIFT ACCEPTANCE AUTHORITY.

(a) IN GENERAL.—Section 161g. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) is amended—

(1) by inserting ''(1)'' after ''(g)'';

(2) by striking ''this Act;'' and inserting ''this Act; or''; and

(3) by adding at the end the following:

''(2) accept, hold, utilize, and administer gifts of real and personal property (not including money) for the purpose of aiding or facilitating the work of the Commission.''.

(b) CRITERIA FOR ACCEPTANCE OF GIFTS.—

(1) IN GENERAL.—Chapter 14 of title I of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) is amended by adding at the end the following:

''SEC. 170C. CRITERIA FOR ACCEPTANCE OF GIFTS.

''(a) IN GENERAL.—The Commission shall establish written criteria for determining whether to accept gifts under section 161g.(2).

''(b) CONSIDERATIONS.—The criteria under subsection (a) shall take into consideration whether the acceptance of a gift would compromise the integrity of, or the appearance of the integrity of, the Commission or any officer or employee of the Commission.''.

(2) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by adding at the end of the items relating to chapter 14 the following:

''Sec. 170C. Criteria for acceptance of gifts.''.

SEC. 607. AUTHORITY OVER FORMER LICENSEES FOR DECOMMISSIONING FUNDING.

Section 161i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking ''and (3)'' and inserting ''(3)''; and

(2) by inserting before the semicolon at the end the following: '', and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility''.

SEC. 608. CARRYING OF FIREARMS BY LICENSEE EMPLOYEES.

(a) IN GENERAL.—Chapter 14 of title I of the Atomic Energy Act of 1954 (42 U.S.C. 2201 et seq.) (as amended by section 606(b)) is amended—

(1) in section 161, by striking subsection k. and inserting the following:

''k. authorize to carry a firearm in the performance of official duties such of its members, officers, and employees, such of the employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States located at facilities owned by or contracted to the United States or being transported to or from such facilities, and such of the employees of persons licensed or certified by the Commission (including employees of contractors of licensees or certificate holders) engaged in the protection of facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission or in the protection of property of significance to the common defense and security located at facilities owned or operated by a Commission licensee or certificate holder or being transported to or from such facilities, as the Commission considers necessary in the interest of the common defense and security;'' and

(2) by adding at the end the following:

''SEC. 170D. CARRYING OF FIREARMS.

''(a) AUTHORITY TO MAKE ARREST.—

''(1) IN GENERAL.—A person authorized under section 161k. to carry a firearm may, while in the performance of, and in connection with, official duties, arrest an individual without a warrant for any offense against the United States committed in the presence of the person or for any felony under the laws of the United States if the person has a reasonable ground to believe that the individual has committed or is committing such a felony.

''(2) LIMITATION.—An employee of a contractor or subcontractor or of a Commission licensee or certificate holder (or a contractor of a licensee or certificate holder) authorized to make an arrest under paragraph (1) may make an arrest only—

''(A) when the individual is within, or is in flight directly from, the area in which the offense was committed; and

''(B) in the enforcement of—

''(i) a law regarding the property of the United States in the custody of the Department of Energy, the Commission, or a contractor of the Department of Energy or Commission or a licensee or certificate holder of the Commission;

''(ii) a law applicable to facilities owned or operated by a Commission licensee or certificate holder that are designated by the Commission under section 161k.;

''(iii) a law applicable to property of significance to the common defense and security that is in the custody of a licensee or certificate holder or a contractor of a licensee or certificate holder of the Commission; or

''(iv) any provision of this Act that subjects an offender to a fine, imprisonment, or both.

''(3) OTHER AUTHORITY.—The arrest authority conferred by this section is in addition to any arrest authority under other law.

''(4) GUIDELINES.—The Secretary and the Commission, with the approval of the Attorney General, shall issue guidelines to implement section 161k. and this subsection.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) (as amended by section 7(b)(2)) is amended by adding at the end of the items relating to chapter 14 the following:

''Sec. 170D. Carrying of firearms.''.

SEC. 609. COST RECOVERY FROM GOVERNMENT AGENCIES.

Section 161w. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(w)) is amended—

(1) by striking '', or which operates any facility regulated or certified under section 1701 or 1702,'';

(2) by striking ''483a of title 31 of the United States Code'' and inserting ''9701 of title 31, United States Code,''; and

(3) by inserting before the period at the end the following: '', and, commencing October 1, 2002, prescribe and collect from any other Government agency any fee, charge, or price that the Commission may require in accordance with section 9701 of title 31, United States Code, or any other law''.

SEC. 610. HEARING PROCEDURES.

Section 189a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)(1)) is amended by adding at the end the following:

''(C) HEARINGS.—A hearing under this section shall be conducted using informal adjudicatory procedures established under sections 553 and 555 of title 5, United States Code, unless the Commission determines that formal adjudicatory procedures are necessary—

''(i) to develop a sufficient record; or

''(ii) to achieve fairness.''.

SEC. 611. UNAUTHORIZED INTRODUCTION OF DANGEROUS WEAPONS.

Section 229a. of the Atomic Energy Act of 1954 (42 U.S.C. 2278a(a)) is amended in the first sentence by inserting ''or subject to the licensing authority of the Commission or to certification by the Commission under this Act or any other Act'' before the period at the end.

SEC. 612. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.

Section 236a. of the Atomic Energy Act of 1954 (42 U.S.C. 2284(a)) is amended—

(1) in paragraph (2), by striking ''storage facility'' and inserting ''storage, treatment, or disposal facility'';

(2) in paragraph (3)—

(A) by striking ''such a utilization facility'' and inserting ''a utilization facility licensed under this Act''; and

(B) by striking ''or'' at the end;

(3) in paragraph (4)—

(A) by striking ''facility licensed'' and inserting ''or nuclear fuel fabrication facility licensed or certified''; and

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

(4) by adding at the end the following:

''(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the person knows or reasonably should know that there is a significant possibility that the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;''.

SEC. 613. NUCLEAR DECOMMISSIONING OBLIGATIONS OF NONLICENSEES.

(a) IN GENERAL.—The Atomic Energy Act of 1954 is amended by inserting after section 241 (42 U.S.C. 2015) the following:

''SEC. 242. NUCLEAR DECOMMISSIONING OBLIGATIONS OF NONLICENSEES.

''(a) DEFINITION OF FACILITY.—In this section, the term 'facility' means a commercial nuclear electric generating facility for which a Federal nuclear obligation is incurred.

''(b) DECOMMISSIONING OBLIGATIONS.—After public notice and in accordance with section 181, the Commission shall establish by rule, regulation, or order any requirement that the Commission considers necessary to ensure that a person that is not a licensee (including a former licensee) complies fully with any nuclear decommissioning obligation.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by inserting after the item relating to section 241 the following:

''Sec. 242. Nuclear decommissioning obligations of nonlicensees.''.

SEC. 614. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title take effect on the date of enactment of this Act.

(b) RECOMMISSIONING AND LICENSE REMOVAL.—The amendment made by section 613 takes effect on the date that is 180 days after the date of enactment of this Act.

Mrs. LINCOLN. Mr. President, today I join Senator DOMENICI in introducing the Nuclear Energy Electricity Assurance Act of 2001. Simply put, this bill is designed to ensure that nuclear energy remains a viable energy source well into the future of this country.

The Nuclear Energy Electricity Assurance Act of 2001 has many important provisions and I will talk specifically about a couple of them today.

We should pursue innovative technologies to reduce the amount of nuclear waste that we will eventually have to store permanently in a geologic repository. Technologies such as nuclear waste reprocessing would allow us to recycle about 75 percent of the nuclear waste we have today. And there are technologies such as transmutation that would increase the percentage of recycled waste even further. This bill establishes a new national strategy for nuclear waste by creating the Office of Spent Nuclear Fuel Research and beginning the Advanced Fuel Recycling Technology Development Program within the Department of Energy to study and focus on achievable nuclear fuel reprocessing initiatives. A strong nuclear fuel reprocessing program is necessary to ensure we can make nuclear fuel a truly renewable fuel source. It simply makes sense.

In my home State of Arkansas, we have one nuclear powerplant located just outside the small town of Dardanelle. This facility has provided safe, clean, emission-free power to all Arkansans for many years, and I aim to see that it remains for many more. This bill will help ensure that this happens by providing incentive funding for utilities to invest in increased efficiency and capacity of each nuclear powerplant.

This bill takes safe, legitimate steps toward bringing more nuclear power online, providing incentives to increase nuclear power efficiency, and strengthening the pursuit of needed reprocessing technologies. I look forward to the debate on this bill and providing this Nation with a safe, economical, and environmentally safe energy supply.

Mr. MURKOWSKI. Mr. President, I rise today to congratulate Senator DOMENICI on the introduction of his very fine bill regarding nuclear energy in this country. He has been a strong advocate of strengthening and reassessing the US approach to nuclear technologies and this bill goes a long

way toward attaining these goals. Senator DOMENICI has been an active participant in all aspects of nuclear production, nonproliferation and our nation's security and has been very helpful to me in my role as Chairman of the Energy and Natural Resources Committee. He has always been supportive of efforts to deal with our nation's nuclear waste and recently co-sponsored my ''National Energy Security Act of 2001,'' a bipartisan approach to ensuring our nation's energy security.

Senator DOMENICI's bill is significant because it addresses both short-term and long-term issues. Our bills share many provisions, including: renewal of the Price-Anderson Act, authorizations for Nuclear Energy Research Initiative, NERI, Nuclear Energy Plant Optimization, NEPO, and Nuclear Energy Technology Programs, NETP, encouraging nuclear energy efficiencies, and creation of an office of spent nuclear fuel research.

Short-term goals of increasing efficiencies are especially important in a time when this country is running short of generation capacity. What is happening in California could happen elsewhere and we need to ensure we get the most of existing generation. In 1999, U.S. nuclear reactors achieved close to 90 percent efficiency. Total efficiency increases during the 1990's at existing plants was the equivalent of adding approximately twenty-three 1,000 megawatt power plants. And keep in mind, that is all clean, non-emitting generation. Despite what environmentalists want you to think, nuclear is clean. It is the largest source of U.S. emission free generation, producing approximately 70 percent of our nation's clean-burning generation in 1999.

In addition, Senator DOMENICI's bill encourages and funds long-term progress in nuclear issues. If we are to have a viable nuclear industry in the future, we must have properly educated and trained professionals. To achieve that goal, Senator DOMENICI's bill encourages education in the hard sciences by funding recommendations made by the Nuclear Energy Research Advisory Committee to support nuclear engineering. Senator DOMENICI's bill also encourages developing waste solutions, a problem that has bedeviled the industry since the first fuel rods were removed from a commercial plant. The federal government said it would take responsibility for this waste but has yet to do so. Senator DOMENICI's ''Office of Spent Nuclear Fuel Research'' would develop a national strategy for spent fuel, including the study of reprocessing and transmutation. The bill also includes authorization for advanced accelerator applications and advanced fuel recycling technology development.

Unless this nation is able to address the nuclear waste issue, we are in danger of losing the nuclear option. And in this time of increasing demand for clean, stable, reliable sources of energy, we just can't afford to lose nuclear energy. Nuclear energy is on the upswing. Four or five years ago, who would have thought we would hear talk of buying and selling plants and even building new plants. But it is happening! In this deregulated environment, nuclear plants are becoming hot commodities, if you will pardon the pun.

And US industry is actually putting its money where its mouth is. By the end of 2001, Chicago-based Exelon Corporation will have invested $15 million in a South African venture to build a pebble bed modular reactor. Designed to be simpler, safer, and cheaper than current light-water reactors, these pebble bed reactors have captured the attention of several companies and the NRC and Senator DOMENICI's bill will help to smooth the path for new reactor technologies.

If we ever hope to achieve energy security and energy independence in this country, we cannot abandon the nuclear option. It is an important and integral part of our energy mix. Our economy depends on nuclear energy. Our national security depends on nuclear energy. Our environment depends on nuclear energy. Our future depends on nuclear energy.

If we do not create reasonable energy diversity with an increased reliance on nuclear generation, we endanger ourselves, our future, and our children's future.

Ms. LANDRIEU. Mr. President, today I rise as an original co-sponsor of the Nuclear Energy Electricity Supply Assurance Act of 2001. I commend the senior Senator from New Mexico for his passion and persistence on this issue.

The U.S. is currently experiencing unusually high and volatile energy prices. Residents of my state of Louisiana as well as citizens across the country are facing abnormally high gas prices this winter and cannot pay their bills. While there are some steps we can take in the short run to help, the situation is complex in nature and any attempt at an overall solution will require a number of different remedies over the long run focusing on both the supply and demand side of the equation.

The need to increase our domestic supply of energy is apparent. One of the great strengths of the electric supply system in this country is the contribution that comes from a variety of fuels such as coal, nuclear, natural gas, hydropower, oil and renewable energy. The diversity of available fuels we have at our disposal should enable us to balance cost, availability and environmental impacts to the best advantage. Unfortunately, we have not made adequate use of this supply.

While most of the attention this winter has focused on the role of natural gas, coal and nuclear energy actually both make a larger contribution to the electricity supply system of the United States, representing approximately 55 and 20 percent respectively of our nation's electricity supply. Each of the above mentioned sources of electricity has unique advantages and disadvantages. While it would not be wise to rely too heavily on any single fuel for its electricity, we must not allow our misconceptions to dissuade us from ignoring others altogether.

One source of energy which I believe we are not making proper use of is nuclear power. There are currently 103 nuclear power plants in this country but no new plants have been ordered since 1978. Two of these plants are located in my state of Louisiana where nuclear power generates 15 percent of the electricity. We have witnessed firsthand the numerous benefits of nuclear energy.

First, nuclear energy is efficient and cost effective due to low operating costs and high plant performance. Also, nuclear energy is reliable in that it is not subject to unreliable weather or climate conditions, unpredictable cost fluctuations or dependence on foreign suppliers. Thirdly, contrary to popular perception, nuclear energy has perhaps the lowest impact on the environment including air, land, water and wildlife of any energy source because it emits no harmful gases into the environment, isolates its waste from the environment and requires less area to produce the same amount of electricity as other sources. Finally, although many people associate the issue of nuclear power with the accident at Three Mile Island in 1979, its safety record has been excellent, particularly in comparison with other major commercial energy technologies.

The bill being introduced today will help provide nuclear power with its proper place in the energy policy debate taking place in our country. Three of the more important provisions contained in this legislation are: the encouragement of new plant construction through loan guarantees to complete unfinished plants; the assurance of a level playing field for nuclear power by making it eligible for federal ''environmentally preferable'' purchasing programs and research supporting regulations for new reactor designs with proper focus on safety and efficiency.

Over the next several months the members of the United States Senate will engage in a critical debate over the future of our nation's energy policy. I look forward to participating in this discussion and advocating for the important role of nuclear power. While development of nuclear power alone will not take care of our energy needs, it should be part of the answer.

Mr. CRAIG. Mr. President, I am very pleased to stand with my friend and colleague, Senator PETE DOMENICI, as an original cosponsor of the Nuclear Energy Electricity Supply Assurance Act of 2001. Following on the heels of the introduction of the comprehensive energy bill last week, this bill takes a closer look at nuclear energy specifically and lays out a concrete plan to secure the continued viability of nuclear energy, our largest source of emissions, free electricity.

Let me also note that I am very pleased that this is a bipartisan effort. I appreciate my colleagues from across the aisle who are joining with us in acknowledging that it is vital to take steps now in support nuclear energy and thereby, help to increase our energy independence.

The Nuclear Energy Electricity Supply Assurance Act of 2001 is a package of measures which help our current energy situation by supporting nuclear energy research and development, by encouraging new plant construction, by assuring a level playing field for nuclear power by acknowledging nuclear's clean air benefits, and by improving the regulatory process. Although the bill does not explicitly address the nuclear waste repository at Yucca Mountain, the bill does create an Office of Spent Nuclear Fuel Research at the Department of Energy and provides for research into advanced nuclear fuel recycling technologies such as those being studied at Argonne National Laboratory in Idaho.

If my colleagues are wondering why it is important that we address the energy issue, they need look no further than the headlines. However, I would like to bring my colleagues' attention to a study that was recently released on the subject of energy. The Center for Strategic and International Studies here in Washington, DC, recently released its study entitled, ''The Geopolitics of Energy into the 21st Century.'' Their findings are sobering and I want to take a moment to highlight some of their conclusions. I do this to provide the global context for our energy picture and to explain why it is so critical that this nuclear energy bill and the comprehensive energy package introduced last week receive our full attention.

This study on the geopolitics of energy found that during the next 20 years, energy demand is projected to expand more than 50 percent and that electricity will continue to be the most rapidly growing sector of energy demand. Energy supply, not simply reductions in demand, will need to be expanded substantially to meet this demand growth and that the choice of primary fuel used to supply power plants will have important effects on the environment. Interestingly, this growth in demand will not be fueled primarily by the United States, as some might think. Developing economies in Asia and in Central and South America will show the greatest increase in consumption.

The study points out that although the world drew some portion of its energy supplies from unstable countries and regions throughout much of the twentieth century, by the year 2020, fully 50 percent of estimated total global oil demand will be met from countries that pose a high risk of internal instability. Furthermore, the study concludes that a crisis in one or more of the world's key energy-producing countries is highly likely at some point between now and the year 2020.

Given these predictions, I am alarmed by our current dependence on imported energy. I think it represents a very serious vulnerability in our energy picture. This situation makes it critical that the Senate act on energy legislation, to put in place the long term steps that will help us climb out of the energy deficit we find ourselves in. Problems, such as the current energy crisis, that have been years in the making will not be remedied overnight, but we need to start taking steps now to improve what we can.

Taking constructive steps to strengthen our energy picture is what the Nuclear Energy Electricity Supply Assurance Act of 2001 is about. One of the first steps to be taken, is to recognize the tremendous contribution that nuclear energy already is making to our domestic energy picture. I think my colleagues might be surprised to hear that the U.S. nuclear industry is considered the strongest in the world. Measured in terms of output, the U.S. nuclear program is as large as the programs of France and Japan combined. Nuclear energy recently replaced coal as having the lowest electricity production cost, approximately 1.83 cents.

The process for extending nuclear power plant licenses has been successfully demonstrated by the Nuclear Regulatory Commission. Two plants have been successfully relicensed and three more are in the process now. Additionally, the nuclear industry continues to improve the efficiency of its currently operating nuclear plants. During the past 10 years, these gains in efficiency have added 23,000 megawatts to the power grid. This is the equivalent of adding 23 additional 1,000 megawatt power plants. This additional power has satisfied approximately 30 percent of the growth in U.S. electricity demand during the 1990s.

What I have not mentioned in all this, is the important contribution nuclear energy makes in meeting clean air goals. If this nuclear generation were not in place, some other carbon-emitting source of generation would probably be taking its place. In fact, if you look at the portfolio of emission-free power generation in the U.S., nuclear energy comprises about 69 percent of our emission-free power, with hydroelectric power making up about 29 percent and the remaining less than 2 percent is made up by geothermal, wind and solar.

The Nuclear Energy Electricity Supply Assurance Act of 2001 will authorize the exploration of advanced nuclear reactor designs which meet the goals of being economic, having enhanced safety features, while also reducing the production of spent fuel. The development of ''Generation Four'' nuclear reactors is something I am really excited about because much of the work done so far on Generation Four reactor design has been done at the Idaho National Engineering and Environmental Laboratory and at Argonne West National Laboratory in my home state of Idaho. One of the reasons I am so optimistic about the ability of this country to tackle these tough energy challenges is the good work that I have seen coming out of our laboratories. When we unleash our best minds on these issues, really wonderful ideas come forth. That kind of creativity and initiative is what this bill is attempting to harness.

I am excited to be a part of this bill and I thank Senator DOMENICI for partnering with me early on in the development of this bill and soliciting my input. I think we have a good product. As we move forward, I am sure we will receive additional innovative ideas. That is the challenge to all of us as we address our energy crisis—bringing the best ideas to bear. This bill is a good start to that process.

By Mr. CRAPO:

S. 473. A bill to amend the Elementary and Secondary Education Act of 1965 to improve training for teachers in the use of technology; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Training Teachers for Technology Act of 2001, a bill to allow states to provide assistance to local educational agencies to develop innovative professional development programs that train teachers to use technology in the classroom.

As your know, education technology can significantly improve student achievement. Congress has recognized this fact by continually voting to dramatically increase funding for education technology. In fact, in just the programs under the Elementary and Secondary Education Act, ESEA. Federal support has grown from $52.6 million in Fiscal Year 1995, to over $700 million just five years later. As we debate the upcoming reauthorization of ESEA, I will be working to support legislation that builds on the strong educational technology infrastructure already in place in school districts in nearly every state.

But we need to do more than simply place computers in classrooms. We need to provide our educators with the skills they need to incorporate evolving educational technology in the classroom. My bill does exactly that. It will encourage states to develop and implement professional development programs that train teachers in the use of technology in the classroom. Effective teaching strategies must incorporate educational technology if we are to ensure that all children have the skills they need to compete in a high-tech workplace. An investment in professional development for our teachers is an investment in our children and our future.

Specifically, the legislation I am introducing today would allow local education agencies to apply once for all teacher training technology programs within the National Challenge Grants for Technology in Education, the Technology Literacy Challenge Fund, and

Star Schools. The U.S. General Accounting Office reported that there are more than thirty federal programs, administered by five different federal agencies, which provide funding for education technology to K–12 schools. My measure would reduce the financial and paperwork burden to primarily small, poor, rural districts that don't have the resources to hire full time staff to handle grant writing for all of these different programs. Instead, schools would be able to apply once for federal technology assistance, and then combine their funds to develop a comprehensive program that integrates technology directly into the curriculum and provides professional development for teachers. My bill adopts the principles of simplicity and flexibility. This is what schools are asking for, so this is what we should give them.

My legislation helps those smaller schools that might ordinarily be unfairly disadvantaged through traditional grant programs. Idaho's public schools are excelling rapidly in their understanding of how technology can enhance the teaching and learning environments in Idaho's classrooms. I would like to extend this same empowerment to public schools throughout the nation. Investing in technology training for teachers will make a significant difference in the lives of our children.

An opportunity has arisen where we, Members of the United States Senate, are able to help many students who face unique challenges and uncertain futures. I hope you agree that a strong technology component for all students is necessary and essential in facilitating student achievement, and that through proper professional development our children will be provided an unparalleled opportunity for a better education.

I urge my colleagues to support this legislation and work for its inclusion in the reauthorization of the ESEA.

By Mr. CRAPO:

S. 474. A bill to amend the Elementary and Secondary Education Act of 1965 to improve provisions relating to initial teaching experiences and alternative routes to certification; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Professional Development Enhancement Act to strengthen and improve professional development opportunities for teachers.

Improving the quality of teaching in America's classrooms has been a priority of mine since the day my oldest child walked through the door of her public school. While I know that my five children were, and still are, fortunate to have outstanding teachers, I am keenly aware that others are not so fortunate. Nothing can replace qualified teachers with high standards and a desire to teach. Coupled with ongoing professional development opportunities, our teachers are equipped to positively influence and inspire every child in their classroom. Teachers are the backbone of education. They are our most important assets, therefore, we must continue to give them the support and appreciation they deserve.

As Congress takes up the reauthorization of the Elementary and Secondary Education Act, ESEA, the focus will shift to the recruitment and retention of good teachers. That is why my legislation is so essential. While using no new funds, the bill would strengthen existing language by making recommendations on current mentoring programs. My proposal outlines the principal components of mentoring programs that would improve the experience of new teachers, as well as provide incentives for alternative teacher certification and licensure programs.

Mentoring is a concept that has been around for years, but only recently have educators and administrators begun to talk about its real benefits. We all know that good teachers are not created over night. It is only after years of dedication and discipline that teachers themselves admit that they truly feel comfortable in their classrooms. Unfortunately, though, we see the highest level of turn-over among beginning teachers, one-third of teachers leave the profession within 5 years. Our goal must be to work with new teachers to assure they are confident in their roles and to secure their participation in the teaching profession for years to come.

My legislation will ensure program quality and accountability by requiring that teachers mentor their peers who teach the same subject, and activities are consistent with state standards. Under the supervision and guidance of a senior colleague, teachers are more likely to develop skills and achieve a higher level of proficiency. The confidence and experience gained during this time will improve the quality of instruction, which in turn will improve overall student achievement.

Attracting and retaining quality teachers is a difficult task, especially in rural impoverished areas. As a result, teacher shortage and high turnover are commonplace in rural communities in almost every state in the nation. In addition to retention, recruitment must also be at the core of our efforts. My bill will provide incentives, and grant states the flexibility to establish, expand, or improve alternative teacher certification and licensure programs.

I do not expect this legislation to solve all the problems confronting our schools today. But, I do see it as a practical way to help make our schools stronger by providing teachers with the tools to grow as professionals.

I urge my colleagues to support the Professional Development Enhancement Act and work for its inclusion in the reauthorization of the ESEA.

By Mr. CRAPO.

S. 475. A bill to provide for rural education assistance, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CRAPO. Mr. President, I rise today to introduce the Rural Education Initiative Act, which makes Federal grant programs more flexible in order to help school districts in rural communities. Serving to compliment President George W. Bush's education proposal, school districts participating in this initiative are expected to meet high accountability standards.

Targeting only those school districts in rural communities with fewer than 600 students, this proposal reaches out to small, rural districts that are often disadvantaged through our current formula-driven grant system. There is tremendous need in rural states like Idaho because many of the traditional formula grants do not reach our small rural schools. And what money does reach these schools is in amounts insufficient for affecting true curriculum initiatives. In other works, schools may not receive enough funding from any individual grant to carry out meaningful activities.

My proposal addresses this problem by allowing districts to combine funds from four independent programs to accomplish locally chosen educational goals. Under this plan, districts would be able to use their aggregate funds to support local or statewide education reform efforts intended to improve the achievement of elementary and secondary school students. I am asking for an authorization of $125 million for small rural and poor rural schools, a small price that could produce large results.

Any school district participating in this initiative would have to meet high accountability standards. It would have to show significant statistical improvement in reading and math scores, based on state assessment standards. Schools that fail to show demonstrable progress will not be eligible for continued funding. In other words, this plan rewards success, while injecting accountability and flexibility.

In reauthorizing the Elementary and Secondary Education Act, ESEA, Congress has an extraordinary opportunity to change the course of education. We must embrace this opportunity by supporting creative and innovative reform proposals, like the one that I have introduced here today. I am committed to working in the best interest of our children to develop an education system that is the best in the world. The Rural Education Initiative moves us in the right direction and I hope my colleagues will join me in supporting this measure. I urge the Senate Health, Education, Labor and Pensions Committee to incorporate this provision into the upcoming ESEA bill.

By Mrs. CLINTON (for herself, Mr. KENNEDY, Mrs. MURRAY, Mr. LEAHY, Ms. MIKULSKI, Mr.

REED, Mr. SCHUMER, and Mr. CORZINE):

S. 476. A bill to amend the Elementary and Secondary Education Act of 1965 to provide for a National Teacher Corps and principal recruitment, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I come to the Floor today to raise an issue that appears to be a foreshadowing national crisis. Every year we are losing more teachers than we can hire and many of our children are left in classrooms without full-time permanent teachers to lead them in the way that they need and deserve to learn.

The teacher shortage in the United States is projected to reach a staggering 2.2 million teachers in the next ten years. And, these shortages have already begun for communities across my state as well as throughout the country. In New York, a third of upstate teachers and half of New York City teachers could retire within the next five years that's approximately 100,000 teachers across the State. In order to deal with these shortages, far too many of our schools are forced to hire emergency certified teachers or long-term substitutes to get through the year. I remember one story about a little girl in Far Rockaway, Queens who in March of last year had already had nine teachers so many she couldn't remember all of their names. Her mother was worried sick that her child was not getting the instruction she needed, but her mother felt powerless to do anything about the situation. And, at one school in Albany, the principal has to regularly fill-in for absent teachers because there are no substitutes available.

The teacher shortage in New York State is only expected to get more dire in the next few years as more teachers retire. Now, in New York City, we know that many teachers decide to leave the City for better working conditions and higher salaries in the surrounding areas.

Last week, we learned from the United Federation of Teachers in New York City that 7,000 teachers are expected to retire this year alone from the city's public schools. In Buffalo, 231 teachers retired last year, compared with an average of 92 in each of the preceding eight years. In addition, Buffalo lost 50 young teachers who moved on to other jobs or other school districts.

Not only are we losing teachers, but principals are becoming more scarce as well. Many of our schools in New York City opened their doors this year without principals. In fact, New York City is expected to lose 50 percent of their principals in the next five years. That is just an unacceptable rate of attrition. We simply cannot afford to lose people who provide instructional leadership and direction to help teachers do their best every day.

Mr. President, that's why I have chosen to focus on this issue so early in my term. And that is why I am proud to introduce the National Teacher and Principal Recruitment Act. My legislation will create a National Teacher Corps that can bring up to 75,000 talented teachers a year into the schools that need them the most. The National Teacher Corps can make the teaching profession more attractive to talented people in our society in several ways. One is by providing bonuses for mid-career professionals interested in becoming teachers. In this fast-paced world, more and more people are changing career paths several times during their working lives. A financial bonus plan can help attract people from other professions.

The National Teacher Corps will also make more scholarships available for college and graduate students, and create new career ladders for teacher aides—to become fully certified teachers. And it will ensure that new teachers get the support and professional development they need both to become—and remain—effective teachers.

This bill will also create a national teacher recruitment campaign to provide good information to prospective teachers about resources and routes to teaching through a National Teacher Recruitment Clearinghouse.

And, finally, the bill will create a National Principal Corps to help bring more highly qualified individuals into our neediest schools. Like the Teacher Corps, the Principal Corps will be focused on attracting good candidates and providing them with the mentorship and professional development they need to succeed.

I am introducing this bill to make sure that all teachers who step into classrooms and all principals who step into leadership in their schools have the expertise, the knowledge, and the support they need to meet the highest possible standards for all of our children, who deserve nothing less.

Now, if a community were running short of water, a state of emergency would be declared and the National Guard would ship in supplies overnight. If a community runs short of blood supplies, the Red Cross stages emergency blood drives to ensure that patients have what they need. Our communities are running short of good teachers and principals, and they are as important to our children's future as any other role that I can imagine. That's what makes it so important for us to act now.

Providing good teachers and principals to schools is a local issue, but it should be a national concern. And to have a partnership with our governors and our mayors, our school superintendents and others is a way that will really help us begin to address this crisis. I hope that all of us on both sides of the aisle and in the public and private sector will join together to make sure we have the supply of teachers that we need. It certainly is the most important public activity any of us can engage in, and it's important to our nation's values as well as our individual aspirations for our children. And I hope that we will find support for doing something to work with our states and localities to meet this crisis.

By Mr. ROBERTS (for himself, Mr. KENNEDY, and Mr. BINGAMAN):

S. 478. A bill to establish and expand programs relating to engineering, science, technology and mathematics education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROBERTS. Mr. President, today, even as I speak, the members of the Health, Education, Labor, and Pensions Committee are in the process of marking up the BEST bill. The BEST bill is an acronym describing an effort to try to put together the reauthorization of the Elementary and Secondary Education Act.

I think without question, in poll after poll taken in America, trying to determine what the American citizenry is concerned about, every one of the polls show the No. 1 issue of concern on the minds of American citizens today is education.

Today I am very proud to announce I am joined by my colleagues, Senator BINGAMAN and Senator KENNEDY, and there will be other cosponsors as well, but they are the original cosponsors in introducing legislation I think without question addresses a very critical need within the American educational system, and also in regard to our national security, as well; that is, the need to improve math and science education.

As a member of the Health, Education, Labor, and Pensions Committee, I want to work with Members on both sides of the aisle. That is what we are attempting to do in the markup this morning: to address the immediate need to improve and enhance the K-through-12 math and science educational level in the United States.

Simply put, the American educational system is not producing enough students with specialized skills in engineering, science, technology, and math to fill many of the jobs currently available that we need and that are vital to the United States. Other countries are simply outpacing us in the number of students in education in EMST, engineering, math, science, and technology study. As a result of this shortage of skilled workers, Congress had to increase the number of H–1B visas by almost 300,000 from fiscal year 2000 to fiscal year 2002.

Now, the United States will need to produce four times as many scientists and engineers than we currently produce in order to meet our future demand. The technology community alone will add 20 million jobs in the next decade that require technical expertise. The U.S. has been a leader in technology for decades and the new economy has created and will continue to create an ample number of jobs that require this kind of skilled workforce.

While increasing the number of visas will assist our American economies with their current labor shortage in specialty and technical areas, we need to focus on long-term solutions through the education of our children.

Improving our students' knowledge of math and science and technology is not only a concern of American companies to remain competitive but should also be a concern of our U.S. national security. The distinguished acting Presiding Officer, the Senator from Oklahoma, has the privilege, along with me, to serve on the Senate Armed Services Committee. He is the chairman of the Readiness Subcommittee. I am in charge of a subcommittee called Emerging Threats and Capabilities.

Guess what is now a real threat, not an emerging threat. According to the latest reports on national security, the lack of engineering, science, technology, and math education, beginning at the K-through-12 level, imposes a great security threat. We don't have the people to do the job to protect our country in regard to cyber threats and the many other threats that certainly threaten our national security.

The report issued by the U.S. Commission on National Security for the 21st century reports:

> The base of American national security is the strength of the American economy.

And our education system.

> Therefore, the health of the U.S. economy depends not only on citizens that can produce and direct innovation, but also on a populace that can effectively assimilate the new tools and the technologies. This is critical not just for the U.S. economy in general but specifically for the defense industry, which simultaneously develops and defends against the same technologies.

This is not only true in regard to that commission report, what we call the Hart-Rudman report, but it is true in regard to the reports by the Bremer commission, by the Gilmore commission, and the CSIS study. Commission report after commission report says we are lacking in regard to this kind of expertise and this kind of skill.

The EMST bill builds on several goals outlined in the National Commission on Mathematics and Science and Teaching of the 21st century. That is the rather famous and well-read report now called the Glenn report. These goals include:

First, establishing an ongoing system to improve science and math education in K–12. The legislation we have introduced would accomplish this through afterschool and day-care opportunities for more hands-on learning and programming that is focused on math and science. It also strives to make all middle school graduates technology literate through a technology training program.

Second, it does increase the number of math and science teachers and improve their preparation. EMST accomplishes this by several means, including intensive summer development institutes, grants for teacher technology training software and instructional materials, master teacher programs that aid other teachers and bring expertise in math, science, or technology. And finally, expansion of the Eisenhower National Clearinghouse to allow access via the Internet to real programs that effectively teach science and math.

Third, the bill makes teaching science and math more attractive for teachers. The EMST bill provides mentoring for teachers to encourage them to stay in their profession, in addition to educating our high school students about the course of study to enter the science, math, and the teaching field.

Mr. President, I encourage all my colleagues to support increasing our K-through-12 teachers' ability to teach math, science, and technology to our students and encourage these students to enter into EMST fields by supporting this legislation.

I don't think it is an exaggeration to say our future depends on it.

By Mr. DEWINE (for himself, Mr. HUTCHINSON, Mr. HATCH, Mr. VOINOVICH, Mr. BROWNBACK, Mr. ENSIGN, Mr. ENZI, Mr. HAGEL, Mr. HELMS, Mr. INHOFE, Mr. NICKLES, and Mr. SANTORUM):

S. 480. A bill to amend titles 10 and 18. United States Code, to protect unborn victims of violence; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today to speak, once again, on behalf of unborn children who are the silent victims of violent crimes. Today, along with my distinguished colleagues, Senators HUTCHINSON, HATCH, VOINOVICH, BROWNBACK, ENSIGN, ENZI, HAGEL, HELMS, INHOFE, NICKLES, and SANTORUM, I am introducing a bill called the ''Unborn Victims of Violence Act of 2001,'' which would create a separate offense for criminals who injure or kill an unborn child.

Our bill, which is similar to legislation we sponsored in the 106th Congress, would establish new criminal penalties for anyone injuring or killing a fetus while committing certain federal offenses. Therefore, this bill would make any murder or injury of an unborn child during the commission of certain existing federal crimes a separate crime under federal law and the Uniform Code of Military Justice. Twenty-four states already have criminalized the killing or injuring of unborn victims during a crime. The Unborn Victims of Violence Act simply acknowledges that violent acts against unborn babies are also criminal when the assailant is committing a federal crime.

We live in a violent world. And sadly, sometimes, perhaps more often than we realize, even unborn babies are the targets, intended or otherwise, of violent acts. I'll give you some disturbing examples.

In 1996, Airman Gregory Robbins and his family were stationed in my home state of Ohio at Wright-Patterson Air Force Base in Dayton. At that time, Mrs. Robbins was more than eight months pregnant with a daughter they named Jasmine. On September 12, 1996, in a fit of rage, Airman Robbins wrapped his fist in a T-shirt and savagely beat his wife by striking her repeatedly about the head and abdomen. Fortunately, Mrs. Robbins survived the violent assault. Tragically, however, her uterus ruptured during the attack, expelling the baby into her abdominal cavity, causing Jasmine's death.

Air Force prosecutors sought to prosecute Airman Robbins for Jasmine's death, but neither the Uniform Code of Military Justice nor the federal code makes criminal such an act which results in the death or injury of an unborn child. The only available federal offense was for the assault on the mother. This was a case in which the only available federal penalty did not fit the crime. So prosecutors bootstrapped the Ohio fetal homicide law to convict Airman Robbins of Jasmine's death. Fortunately, upon appeal, the court upheld the lower court's ruling.

If it hadn't been for the Ohio law that was already in place, there would have been no opportunity to prosecute and punish Airman Robbins for the assault against Baby Jasmine. That's why we need a Federal remedy to avoid having to bootstrap state laws to provide recourse when a violent act occurs during the commission of a federal crime. A federal remedy will ensure that crimes within federal jurisdiction against unborn victims are punished.

Let me give you another example. In August 1999, Shiwona Pace of Little Rock, Arkansas, was days away from giving birth. She was thrilled about her pregnancy. Her boyfriend, Eric Bullock, however, did not share her joy and enthusiasm. In fact, Eric wanted the baby to die. So, he hired three thugs to beat his girlfriend so badly that she lost the unborn baby. According to Shiwona, who testified at a Senate Judiciary hearing we held in Washington on February 23, 2000: ''I begged and pleaded for the life of my unborn child, but they showed me no mercy. In fact, one of them told me, 'Your baby is dying tonight.' I was choked, hit in the face with a gun, slapped, punched and kicked repeatedly in the stomach. One of them even put a gun in my mouth and threatened to shoot.''

In this particular case, just a few short weeks before this vicious attack, Arkansas passed its ''Fetal Protection Act.'' Under the state law, Erik Bullock was convicted on February 9, 2001, of capital murder against Shiwona's unborn child and sentenced to life in prison without parole. He was also convicted of first degree battery for harm against Shiwona.

In yet another example, this one in Columbus, 16-year-old Sean Steele was found guilty of two counts of murder for the death of his girlfriend Barbara ''Bobbie'' Watkins, age 15, and her 22-week-old unborn child. He was convicted under Ohio's unborn victims

law, which represented the first murder conviction in Franklin County, Ohio, in which a victim was a fetus.

Look at one more example. In the Oklahoma City and World Trade Center bombings, Federal prosecutors were able to charge the defendants with the murders of or injuries to the mothers, but not to their unborn babies. Again, federal law currently fails to criminalize these violent acts. There are no federal provisions for the unborn victims of federal crimes.

Our bill would make acts like this, acts of violence within federal jurisdiction, Federal crimes. This is a very simple step, but one that will have a dramatic effect.

The fact is that it's just plain wrong that our federal government does absolutely nothing to criminalize violent acts against unborn children. We cannot allow criminals to get away with murder. We must close this loophole.

As a civilized society, we must take a stand against violent crimes against children, especially those waiting to be born. We must close this loophole.

We purposely drafted this legislation very narrowly. Because of that, our bill would not permit the prosecution for any abortion to which a woman consented. It would not permit the prosecution of a woman for any action, legal or illegal, in regard to her unborn child. Our legislation would not permit the prosecution for harm caused to the mother or unborn child in the course of medical treatment. And finally, our bill would not allow for the imposition of the death penalty under this Act.

It is time that we wrap the arms of justice around unborn children and protect them against criminal assailants. Everyone agrees that violent assailants of unborn babies are criminals. When acts of violence against unborn victims fall within federal jurisdiction, we must have a penalty. We have an obligation to our unborn children who cannot speak for themselves. I think Shiwona Pace said it best when she testified at our hearing, ''The loss of any potential life should never be in vain.''

I strongly urge my colleagues to join in support of this legislation.

By Mr. GRAHAM (for himself and Mr. CORZINE):

S. 481. A bill to amend the Internal Revenue Code of 1986 to provide for a 10-percent income tax rate bracket, and for other purposes; to the Committee on Finance.

Mr. GRAHAM. Mr. President, with my colleague, I rise today to introduce the Economic Insurance Tax Cut of 2001.

In his 1862 message to Congress, President Abraham Lincoln surveyed our fractured national horizon and concluded that:

> The occasion is piled high with difficulty and we must rise to the occasion. As our case is new, so we must think anew and act anew.

The same could be said about our current circumstances. The United States has not experienced a recession since the one that occurred in 1990–1991. At that time, the old economic assumptions were shattered and new ones born. Over the past 5 years, it seemed as if nothing could stop the American economy from roaring on.

It was during this comparatively serene time that then-candidate George W. Bush, in the debates leading up to the Iowa caucus in the winter of 1999–2000, announced his plan to cut taxes by $1.6 trillion over the next 10 years.

The landscape has shifted dramatically since the winter of 1999 to the spring of 2001. That shift in the landscape did not just occur in Seattle. Today's headlines are filled with ominous news. Economic activity in the manufacturing sector declined in February for the seventh consecutive month. DaimlerChrysler has laid off 26,000 workers. Whirlpool has slashed the estimates of its earnings and plans 6,000 job cuts. Gateway is dismissing 3,000 workers, 12.5 percent of its workforce. Over the past 2 months, layoffs totaling more than 275,000 jobs have been announced.

This bad news has had, as would be expected, a negative effect on consumers' confidence. Consumers' confidence has plunged 35 points from an all-time high of 142.5 in September of 1999.

When their confidence is shaken, consumers stop spending. When consumers stop spending, the economy gets worse. When the economy gets worse, consumer confidence falls further. The cycle feeds on itself.

In an attempt to staunch the bleeding, the Federal Reserve has twice lowered interest rates in January. Monetary policy, the adjustment of short-term interest rates, is a trusted and often effective tool in stimulating the economy. I am confident that the Federal Reserve will continue to exercise wise judgment.

But there is a growing consensus that more must be done, that fiscal policy can also play an important role in boosting the economy, if not immediately then certainly in the second half of this year. In his testimony before the Senate Budget Committee in January, Chairman Alan Greenspan of the Federal Reserve Board stated:

> Should the current economic weakness spread beyond what now appears likely, having a tax cut in place may in fact do noticeable good.

On February 13, Treasury Secretary O'Neill told the House Ways and Means Committee that he, too, supports the use of fiscal policy as a tool to boost the economy. Mr. O'Neill said:

> To the extent that getting it [the surplus] back to them [the American people] sooner can help stave off a worsening of the economic slowdown, we should move forward immediately.

Finally, during the President's speech to the Nation a week ago, he stated:

> Tax relief is right and tax relief is urgent. The long economic expansion that began almost 10 years ago is faltering. Lower interest rates will eventually help, but we cannot assure that they will do the job all by themselves.

Senator CORZINE and I agree. We think there are several perspectives from which this issue must be viewed. The first is the contextual perspective: How large a tax cut can the American economy and the Federal fiscal system sustain? We share the belief that we are facing a serious demographic challenge in the next 10 to 15 years, as large numbers of persons born immediately after World War II will retire and place unique strains on our Nation's Social Security and Medicare system. That is but one example of the kinds of steps that we need to be cognizant to take and prepare for which will utilize a portion of our current surplus.

After we have determined how large a tax cut is prudent in the context of these other responsibilities, the next step is crafting a plan that can, in fact, be helpful in averting a prolonged economic slowdown. According to economists, a tax cut aimed at stimulating the economy should have four characteristics.

First, the tax relief should be simple enough to be enacted quickly. One of the principal criticisms of the attempts to use fiscal policy to stimulate the economy on a short-term basis is that, historically, Congress and the President have been sufficiently slow in reaching agreement for enactment of such tax cuts that by the time the tax relief is available, the problem has passed. The longer Congress deliberates, the less likely tax relief will get to the American public in time to do some good. Therefore, a simple, straightforward approach is absolutely essential to getting a bill passed quickly.

The more components this tax relief includes, the more debate, discussion, deliberation, and the likelihood of procrastination.

The second characteristic is the tax relief must be significant enough to have a measurable effect on the economy. The economists we have consulted suggest that tax relief in the amount of $60 billion to $65 billion would boost the gross domestic product by one-half to three-quarters of a percentage point. At a time when the economy is at virtually zero growth, that would be a welcome improvement.

Third, the tax relief must be conspicuous. The more transparent the tax cut, the more positive effect it will have on consumer confidence.

Finally, the tax relief must be directed at those who will spend it. Two-thirds of the Nation's economic output is based on consumer spending. Recessions are largely a result of a letup in that consumer demand. Common sense suggests that broad-based tax cuts, the bulk of which are directed at low- and middle-income American families, are much more likely to be the tax cuts that will stimulate consumption. Any

tax cut that claims to provide an economic stimulus must be measured against these four standards.

When scrutinized this way, both the President's proposal and the plan which was reported last week by the House Ways and Means Committee, and may, in fact, be voted on by the full House as early as tomorrow, display significant weaknesses.

One, context: At $1.6 trillion, the Bush plan would consume nearly 75 percent of the non-Social Security, non-Medicare surplus, when interest costs are included. That leaves precious few resources for other important initiatives like desperately needed prescription drugs for our seniors, modernization of our armed forces, improving our schools.

No funds would be left to add to the debt reduction that can come through the application of the surpluses coming into Social Security and Medicaid. The Ways and Means proposal is a more expensive down-payment of the Bush plan in that its implementation is pushed forward by a year.

Two, simplicity: The President's tax cut plan contains several complicated proposals that will require Congress to carefully consider their ramifications. This deliberation is likely to delay enactment of the President's plan until it is too late to stimulate the economy.

Three, sufficiency: The president's budget tallies the total tax relief for 2001 at $183 million. For 2002, the total is $30 billion. Tax relief at that low level will do little to boost the economy. The President's tax relief is so small because it is phased in over a five-year period. Phasing in tax relief is exactly the opposite policy to adopt if your goal is economic stimulus. Even the Ways and Means package, despite applying retroactively to 2001, falls far short of injecting tax cuts into the economy during the second half of this year. That plan provides only $10 billion of ''stimulus'' during this period.

Four, propensity to Spend: Economic stimulus occurs when consumers are encouraged to spend. Only one of the proposals in the President's plan meets this standard. Eighty percent of all taxpayers are affected by changes to the 15 percent tax bracket. Therefore, the President's idea for creating a new 10 percent bracket—which has the effect of lowering the 15 percent tax rate—will apply quite broadly across those paying income taxes. In contrast, three-quarters of all taxpayers are unaffected by changes to the remaining four tax brackets. Yet, nearly 60 percent of the total cost of both the President's and the Ways and Means' tax cut packages are devoted to these upper rate cuts.

Earlier this year, noted economist Robert Samuelson wrote in the Washington Post that the time had come for tax cuts whose purpose was to stimulate the economy. He too, criticized the President's tax plan as being poorly designed for this purpose. Specifically, he argued that the President should make his tax cuts retroactive to the beginning of this year and focus more toward the bottom income brackets.

Samuelson also argued that other proposals, whatever their merit—marriage penalty relief, estate tax repeal, new incentives for charitable giving—should wait their place in line; that the first place in this line of America in the year 2001 should be economic stimulation to keep this economy from falling into a deep ditch.

Mr. President, I ask unanimous consent that the columns by Robert Samuelson be printed in the RECORD immediately after my remarks.

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

(See Exhibit 1.)

Mr. GRAHAM. Mr. President, Senator CORZINE and I have an alternative that makes the improvements to the President's tax cut plan suggested by Mr. Samuelson, and makes it consistent with the characterization which I have outlined. Senator CORZINE and I have an alternative that builds upon a proposal included in the President's tax cut plan.

President Bush has proposed the creation of a new 10-percent rate bracket. His proposal is that for incomes up to $6,000 for an individual and $12,000 for a couple, that the first $6,000 or $12,000 would be taxed at 10 percent rather than the current 15 percent. The problem with his proposal is that he proposes to implement this change over 5 years. It is not until the year 2006 that this plan is fully in place.

Senator CORZINE and I propose to fully implement this 10-percent bracket retroactive to January of this year. In addition, we suggest the bracket needs to be expanded so the incomes on which it would apply would be $9,500 for an individual, and $19,000 for a married couple.

There are several reasons why we believe their proposal makes sense.

First, it provides tax relief to a broad range of taxpayers. Every American income tax payer would participate in this plan. All couples with income tax liabilities would save $950 annually, or have their tax liability eliminated entirely.

Second, our proposal provides significant tax relief to middle-income families who are more likely to spend their additional money, and, therefore, create demand within our economy.

Our plan would be more effective in stimulating our economy, particularly at this time of concern about our economic future.

This proposal will lower taxes by $60 billion in both 2001 and 2002.

I point out this contrast with the President's plan with the lower taxes in 2001 by less than $200 million, and the plan of the House Ways and Means Committee which will lower taxes in 2001 by approximately $10 billion.

We believe this infusion of energy into the economy—$60 billion in this and the next year—is the first portion of tax relief which will be strong enough to be able to have a meaningful effect on the economy.

We would propose that a large portion of the first year's tax relief be reflected in workers' paychecks during the second half of the year, precisely the time that would be needed to forestall a prolonged economic downturn.

The 10-year cost of this proposal is $693 billion. This is less than half of the President's total plan, and it could be reduced further if the Congress were to decide it wished to sunset any portion of this tax cut before the end of the 10-year period.

Fourth, this proposal is simple. There is no reason this proposal could not be enacted by July 4. The Treasury would be directed to adjust its withholding tables as quickly as possible. Families could expect to see an increase in their paychecks by a reduction in the amount withheld for income tax in time for their August vacations. Instead of staying home that week, they could take their children to the beach or take themselves out to dinner. They could use the money to fix the car and head for the mountains, or fix up the backyard and celebrate with a barbecue.

In doing so, they could begin to reverse the cycle—to put money back into the economy, to feed expansion, to stimulate growth, to create jobs, to increase Americans' confidence in their economic future.

This tax cut would truly be the gift that keeps on giving.

There is one additional benefit to proceeding in the manner that Senator CORZINE and I are suggesting. Enacting this stimulative tax cut first and waiting until later to address other tax matters will give Congress time to evaluate the seriousness of the economic downturn and to evaluate how effective this economic insurance policy has been in putting a foundation under that downturn.

In particular, this time will give us a better idea of whether the slowing economy will adversely affect the surplus projections on which additional tax cuts are predicated.

Again, I return to President Lincoln's suggestion during one of the most trying times of his service as President of the United States.

This is not the time for timidity and handwringing. This is the time for swift, bold action. The occasion is piled high with difficulty, and we must rise with the occasion.

EXHIBIT 1

[From the Washington Post, Jan. 9, 2001]

TIME FOR A TAX CUT

(By Robert J. Samuelson)

For some time, I have loudly and monotonously objected to large federal tax cuts. The arguments against them seemed overwhelming: The booming economy didn't need further stimulating; the best use of rising budget surpluses was to pay down the federal debt. But I regularly attached a large asterisk to this opposition. A looming economic slowdown or recession might justify a big tax cut. Well, the asterisk is hereby activated.

By now, it's clear that most commentators missed the economy's emerging weakness.

Indeed, a recession may already have started. Industrial production has declined slightly since September. Christmas retail sales were miserable; at Wal-Mart, same-store sales were up a meager 0.3 percent from a year earlier. The story is the same for autos; sales declined 8 percent in December. Montgomery Ward is going out of business. Last week's surprise interest-rate cut by the Federal Reserve confirms the large miscalculation.

A tax cut is now common sense. It would make it easier for consumers to handle their heavy debts and, to some extent, bolster their purchasing power. The fact that President-elect George W. Bush supports a major tax cut is fortuitous. But his proposal is poorly designed to combat recession. Although the estimated costs—$1.3 trillion from 2001 to 2010—are large, they are ''backloaded.'' That is, the biggest tax cuts occur in the later years. In 2002, the tax cut would amount to $21 billion, a trivial 0.2 percent of gross domestic product (national income). This would barely affect the economy.

What Bush needs to do is accelerate the immediate benefits (to resist a slump) while limiting the long-term costs (to protect against new deficits). This would improve a tax plan's economic impact and political appeal. The required surgery is easier than it sounds:

Bush's across-the-board tax-rate cuts should be compressed into two years—making them retroactive to Jan. 1, 2001—instead of being phased in from 2002 to 2006. The idea is to increase people's disposable incomes, quickly. (Under the campaign proposal, today's rates of 39.6, 36, 31 and 28 percent would be reduced to 33 and 25 percent. The present 15 percent rate would remain, but a new 10 percent rate would be created on the first $6,000 of taxable income for singles and $12,000 for couples.) Similarly, the proposed increase in the child tax-credit, from $500 to $1,000, should occur over two years, not four.

The distribution of the tax cut should be tilted more toward the bottom and less toward the top. One criticism of the original plan is that it's skewed toward the richest taxpayers, who pay most of the taxes. (In 1998 the 1.6 percent of tax returns with incomes above $200,000 paid 40 percent of the income tax.) The criticism could—and should—be blunted by reducing the top rate to only 35 percent, while expanding tax cuts for the lower brackets. This would concentrate tax relief among middle-class families, whose debt burdens are highest.

Bush should defer most other proposals: the gradual phase-out of the estate tax, new tax breaks for charitable contributions and tax relief from the so-called marriage penalty. Together, these items would cost an estimated $400 billion from 2001 to 2010. They are the most politically charged parts of the package and the least related to stimulating the economy. Proposing them now would muddle what ought to be Bush's central message: a middle-class tax cut to help the economy.

The case for this tax cut rests on a critical assumption. It is that the slowdown (or recession) could be long, deep or both. If it's just a blip—as some economists think—the economic argument for a tax cut disappears. The economy will revive quickly, aided by the Fed's lower interest rates. Then the debate over a tax cut should return to political preferences. Do we want more spending, lower taxes or debt reduction? My preference would remain debt reduction. But I doubt that the economic outlook is so charmed.

Just as the boom—the longest in U.S. history—was unprecedented, so may be its aftermath. The boom's great propellant was a buying binge by consumers and businesses. Both spent beyond their means. They went deep into debt. Put another way, the private sector as a whole has been running an ever-widening ''deficit,'' says Wynne Godley of the Jerome Levy Economics Institute of Bard College. By his calculation, the deficit began in 1997 and reached a record 8 percent of disposable income in late 2000. Household debt hit 100 percent of personal disposable income, up from 82 percent in 1990.

What may loom is a protracted readjustment. ''An increase in private debt relative to income can go on for a long time, but it cannot go on forever,'' writes Godley. People and companies reduce their debt burdens by borrowing less and using some of their income to repay existing loans. The private-sector ''deficit'' would shrink. But this process of retrenchment would hurt consumer spending and business investment, which constitute about 85 percent of the economy.

It's self-defeating for government to exert a further drag through growing budget surpluses. Of course, government could spend more. But politically, that isn't likely—and spending increases take time to filter into the economy. A tax cut could be enacted quickly and enables people to keep more of what they've earned. Roughly speaking, the Bush tax cuts could raise disposable incomes of middle-income households (those between $35,000 and $75,000) by $1,000 to $2,500. This would make it easier for consumers to manage their debts and maintain spending. It's also an illusion to think that lower interest rates (through Fed cuts and government-debt repayment) can instantly and single-handedly stimulate recovery.

''The danger of a severe and prolonged recession is being seriously underestimated,'' writes Godley. If you believe that—and I do—then a tax cut that made no sense six months ago makes eminent sense now.

[From the Washington Post, Feb. 14, 2001]

WHO DESERVES A TAX CUT?

(By Robert J. Samuelson)

The economic case for a tax cut seems compelling. The U.S. economy is unwinding from an unstable boom. ''Animal spirits''—the immortal phrase of economist John Maynard Keynes—took hold. Consumers overborrowed or, dazzled by rising stock prices, overspent. Businesses overinvested thanks to strong profits and cheap capital. Both consumers and businesses will now curb spending: consumers made cautious by high debts, stagnant (or falling) stocks and fewer new jobs; businesses deterred by surplus capacity and scarcer capital. A tax cut would cushion the spending slowdown.

Of course, we don't yet know the slump's seriousness. In the final quarter of 2000, business investment dropped at an annual rate of 1.5 percent; in the first quarter of 2000, it rose at a rate of 21 percent. Consumer spending rose at a 2.9 percent rate in the last quarter, but within that, spending on ''durables'' (cars, appliances, computers) dropped 3.4 percent, again at annual rates. These were both large declines from earlier in the year. In the first quarter, the gains had been 7.6 percent and 23.6 percent.

Consumer spending (68 percent of gross domestic product) and business investment (14 percent) constitute four-fifths of the economy. If they are in retreat, the economy is—almost by definition—in trouble. (Housing, exports and government represent the rest.) The case against a tax cut is that the spending slowdown will be mild; it will be checked by the Federal Reserve's cut in interest rates. Perhaps. But I'm skeptical. If businesses have idle capacity and consumers have excess debts, lower interest rates may not stimulate much new borrowing.

Nor will large budget surpluses automatically preserve prosperity. This argument is (to put it charitably) absurd. The surpluses are the consequence—not the cause—of the economic boom and stock market frenzy, which created a tidal wave of new tax revenues. The big surpluses were a pleasant dividend. But now they may depress the economy by removing purchasing power.

This is easy to grasp. Suppose the budget surplus were a huge sum: say, $1 trillion or about 10 percent of GDP. Would anyone deny the drag on economic growth? Personal and corporate income would be reduced by the amount of the surplus. This drag could be offset only if the resulting drop in interest rates and repayment of federal debt created an equal stimulus. Though conceivable, this is hardly certain and—in my view—unlikely. Today's surplus is only $200 billion to $300 billion, or about 2 to 3 percent of GDP. But the same reasoning applies. The surplus doesn't mechanically create demand or spending and, quite probably, does the opposite.

A year ago, a tax cut would have been folly. Private spending was booming. But a tax cut now is not an effort to ''fine tune'' the economy. It's the logical response to the end of the private boom—an attempt to prevent a ''bust'' by restoring some of people's incomes. Whose incomes? Who deserves tax cuts? These (to me) are the harder questions.

President Bush's across-the-board rate cuts would give the largest dollar tax cuts to the wealthiest Americans, because they pay most taxes. In 2000, the richest 10 percent of Americans—whose incomes begin at about $100,000—paid 66 percent of the federal income tax and 50 percent of all federal personal taxes (including payroll and excise taxes), estimates the Congressional Joint Committee on Taxation.

Within this group, the wealthiest one percent—with incomes above $300,000—paid 34 percent of income taxes and 19 percent of all taxes. Over time, these shares have increased. In 1977 the richest 10 percent paid 50 percent of income taxes and 43 percent of all federal taxes. There are two reasons for this trend: (a) the rich's incomes grew faster than everyone else's; and (b) tax relief went more toward the lower half of the income spectrum.

If you like income redistribution for its own sake, this is wonderful. But the growing gap between those who pay for government and those who receive its benefits creates a dangerous temptation. It is to tax the few and distribute to the many. Though politically expedient, expanded government programs may have little to do with the broader national interest. They may simply make more people and institutions dependent on Washington and the political process. Taxes must be fairly broad-based if the public is to weigh the pleasure of new government programs against the pain of higher taxes.

As originally proposed, Bush's plan was avowedly political. It aimed to restrain government spending by depriving government of some money to spend. But Bush is now selling his program as an antidote to economic slump. Ironically, this strengthens the case for skewing the tax cut toward middle- and lower-income households. Almost certainly, their debt burdens are higher than upscale America's. they may also spend more of any tax cut than the rich, providing greater support to the economy.

Finally, it's true that an excessive tax cut would invite future deficits. How to balance these competing pressures is what we will debate. My preference is to accelerate the introduction of Bush's across-the-board rate cuts, with one exception; I would cut the top rate of 39.6 percent to 35 percent, instead of Bush's 33 percent, and use the savings to broaden tax cuts at lower income levels.

I would also accelerate the increase in the child tax credit—from $500 to $1,000—but

defer Bush's other proposals (ending the estate tax, bigger charitable deductions). This would raise the overall tax cut's immediate economic impact and reduce the long-term budget costs.

As we debate, we should not idealize budget surpluses. They are simply paper projections, based on various assumptions, including strong economic growth. If the growth doesn't materialize, neither will the surpluses. A slavish effort to preserve the surpluses could perversely destroy them.

[From the Washington Post, Mar. 7, 2001]

TAX CUTS: THE TRUE ISSUE

(By Robert J. Samuelson)

The tax and budget debate is essentially a quarrel about political philosophy. President Bush wants to limit the size of government by depriving it of more money to spend. His Democratic critics want government to keep as much in taxes as possible, because they want to spend it. In fiscal 2000 federal taxes represented a post-World War II record of 20.6 percent of gross domestic product (national income). Over a decade, Bush wants to nudge that below 19 percent of GDP, while Democrats prefer to keep it above 20 percent. That's the central issue between them—and they're trying to obscure it.

We have diehard liberals preaching the virtues of reducing the federal debt, not because they believe in smaller government but because this makes them seem frugal, cautious and even conservative. Meanwhile, President Bush flaunts his proposed spending increases for education and Medicare, not because he believes in bigger government but because they make him seem humane, sensitive and even liberal. Both sides are fleeing their traditional stereotypes: liberals as extravagant spenders, conservatives as cruel cheapskates.

The result is calculated confusion. The antagonists informally deemphasize their central dispute—the size of government—and shift the debate to side issues (they hope) will disarm their opponents. For example:

Does a faltering economy need a tax cut?

This is Bush's ace. Consumer confidence has dropped for five straight months; in January existing-home sales fell 6.6 percent. The more the economy weakens, the harder it is for Democrats to resist tax cuts. There's a certain common-sense appeal to bolstering people's purchasing power by reducing their taxes. A year ago President Clinton proposed only $350 billion in tax cuts over a decade. Now many Democrats talk in the $700 billion to $1 trillion range—much closer to Bush's $1.6 trillion.

Do Bush's budget numbers add up?

No, say critics. His budget skimps on paying down the federal debt—all the Treasury bonds and bills issued to cover past budget deficits. Worse, the tax cut might create future deficits when combined with programs not in the present budget: an anti-missile defense and private accounts for Social Security, for instance. All this is possible, especially if the surplus forecasts turn out (as they might) to be too optimistic. Still, the critics' case is wildly overstated.

Between 2002 and 2011, Bush projects budget surpluses of $5.6 trillion. This is defensible; the Congressional Budget Office made a similar estimate. The tax cut would reduce the surplus by $1.6 trillion and require an extra $400 billion in interest payments. This leaves a surplus of $3.6 trillion. Of that, Bush would use $2 trillion for debt reduction. (From 2001 to 2011, the debt would drop from $3.2 trillion to $1.2 trillion. Interest payments would decline to below 3 percent of federal spending, down from 15 percent in 1997.)

Now we're at $1.6 trillion. Bush proposes almost $200 billion in new spending—mainly for changes in Medicare, including a drug benefit. Bush labels the remaining $1.4 trillion in surplus a ''reserve'' against faulty estimates, further debt reduction or more spending. All the possible claims on the reserve (the missile defense, private accounts for Social Security) could exhaust it. But if you're trying to make Congress set spending priorities—as Bush is—his approach isn't unreasonable.

If there's a tax cut, who should get it?

Politically, this is Bush's Achilles' heel. He says that taxes belong to the people who earned them—not the government. Okay. The political problem is that most federal taxes are paid by a small constituency of the well-to-do and wealthy. In 2001 the richest 10 percent of Americans—those with incomes above $107,000—will pay 68 percent of the income tax and 52 percent of all federal taxes, estimates the Congressional Joint Committee on Taxation. With its across-the-board rate reductions, Bush's plan give them the largest dollar cuts. Citizens for Tax Justice, a liberal advocacy group, estimates that the richest one percent get 31 percent of the income-tax cuts (slightly below their share of income taxes, 36 percent). Democrats are aghast; they want smaller tax cuts to concentrate benefits on households under $100,000.

To handicap the tax debate, watch these issues. If the economy weakens further, pressure for tax relief will intensify. But so will pressure to redirect the benefits down the income ladder. My view—stated in earlier columns—is that the economy needs a tax cut. I would accelerate Bush's across-the-board rate cuts and the doubling of the child credit (from $500 to $1,000). But I would cut today's top rate of 39.6 percent only to 35 percent, not 33 percent, as Bush proposes. All this would maximize the tax cut's immediate effect on the economy.

Like Bush's critics, I think the long-term budget projections are too uncertain to enact his full tax package now; so I would defer action on his other proposals (abolishing the estate tax, marriage-penalty relief, new charitable deductions). But unlike his critics, I think Bush is correct on the central issue of government's size. The real choice now is not between cutting taxes and paying down the debt. If immense surpluses emerge, Congress—Democrats and Republicans—will spend them. Even last year's modest surplus spurred Congress to a spending spree.

It's the wrong time for huge spending increases. The retirement of the baby boom generation, beginning in a decade, will expand government commitments. Retirement benefits will inevitably increase, exerting pressure for higher taxes. If we raise spending now, we will begin this process from a higher base of spending and taxes—that will ultimately have to be paid by today's children and young adults. This would be a dubious legacy.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD the text of the bill.

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

S. 481

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Economic Insurance Tax Cut of 2001''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—No amendment made by this Act shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

SEC. 2. 10-PERCENT INCOME TAX RATE BRACKET FOR INDIVIDUALS.

(a) RATES FOR 2001.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (d) and inserting the following:

''(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

''(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

''(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $19,000	10% of taxable income.
Over $19,000 but not over $45,200.	$1,900, plus 15% of the excess over $19,000.
Over $45,200 but not over $109,250.	$5,830, plus 28% of the excess over $45,200.
Over $109,250 but not over $166,500.	$23,764, plus 31% of the excess over $109,250.
Over $166,500 but not over $297,350.	$41,511.50, plus 36% of the excess over $166,500.
Over $297,350	$88,617.50, plus 39.6% of the excess over $297,350.

''(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $14,250	10% of taxable income.
Over $14,250 but not over $36,250.	$1,425, plus 15% of the excess over $14,250.
Over $36,250 but not over $93,650.	$4,725, plus 28% of the excess over $36,250.
Over $93,650 but not over $151,650.	$20,797, plus 31% of the excess over $93,650.
Over $151,650 but not over $297,350.	$38,777, plus 36% of the excess over $151,650.
Over $297,350	$91,229, plus 39.6% of the excess over $297,350.

''(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $9,500	10% of taxable income.
Over $9,500 but not over $27,050.	$950, plus 15% of the excess over $9,500.
Over $27,050 but not over $65,550.	$3,582.50, plus 28% of the excess over $27,050.
Over $65,550 but not over $136,750.	$14,362.50, plus 31% of the excess over $65,550.
Over $136,750 but not over $297,350.	$36,434.50, plus 36% of the excess over $136,750.
Over $297,350	$94,250.50, plus 39.6% of the excess over $297,350.

''(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

''If taxable income is:	The tax is:
Not over $9,500	10% of taxable income.
Over $9,500 but not over $22,600.	$950, plus 15% of the excess over $9,500.
Over $22,600 but not over $54,625.	$2,915, plus 28% of the excess over $22,600.
Over $54,625 but not over $83,250.	$11,882, plus 31% of the excess over $54,625.
Over $83,250 but not over $148,675.	$20,755.75, plus 36% of the excess over $83,250.

"If taxable income is:	The tax is:
Over $148,675	$44,308.75, plus 39.6% of the excess over $148,675.".

(b) INFLATION ADJUSTMENT TO APPLY IN DETERMINING RATES FOR 2002.—Subsection (f) of section 1 is amended—

(1) by striking "1993" in paragraph (1) and inserting "2001",

(2) by striking "1992" in paragraph (3)(B) and inserting "2000", and

(3) by striking paragraph (7).

(c) CONFORMING AMENDMENTS.—

(1) The following provisions are each amended by striking "1992" and inserting "2000" each place it appears:

(A) Section 25A(h).
(B) Section 32(j)(1)(B).
(C) Section 41(e)(5)(C).
(D) Section 42(h)(3)(H)(i)(II).
(E) Section 59(j)(2)(B).
(F) Section 63(c)(4)(B).
(G) Section 68(b)(2)(B).
(H) Section 132(f)(6)(A)(ii).
(I) Section 135(b)(2)(B)(ii).
(J) Section 146(d)(2)(B).
(K) Section 151(d)(4).
(L) Section 220(g)(2).
(M) Section 221(g)(1)(B).
(N) Section 512(d)(2)(B).
(O) Section 513(h)(2)(C)(ii).
(P) Section 685(c)(3)(B).
(Q) Section 877(a)(2).
(R) Section 911(b)(2)(D)(ii)(II).
(S) Section 2032A(a)(3)(B).
(T) Section 2503(b)(2)(B).
(U) Section 2631(c)(2).
(V) Section 4001(e)(1)(B).
(W) Section 4261(e)(4)(A)(ii).
(X) Section 6039F(d).
(Y) Section 6323(i)(4)(B).
(Z) Section 6334(g)(1)(B).
(AA) Section 6601(j)(3)(B).
(BB) Section 7430(c)(1).

(2) Subclause (II) of section 42(h)(6)(G)(i) is amended by striking "1987" and inserting "2000".

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 1(g)(7)(B)(ii)(II) is amended by striking "15 percent" and inserting "10 percent".

(2) Section 1(h) is amended by striking paragraph (13).

(3) Section 3402(p)(1)(B) is amended by striking "7, 15, 28, or 31 percent" and inserting "5, 10, 15, 28, or 31 percent".

(4) Section 3402(p)(2) is amended by striking "15 percent" and inserting "10 percent".

(e) DETERMINATION OF WITHHOLDING TABLES.—Section 3402(a) (relating to requirement of withholding) is amended by adding at the following new paragraph:

"(3) CHANGES MADE BY SECTION 2 OF THE ECONOMIC INSURANCE TAX CUT OF 2001.—Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) through the reduction of the amount of withholding required with respect to taxable years beginning in calendar year 2001 to reflect the effective date of the amendments made by section 2 of the Economic Insurance Tax Cut of 2001, and such modification shall take effect on the first day of the first month beginning after the date of the enactment of such Act.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) AMENDMENTS TO WITHHOLDING PROVISIONS.—The amendments made by paragraphs (3) and (4) of subsection (d) shall apply to amounts paid after December 31, 2000.

Mr. CORZINE. Mr. President, I am pleased to join with my distinguished colleague from Florida, Senator GRAHAM, in introducing the legislation to establish a new 10-percent tax bracket.

This bill would provide a simple, fair, and fiscally responsible tax cut that can be enacted quickly, and that can provide an important insurance policy against the risk of an economic slowdown, a slowdown that to most observers appears to be more real and potentially deeper than perceived even as early as in January of this year.

To me, there is little question that our economy needs stimulus, fiscally as well as monetarily, to return to a moderate growth path. The question for policymakers is how to make that happen.

Some, including Fed Chairman Alan Greenspan, have questioned whether Congress is capable of enacting a tax cut quickly enough to prevent a recession or even help lift us out of one on a timely basis. I think we can. In any case, as many other economists, Chairman Greenspan has argued that tax cuts would be helpful once an economic downturn is upon us, if a tax cut were implemented expeditiously.

To make any tax cut effective as an economic insurance policy, Congress and the President need to reach agreement quickly. To facilitate such an agreement, we are proposing that Congress defer consideration of the long list of worthy, and maybe some less worthy, tax cut proposals currently under debate, and, for now, adopt a very straightforward, simple approach.

President Bush has already proposed the creation of a new 10-percent rate bracket for income of up to $12,000 for couples who are currently taxed at 15 percent. The corresponding level for single taxpayers, under the President's proposal, would be $6,000. However, as originally proposed, the Bush rate cut would not be fully effective until 2006.

Senator GRAHAM and I are proposing to immediately—and retroactively for this year—create a 10-percent rate bracket and increase the threshold of that bracket to $19,000 for married taxpayers and $9,500 for individuals.

There are several reasons why this 10-percent compromise makes sense to us. First, it provides equitable relief to taxpayers at all different income levels. All couples with income tax liabilities would save $950 annually or have their tax liability eliminated entirely.

Second, middle-class families are more likely to spend a tax cut than the wealthier families favored under some aspects of the President's plan. Our proposal would be more effective in boosting the economy now.

Third, our proposal would put roughly $60 billion of the annual non-Social Security surplus into a retroactive tax cut. This is the amount that economists tell us is needed to achieve a noticeable economic impact this year. At this level, we would expect that tax cut to boost GDP by one-half to three-quarters of a percentage point.

Fourth, because of its simplicity, the proposal could be debated, enacted, and implemented very quickly. I think the latter is very important. In fact, if the President and the bipartisan congressional leadership were to come to an agreement, announce an agreement on this package, business and consumer confidence in private spending could be bolstered almost immediately. Later, once the proposal is signed into law, withholding tables could be adjusted in a matter of weeks. That is where the simplicity comes in. By contrast, many of the President's and Congress's proposals are not only controversial and would draw lengthy debate, but would take much longer to be able to be implemented into law.

Finally, while providing a real economic stimulus up front, the cost of our proposal is something that is doable within the current context of our budget. The cost of our proposal is roughly $700 billion. This would not preclude further debt reduction, tax cuts, or spending priorities, such as improvements in education, as the President has suggested, and prescription drug coverage, or increases in defense spending.

By contrast, the President's original proposal provides very limited stimulus up front—only $21 billion in 2001—yet threatens to starve the Government of needed resources in later years, especially when our obligations to Social Security and Medicare begin to grow substantially.

Our 10-percent compromise asks both parties to temporarily give up their favorite tax cut proposals in the interests of a quick compromise which would benefit the country, which would apply the principle that a rising tide lifts all boats. We do not accept the common wisdom that Washington is incapable of acting quickly. There is a need. When it really matters, we know we can keep things simple, and we can get things done, and make them happen.

I congratulate Senator GRAHAM. And I very much appreciate the opportunity to introduce this legislation. We look forward to working with the Congress to try to get a quick and stimulative and simple proposal through the Congress.

By Mr. WYDEN:

S. 483 A bill to amend title 49, United States Code, to improve the disclosure of information to airline passengers and the enforceability of airline passengers and the enforceability of airline passengers' rights under airline customer service agreements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, today I am introducing legislation to provide enforceable consumer protections for airline passengers. The bill I introduce today is the result of a process that started over two years ago, when I first introduced bipartisan passenger rights

legislation. Instead of enacting that legislation, Congress decided to give the airlines a year-and-a-half to improve customer service through voluntary plans. At the end of that time, the Department of Transportation Inspector General was to report to Congress on the airlines' progress.

The Inspector General released his report last month. It is a carefully researched and balanced document, and it finds that, while the airlines have made progress in some areas, there are also significant continued shortcomings. In particular, in many cases passengers are still not receiving reliable and timely communications about flight delays, cancellations, and diversions. The report recommends a number of specific, reasonable steps that could be taken to improve the experience of the flying public.

I want to commend the chairman of the Commerce Committee, Senator MCCAIN, and Senators HOLLINGS and HUTCHISON, for the bill they have introduced, which reflects the essence of the Inspector General's report. My bill is intended to complement and further the discussion that legislation has begun.

My legislation closely tracks the findings and recommendations of the Inspector General's report. First, it features ''right-to-know'' provisions that require airlines to tell customers when a flight they are about to book a ticket on is chronically delayed or canceled, and to provide better information about overbooking, frequent flyer programs, and lost baggage. The bill also contains provisions to enhance and improve the enforcement of the airlines' customer service commitments, such as requirement that each airline incorporate its commitments into its binding contract of carriage. Finally, the bill calls on the Secretary of Transportation to review existing regulations to make sure airlines adhere to their commitments, and to encourage the establishment of a baseline standard of service for all airlines.

The provisions of this bill are not radical, nor are they regulatory; they are basic reasonable steps based directly on the specific findings and recommendations of the Inspector General. Most importantly, they would create meaningful, enforceable protections for consumers in the areas where the Inspector General has identified ongoing problems.

I am hopeful that my colleagues here in the Senate will join me in supporting this legislation, and 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. 483

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Treatment of Airline Passengers Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) United States airline traffic is increasing. The number of domestic passengers carried by United States air carriers has nearly tripled since 1978, to over 660 million annually. The number is expected to grow to more than 1 billion by 2010. The number of domestic flights has been steadily increasing as well.

(2) The Inspector General of the Department of Transporation has found that with this growth in traffic have come increases in delays, cancellations, and customer dissatisfaction with air carrier service.

(A) The Federal Aviation Administration has reported that, between 1995 and 2000, delays increased 90 percent and cancellations increased 104 percent. In 2000, over 1 in 4 flights were delayed, canceled, or diverted, affecting approximately 163 million passengers.

(B) At the 30 largest United States airports, the number of flights with taxi-out times of 1 hour or more increased 165 percent between 1995 and 2000. The number of flights with taxi-out times of 4 hours or more increased 341 percent during the same period.

(C) Certain flights, particularly those scheduled during peak periods at the nation's busiest airports, are subject to chronic delays. In December, 2000, 626 regularly-scheduled flights arrived late 70 percent of the time or more, as reported by the Department of Transportation.

(D) Consumer complaints filed with the Department of Transportation about airline travel have nearly quadrupled since 1995. The Department of Transportation Inspector General has estimated that air carriers receive between 100 and 400 complaints for every complaint filed with the Department of Transportation.

(3) At the same time as the number of complaints about airline travel has increased, the resources devoted to Department of Transportation handling of such complaints have declined sharply. The Department of Transportation Inspector General has reported that the staffing of the Department of Transportation office responsible for handling airline customer service complaints declined from 40 in 1985 to just 17 in 2000.

(4) In June, 1999, the Air Transport Association and its member airlines agreed to an Airline Customer Service Commitment designed to address mounting consumer dissatisfaction and improve customer service in the industry.

(5) The Department of Transportation Inspector General has reviewed the airlines' implementation of the Airline Customer Service Commitment. The Inspector General found that:

(A) The Airline Customer Service Commitment has prompted air carriers to address consumer concerns in many areas, resulting in positive changes in how air travelers are treated.

(B) Despite this progress, there continue to be significant shortfalls in reliable and timely communication with passengers about flight delays and cancellations. Reports to passengers about flight status are frequently untimely, incomplete, or unreliable.

(C) Air carriers need to do more, in the areas under their control, to reduce overscheduling, the number of chronically-late or canceled flights, and the amount of checked baggage that does not show up with the passenger upon arrival.

(D) A number of further steps could be taken to improve the effectiveness and enforceability of the Airline Customer Service Commitment and to improve the consumer protections available to commercial air passengers.

SEC. 3. FAIR TREATMENT OF AIRLINE PASSENGERS.

(a) IN GENERAL.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

''§ 41722. Airline passengers' right to know

''(a) DISCLOSURE OF ON-TIME PERFORMANCE.—Whenever any person contacts an air carrier to make a reservation or to purchase a ticket on a consistently-delayed or canceled flight, the air carrier shall disclose (without being requested), at the time the reservation or purchase is requested, the on-time performance and cancellation rate for that flight for the most recent month for which data is available. For purposes of this paragraph, the term 'consistently-delayed or canceled flight' means a regularly-scheduled flight—

''(1) that has failed to arrive on-time (as defined in section 234.2 of title 14, Code of Federal Regulations) at least 40 percent of the time during the most recent 3-month period for which data are available; or

''(2) at least 20 percent of the departures of which have been canceled during the most recent 3-month period for which data are available.

''(b) ON-TIME PERFORMANCE POSTED ON WEBSITE.—An air carrier that has a website on the Internet shall include in the information posted about each flight operated by that air carrier the flight's on-time performance (as defined in section 234.2 of title 14, Code of Federal Regulations) for the most recent month for which data is available.

''(c) PASSENGER INFORMATION CONCERNING DELAYS, CANCELLATIONS, AND DIVERSIONS.—

''(1) IN GENERAL—Whenever a flight is delayed, canceled, or diverted, the air carrier operating that flight shall provide to customers at the airport and on board the aircraft, in a timely, reasonable, and truthful manner, the best available information regarding such delay, cancellation, or diversion, including—

''(A) the cause of the delay, cancellation, or diversion; and

''(B) in the case of a delayed flight, the carrier's best estimate of the departure time.

''(2) PUBLIC INFORMATION.—An air carrier that provides a telephone number or website for the public to obtain flight status information shall ensure that the information provided via such telephone number or website will reflect the best and most current information available concerning delays, cancellations, and diversions.

''(d) PRE-DEPARTURE NOTIFICATION SYSTEM.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier that is a reporting carrier (as defined in section 234.2 of title 14, Code of Federal Regulations) shall establish a reasonable system (taking into account the size, financial condition, and cost structure of the air carrier) for notifying passengers before their arrival at the airport when the air carrier knows sufficiently in advance of the check-in time for their flight that the flight will be canceled or delayed by an hour or more.

''(e) COORDINATION OF MONITORS; CURRENT INFORMATION.—At any airport at which the status of flights to or from that airport is displayed to the public on flight status monitors operated by the airport, each air carrier the flights of which are displayed on the monitors shall work closely with the airport to ensure that flight information shown on the monitors reflects the best and most current information available.

''(f) FREQUENT FLYER PROGRAM INFORMATION.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier that maintains a frequent flyer program shall increase

the comprehensiveness and accessibility to the public of its reporting of frequent flyer award redemption information. The information reported shall include—

''(1) the percentage of successful redemptions of requested frequent flyer awards for free tickets or class-of-service upgrades for the air carrier;

''(2) the percentage of successful redemptions of requested frequent flyer awards for free tickets or class-of-service upgrades for each flight in the air carrier's top 100 origination and destination markets; and

''(3) the percentage of seats available for frequent flyer awards on each flight in its top 100 origination and destination markets.

''(g) OVERBOOKING.—

''(1) OVERSOLD FLIGHT DISCLOSURE.—An air carrier shall inform a ticketed passenger, upon request, whether the flight on which the passenger is ticketed is oversold.

''(2) BUMPING COMPENSATION INFORMATION.—An air carrier shall inform passengers on a flight what the air carrier will pay passengers involuntarily denied boarding before making offers to passengers to induce them voluntarily to relinquish seats.

''(3) DISCLOSURE OF BUMPING POLICY.—An air carrier shall disclose, both on its Internet website, if any, and on its ticket jackets, its criteria for determining which passengers will be involuntarily denied boarding on an oversold flight and its procedures for offering compensation to passengers voluntarily or involuntarily denied boarding on an oversold flight.

''(h) MISHANDLED BAGGAGE REPORTING.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, each air carrier shall revise its reporting for mishandled baggage to show—

''(1) the percentage of checked baggage that is mishandled during a reporting period;

''(2) the number of mishandled bags during a reporting period; and

''(3) the average length of time between the receipt of a passenger's claim for missing baggage and the delivery of the bag to the passenger.

''(i) SMALL AIR CARRIER EXCEPTION.—This section does not apply to an air carrier that operates no civil aircraft designed to have a maximum passenger seating capacity of more than 30 passengers.

''§ 41723. Enforcement and enhancement of airline passenger service commitments

''(a) ADOPTION OF CUSTOMER SERVICE PLAN.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102 that has not already done so shall—

''(1) develop and adopt a customer service plan designed to implement the provisions of the Airline Customer Service Commitment executed by the Air Transport Association and 14 of its member airlines on June 17, 1999;

''(2) incorporate its customer service plan in its contract of carriage;

''(3) incorporate the provisions of that Commitment if, and to the extent that those provisions are more specific than, or relate to issues not covered by, its customer service plan;

''(4) submit a copy of its customer service plan to the Secretary of Transportation;

''(5) post a copy of its contract of carriage on its Internet website, if any; and

''(6) notify all ticketed customers, either at the time a ticket is purchased or on a printed itinerary provided to the customer, that the contract of carriage is available upon request or on the air carrier's website.

''(b) MODIFICATIONS.—Any modification in any air carrier's customer service plan shall be promptly incorporated in its contract of carriage, submitted to the Secretary, and posted on its website.

''(c) QUALITY ASSURANCE AND PERFORMANCE MEASUREMENT SYSTEM.—

''(1) AIR CARRIERS.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102, after consultation with the Inspector General of the Department of Transportation, shall—

''(A) establish a quality assurance and performance measurement system for customer service; and

''(B) establish an internal audit process to measure compliance with its customer service plan.

''(2) DOT APPROVAL REQUIRED.—Each air carrier shall submit the measurement system established under paragraph (1)(A) and the audit process established under paragraph (1)(B) to the Secretary of Transportation for review and approval.

''(d) CUSTOMER SERVICE PLAN ENHANCEMENTS.—Within 6 months after the date of enactment of the Fair Treatment of Airline Passengers Act, an air carrier certificated under section 41102 shall—

''(1) amend its customer service plan to specify that it will offer to a customer purchasing a ticket at any of the air carrier's ticket offices or airport ticket service counters the lowest fare available for which that customer is eligible; and

''(2) establish performance goals designed to minimize incidents of mishandled baggage.

''(e) SMALL AIR CARRIER EXCEPTION.—This section does not apply to an air carrier that operates no civil aircraft designed to have a maximum passenger seating capacity of more than 30 passengers.''.

(b) CIVIL PENALTY.—Section 46301(a)(7) is amended by striking ''40127 or 41712'' and inserting ''40127, 41712, 41722, or 41723''.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41721 the following:

''41722. Airline passengers' right to know
''41723. Enforcement and enhancement of airline passenger service commitments''.

SEC. 4. REQUIRED ACTION BY SECRETARY OF TRANSPORTATION.

(a) UNIFORM MINIMUM CHECK-IN TIME; BAGGAGE STATISTICS; BUMPING COMPENSATION.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall—

(1) establish a uniform check-in deadline and require air carriers to disclose, both in their contracts of carriage and on ticket jackets, their policies on how those deadlines apply to passengers making connections;

(2) revise the Department of Transportation's method for calculating and reporting the rate of mishandled baggage for air carriers to reflect the reporting requirements of section 41722(h) of title 49, United States Code; and

(3) revise the Department of Transportation's Regulation (14 C.F.R. 250.5) governing the amount of denied boarding compensation for passengers denied boarding involuntarily to increase the maximum amount thereof.

(b) REVIEW OF REGULATIONS.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Secretary shall complete a thorough review of the Department of Transportation's regulations that relate to air carriers' treatment of customers, and make such modifications as may be necessary or appropriate to ensure the enforceability of those regulations and the provisions of this Act and of title 49, United States Code, that relate to such treatment, or otherwise to promote the purposes of this Act.

(2) SPECIFIC AREAS OF REVIEW.—As part of such review and modification, the Secretary shall, to the extent necessary or appropriate—

(A) modify existing regulations to reflect this Act and sections 41722 and 41723 of title 49, United States Code;

(B) modify existing regulations to the extent necessary to ensure that they are sufficiently clear and specific to be enforceable;

(C) establish minimum standards, compliance with which can be measured quantitatively, of air carrier performance with respect to customer service issues addressed by the Department of Transportation regulations or the Airline Customer Service Commitment executed by the Air Transport Association and 14 of its member airlines on June 17, 1999;

(D) address the manner in which the Department of Transportation regulations should treat customer service commitments that relate to actions occurring prior to the purchase of a ticket, such as the commitment to offer the lowest available fare, and whether such the inclusion of such commitments in the contract of carriage creates an enforceable obligation prior to the purchase of a ticket;

(E) restrict the ability of air carriers to include provisions in the contract of carriage restricting a passenger's choice of forum in the event of a legal dispute; and

(F) require each air carrier to report information to Department of Transportation on complaints submitted to the air carrier, and modify the reporting of complaints in the Department of Transportation's monthly customer service reports, so those reports will reflect complaints submitted to air carriers as well as complaints submitted to the Department.

(3) EXPEDITED PROCEDURE.—Within 1 year after the date of enactment of this Act, the Secretary shall complete all actions necessary to establish regulations to implement the requirements of this subsection.

SEC. 5. IMPROVED ENFORCEMENT OF AIR PASSENGER RIGHTS.

(a) USE OF AUTHORIZED FUNDS.—In utilizing the funds authorized by section 223 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century for the purpose of enforcing the rights of air travelers, the Secretary of Transportation shall give priority to the areas identified by the Inspector General of the Department of Transportation as needing improvement in Report No. AV-2001-020, submitted to the Congress on February 12, 2001.

(b) SECRETARY REQUIRED TO CONSULT THE SECRETARY'S INSPECTOR GENERAL.—The Secretary of Transportation, in carrying out this Act and the provisions of section 41722 and 41723 of title 49, United States Code, shall consult with the Inspector General of the Department of Transportation.

By Ms. SNOWE (for herself, Mr. ROCKEFELLER, Mr. DEWINE, Mr. DODD, Ms. COLLINS, Mrs. LINCOLN, and Mr. BREAUX):

S. 484. A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies; to the Committee on Finance.

Ms. SNOWE. Mr. President I rise today to introduce the Child Protection/Alcohol and Drug Partnership Act,

and I am pleased to be joined by my good friends, Senators ROCKEFELLER, DEWINE, DODD, COLLINS, and LINCOLN. Mr. President this bill is an enormously important piece of legislation. It provides the means for states to support some of our most vulnerable families, families who are struggling with alcohol and drug abuse, and the children who are being raised in these homes.

It is obvious, both anecdotally and statistically, that child welfare is significantly impacted by parental substance abuse. And it makes a lot of sense to fund state programs to address these two issues in tandem. The real question in designing and supporting child welfare programs is how can we, public policy makers, government officials, welfare agencies, honestly expect to improve child welfare without appropriately and adequately addressing the root problems affecting these children's lives?

We know that substance abuse is the primary ingredient in child abuse and neglect. Most studies find that between one-third and two-thirds, and some say as high as 80 percent to 90 percent, of children in the child welfare system come from families where parental substance abuse is a contributing factor.

The Child Protection/Alcohol and Drug Partnership Act creates a new five-year $1.9 billion state block grant program to address the connection between substance abuse and child welfare. Payments would be made to promote joint activities among federal, state, and local public child welfare and alcohol and drug prevention and treatment agencies. Our underlying belief, and the point of this bill, is to encourage existing agencies to work together to keep children safe.

HHS will award grants to States and Indian tribes to encourage programs for families who are known to the child welfare system and have alcohol and drug abuse problems. These grants will forge new and necessary partnerships between the child protection agencies and the alcohol and drug prevention and treatment agencies so they can work together to provide services fort this population. The program is designed to increase the capacity of both the child welfare and alcohol and drug systems to comprehensively address the needs of these families to improve child safety, family stability, and permanence, and to promote recovery from alcohol and drug problems.

Statistics paint an unhappy picture for children of substance abusing parents: a 1998 report by the National Committee to Prevent Child Abuse found that 36 states reported that parental substance abuse and poverty are the top two problems exhibited by families reported for child maltreatment. And a 1997 survey conducted by the Child Welfare League of America found that at least 52 percent of placements into out-of-home care were due in part to parental substance abuse.

Children whose parents abuse alcohol and drugs are almost three times likelier to be abused and more than four times likelier to be neglected than children of parents who are not substance abusers. Children in alcohol-abusing families were nearly four times more likely to be maltreated overall, almost five times more likely to be physically neglected, and 10 times more likely to be emotionally neglected than children in families without alcohol problems.

A 1994 study published in the American Journal of Public Health fund that children prenatally exposed to substances have been found to be two to three times more likely to be abused than non-exposed children. And as many as 80 percent of prenatally drug exposed infants will come to the attention of child welfare before their first birthday. Abused and neglected children under age six face the risk of more severe damage than older children because their brains and neurological systems are still developing.

Unfortunately, child welfare agencies estimate that only a third of the 67 percent of the parents who need drug or alcohol prevention and treatment services actually get help today.

This bill is about preventing problems. My colleagues and I know that what is most important here is the safety and well-being of America's children. We expect much of our youth because they are the future of our nation. In turn, we must be willing to give them the support they need to learn and grow, so that they can lead healthy and productive lives.

In 1997 Congress passed the Adoption and Safe Families Act, ASFA, authored by the late Senator John Chafee. ASFA promotes safety, stability, and permanence for all abused and neglected children and requires timely decision-making in all proceedings to determine whether children can safely return home, or whether they should be moved to permanent, adoptive homes. Specifically, the law requires a State to ensure that services are provided to the families of children who are at risk, so that children can remain safely with their families or return home after being in foster care.

The bill we are introducing today identifies a very specific area in which families and children need services, substance abuse. And it will ensure that states have the funding necessary to provide services as required under the Adoption and Safe Families Act.

On March 23, 2000, Kristine Ragaglia, Commissioner of the Connecticut Department of Children and Families, testified before the House Subcommittee on Human Resources on this issue. She said simply that ''If substance abuse issues are left unaddressed, many of the system's efforts to protect children and to promote positive change in families will be wasted.'' This legislation aims to address this very gap in our nation's child protection system.

I am pleased that this legislation has been endorsed by the American Academy of Child & Adolescent Psychiatry; the American Academy of Pediatrics; the American Prosecutors Research Institute; the American Psychological Association; the American Public Human Services Association; the Child Welfare League of America; the Children's Defense Fund; Fight Crime: Invest in Kids; the Maine Association of Prevention Programs; the Maine Association of Substance Abuse Programs; the Maine Children's Trust; Mainely Parents; the Massachusetts Society for the Prevention of Cruelty to Children; the National Conference of State Legislators; the New York State Office of Alcoholism and Substance Abuse Services; and Prevent Child Abuse America.

I encourage my colleagues to take a look at our bill, to think seriously about the future for kids in their states, and to work with us in passing this very important piece of legislation. I ask unanimous consent that a fact sheet and section-by-section description of the bill be printed in the RECORD.

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

FACT SHEET—CHILD PROTECTION/ALCOHOL AND DRUG PARTNERSHIP ACT OF 2001

The Child Protection/Alcohol and Drug Partnership Act of 2001 is a bill to create a grant program to promote joint activities among Federal, State, and local public child welfare and alcohol and drug abuse prevention and treatment agencies to improve child safety, family stability, and permanence for children in families with drug and alcohol problems, as well as promote recovery from drug and alcohol problems.

Child welfare agencies estimate that only a third of the 67 percent of the parents who need drug or alcohol prevention and treatment services actually get help today. This bill builds on the foundation of the Adoption and Safe Families Act of 1997 which requires states to focus on a child's need for safety, health and permanence. The bill creates new funding for alcohol and drug treatment and other activities that will serve the special needs of these families to either provide treatment for parents with alcohol and drug abuse problems so that a child can safely return to their family or to promote timely decisions and fulfill the requirement of the 1997 Adoption and Safe Families Act to provide services prior to adoption.

Grants to promote child protection/alcohol and drug partnerships

In an effort to improve child safety, family stability, and permanence as well as promote recovery from alcohol and drug abuse problems. HHS will award grants to States and Indian tribes to encourage programs for families who are known to the child welfare system and have alcohol and drug abuse problems. Such grants will forge new and necessary partnerships between the child protection agencies and the alcohol and drug prevention and treatment agencies in States so they can together provide necessary services for this unique population.

These grants will help build new partnerships to provide alcohol and drug abuse prevention and treatment services that are timely, available, accessible, and appropriate and include the following components:

(A) Preventive and early intervention services for the children of families with alcohol and drug problems that combine alcohol and drug prevention services with mental health

and domestic violence services, and recognize the mental, emotional, and developmental problems the children may experience.

(B) Prevention and early intervention services for families at risk of alcohol and drug problems.

(c) Comprehensive home-based, out-patient and residential treatment options.

(D) Formal and informal after-care support for families in recovery that promote child safety and family stability.

(E) Services and supports that promote positive parent-child interaction.

Forging new partnerships

GAO and HHS studies indicate that the existing programs for alcohol and drug treatment do not effectively service families in the child protection system. Therefore, this new grant program will help eliminate barriers to treatment and to child safety and permanence by encouraging agencies to build partnerships and conduct joint activities including:

(A) Promote appropriate screening and assessment of alcohol and drug problems.

(B) Create effective engagement and retention strategies that get families into timely treatment.

(C) Encourage joint training for staff of child welfare and alcohol and drug abuse prevention and treatment agencies, and judges and other court personnel to increase understanding of alcohol and drug problems related to child abuse and neglect and to more accurately identify alcohol and drug abuse in families. Such training increases staff knowledge of the appropriate resources that are available in the communities, and increases awareness of the importance of permanence for children and the urgency for expedited time lines in making these decisions.

(D) Improve data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine which approaches are most effective.

(E) Evaluate strategies to identify the effectiveness of treatment and those parts of the treatment that have the greatest impact on families in different circumstances.

New, targeted investments

A total of $1.9 billion will be available to eligible states with funding of $200 million in the first year expanding to $575 million by the last year. The amount of funding will be based on the State's number of children under 18, with a small state minimum to ensure that every state gets a fair share. Indian tribes will have a 3–5 percent set aside. State child welfare and alcohol and drug agencies shall have a modest matching requirement for funding beginning with a 15 percent match and gradually increasing to 25 percent. The Secretary has discretion to waive the State match in cases of hardship.

Accountability and performance measurement

To ensure accountability, HHS and the related State agencies must establish indicators within 12 months of the enactment of this law which will be used to assess the State's progress under this program. Annual reports by the States must be submitted to HHS. Any state that fails to submit its report will lose its funding for the next year, until it comes into compliance. HHS must issue an annual report to Congress on the progress of the Child Protection/Alcohol and Drug Partnership grants.

SECTION-BY-SECTION—CHILD PROTECTION/ALCOHOL AND DRUG PARTNERSHIP ACT OF 2001

A bill to amend part B of title IV of the Social Security Act to create a grant program to promote joint activities among Federal, State, and Local public child welfare and alcohol and drug abuse prevention and treatment agencies.

Grants to promote child protection/alcohol and drug partnership for children

In an effort to improve child safety, family stability, and permanence, as well as promote recovery from alcohol and drug abuse problems, the Secretary may award grants to eligible States and Indian tribes to foster programs for families who are known to the child welfare system to have alcohol and drug abuse problems. The Secretary shall notify States and Indian tribes of approval or denial not later than 60 days after submission.

State plan requirements

In order to meet the prevention and treatment needs of families with alcohol and drug abuse problems in the child welfare system and to promote child safety, permanence, and family stability, State agencies will jointly work together, creating a plan to identify the extent of the drug and alcohol abuse problem.

Creation of plan—State agencies will provide data on appropriate screening and assessment of cases, consultation on cases involving alcohol and drug abuse, arrangements for addressing confidentiality and sharing of information, cross training of staff, co-location of services, support for comprehensive treatment for parents and their children, and priority of child welfare families for assessment or treatment.

Identify activities—A description of the activities and goals to be implemented under the five-year funding cycle should be identified, such as: identify and assess alcohol and drug treatment needs, identify risks to children's safety and the need for permanency, enroll families in appropriate services and treatment in their communities, and regularly assess the progress of families receiving such treatment.

Implement prevention and treatment services—States and Indian tribes should implement individualized alcohol and drug abuse prevention and treatment services that are available, accessible, and appropriate that include the following components:

(A) Preventive and early intervention services for the children of families with alcohol and drug abuse problems that integrate alcohol and drug abuse prevention services with mental health and domestic violence services, as well as recognizing the mental, emotional, and developmental problems the children may experience.

(B) Prevention and early intervention services for parents at risk for alcohol and drug abuse problems.

(C) Comprehensive home-based, out-patient and residential treatment options.

(D) Formal and informal after-care support for families in recovery.

(E) Services and programs that promote parent-child interaction.

Sharing information among agencies—Agencies should eliminate existing barriers to treatment and to child safety and permanence by sharing information among agencies and learning from the various treatment protocols of other agencies such as:

(A) Creating effective engagement and retention strategies.

(B) Encouraging joint training of child welfare staff and alcohol and drug abuse prevention agencies, and judges and court staff to increase awareness and understanding of drug abuse and related child abuse and neglect and more accurately identify abuse in families, increase staff knowledge of the services and resources that are available in the communities, and increase awareness of permanence for children and the urgency for time lines in making these decisions.

(C) Improving data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine which approaches are most effective.

(D) Evaluation strategies to identify the effectiveness of treatment that has the greatest impact on families in different circumstances.

(E) Training and technical assistance to increase the State's capacity to perform the above activities.

Plan descriptions and assurances—States and Indian tribes should create a plan that includes the following descriptions and assurances:

(A) A description of the jurisdictions in the State whether urban, suburban, or rural, and the State's plan to expand activities over the 5-year funding cycle to other parts of the State.

(B) A description of the way in which the State agency will measure progress, including how the agency will jointly conduct an evaluation of the results of the activities.

(C) A description of the input obtained from staff of State agencies, advocates, consumers of prevention and treatment services, line staff from public and private child welfare and drug abuse agencies, judges and court staff, representatives of health, mental health, domestic violence, housing and employment services, as well as representative of the State agency in charge of administering the temporary assistance to needy families program (TANF).

(D) An assurance of coordination with other services provided under other Federal or federally assisted programs including health, mental health, domestic violence, housing, employment programs, TANF, and other child welfare and alcohol and drug abuse programs and the courts.

(E) An assurance that not more than 10 percent of expenditures under the State plan for any fiscal year shall be for administrative costs. However, Indian tribes will be exempt from this limitation and instead may use the indirect cost rate agreement in effect for the tribe.

(F) An assurance from States that Federal funds provided will not be used to supplant Federal or non-Federal funds for services and activities provided as of the date of the submission of the plan. However, Indian tribes will be exempt from this provision.

Amendments—A State or Indian tribe may amend its plan, in whole or in part at any time through a plan amendment. The amendment should be submitted to the Secretary not later than 30 days after the date of any changes. Approval from the Secretary shall be presumed unless, the State has been notified of disapproval within 60 days after receipt.

Special application to Indian tribes—The Indian tribe must submit a plan to the Secretary that describes the activities it will undertake with both the child welfare and alcohol and drug agencies that serve its children to address the needs of families who come to the attention of the child welfare agency who have alcohol and drug problems. The Indian tribe must also meet other applicable requirements, unless the Secretary determines that it would be inappropriate based on the tribe's resources, needs, and other circumstances.

Appropriation of funds

Appropriations—A total of 1.9 billion dollars will be appropriated to eligible States and Indian tribes at the progression rate of:

(1) for fiscal year 2002, $200,000,000;
(2) for fiscal year 2003, $275,000,000;
(3) for fiscal year 2004, $375,000,000;
(4) for fiscal year 2005, $475,000,000; and
(5) for fiscal year 2006, $575,000,000.

Territories—The Secretary of HHS shall reserve 2 percent of the amount appropriated each fiscal year for payments to Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Northern Mariana Islands. In addition, the Secretary shall reserve from 3 to 5 percent of the amount appropriated for direct payment to Indian tribes.

Research and training—The Secretary shall reserve 1 percent of the appropriated amount for each fiscal year for practice-based research on the effectiveness of various approaches for screening, assessment, engagement, treatment, retention, and monitoring of families and training of staff in such areas. In addition, the Secretary will also ensure that a portion of these funds are used for research on the effectiveness of these approaches for Indian children and the training of staff.

Determination of use of funds—Funds may only be used to carry out a specific research agenda established by the Secretary, together with the Assistant Secretary of the Administration for Children and Families and the Administrator of Substance Abuse and Mental Health Services Administration with input from public and private nonprofit providers, consumers, representatives of Indian tribes and advocates.

Payments to states

Amount of grant to States and territories—Each eligible State will receive an amount based on the number of children under the age of 18 that reside in that State. There will be a small state minimum of .05 percent to ensure that all States are eligible for sufficient funding to establish a program.

Amount of grant to Indian tribes or tribal organizations—Indian tribes shall be eligible for a set aside of 3 to 5 percent. This amount will be distributed based on the population of children under 18 in the tribe.

State matching requirement—States shall provide, through non-Federal contributions, the following applicable percentages for a given fiscal year:

(A) for fiscal years 2002 and 2003, 15 percent match;

(B) for fiscal years 2004 and 2005, 20 percent match; and

(C) for fiscal year 2006, 25 percent match.

Source of match—The non-Federal contributions required of States may be in cash or in-kind including plant equipment or services made directly from donations from public or private entities. Amounts received from the Federal Government may not be included in the applicable percentage of contributions for a given fiscal year. However, Indian tribes may use three Federal sources of matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act Funds, and Community Block Grant funds.

Waiver—The Secretary may modify matching funds if it is determined that extraordinary economic conditions in the State justify the waiver. Indian tribes' matching funds may also be modified if the Secretary determines that it would be inappropriate based on the resources and needs of the tribe.

Use of funds and deadline for request of payment—Funds may only be used to carry out activities specified in the plan, as approved by the Secretary. Each State or Indian tribe shall apply to be paid funds not later than the beginning of the fourth quarter of a fiscal year or they will be reallotted.

Carryover and reallocation of funds—Funds paid to an eligible State or Indian tribe may be used in that fiscal year or the succeeding fiscal year. If a State does not apply for funds allotted within the time provided, the funds will be reallotted to one or more other eligible States on the basis of the needs of that individual state. In the case of Indian tribes, funds will be reallotted to remaining tribes that are implementing approved plans.

Performance measurement

Establishment of indicators—The Secretary, in consultation with the Assistant Secretary for the Administration for Children and Families, the Administrator of the Substance Abuse and Mental Health Services Administration within HHS, and with state and local government, public officials responsible for administering child welfare and alcohol and drug abuse prevention and treatment programs, court staff, consumers of the services, and advocates for these children and parents will establish indicators within 12 months of the enactment of this law which will be used to assess the performance of States and Indian tribes. A State or Indian tribe will be measured against itself, assessing progress over time against a baseline established at the time the grant activities were undertaken.

Illustrative examples—Indicators of activities to be measured include:

(A) Improve screening and assessment of families.

(B) Increase availability of comprehensive individualized treatment.

(C) Increase the number/proportion of families who enter treatment promptly.

(D) Increase engagement and retention.

(E) Decrease the number of children who re-enter foster care after being returned to families who had alcohol or drug problems.

(F) Increase number/proportion of staff trained.

(G) Increase the proportion of parents who complete treatment and show improvement in their employment status.

Reports—The child welfare and alcohol and drug abuse and treatment agencies in each eligible state, and the Indian tribes that receive funds shall submit no later than the end of the first fiscal year, a report to the Secretary describing activities carried out, and any changes in the use of the funds planned for the succeeding fiscal year. After the first report is submitted, a State or Indian tribe must submit to the Secretary annually, by the end of the third quarter in the fiscal year, a report on the application of the indicators to its activities, an explanation of why these indicators were chosen, and the results of the evaluation to date. After the third year of the grant all of the States must include indicators that address improvements in treatment. A final report on evaluation and the progress made must be submitted to the Secretary not later than the end of each five year funding cycle of the grant.

Penalty—States or Indian tribes that fail to report on the indicators will not be eligible for grant funds for the fiscal year following the one in which it failed to report, unless a plan for improving their ability to monitor and evaluate their activities is submitted to the Secretary and then approved in a timely manner.

Secretarial reports and evaluations—Beginning October 1, 2003, the Secretary, in consultation with the Assistant Secretary for the Administration for Children and Families, and the Administrator of the Substance Abuse and Mental Health Service Administration, shall report annually, to the Committee on Ways and Means of the House of the Representatives and the Committee on Finance of the Senate on the joint activities, indicators, and progress made with families.

Evaluations—Not later than six months after the end of each five year funding cycle, the Secretary shall submit a report to the above committees, the results of the evaluations as well as recommendations for further legislative actions.

Mr. ROCKEFELLER. Mr. President, I am here today to talk about our Nation's most vulnerable children, innocent children who have been abused or neglected by parents, many of whom have alcohol and drug abuse problems. Over 500,000 children receive foster care services nationwide, including 3,000 children in West Virginia. These numbers belie our policy that every child deserves a safe, healthy, permanent home, as specified in the fundamental guidelines set forth in the 1997 Adoption and Safe Families Act, ASFA.

National statistics tell us that a majority of families in the child welfare system may struggle with alcohol and/or drug abuse. One recent survey noted that 67 percent of parents involved in child abuse or neglect cases required alcohol or drug treatment, but only one-third of those parents received appropriate treatment or services to address their addiction. In my own state of West Virginia, over half of the children placed in the foster care system have families with substance abusing behaviors. We are also aware of countless numbers of other children who, while not receiving foster care services, are at risk of neglect due their parents' addictions.

Another stunning, sad statistic is that children with open child welfare cases whose parents have substance abuse problems are younger than other children in the foster care system and are more likely to suffer severe, chronic neglect from their parents. Once these children are placed in the foster care system, they tend to stay in care longer than other children.

It will be impossible to achieve the critical goal of safe, healthy, and permanent homes for children in the child protection system if we do not address the problems of parental alcohol and drug abuse.

Examining the effects of substance abuse involves complex and far-reaching issues. As part of the 1997 Adoption and Safe Families Act, the Department of Health and Human Services, HHS, was directed to study substance abuse as it relates to and within the framework of the child protection system. Their important report, ''Blending Perspectives and Building Common Ground,'' outlines many challenges. It concludes that we lack the necessary array of appropriate substance abuse treatment programs and services, and emphasizes the well-known lack of services designed for women, especially for women and their children. In addition, the report notes that the separate substance abuse and child protection systems have no purposeful, planned partnership to address the unique needs of abused and neglected children.

The report details the lack of a cooperative, inter-agency relationship between the two systems whose staffs

work diligently to provide services under their own jurisdiction, but have minimal communication, different goals, and divergent service philosophies with regard to each other. For example, each system has different definitions of the ''client served.'' While ASFA views the child as ''the client'' and expects child protection agencies and courts to consider termination, within a 22-month time frame, of parental rights for children receiving foster care service for 15 months, substance abuse treatment providers often view the adult as the client, with different time frames and expectations for recovery.

In order to meet the goals of ASFA, we must develop new ways to encourage these two independent systems to work together on behalf of parents with substance abuse problems and their children. The issues of addiction and children receiving protection services cannot be addressed in isolation. It is essential to consider the total picture: The needs of the child, the needs of the parents, and cost-effective services that meet adoption laws' goal to provide every child with a safe, healthy, and permanent home.

The HHS report identifies significant priorities. First, it calls for building collaborative working relationships between the child protection and substance abuse agencies.

While substance abuse treatment is a challenge in and of itself, the report explains that effective treatment is further complicated for parents with children. The majority of substance abuse treatment programs are not set up to serve both women and their children. While our country in general lacks the comprehensive services needed for such families, there are some models and promising practices on how to serve both parents and children.

One model can be found in my State, the MOTHERS program in Beckley, WV, which serves women and their children. The majority of these women have either lost custody of their children or were under child protection service investigation or mandate, are typically unemployed and untrained for gainful employment, have few aspirations, and wrestle with depression. This innovation program simultaneously addresses the needs of both mothers and their children, through individual and joint therapy, in such areas as recovery, mental health counseling, employment, academic education, healthy living skills, parenting, and family permanency. These services are provided using a residential model where mothers and their children live in a therapeutic environment and receive temporary housing, meal service, recreation activities, and transportation to and from community Alcoholics Anonymous and Narcotics Anonymous meetings. The bill we are introducing today would give other localities the opportunity to develop similar programs or alternative models.

In addition, the HHS report recognizes the importance of research to better understand the relationship between substance abuse and child maltreatment.

Today, I am proud to join with my colleagues, Senators SNOWE, DEWINE, and DODD, to introduce legislation to address the challenges of abused and neglected children whose parents have alcohol and/or drug problems. We have worked with state officials, child advocates, criminal justice officials, and members of the substance abuse community to develop the Child Protection/Alcohol and Drug Partnership Act of 2001. This bill builds on ASFA's fundamental goal of making a child's safety, health, and permanency paramount.

To accomplish this bold purpose, we must invest in a partnership designed to respond to the needs and priorities outlined in the HHS report. I believe that a new program and a new approach are essential. Existing substance abuse treatment programs such as those designed to serve single males cannot respond to the needs of a mother and her child.

To be effective, we must connect child protection and substance abuse treatment staffs and support them to work in partnership to test and identify best practices. Forging new partnerships take time—and it takes money. That is why this bill invests $1.9 billion over 5 years to combat the problems of substance abuse faced by families whose children are sheltered by the child protection system. I understand this is a large sum, but alcohol and drug abuse is an enormous problem in our country and represents an overwhelming financial and human loss. Before reacting to the bill expenditure alone, consider the costs we would incur if we remain silent on this issue. If we do not invest in substance abuse prevention and treatment for such families, we cannot effectively combat the abuse and neglect of children.

Our bill is designed to tackle this tough issue and encourage child protection and substance abuse agencies to work in partnership and promote innovative approaches within both of their systems to support women and their children. This bill can provide funding for outreach services to families, screening and assessment to enhance prevention, outpatient or residential treatment services, retention supports to aid mothers to remain in treatment, and aftercare services to keep families and children safe. This bill also addresses the importance of dual training for the staffs of the child protection and substance abuse treatment systems, to share effective strategies in order to meet the goal of safe and permanent homes for children.

If we choose to invest in child protection and substance abuse partnerships for families, we can achieve two things. For many families, I hope that parents will achieve sobriety through treatment and that their children will return to a safe and stable home. For those who are unsuccessful, we will know that we have put forth a reasonable, good faith effort and learned an important lesson—that some children need alternate homes, and that we will still need to pursue adoption for some children. Under the Adoption and Safe Families Act, courts cannot move forward on adoption until appropriate services have been provided to families. That is the law, and we need to follow it.

Our bill will promote a responsible approach with a focus on accountability. It requires annual progress reports that detail defined outcomes, challenges, and proposed solutions. These reports will evaluate parental treatment outcomes, the child's safety, and the stability of the family.

Throughout the years, I have worked to address the needs of abused and neglected children in a bipartisan matter. I am proud to continue this bipartisan approach as we come to grips with such a controversial and emotionally charged issue as protecting children who are abused and neglected by their substance-abusing parents.

By Mr. HOLLINGS (for himself and Mr. MCCAIN):

S. 485. A bill to amend Federal law regarding the tolling of the Interstate Highway System; to the Committee on Environment and Public Works.

Mr. HOLLINGS. Mr. President, I rise to bring to your attention an issue of great national concern. We all remember the great debate that this chamber had last year during reauthorization of the federal highway bill, TEA–21. We all negotiated to get more funds for our states because we know that more investment in our highways means better, safer, and more efficient transportation for those who reply on roads for making deliveries, going to work or school, or just doing the grocery shopping. Transportation is the linchpin for economic development, and those states that have good, efficient transportation systems attract business development, ultimately raising standards of living. However, I think that we may have gone too far in authorizing states additional means to raise revenue for highway improvements. These means to raise revenue are not productive and hurt our system of transportation.

Specifically, I am concerned that states have too much flexibility to establish tolls on our Interstate highway system. For many states, the large increases in TEA–21 funding have satisfied the need to invest in infrastructure. Other states have found that they need to raise more money, and so they have raised their state fuel taxes or taken other actions to raise the needed revenue. These increases may be difficult to implement politically, because frankly most people don't support any tax increase. However, I believe that highway tolls are a non-productive and overly intrusive means of raising revenue causing more harm to commerce than can be justified.

Congress, mistakenly in my opinion, increased the authority of states to put tolls on their Interstate highway in TEA–21. I am introducing the interstate Tolls Relief Act of 2001 to restrict Interstate toll authority. The debate over highway tolls goes back to the genesis of our Republic, and contributed to our movement away from the Articles of Confederation to a more uniform system of governance under the U.S. Constitution. Toll roads were the bane of commerce, in the early years of the Republic, as each state would attempt to toll the interstate traveling public to finance state public improvements. Ultimately, frustration with delay and uneven costs helped contribute to the adoption of Commerce Clause powers to help facilitate interstate and foreign trade. Those same concerns hold true today, and I think that we in Congress must take a national perspective and promote interstate commerce.

I think that if one were to ask the citizens of the United States about tolls, they would ultimately conclude that Interstate tolls would reduce by efficiency of our Interstate highways, increase shipping costs, and make interstate travel more expensive and less convenient. Not to mention the safety problems associated with erecting toll booths and operating them to collect revenues.

Now, I recognize that tolls under certain circumstances may be a good idea, and my bill does not prevent states from tolling non-Interstate highways. My bill also does not affect tolls on highways where they are already in use, and states will continue to be able to rely on existing tolls for revenues. Furthermore, my bill recognizes that when funds must be found for a major Interstate bridge or tunnel project, states may have no other option but to use tolls to finance the project. They may continue to do so under my bill. I believe this consistent with the original intent of authority granted for Interstate tolls. What my bill does is to prevent the proliferation of Interstate tolls, and restrict tolling authority for major bridges and tunnels.

This bill is essential if we are to continue to have an Interstate Highway System that is safe and facilitates the efficient movement of Interstate commerce and personal travel. I urge the support of my colleagues.

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. 485

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Interstate Tolls Relief Act of 2001''.

SEC. 2. INTERSTATE SYSTEM RECONSTRUCTION AND REHABILITATION PILOT PROGRAM REPEALED.

Section 1216(b) of the Transportation Equity Act for the 21st Century (112 Stat. 212-214; 23 U.S.C. 19 nt) is repealed.

SEC. 3. TOLLS ON BRIDGES AND TUNNELS.

Section 129(a)(1)(C) of title 23, United States Code, is amended by striking ''toll-free bridge or tunnel'' and inserting ''toll-free major bridge or toll-free tunnel''.

SEC. 4. LIMITATION ON USE OF TOLL REVENUES.

Section 129(a)(3) of title 23, United States Code, is amended by—

(1) striking ''first'' in the first sentence and inserting ''only''; and

(2) striking ''If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.''.

By Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. FEINGOLD, Mr. JEFFORDS, Mr. KENNEDY, Mr. CHAFEE, Mr. AKAKA, Ms. MIKULSKI, Mr. DODD, Mr. LIEBERMAN, Mr. TORRICELLI, Mr. WELLSTONE, Mrs. BOXER, and Mr. CORZINE):

S. 486. A bill to reduce the risk that innocent persons may be executed, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, a little over one year ago, I came to this floor to draw attention to the growing crisis in the administration of capital punishment. I noted the startling number of cases, 85, in which death row inmates had been exonerated after long stays in prison. In some of those cases, the inmate had come within days of being executed.

A lot has happened in a year. For one thing, a lot more death row inmates have been exonerated. The number jumped in a single year from 85 all the way to 95. There are now 95 people in 22 States who have been cleared of the crime that sent them to death row, according to the Death Penalty Information Center. The appalling number of exonerations, and the fact that they span so many States, a substantial majority of the States that have the death penalty, makes it clearer than ever that the crisis I spoke of last year is real, and that it is national in its scope. This is not an ''Illinois problem'' or a ''Texas problem.'' Nor, with Earl Washington's release last month from prison, is it a ''Virginia problem.'' There are death penalty problems across the nation, and as a nation we need to pay attention to what is happening.

It seems like every time you pick up a paper these days, there is another story about another person who was sentenced to death for a crime that he did not commit. The most horrifying miscarriages of justice are becoming commonplace: ''Yet Another Innocent Person Cleared By DNA, Walks Off Death Row,'' story on page 10. We should never forget that behind each of these headlines is a person whose life was completely shattered and nearly extinguished by a wrongful conviction.

And those were the ''lucky'' ones. We simply do not know how many innocent people remain on death row, and how many may already have been executed.

People of good conscience can and will disagree on the morality of the death penalty. I have always opposed it. I did when I was a prosecutor, and I do today. But no matter what you believe about the death penalty, no one wants to see innocent people sentenced to death. It is completely unacceptable.

A year ago, along with several of my colleagues, I introduced the Innocence Protection Act of 2000. I hoped this bill would stimulate a national debate and begin work on national reforms on what is, as I said, a national problem. A year later, the national debate is well under way, but the need for real, concrete reforms is more urgent than ever.

Today, my friend GORDON SMITH and I are introducing the Innocence Protection Act of 2001. We are joined by Senators from both sides of the aisle, by some who support capital punishment and by others who oppose it. On the Republican side, I want to thank Senators SUSAN COLLINS and LINCOLN CHAFEE, and my fellow Vermonter JIM JEFFORDS. On the Democratic side, my thanks to Senators LEVIN, FEINGOLD, KENNEDY, AKAKA, MIKULSKI, DODD, LIEBERMAN, TORRICELLI, WELLSTONE, BOXER and CORZINE. I also want to thank our House sponsors WILLIAM DELAHUNT, and RAY LAHOOD, along with their 117 additional cosponsors, both Democratic and Republican.

Over the last year we have turned the corner in showing that the death process is broken. Now we will push forward to our goal of acting on reforms that address these problems.

Here on Capitol Hill it is our job to represent the public. The scores of legislators who have sponsored this legislation clearly do represent the American public, both in their diversity and in their readiness to work together in a bipartisan manner for common-sense solutions.

Too often in this chamber, we find ourselves dividing along party or ideological lines. The Innocence Protection Act is not about that, and it is not about whether, in the abstract, you favor or disfavor the death penalty. It is about what kind of society we want America to be in the 21st Century.

The goal of our bill is simple, but profoundly important: to reduce the risk of mistaken executions. The Innocence Protection Act proposes basic, common-sense reforms to our criminal justice system that are designed to protect the innocent and to ensure that if the death penalty is imposed, it is the result of informed and reasoned deliberation, not politics, luck, bias, or guesswork. We have listened to a lot of good advice and made some refinements to the bill since the last Congress, but it is still structured around

two principal reforms: improving the availability of DNA testing, and ensuring reasonable minimum standards and funding for court-appointed counsel.

The need to make DNA testing more available is obvious. DNA is the fingerpint of the 21st Century. Prosecutors across the country use it, and rightly so, to prove guilt. By the same token, it should be used to do what it is equally scientifically reliable to do, prove innocence. Our bill would provide broader access to DNA testing by convicted offenders. It would also prevent the premature destruction of biological evidence that could hold the key to clearing an innocent person or identifying the real culprit.

I am gratified that our bill has served as a catalyst for reforms in the States with respect to post-conviction DNA testing. In just one year, several States have passed some form of DNA legislation. Others have DNA bills under consideration. Much of this legislation is modeled on the DNA provisions proposed in the Innocence Protection Act, and we can be proud about this.

But there are still many States that have not moved on this issue, even though it has been more than six years since New York passed the Nation's first post-conviction DNA statute. And some of the States that have acted have done so in ways that will leave the vast majority of prisoners without access to DNA testing. Moreover, none of these new laws addresses the larger and more urgent problem of ensuring that people facing the death penalty have adequate legal representation. The Innocence Protection Act does address this problem.

In our adversarial system of justice, effective assistance of counsel is essential to the fair administration of justice. Unfortunately, the manner in which defense lawyers are selected and compensated in death penalty cases too often results in fundamental unfairness and unreliable verdicts. More than two-thirds of all death sentences are overturned on appeal or after post-conviction review because of errors in the trial; such errors are minimized when the defendant has a competent counsel.

It is a sobering fact that in some areas of the Nation it is often better to be rich and guilty than poor and innocent. All too often, lawyers defending people whose lives are at stake are inexperienced, inept, or just plain incompetent. All too often, they fail to take the time to review the evidence and understand the basic facts of the case before the trial is under way.

The reasons for this inadequacy of representation are well know: lack of standards for choosing defense counsel, and lack of funding for this type of legal service. The Innocence Protection Act addresses these problems head on. It calls for the creation of a temporary Commission on Capital Representation, which would consist of distinguished American legal experts who have experienced the criminal justice system first hand, prosecutors, defense lawyers, and judges. The Commission would be tasked with formulating standards that specify the elements of an effective system for providing adequate representation in capital cases. The bill also authorizes more than $50,000,000 in grants to help put the new standards into effect.

We have consulted a great many legal experts in the course of formulating these provisions. They have all provided valuable insights, but as a former prosecutor myself, I have been particularly pleased with the encouragement and assistance we have received from prosecutors across the nation.

Good prosecutors have two things in common. First, good prosecutors want to convict the person, not to get a conviction that may be a mistake, and that may leave the real culprit in the clear. Second, good prosecutors want defendants to be represented by good defense lawyers. Lawyers who investigate their client's cases thoroughly before trial, and represent their clients vigorously in court, are essential in getting at the truth in our adversarial system.

Given some leadership from the people's representatives in Congress, some fair and objective standards, and some funding, America's prosecutors will be ready, willing and able to help fix the system. We owe them, and the American people, that leadership.

On August 3, 1995, more than five years ago, the Conference of Chief Justices urged the judicial leadership in each State in which the death penalty is authorized by law to ''establish standards and a process that will assure the timely appointment of competent counsel, with adequate resources, to represent defendants in capital cases at each stage of such proceedings.'' The States' top jurists, the people who run our justice system, called for reform. But not much came of their initiative. Although a few States have established effective standards and sound administrative systems for the appointment and compensation of counsel in capital cases, most have not. The do-nothing politics of gridlock got in the way of sensible, consensus-based reform.

We have made a commitment to the American people to do better than that. At the end of the last Congress, members on both sides of the aisle joined together to pass the Paul Coverdell National Forensic Sciences Improvement Act and the DNA Analysis Backlog Elimination Act. I strongly supported both bills, which will give States the help they desperately need to reduce the backlogs of untested DNA evidence in their crime labs, and to improve the quality and capacity of these facilities. Both bills passed unanimously in both houses. And in both bills, all of us here in Congress committed ourselves to working with the States to ensure access to post-conviction DNA testing in appropriate cases, and to improve the quality of legal representation in capital cases through the establishment of counsel standards. Congress has already gone on record in recognizing what has to be done. Now it is time to actually do it.

If we had a series of close calls in airline traffic, we would be rushing to fix the problem. These close calls on death row should concentrate our minds, and focus our will, to act.

This new Congress is, as our new President has said, a time for leadership. It is a time for fulfilling the commitments we have made to the American people. And it is a time for action. The Innocence Protection Act is a bipartisan effort to move beyond the politics of gridlock. By passing it, we can work cooperatively with the States to ensure that defendants who are put on trial for their lives have competent legal representation at every stage of their cases. By passing it, we can send a message about the values of fundamental justice that unite all Americans. And by passing it, we can substantially reduce the risk of executing innocent people. We have had a constructive debate, and we have made a noble commitment. It is now time to act.

I ask unanimous consent that the text of the bill and a summary of the bill be included in the RECORD.

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

S. 486

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 ''Innocence Protection Act of 2001''.

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

Sec. 1. Short title; table of contents.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes.
Sec. 102. Post-conviction DNA testing in Federal criminal justice system.
Sec. 103. Post-conviction DNA testing in State criminal justice systems.
Sec. 104. Prohibition pursuant to section 5 of the 14th amendment.
Sec. 105. Grants to prosecutors for DNA testing programs.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. National Commission on Capital Representation.
Sec. 202. Capital defense incentive grants.
Sec. 203. Amendments to prison grant programs.
Sec. 204. Effect on procedural default rules.
Sec. 205. Capital defense resource grants.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Increased compensation in Federal cases.
Sec. 302. Compensation in State death penalty cases.
Sec. 303. Certification requirement in Federal death penalty prosecutions.
Sec. 304. Alternative of life imprisonment without possibility of release.
Sec. 305. Right to an informed jury.
Sec. 306. Annual reports.
Sec. 307. Sense of Congress regarding the execution of juvenile offenders and the mentally retarded.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Over the past decade, deoxyribonucleic acid testing (referred to in this section as ''DNA testing'') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene.

(2) Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact.

(3) While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, in some cases convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.

(4) Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent men and women.

(5) In more than 80 cases in the United States, DNA evidence has led to the exoneration of innocent men and women who were wrongfully convicted. This number includes at least 10 individuals sentenced to death, some of whom came within days of being executed.

(6) In more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the identification of the actual perpetrator.

(7) Experience has shown that it is not unduly burdensome to make DNA testing available to inmates. The cost of that testing is relatively modest and has decreased in recent years. Moreover, the number of cases in which post-conviction DNA testing is appropriate is small, and will decrease as pretrial testing becomes more common.

(8) Under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence. Under Federal law, motions for a new trial based on newly discovered evidence must be made within 3 years after conviction. In most States, those motions must be made not later than 2 years after conviction, and sometimes much sooner. The result is that laws intended to prevent the use of evidence that has become less reliable over time have been used to preclude the use of DNA evidence that remains highly reliable even decades after trial.

(9) The National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude that testing, and notwithstanding the inability of an inmate to pay for the testing.

(10) Since New York passed the Nation's first post-conviction DNA statute in 1994, only a few States have adopted post-conviction DNA testing procedures, and some of these procedures are unduly restrictive. Moreover, only a handful of States have passed legislation requiring that biological evidence be adequately preserved.

(11) In 1994, Congress passed the DNA Identification Act, which authorized the construction of the Combined DNA Index System, a national database to facilitate law enforcement exchange of DNA identification information, and authorized funding to improve the quality and availability of DNA testing for law enforcement identification purposes. In 2000, Congress passed the DNA Analysis Backlog Elimination Act and the Paul Coverdell Forensic Sciences Improvement Act, which together authorized an additional $908,000,000 over 6 years in DNA-related grants.

(12) Congress should continue to provide financial assistance to the States to increase the capacity of State and local laboratories to carry out DNA testing for law enforcement identification purposes. At the same time, Congress should insist that States which accept financial assistance make DNA testing available to both sides of the adversarial system in order to enhance the reliability and integrity of that system.

(13) In Herrera v. Collins, 506 U.S. 390 (1993), a majority of the members of the Court suggested that a persuasive showing of innocence made after trial would render the execution of an inmate unconstitutional.

(14) It shocks the conscience and offends social standards of fairness and decency to execute innocent persons or to deny inmates the opportunity to present persuasive evidence of their innocence.

(15) If biological material is not subjected to DNA testing in appropriate cases, there is a significant risk that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally executed.

(16) Given the irremediable constitutional harm that would result from the execution of an innocent person and the failure of many States to ensure that innocent persons are not sentenced to death, a Federal statute assuring the availability of DNA testing and a chance to present the results of testing in court is a congruent and proportional prophylactic measure to prevent constitutional injuries from occurring.

(b) PURPOSES.—The purposes of this title are to—

(1) substantially implement the Recommendations of the National Commission on the Future of DNA Evidence in the Federal criminal justice system, by authorizing DNA testing in appropriate cases;

(2) prevent the imposition of unconstitutional punishments through the exercise of power granted by clause 1 of section 8 and clause 2 of section 9 of article I of the Constitution of the United States and section 5 of the 14th amendment to the Constitution of the United States; and

(3) ensure that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, by requiring the preservation of DNA evidence for a limited period.

SEC. 102. POST-CONVICTION DNA TESTING IN FEDERAL CRIMINAL JUSTICE SYSTEM.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by inserting after chapter 155 the following:

''CHAPTER 156—DNA TESTING

''Sec.
''2291. DNA testing.
''2292. Preservation of evidence.

''§ 2291. DNA testing

''(a) APPLICATION.—Notwithstanding any other provision of law, a person convicted of a Federal crime may apply to the appropriate Federal court for DNA testing to support a claim that the person did not commit—

''(1) the Federal crime of which the person was convicted; or

''(2) any other offense that a sentencing authority may have relied upon when it sentenced the person with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

''(b) NOTICE TO GOVERNMENT.—The court shall notify the Government of an application made under subsection (a) and shall afford the Government an opportunity to respond.

''(c) PRESERVATION ORDER.—The court shall order that all evidence secured in relation to the case that could be subjected to DNA testing must be preserved during the pendency of the proceeding. The court may impose appropriate sanctions, including criminal contempt, for the intentional destruction of evidence after such an order.

''(d) ORDER.—

''(1) IN GENERAL.—The court shall order DNA testing pursuant to an application made under subsection (a) upon a determination that—

''(A) the evidence is still in existence, and in such a condition that DNA testing may be conducted;

''(B) the evidence was never previously subjected to DNA testing, or was not subject to the type of DNA testing that is now requested and that may resolve an issue not resolved by previous testing;

''(C) the proposed DNA testing uses a scientifically valid technique; and

''(D) the proposed DNA testing has the scientific potential to produce new, noncumulative evidence material to the claim of the applicant that the applicant did not commit—

''(i) the Federal crime of which the applicant was convicted; or

''(ii) any other offense that a sentencing authority may have relied upon when it sentenced the applicant with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

''(2) LIMITATION.—The court shall not order DNA testing under paragraph (1) if the Government proves by a preponderance of the evidence that the application for testing was made to unreasonably delay the execution of sentence or administration of justice, rather than to support a claim described in paragraph (1)(D).

''(3) TESTING PROCEDURES.—If the court orders DNA testing under paragraph (1), the court shall impose reasonable conditions on such testing designed to protect the integrity of the evidence and the testing process and the reliability of the test results.

''(e) COST.—The cost of DNA testing ordered under subsection (c) shall be borne by the Government or the applicant, as the court may order in the interests of justice, except that an applicant shall not be denied testing because of an inability to pay the cost of testing.

''(f) COUNSEL.—The court may at any time appoint counsel for an indigent applicant under this section pursuant to section 3006A(a)(2)(B) of title 18.

''(g) POST-TESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULTS.—If the results of DNA testing conducted under this section

are inconclusive, the court may order such further testing as may be appropriate or dismiss the application.

''(2) RESULTS UNFAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section inculpate the applicant, the court shall—

''(A) dismiss the application;

''(B) assess the applicant for the cost of the testing; and

''(C) make such further orders as may be appropriate.

''(3) RESULTS FAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section are favorable to the applicant, the court shall order a hearing and thereafter make such further orders as may be appropriate under applicable rules and statutes regarding post-conviction proceedings, notwithstanding any provision of law that would bar such hearing or orders as untimely.

''(h) RULES OF CONSTRUCTION.—

''(1) OTHER POST-CONVICTION RELIEF UNAFFECTED.—Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of law.

''(2) FINALITY RULE UNAFFECTED.—An application under this section shall not be considered a motion under section 2255 for purposes of determining whether it or any other motion is a second or successive motion under section 2255.

''(i) DEFINITIONS.—In this section:

''(1) APPROPRIATE FEDERAL COURT.—The term 'appropriate Federal court' means—

''(A) the United States District Court which imposed the sentence from which the applicant seeks relief; or

''(B) in relation to a crime under the Uniform Code of Military Justice, the United States District Court having jurisdiction over the place where the court martial was convened that imposed the sentence from which the applicant seeks relief, or the United States District Court for the District of Columbia, if no United States District Court has jurisdiction over the place where the court martial was convened.

''(2) FEDERAL CRIME.—The term 'Federal crime' includes a crime under the Uniform Code of Military Justice.

"§ 2292. Preservation of evidence

''(a) IN GENERAL.—Notwithstanding any other provision of law and subject to subsection (b), the Government shall preserve all evidence that was secured in relation to the investigation or prosecution of a Federal crime (as that term is defined in section 2291(i)), and that could be subjected to DNA testing, for not less than the period of time that any person remains subject to incarceration in connection with the investigation or prosecution.

''(b) EXCEPTIONS.—The Government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the Government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for such person was imposed), of the intention of the Government to dispose of the evidence and the provisions of this chapter; and

''(ii) the Government affords such person not less than 180 days after such notification to make an application under section 2291(a) for DNA testing of the evidence; or

''(B)(i) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

''(ii) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.

''(c) REMEDIES FOR NONCOMPLIANCE.—

''(1) GENERAL LIMITATION.—Nothing in this section shall be construed to give rise to a claim for damages against the United States, or any employee of the United States, any court official or officer of the court, or any entity contracting with the United States.

''(2) CIVIL PENALTY.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), an individual who knowingly violates a provision of this section or a regulation prescribed under this section shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for the first violation and $5,000 for each subsequent violation, except that the total amount imposed on the individual for all such violations during a calendar year may not exceed $25,000.

''(B) PROCEDURES.—The provisions of section 405 of the Controlled Substances Act (21 U.S.C. 844a) (other than subsections (a) through (d) and subsection (j)) shall apply to the imposition of a civil penalty under subparagraph (A) in the same manner as such provisions apply to the imposition of a penalty under section 405.

''(C) PRIOR CONVICTION.—A civil penalty may not be assessed under subparagraph (A) with respect to an act if that act previously resulted in a conviction under chapter 73 of title 18.

''(3) REGULATIONS.—

''(A) IN GENERAL.—The Attorney General shall promulgate regulations to implement and enforce this section.

''(B) CONTENTS.—The regulations shall include the following:

''(i) Disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who knowingly or repeatedly violate a provision of this section.

''(ii) An administrative procedure through which parties can file formal complaints with the Department of Justice alleging violations of this section.''.

(b) CRIMINAL PENALTY.—Chapter 73 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1519. Destruction or altering of DNA Evidence.

Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under section 2292 of title 28, United States Code, with intent to—

(1) impair the integrity of that evidence;

(2) prevent that evidence from being subjected to DNA testing; or

(3) prevent the production or use of that evidence in an official proceeding,

shall be fined under this title or imprisoned not more than 5 years, or both.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The analysis for part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 155 the following:

"156. DNA testing ..... 2291".

(2) The table of contents for Chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1518 the following:

''1519. Destruction or altering of DNA Evidence.''.

SEC. 103. POST-CONVICTION DNA TESTING IN STATE CRIMINAL JUSTICE SYSTEMS.

(a) CERTIFICATION REGARDING POST-CONVICTION TESTING AND PRESERVATION OF DNA EVIDENCE.—If any part of funds received from a grant made under a program listed in subsection (b) is to be used to develop or improve a DNA analysis capability in a forensic laboratory, or to collect, analyze, or index DNA samples for law enforcement identification purposes, the State applying for that grant must certify that it will—

(1) make post-conviction DNA testing available to any person convicted of a State crime in a manner consistent with section 2291 of title 28, United States Code, and, if the results of such testing are favorable to such person, allow such person to apply for post-conviction relief, notwithstanding any provision of law that would bar such application as untimely; and

(2) preserve all evidence that was secured in relation to the investigation or prosecution of a State crime, and that could be subjected to DNA testing, for not less than the period of time that such evidence would be required to be preserved under section 2292 of title 28, United States Code, if the evidence were related to a Federal crime.

(b) PROGRAMS AFFECTED.—The certification requirement established by subsection (a) shall apply with respect to grants made under the following programs:

(1) DNA ANALYSIS BACKLOG ELIMINATION GRANTS.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106–546).

(2) PAUL COVERDELL NATIONAL FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part BB of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as added by Public Law 106–561).

(3) DNA IDENTIFICATION GRANTS.—Part X of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk et seq.).

(4) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANTS.—Subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751 et seq.).

(5) PUBLIC SAFETY AND COMMUNITY POLICING GRANTS.—Part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(c) EFFECTIVE DATE.—This section shall apply with respect to any grant made on or after the date that is 1 year after the date of enactment of this Act.

SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who is under sentence of death, if the proposed DNA testing has the scientific potential to produce new, noncumulative evidence material to the claim of the prisoner that the prisoner did not commit—

(1) the offense for which the prisoner was sentenced to death; or

(2) any other offense that a sentencing authority may have relied upon when it sentenced the prisoner to death.

(b) OPPORTUNITY TO PRESENT RESULTS OF DNA TESTING.—No State shall rely upon a time limit or procedural default rule to deny a prisoner in State custody who is under sentence of death an opportunity to present in an appropriate State court new, noncumulative DNA results that establish a reasonable probability that the prisoner did not commit an offense described in subsection (a).

(c) REMEDY.—A prisoner in State custody who is under sentence of death may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in

a district court of the United States, naming an executive or judicial officer of the State as defendant.

(d) FINALITY RULE UNAFFECTED.—An application under this section shall not be considered an application for a writ of habeas corpus under section 2254 of title 28, United States Code, for purposes of determining whether it or any other application is a second or successive application under section 2254.

SEC. 105. GRANTS TO PROSECUTORS FOR DNA TESTING PROGRAMS.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended by—

(1) striking ''and'' at the end of paragraph (25);

(2) striking the period at the end of paragraph (26) and inserting ''; and''; and

(3) adding at the end the following:

''(27) prosecutor-initiated programs to conduct a systematic review of convictions to identify cases in which DNA testing is appropriate and to offer DNA testing to inmates in such cases.''.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

SEC. 201. NATIONAL COMMISSION ON CAPITAL REPRESENTATION.

(a) ESTABLISHMENT.—There is established the National Commission on Capital Representation (referred to in this section as the ''Commission'').

(b) DUTIES.—The Commission shall—

(1) survey existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and

(2) formulate standards specifying the elements of an effective system for providing adequate representation, including counsel and investigative, expert, and other services necessary for adequate representation, to—

(A) indigents charged with offenses for which capital punishment is sought;

(B) indigents who have been sentenced to death and who seek appellate or collateral review in State court; and

(C) indigents who have been sentenced to death and who seek certiorari review in the Supreme Court of the United States.

(c) ELEMENTS.—The elements of an effective system described in subsection (b)(2) shall include—

(1) a centralized and independent appointing authority, which shall—

(A) recruit attorneys who are qualified to be appointed in the proceedings specified in subsection (b)(2);

(B) draft and annually publish a roster of qualified attorneys;

(C) draft and annually publish qualifications and performance standards that attorneys must satisfy to be listed on the roster and procedures by which qualified attorneys are identified;

(D) periodically review the roster, monitor the performance of all attorneys appointed, provide a mechanism by which members of the relevant State Bar may comment on the performance of their peers, and delete the name of any attorney who fails to satisfactorily complete regular training programs on the representation of clients in capital cases, fails to meet performance standards in a case to which the attorney is appointed, or otherwise fails to demonstrate continuing competence to represent clients in capital cases;

(E) conduct or sponsor specialized training programs for attorneys representing clients in capital cases;

(F) appoint lead counsel and co-counsel from the roster to represent a client in a capital case promptly upon receiving notice of the need for an appointment from the relevant State court; and

(G) report the appointment, or the failure of the client to accept such appointment, to the court requesting the appointment;

(2) adequate compensation of private attorneys for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases;

(3) reimbursement of private attorneys and public defender organizations for attorney expenses reasonably incurred in the representation of a client in a capital case; and

(4) reimbursement of private attorneys and public defender organizations for the reasonable costs of law clerks, paralegals, investigators, experts, scientific tests, and other support services necessary in the representation of a client in a capital case.

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members, as follows:

(A) Four members appointed by the President on the basis of their expertise and eminence within the field of criminal justice, 2 of whom have 10 years or more experience in representing defendants in State capital proceedings, including trial, direct appeal, or post-conviction proceedings, and 2 of whom have 10 years or more experience in prosecuting defendants in such proceedings.

(B) Two members appointed by the Conference of Chief Justices, from among the members of the judiciaries of the several States.

(C) Two members appointed by the Chief Justice of the United States, from among the members of the Federal Judiciary.

(D) The Chairman of the Committee on Defender Services of the Judicial Conference of the United States, or a designee of the Chairman.

(2) EX OFFICIO MEMBER.—The Executive Director of the State Justice Institute, or a designee of the Executive Director, shall serve as an ex officio nonvoting member of the Commission.

(3) POLITICAL AFFILIATION.—Not more than 2 members appointed under paragraph (1)(A) may be of the same political party.

(4) GEOGRAPHIC DISTRIBUTION.—The appointment of individuals under paragraph (1) shall, to the maximum extent practicable, be made so as to ensure that different geographic areas of the United States are represented in the membership of the Commission.

(5) TERMS.—Members of the Commission appointed under subparagraphs (A), (B), and (C) of paragraph (1) shall be appointed for the life of the Commission.

(6) DEADLINE FOR APPOINTMENTS.—All appointments to the Commission shall be made not later than 45 days after the date of enactment of this Act.

(7) VACANCIES.—A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(8) NO COMPENSATION.—Members of the Commission shall serve without compensation for their service.

(9) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(10) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(11) INITIAL MEETING.—The initial meeting of the Commission shall occur not later than 30 days after the date on which all initial members of the Commission have been appointed.

(12) CHAIRPERSON.—At the initial meeting of the Commission, a majority of the members of the Commission present and voting shall elect a Chairperson from among the members of the Commission appointed under paragraph (1).

(e) STAFF.—

(1) IN GENERAL.—The Commission may appoint and fix the pay of such personnel as the Commission considers appropriate.

(2) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(f) POWERS.—

(1) INFORMATION-GATHERING ACTIVITIES.—The Commission may, for the purpose of carrying out this section, hold hearings, receive public comment and testimony, initiate surveys, and undertake such other activities to gather information as the Commission may find advisable.

(2) OBTAINING OFFICIAL INFORMATION.—The Commission may secure directly from any department or agency of the United States such information as the Commission considers necessary to carry out this section. Upon request of the chairperson of the Commission, the head of that department or agency shall provide such information, except to the extent prohibited by law.

(3) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(4) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(g) REPORT.—

(1) IN GENERAL.—The Commission shall submit a report to the President and the Congress before the end of the 1-year period beginning after the first meeting of all members of the Commission.

(2) CONTENTS.—The report submitted under paragraph (1) shall contain—

(A) a comparative analysis of existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and

(B) such standards as are formulated by the Commission pursuant to subsection (b)(2), together with such commentary and recommendations as the Commission considers appropriate.

(h) TERMINATION.—The Commission shall terminate 90 days after submitting the report under subsection (g).

(i) EXPENSES OF COMMISSION.—There are authorized to be appropriated to pay any expenses of the Commission such sums as may be necessary not to exceed $1,000,000. Any sums appropriated for such purposes are authorized to remain available until expended, or until the termination of the Commission pursuant to subsection (h), whichever occurs first.

SEC. 202. CAPITAL DEFENSE INCENTIVE GRANTS.

The State Justice Institute Act of 1984 (42 U.S.C. 10701 et seq.) is amended by inserting after section 207 the following:

''SEC. 207A. CAPITAL DEFENSE INCENTIVE GRANTS.

''(a) PROGRAM AUTHORIZED.—The State Justice Institute (referred to in this section as the 'Institute') may make grants to State agencies and organizations responsible for the administration of standards of legal competence for counsel in capital cases, for the purposes of—

''(1) implementing new mechanisms or supporting existing mechanisms for providing representation in capital cases that comply with the standards promulgated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001; and

''(2) otherwise improving the quality of legal representation in capital cases.

''(b) USE OF FUNDS.—Funds made available under this section may be used for any purpose that the Institute determines is likely to achieve the purposes described in subsection (a), including—

''(1) training and development of training capacity to ensure that attorneys assigned to capital cases meet such standards;

''(2) augmentation of attorney, paralegal, investigator, expert witness, and other staff and services necessary for capital defense; and

''(3) development of new mechanisms for addressing complaints about attorney competence and performance in capital cases.

''(c) APPLICATIONS.—

''(1) IN GENERAL.—No grant may be made under this section unless an application has been submitted to, and approved by, the Institute.

''(2) APPLICATION.—An application for a grant under this section shall be submitted in such form, and contain such information, as the Institute may prescribe by regulation or guideline.

''(3) CONTENTS.—In accordance with the regulations or guidelines established by the Institute, each application for a grant under this section shall—

''(A) include a long-term strategy and detailed implementation program that reflects consultation with the organized bar of the State, the highest court of the State, and the Attorney General of the State, and reflects consideration of a statewide strategy; and

''(B) specify plans for obtaining necessary support and continuing the proposed program following the termination of Federal support.

''(d) RULES AND REGULATIONS.—The Institute may issue rules, regulations, guidelines, and instructions, as necessary, to carry out the purposes of this section.

''(e) TECHNICAL ASSISTANCE AND TRAINING.—To assist and measure the effectiveness and performance of programs funded under this section, the Institute may provide technical assistance and training, as required.

''(f) GRANT PERIOD.—A grant under this section shall be made for a period not longer than 3 years, but may be renewed on such terms as the Institute may require.

''(g) LIMITATIONS ON USE OF FUNDS.—

''(1) NONSUPPLANTING REQUIREMENT.—Funds made available under this section shall not be used to supplant State or local funds, but shall be used to supplement the amount of funds that would, in the absence of Federal funds received under this section, be made available from States or local sources.

''(2) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed—

''(A) for the first fiscal year for which a program receives assistance, 75 percent of the total costs of such program; and

''(B) for subsequent fiscal years for which a program receives assistance, 50 percent of the total costs of such program.

''(3) ADMINISTRATIVE COSTS.—A State agency or organization may not use more than 5 percent of the funds it receives from this section for administrative expenses, including expenses incurred in preparing reports under subsection (h).

''(h) REPORT.—Each State agency or organization that receives a grant under this section shall submit to the Institute, at such times and in such format as the Institute may require, a report that contains—

''(1) a summary of the activities carried out under the grant and an assessment of the effectiveness of such activities in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases; and

''(2) such other information as the Institute may require.

''(i) REPORT TO CONGRESS.—Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Institute shall submit to Congress a report that includes—

''(1) the aggregate amount of grants made under this part to each State agency or organization for such fiscal year;

''(2) a summary of the information provided in compliance with subsection (h); and

''(3) an independent evaluation of the effectiveness of the programs that received funding under this section in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases.

''(j) DEFINITIONS.—In this section—

''(1) the term 'capital case'—

''(A) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

''(B) includes all proceedings filed in connection with the case, up to and including direct appellate review and post-conviction review in State court; and

''(2) the term 'representation' includes counsel and investigative, expert, and other services necessary for adequate representation.

''(k) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, in addition to other amounts authorized by this Act, to remain available until expended, $50,000,000 for fiscal year 2002, and such sums as may be necessary for fiscal years 2003 and 2004.

''(2) TECHNICAL ASSISTANCE AND TRAINING.—Not more than 3 percent of the amount made available under paragraph (1) for a fiscal year shall be available for technical assistance and training activities by the Institute under subsection (e).

''(3) EVALUATIONS.—Up to 5 percent of the amount authorized to be appropriated under paragraph (1) in any fiscal year may be used for administrative expenses, including expenses incurred in preparing reports under subsection (i).''.

SEC. 203. AMENDMENTS TO PRISON GRANT PROGRAMS.

(a) IN GENERAL.—Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13701 et seq.) is amended by adding at the end the following:

''SEC. 20110. STANDARDS FOR CAPITAL REPRESENTATION.

''(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE WITH STANDARDS FOR CAPITAL REPRESENTATION.—

''(1) IN GENERAL.—The Attorney General shall withhold a portion of any grant funds awarded to a State or unit of local government under this subtitle on the first day of each fiscal year after the second fiscal year beginning after September 30, 2001, if such State, or the State to which such unit of local government appertains—

''(A) prescribes, authorizes, or permits the penalty of death for any offense, and sought, imposed, or administered such penalty at any time during the preceding 5 fiscal years; and

''(B) has not established or does not maintain an effective system for providing adequate representation for indigent persons in capital cases, in compliance with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

''(2) WITHHOLDING FORMULA.—The amount to be withheld under paragraph (1) shall be, in the first fiscal year that a State is not in compliance, 10 percent of any grant funds awarded under this subtitle to such State and any unit of local government appertaining thereto, and shall increase by 10 percent for each year of noncompliance thereafter, up to a maximum of 60 percent.

''(3) DISPOSITION OF WITHHELD FUNDS.—Funds withheld under this subsection from apportionment to any State or unit of local government shall be allotted by the Attorney General and paid to the States and units of local government receiving a grant under this subtitle, other than any State referred to in paragraph (1), and any unit of local government appertaining thereto, in a manner equivalent to the manner in which the allotment under this subtitle was determined.

''(b) WAIVER OF WITHHOLDING REQUIREMENT.—

''(1) IN GENERAL.—The Attorney General may waive in whole or in part the application of the requirement of subsection (a) for any 1-year period with respect to any State, where immediately preceding such 1-year period the Attorney General finds that such State has made and continues to make a good faith effort to comply with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

''(2) LIMITATION ON WAIVER AUTHORITY.—The Attorney General may not grant a waiver under paragraph (1) with respect to any State for 2 consecutive 1-year periods.

''(3) LIMITATION ON USE OF FUNDS.—If the Attorney General grants a waiver under paragraph (1), the State shall be required to use the total amount of grant funds awarded to such State or any unit of local government appertaining thereto under this subtitle that would have been withheld under subsection (a) but for the waiver to improve the capability of such State to provide adequate representation in capital cases.

''(c) REPORT TO CONGRESS.—Not later than 180 days after the end of each fiscal year for which grants are made under this subtitle, the Attorney General shall submit to Congress a report that includes, with respect to each State that prescribes, authorizes, or permits the penalty of death for any offense—

''(1) a detailed description of such State's system for providing representation to indigent persons in capital cases;

''(2) the amount of any grant funds withheld under subsection (a) for such fiscal year from such State or any unit of local government appertaining thereto, and an explanation of why such funds were withheld; and

''(3) the amount of any grant funds released to such State for such fiscal year pursuant to a waiver by the Attorney General under subsection (b), and an explanation of why waiver was granted.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 2 of the Violent Crime Control and Law Enforcement Act of 1994 is amended by inserting after the item relating to section 20109 the following:

''Sec. 20110. Standards for capital representation.''.

SEC. 204. EFFECT ON PROCEDURAL DEFAULT RULES.

(a) IN GENERAL.—Section 2254(e) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking ''In a proceeding'' and inserting ''Except as provided in paragraph (3), in a proceeding''; and

(2) by adding at the end the following:

''(3) In a proceeding instituted by an applicant under sentence of death, the court shall neither presume a finding of fact made by a State court to be correct nor decline to consider a claim on the ground that the applicant failed to raise such claim in State court at the time and in the manner prescribed by State law, if—

''(A) the applicant was financially unable to obtain adequate representation at the stage of the State proceedings at which the State court made the finding of fact or the applicant failed to raise the claim, and the applicant did not waive representation by counsel; and

''(B) the State did not provide representation to the applicant under a State system for providing representation that satisfied the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.''.

(b) NO RETROACTIVE EFFECT.—The amendments made by this section shall not apply to any case in which the relevant State court proceeding occurred before the end of the first fiscal year following the formulation of standards by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

SEC. 205. CAPITAL DEFENSE RESOURCE GRANTS.

Section 3006A of title 18, United States Code, is amended—

(1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(2) by inserting after subsection (h) the following:

''(i) CAPITAL DEFENSE RESOURCE GRANTS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'capital case'—

''(i) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

''(ii) includes all proceedings filed in connection with the case, including trial, appellate, and Federal and State post-conviction proceedings;

''(B) the term 'defense services' includes—

''(i) recruitment of counsel;

''(ii) training of counsel; and

''(iii) legal and administrative support and assistance to counsel; and

''(C) the term 'Director' means the Director of the Administrative Office of the United States Courts.

''(2) GRANT AWARD AND CONTRACT AUTHORITY.—Notwithstanding subsection (g), the Director shall award grants to, or enter into contracts with, public agencies or private nonprofit organizations for the purpose of providing defense services in capital cases.

''(3) PURPOSES.—Grants and contracts awarded under this subsection shall be used in connection with capital cases in the jurisdiction of the grant recipient for 1 or more of the following purposes:

''(A) Enhancing the availability, competence, and prompt assignment of counsel.

''(B) Encouraging continuity of representation between Federal and State proceedings.

''(C) Increasing the efficiency with which such cases are resolved.

''(4) GUIDELINES.—The Director, in consultation with the Judicial Conference of the United States, shall develop guidelines to ensure that defense services provided by recipients of grants and contracts awarded under this subsection are consistent with applicable legal and ethical proscriptions governing the duties of counsel in capital cases.

''(5) CONSULTATION.—In awarding grants and contracts under this subsection, the Director shall consult with representatives of the highest State court, the organized bar, and the defense bar of the jurisdiction to be served by the recipient of the grant or contract, and shall ensure coordination with grants administered by the State Justice Institute pursuant to section 207A of the State Justice Institute Act of 1984.''.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.

Section 2513(e) of title 28, United States Code, is amended by striking ''$5,000'' and inserting ''$50,000 for each 12-month period of incarceration, except that a plaintiff who was unjustly sentenced to death may be awarded not more than $100,000 for each 12-month period of incarceration.''.

SEC. 302. COMPENSATION IN STATE DEATH PENALTY CASES.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1)) is amended by—

(1) striking ''and'' at the end of subparagraph (A);

(2) striking the period at the end of subparagraph (B) and inserting ''; and''; and

(3) adding at the end the following:

''(C) provide assurances to the Attorney General that the State, if it prescribes, authorizes, or permits the penalty of death for any offense, has established or will establish not later than 18 months after the enactment of the Innocence Protection Act of 2001, effective procedures for—

''(i) reasonably compensating persons found to have been unjustly convicted of an offense against the State and sentenced to death; and

''(ii) investigating the causes of such unjust convictions, publishing the results of such investigations, and taking steps to prevent such errors in future cases.''.

SEC. 303. CERTIFICATION REQUIREMENT IN FEDERAL DEATH PENALTY PROSECUTIONS.

(a) IN GENERAL.—Chapter 228 of title 28, United States Code, is amended by adding at the end the following:

''§ 3599. Certification requirement

''(a) CERTIFICATION BY ATTORNEY GENERAL.—The Government shall not seek a sentence of death in any case brought before a court of the United States except upon the certification in writing of the Attorney General, which function of certification may not be delegated, that the Federal interest in the prosecution is more substantial than the interests of the State or local authorities.

''(b) REQUIREMENTS.—A certification under subsection (a) shall state the basis on which the certification was made and the reasons for the certification.

''(c) STATE INTEREST.—In States where the imposition of a sentence of death is not authorized by law, the fact that the maximum Federal sentence is death does not constitute a more substantial interest in Federal prosecution.

''(d) DEFINITION OF STATE.—For purposes of this section, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(e) RULE OF CONSTRUCTION.—This section does not create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 228 of title 28, United States Code, is amended by adding at the end the following:

''3599. Certification requirement.''.

SEC. 304. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

(a) PURPOSE.—The purpose of this section is to clarify that juries in death penalty prosecutions brought under the drug kingpin statute—like juries in all other Federal death penalty prosecutions—have the option of recommending life imprisonment without possibility of release.

(b) CLARIFICATION.—Section 408(l) of the Controlled Substances Act (21 U.S.C. 848(l)), is amended by striking the first 2 sentences and inserting the following: ''Upon a recommendation under subsection (k) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law.''.

SEC. 305. RIGHT TO AN INFORMED JURY.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1)), as amended by section 302 of this Act, is amended by—

(1) striking ''and'' at the end of subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting ''; and''; and

(3) adding at the end the following:

''(D) provide assurances to the Attorney General that in any capital sentencing proceeding occurring after the date of enactment of the Innocence Protection Act of 2001 in which the jury has a role in determining the sentence imposed on the defendant, the court, at the request of the defendant, shall inform the jury of all statutorily authorized sentencing options in the particular case, including applicable parole eligibility rules and terms.''.

SEC. 306. ANNUAL REPORTS.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Attorney General shall prepare and transmit to Congress a report concerning the administration of capital punishment laws by the Federal Government and the States.

(b) REPORT ELEMENTS.—The report required under subsection (a) shall include substantially the same categories of information as are included in the Bureau of Justice Statistics Bulletin entitled ''Capital Punishment 1999'' (December 2000, NCJ 184795), and shall also include the following additional categories of information, if such information can practicably be obtained:

(1) The percentage of death-eligible cases in which a death sentence is sought, and the percentage in which it is imposed.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) The percentage of capital cases in which counsel is retained by the defendant, and the percentage in which counsel is appointed by the court.

(4) The percentage of capital cases in which life without parole is available as an alternative to a death sentence, and the sentences imposed in such cases.

(5) The percentage of capital cases in which life without parole is not available as an alternative to a death sentence, and the sentences imposed in such cases.

(6) The frequency with which various statutory aggravating factors are invoked by the prosecution.

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside, and a short statement of the reasons therefore.

(c) REQUEST FOR ASSISTANCE.—In compiling the information referred to in subsection (b),

the Attorney General shall, when necessary, request assistance from State and local prosecutors, defense attorneys, and courts, as appropriate. Requested assistance, whether provided or denied by a State or local official or entity, shall be noted in the reports referred to in subsection (a).

(d) PUBLIC DISCLOSURE.—The Attorney General or the Director of the Bureau of Justice Assistance, as appropriate, shall ensure that the reports referred to in subsection (a) are—

(1) distributed to national print and broadcast media; and

(2) posted on an Internet website maintained by the Department of Justice.

SEC. 307. SENSE OF CONGRESS REGARDING THE EXECUTION OF JUVENILE OFFENDERS AND THE MENTALLY RETARDED.

It is the sense of Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to a person who is mentally retarded or who had not attained the age of 18 years at the time of the offense.

INNOCENCE PROTECTION ACT OF 2001—SECTION-BY-SECTION SUMMARY

OVERVIEW

The Innocence Protection Act of 2001 is a carefully crafted package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed. Most urgently the bill would afford greater access to DNA testing by convicted offenders; and help States improve the quality of legal representation in capital cases.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes. Legislative findings and purposes in support of this title.

Sec. 102. DNA testing in Federal criminal justice system. Establishes rules and procedures governing applications for DNA testing by inmates in the Federal system. Courts shall order DNA testing if it has the scientific potential to produce new exculpatory evidence material to the inmate's claim of innocence. When the test results are exculpatory, courts shall order a hearing and make such further orders as may be appropriate under existing law. Prohibits the destruction of biological evidence in a criminal case while a defendant remains incarcerated, absent prior notification to such defendant of the government's intent to destroy the evidence.

Sec. 103. DNA testing in State criminal justice system. Conditions receipt of Federal grants for DNA-related programs on an assurance that the State will adopt adequate procedures for preserving biological material and making DNA testing available to inmates.

Sec. 104. Prohibition pursuant to section 5 of the 14th Amendment. Prohibits States from denying applications for DNA testing by death row inmates, if the proposed testing has the scientific potential to produce new exculpatory evidence material to the inmate's claim of innocence. Also prohibits States from denying inmates a meaningful opportunity to prove their innocence using the results of DNA testing. Inmates may sue for declaratory or injunctive relief to enforce these prohibitions.

Sec. 105. Grants to prosecutors for DNA testing programs. Permits States to use grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs to fund the growing number of prosecutor-initiated programs that review convictions to identify cases in which DNA testing is appropriate and that offer DNA testing to inmates in such cases.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. National Commission on Capital Representation. Establishes a National Commission on Capital Representation to develop standards for providing adequate legal representation for indigents facing a death sentence. The Commission would be composed of nine members and would include experienced prosecutors, defense attorneys, and judges, and would complete its work within on year. Total authorization $1,000,000.

Sec. 202. Capital defense incentive grants. Establishes a grant program, to be administered by the State Justice Institute, to help States implement the Commission's standards and otherwise improve the quality of representation in capital cases. Authorization is $50,000,000 for the first year, and such sums as may be necessary for the two years that follow.

Sec. 203. Amendments to prison grant programs. Directs the Attorney General to withhold a portion of the funds awarded under the prison grant programs from death penalty States that have not established or do not maintain a system for providing legal representation in capital cases that satisfies the Commission's standards. The Attorney General may waive the withholding requirement for one year under certain circumstances.

Sec. 204. Effect on procedural default rules. Provides that certain procedural barriers to Federal habeas corpus review shall not apply if the State did not provide legal representation to the habeas petitioner under a State system for providing representation that satisfied the Commission's standards. This section does not apply in any case in which the relevant State court proceeding occurred more than 1 year before the formulation of such standards.

Sec. 205. Capital defense resource grants. Amends the Criminal Justice Act, 18 U.S.C. §3006A, to make more Federal funding available for purposes of enhancing the availability, competence, and prompt assignment of counsel in capital cases, encouraging the continuity of representation in such cases, and increasing the efficiency with which capital cases are resolved.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Increased compensation in federal cases. Raises the total amount of damages that may be awarded against the United States in cases of unjust imprisonment from $5,000 to $50,000 a year in a non-death penalty case, or $100,000 a year in a death penalty case.

Sec. 302. Compensation in state death cases. Encourages states to maintain effective procedures for reasonably compensating persons who were unjustly convicted and sentenced to death, and investigating the causes of such unjust convictions in order to prevent such errors from recurring.

Sec. 303. Certification requirement in federal death penalty prosecutions. Increases accountability by requiring the Attorney General, when seeking the death penalty in any case, to certify that the federal interest in the prosecution is more substantial than the interests of the state or local authorities. Modeled on the certification requirements in the federal civil rights and juvenile delinquency laws, this section codifies existing practice as reflected in section 9–10.070 of the U.S. Attorney's Manual. This section does not create any rights enforceable at law by any party in any matter civil or criminal.

Sec. 304. Alternative of life imprisonment without possibility of release. Clarifies that juries in death penalty prosecutions brought under the drug kingpin statute, 21 U.S.C. §848(l), have the option of recommending life imprisonment without possibility of release. This amendment incorporates into the drug kingpin statute a procedural protection that federal law already expressly provides to the vast majority of capital defendants.

Sec. 305. Right to an informed jury. Encourages states to allow defendants in capital cases to have the jury instructed on all statutorily-authorized sentencing options, including applicable parole eligibility rules and terms.

Sec. 306. Annual reports. Directs the Justice Department to prepare an annual report regarding the administration of the nation's capital punishment laws. The report must be submitted to Congress, distributed to the press and posted on the Internet.

Sec. 307. Sense of the Congress regarding the execution of juvenile offenders and the mentally retarded. Expresses the sense of the Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to juvenile offenders and the mentally retarded.

Mr. SMITH of Oregon. Mr. President, I am proud to be a co-sponsor of this new and improved Innocence Protection Act. The Innocence Protection Act we introduced last year was widely heralded as providing much-needed improvements to our nation's already strong judicial system. This year, the bill itself has been strengthened, so it can better benefit the truly innocent without imposing undue hardship on our hard-working law enforcement personnel. While our court and law enforcement officials work extremely hard to ensure justice for all, occasionally mistakes are made.

To prevent these rare instances, The Innocence Protection Act encourages appropriate use of DNA testing, and provision of competent counsel. The bill also provides for adequate compensation in the rare case that a person is wrongfully imprisoned, and encourages states to examine these situations to prevent their recurrence. The Innocence Protection Act proposes to apply technological advances of the 21st century evenly across the country to ensure that justice is served swiftly and fairly, regardless of where you live.

Both supporters and opponents of the death penalty can support this bill, which will only improve the integrity of our Criminal Justice System. By helping ensure that the true perpetrators of heinous crimes are behind bars, the innocent can live in a safer world. I am a supporter of the death penalty. I believe that there are some times when humankind can act in a manner so odious, so heinous, and so depraved that the right to life is forfeited. Notwithstanding this belief, indeed, because of this belief, I am reintroducing the Innocence Protection Act of 2001 with Senator LEAHY and others today.

Clearly, there is a growing interest in this issue in Congress. I feel strongly that this is a bill whose time has come, and I look forward to working with my colleagues in the House and Senate to ensure its passage this session.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 487. A bill to amend chapter 1 of title 17, United States Code, relating to

the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, today I am pleased to introduce with my distinguished colleague, Senator LEAHY, legislation entitled the ''Technology Education and Copyright Harmonization Act'' or fittingly abbreviated as the ''TEACH Act,'' which updates the educational use provisions of the copyright law to account for advancements in digital transmission technologies that support distance learning.

While distance learning is far from a new concept, there is no ''official'' definition as to what falls under the umbrella of distance learning. There is, however, general agreement that distance education covers the various forms of study at all levels in which students are separated from instructors by time or space. By creating new avenues of communication, technology has paved the way for so-called ''distance learning,'' starting with correspondence courses, and later with instructional broadcasting. Most recently, however, the introduction of online education has revolutionized the world of ''distance learning.'' While the benefits of all forms of distance learning are self-evident, online learning opens unprecedented educational opportunities. With the click of a mouse, students in remote areas are able to access a broad spectrum of courses from the finest institutions and ''chat'' with other students across the country.

Distance education, and the use of high technology tools such as the Internet in education, hold great promise for students in states like Utah. Students in remote areas of my state are now able to link up to resources previously only available to those in cities or at prestigious educational institutions. For many Utahns, this means having access to courses or being able to see virtual demonstrations of principles that until now they have only read about.

True to its heritage, Utah is a pioneer among states in blazing the trail to the next century, making tomorrow's virtual classrooms a reality today. Fittingly, since it is home to one of the original six universities that pioneered the Internet, the State of Utah and the Utah System of Higher Education, as well as a number of individual universities in the state have consistently been recognized as technology and web-education innovators. Such national recognition reflects, in part, Utah's high-tech industrial base, its learning-oriented population, and the fact that Utah was the first state with a centrally coordinated statewide system for distance learning. In the course of preparing the report that resulted in this legislation, I was pleased to host the Register of Copyrights at a distance education exposition and copyright round table that took place at the nerve center of that system, the Utah Education Network, where we saw many of the exciting technologies being developed and implemented in Utah, by Utahns, to make distance education a reality.

At the event in Salt Lake City, Ms. Peters and I dropped in on a live online art history class hosted in Orem, that included high school and college students scattered from Alpine in the north to Lake Powell in the south, nearly the length of the state. And the promise of distance education extends far beyond the traditional student, making expanded opportunities available for working parents, senior citizens, and anyone else with a desire to learn.

This legislation will make it easier for the teacher who connects with her students online to enhance the learning process by illustrating music appreciation principles with appropriately limited sound recordings or illustrate visual design or story-telling principles with appropriate movie clips. Or she might create wholly new experiences such as making a hypertext poem that links significant words or formal elements to commentary, similar uses in other contexts, or other sources for deeper understanding, all accessible at the click of a mouse. These wholly new interactive educational experiences, or more traditional ones now made available around the students' schedule, will be made more easily and more inexpensively by this legislation. Beyond the legislative safe harbor provided by this legislation, opportunities for students and lifetime learners of all kinds, in all kinds of locations, is limited only by the human imagination and the cooperative creativity of the creators and users of copyrighted works. I hope that creative licensing arrangements will be spurred to make even more exciting opportunities available to students and lifelong learners, and that incentives to create those experiences will continue to encourage innovation in education, art and entertainment online. The possibilities for everyone in the wired world are thrilling to contemplate.

While the development of digital technology has fostered the tremendous growth of distance learning in the United States, online education will work only if teachers and students have affordable and convenient access to the highest quality educational materials. In fact, in its recent report, the Web-Based Commission, established by Congress to develop policies to ensure that new technologies will enhance learning, concluded that United States copyright practice presents significant impediments to online education. Additionally, the Web-Based Commission concluded that there are some needed reforms in higher education regulations and statutes. Specifically, the Commission identifies reforms needed in the so-called 12 hour rule, the 50 percent rule and the ban on incentive based compensation. These education recommendations are not included in the legislation I am introducing today. However, I want to put my colleagues on notice that I will pushing for these reforms and leave open the possibility of amending this particular bill or seek other vehicles to include such education reform provisions which will improve delivery of distance education to a wider variety of students. We will be discussing education reforms in the Senate in the coming weeks, and I think it is important that any education reform include the kinds of reforms that will promote the use of high technologies in education, such as the Internet. And I intend to work to have these reforms included in any larger education package considered this year.

As part of its mandate under the Digital Millennium Copyright Act, DMCA, which laid the basic copyright rules in a digital environment, the Copyright Office was tasked to study the impact of copyright law on online education and submit recommendations on how to promote distance learning through digital technologies while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Without adequate incentives and protections, those who create these materials will be disinclined to make their works available for use in online education. The interests of educators, students, and copyright owners need not be divergent; indeed, I believe they coincide in making the most of this medium. As expected, the Copyright Office has presented us with a detailed and comprehensive study of the copyright issues involved in digital distance education that takes into account a wide range of views expressed by various groups, including copyright owners, educational institutions, technologists, and libraries. As part of its report, the Copyright Office concluded that the current law should be updated to accommodate digital educational technologies.

After careful review and consideration of the findings and recommendations presented in the report prepared by the Copyright Office, not to mention my enormous respect for and confidence in the Register of Copyrights, I fully support the Office's recommendation to update the current copyright law in a manner that promotes the use of high technology in education, such as distance learning over the Internet, while maintaining appropriate incentives for authors. While the bill we are introducing today is based on the hard work and expert advice of the Copyright Office, and is therefore, I believe a very good bill, I welcome constructive suggestions from improvements from any interested party as this bill moves through the legislative process.

Currently, United States copyright law contains a number of exemptions

to copyright owners' rights relating to face-to-face classroom teaching and instructional broadcasts. While these exemptions embody the policy that certain uses of copyrighted works for instructional purposes should be exempt from copyright control, the current exemptions were not drafted with online, interactive digital technologies in mind. As a result, the Copyright Office concluded that the current exemptions related to instructional purposes are probably inapplicable to most advanced digital delivery systems and without a corresponding change, the policy behind the existing law will not be advanced.

Drawing from the recommendations made by the Copyright Office, the primary goal of this legislation is simple and straight forward: to promote digital distance learning by permitting certain limited instructional activities to take place without running afoul of the rights of copyright owners. The bill does not limit the bounds of ''fair use'' in the educational context, but provides something of a ''safe harbor'' for online distance education. And nothing limits the possibilities for creative licensing of copyrighted works for even more innovative online educational experiences. While Section 110(1) of the Copyright Act exempts the performance or display of any work in the course of face-to-face teachings, Section 110(2) of the Copyright Act limits these exemptions in cases of instructional broadcasting. Under Section 110(2), while displays of all works are permitted, only performances of nondramatic literary or mystical works are permitted. Thus, an instructor is currently not able to show a movie or perform a play via educational broadcasting.

This legislation would amend Section 110(2) of the Copyright Act to create a new set of rules in the digital education world that, in essence, represent a hybrid of the current rules applicable to face-to-face instruction and instructional broadcasting. In doing this, the legislation amends Section 110(2) by expanding the permitted uses currently available for instructional broadcasting in a modest fashion by including the performance of any work not produced primarily for instructional use in reasonable and limited portions.

In addition, in order to modernize the statute to account for digital technologies, the legislation amends Section 110(2) by eliminating the requirement of a physical classroom and clarifies that the instructional activities exempted in Section 110(2) of the Copyright Act apply to digital transmissions as well as analog. The legislation also permits a limited right to reproduce and distribute transient copies created as part of the automated process of digital transmissions. Mindful of the new risks involved with digital transmissions, the legislation also creates new safeguards for copyright owners. These include requirements that those invoking the exemptions institute a policy to promote compliance with copyright law and apply technological measures to prevent unauthorized access and uses.

Moreover, in order to allow the exempted activities to take place in online education asynchronously, a new amendment to the ephemeral recording exemption is proposed that would permit an instructor to upload a copyrighted work onto a server to be later transmitted to students. Again, extra safeguards are in place to ensure that no additional copies beyond those necessary to the transmission can be made and that the retention of the copy is limited in time.

I believe that this legislation is necessary to foster and promote the use of high technology tools, such as the Internet, in education and distance learning, while at the same time maintains a careful balance between copyright owners and users. Through the increasing influence of educational technologies, virtual classrooms are popping up all over the country and what we do not want to do is stand in the way of the development and advancement of innovative technologies that offer new and exciting educational opportunities. I think we all agree that digital distance should be fostered and utilized to the greatest extent possible to deliver instruction to students in ways that could have been possible a few years ago. We live at a point in time when we truly have an opportunity to help shape the future by influencing how technology is used in education so I hope my colleagues will join us in supporting this modest update of the copyright law that offers to make more readily available distance education in a digital environment to all of our students.

I ask unanimous consent that the text of the bill and explanatory section-by-section analysis, be printed in the RECORD.

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

S. 487

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Technology, Education And Copyright Harmonization Act of 2001''.

SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES.

Section 110(2) of title 17, United States Code, is amended—

(1) by striking the matter preceding subparagraph (A) and inserting the following:

''(2) except with respect to a work produced primarily for instructional use or a performance or display that is given by means of a copy that is not lawfully made and acquired under this title, and the transmitting governmental body or nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work, by or in the course of a transmission, reproduction of such work in transient copies or phonorecords created as a part of the automatic technical process of a digital transmission, and distribution of such copies or phonorecords in the course of such transmission, to the extent technologically necessary to transmit the performance or display, if—'';

(2) in subparagraph (A) by striking all beginning with ''the performance'' through ''regular'' and inserting the following: ''the performance or display is made by or at the direction of an instructor as an integral part of a class session offered as a regular'';

(3) by striking subparagraph (C) and inserting the following:

''(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

''(i) students officially enrolled in the course for which the transmission is made; or

''(ii) officers or employees of governmental bodies as part of their official duties or employment; and''; and

(4) by adding at the end the following:

''(D) any transient copies are retained for no longer than reasonably necessary to complete the transmission; and

''(E) the transmitting body or institution—

''(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

''(ii) in the case of digital transmissions, applies technological measures that reasonably prevent unauthorized access to and dissemination of the work, and does not intentionally interfere with technological measures used by the copyright owner to protect the work.''.

SEC. 3. EPHEMERAL RECORDINGS.

(a) IN GENERAL.—Section 112 of title 17, United States Code, is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

''(f) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled to transmit a performance or display of a work that is in digital form under section 110(2) to make copies or phonorecords embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

''(1) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2);

''(2) such copies or phonorecords are used solely for transmissions authorized under section 110(2); and

''(3) the body or institution does not intentionally interfere with technological measures used by the copyright owner to protect the work.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 802(c) of title 17, United States Code, is amended in the third sentence by striking ''section 112(f)'' and inserting ''section 112(g)''.

SEC. 4. IMPLEMENTATION BY COPYRIGHT OFFICE.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall conduct a study and submit a report to Congress on the status of—

(1) licensing by private and public educational institutions of copyrighted works for digital distance education programs, including—

(A) live interactive distance learning classes;

(B) faculty instruction recorded without students present for later transmission; and

(C) asynchronous delivery of distance learning over computer networks; and

(2) the use of copyrighted works in such programs.

(b) CONFERENCE.—Not later than 2 years after the date of enactment of this Act, the Copyright Office shall—

(1) convene a conference of interested parties, including representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and section 110 (1) and (2) of title 17, United States Code;

(2) to the extent the Copyright Office determines appropriate, submit to the Committees on the Judiciary of the Senate and the House of Representatives such guidelines, along with information on the organizations, Government agencies, and institutions participating in the guideline development and endorsing the guidelines; and

(3) post such guidelines on an Internet website for educators, copyright owners, libraries, and other interested persons.

SECTION-BY-SECTION ANALYSIS OF THE TECHNOLOGY, EDUCATION, AND COPYRIGHT HARMONIZATION ACT

SECTION 1. SHORT TITLE

This bill may be cited as the ''Technology, Education And Copyright Harmonization Act of 2001'' or the TEACH Act.

SECTION 2. EXEMPTION OF CERTAIN PERFORMANCES AND DISPLAYS FOR EDUCATIONAL USES

The bill updates section 110(2) to allow the similar activities to take place using digital delivery mechanisms that were permitted under the basic policy balance struck in 1976, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. Current law allows performances and displays of all categories of copyrighted works in classroom settings, under section 110(1) of the Copyright Act, and allows performances of nondramatic literary and musical works and displays of works during certain education-related transmissions (usually television-type transmission) under Section 110(2). Section 110(2) is amended to allow performances of categories of copyrighted works—such as portions of audiovisual works, sound recordings and dramatic literary and musical works—in addition to the non-dramatic literary and musical works that may be performed under current law. Because of the potential adverse effect on the secondary markets of such works, only reasonable and limited portions of these additional works may be performed under the exemption. Excluded from the exemption are those works that are produced primarily from instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. As an additional safeguard, this provision requires the exempted performance or display to be made from a lawful copy. Since digital transmissions implicate the reproduction and distribution rights in addition to the public performance right, section 110(2) is further amended to add coverage of the rights of reproduction/and or distribution, but only to the extent technologically required in order to transmit a performance or display authorized by the exemption.

Section 110(2)(C) eliminates the requirement of a physical classroom by permitting transmissions to be made to students officially enrolled in the course and to government employees, regardless of their physical location. In lieu of this limitation two safeguards have been added. First, section 110(2)(A) emphasizes the concept of mediated instruction by ensuring that the exempted performance or display is analogous to the type of performance or display that would take place in a live classroom setting. Second, section 110(2)(C) adds the requirement that, to the extent technologically feasible, the transmission must be made solely for reception by the defined class of eligible recipients.

Sections 110(2)(D), (E)(i) and (E)(ii) add new safeguards to counteract the new risks posed by the transmission of works to students in digital form. Paragraph (D) requires that transient copies permitted under the exemption be retained no longer than reasonably necessary to complete the transmission. Paragraph (E)(i) requires that beneficiaries of the exemption institute policies regarding copyright; provide information materials to faculty, students, and relevant staff members that accurately describe and promote compliance with copyright law; and provide notice to students that materials may be subject to copyright protection. Paragraph 110(2)(E)(ii) requires that the transmitting organization apply measures to protect against both unauthorized access and unauthorized dissemination after access has been obtained. This provision also specifies that the transmitting body or institution may not intentionally interfere with protections applied by the copyright owners themselves.

SECTION 3. EPHEMERAL RECORDINGS

Section 112 is amended by adding a new subsection which permits an educator to upload a copyrighted work onto a server to facilitate transmissions permitted under section 110(2) to students enrolled in his or her course. Limitations have been imposed upon the exemption similar to those set out in other subsections of section 112. Paragraph 112(f)(1) specifies that any such copy be retained and used solely by the entity that made it and that no further copies be reproduced from it except the transient copies permitted under section 110(2). Paragraph 112(f)(2) requires that the copy be used solely for transmissions authorized under section 110(2). Paragraph 112(f)(3) prohibits a body or institution from intentionally interfering with technological protection measures used by the copyright owner to protect the work.

SECTION 4. IMPLEMENTATION BY COPYRIGHT OFFICE

Subsection (a) requires the Copyright Office, not later than 2 years after the date of the enactment, to conduct a study and submit a report to Congress on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs. Subsection (b) requires the Copyright Office, not later than 2 years after the date of enactment, to convene a conference of other interested parties on the subject of the use of copyrighted works in education and, to the extent the Office deems appropriate, develop guidelines for the clarification of the appropriate use of copyrighted works in educational settings, including distance education, for submission to Congress and for posting on the Copyright Office website as a reference resource.

Mr. LEAHY. Mr. President, an important responsibility of the Senate Judiciary Committee is fulfilling the mandate set forth in Article 1, section 8 of the Constitution, ''to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'' Chairman HATCH and I, and other colleagues on the Judiciary Committee, have worked together successfully over the years to update and make necessary adjustments to our copyright, patent and trademark laws to carry out this responsibility. We have strived to do so in a manner that advances the rights of intellectual property owners while protecting the important interests of users of the creative works that make our culture a vibrant force in this global economy.

Several years ago, as part of the Digital Millennium Copyright Act, DMCA, we asked the Copyright Office to perform a study of the complex copyright issues involved in distance education and to make recommendations to us for any legislative changes. In conducting that study, Maybeth Peters, the Registrar of Copyrights met informally with interested Vermonters at Champlain College in Burlington, Vermont, to hear their concerns on this issue. Champlain College has been offering on-line distance learning programs since 1993, with a number of on-line programs, including for degrees in accounting, business, and hotel-restaurant management.

The Copyright Office released its report in May, 1999, at a hearing held in this Committee, and made valuable suggestions on how modest changes in our copyright law could go a long way to foster the appropriate use of copyrighted works in valid distance learning activities. I am pleased to join Senator HATCH in introducing the Technology, Education and Copyright Harmonization, or TEACH, Act, that incorporates the legislative recommendations of that report. This legislation will help clarify the law and allow educators to use the same rich material in distance learning over the Internet that they are able to use in face-to-face classroom instruction.

The growth of distance learning is exploding, largely because it is responsive to the needs of older, non-traditional students. The Copyright Office, CO, report noted two years ago that, by 2002, the number of students taking distance education courses will represent 15 percent of all higher education students. Moreover, the typical average distance learning student is 34 years old, employed full-time and has previous college credit. More than half are women. In increasing numbers, students in other countries are benefitting from educational opportunities here through U.S. distance education programs.

In high schools, distance education makes advanced college placement and college equivalency courses available,

a great opportunity for residents in our more-rural states. In colleges, distance education makes lifelong learning a practical reality.

Not only does distance education make it more convenient for many students to pursue an education, for students who have full-time work commitments, who live in rural areas or in foreign countries, who have difficulty obtaining child or elder care, or who have physical disabilities, distance education may be the only means for them to pursue an education. These are the people with busy schedules who need the flexibility that on-line programs offer: virtual classrooms accessible when the student is ready, and free, to log-on.

In Vermont and many other rural states, distance learning is a critical component of any quality educational and economic development system. In fact, the most recent Vermont Telecommunications Plan, which was published in 1999 and is updated at regular intervals, identifies distance learning as being critical to Vermont's development. It also recommends that Vermont consider ''using its purchasing power to accelerate the introduction of new [distance learning] services in Vermont.'' Technology has empowered individuals in the most remote communities to have access to the knowledge and skills necessary to improve their education and ensure they are competitive for jobs in the 21st century.

Several years ago, I was proud to work with the state in establishing the Vermont Interactive Television network. This constant two-way videoconferencing system can reach communities, schools and businesses in every corner of the State. Since we first successfully secured funds to build the backbone of the system, Vermont has constructed fourteen sites. The VIT system is currently running at full capacity and has demonstrated that in Vermont, technology highways are just as important as our transportation highways.

No one single technology should be the platform for distance learning. In Vermont, creative uses of available resources have put in place a distance learning system that employees T–1 lines in some areas and traditional internet modem hook-ups in others. Several years ago, the Grand Isle Supervisory Union received a grant from the U.S. Department of Agriculture to link all the schools within the district with fiber optic cable. There are not a lot of students in this Supervisory Union but these is a lot of land separating one school from another. The bandwidth created by the fiber optic cables has not only improved the educational opportunities in the four Grand Isle towns, but it has also provided a vital economic boost to the area's business.

While there are wonderful examples of the use of distance learning inside Vermont, the opportunities provided by these technologies are not limited to the borders of one state, or even one country. Champlain College, a small school in Burlington, Vermont has shown this is true when it adopted a strategic plan to provide distance learning for students throughout the world. Under the leadership of President Roger Perry, Champlain College now has more students enrolled than any other college in Vermont. The campus in Vermont has not been overwhelmed with the increase. Instead, Champlain now teaches a large number of students overseas through its on-line curriculum. Similarly, Marlboro College in Marlboro, Vermont, offers innovative graduate programs designed for working professionals with classes that meet not only in person but also online.

The Internet, with its interactive, multi-media capabilities, has been a significant development for distance learning. By contrast to the traditional, passive approach of distance learning where a student located remotely from a classroom was able to watch a lecture being broadcast at a fixed time over the air, distance learners today can participate in real-time class discussions, or in simultaneous multimedia projects. The Copyright Office report confirms what I have assumed for some time—that ''the computer is the most versatile of distance education instruments,'' not just in terms of flexible schedules, but also in terms of the material available.

Over twenty years ago, the Congress recognized the potential of broadcast and cable technology to supplement classroom teaching, and to bring the classroom to those who, because of their disabilities or other special circumstances, are unable to attend classes. At the same time, Congress also recognized the potential for unauthorized transmissions of works to harm the markets for educational uses of copyrighted materials. The present Copyright Act strikes a careful balance and includes two narrowly crafted exemptions for distance learning, in addition to the general fair use exemption.

Under current law, the performance or display of any work in the course of face-to-face instruction in a classroom is exempt from the exclusive rights of a copyright owner. In addition, the copyright law allows transmission of certain performances or displays of copyrighted works to be sent to a classroom or a similar place which is normally devoted to instruction, to persons whose disabilities or other special circumstances prevent classroom attendance, or to government employees. While this exemption is technology neutral and does not limit authorized ''transmissions'' to distance learning broadcasts, the exemption does not authorize the reproduction or distribution of copyrighted works—a limitation that has enormous implications for transmissions over computer networks. Digital transmissions over computer networks involve multiple acts of reproduction as a data packet is moved from one computer to another.

The need to update our copyright law to address new developments in online distance learning was highlighted in the December, 2000 report of the Web-Based Education Commission, headed by former Senator Bob Kerrey. This Commission noted that:

> Current copyright law governing distance education . . . was based on broadcast models of telecourses for distance education. That law was not established with the virtual classroom in mind, nor does it resolve emerging issues of multimedia online, or provide a framework for permitting digital transmissions.

This report further observed that ''This current state of affairs is confusing and frustrating for educators. . . . Concern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool.'' In conclusion, the report concluded that our copyright laws were ''inappropriately restrictive.''

The TEACH Act makes three significant expansions in the distance learning exemption in our copyright law, while minimizing the additional risks to copyright owners that are inherent in exploiting works in a digital format. First, the bill eliminates the current eligibility requirements for the distance learning exemption that the instruction occur in a physical classroom or that special circumstances prevent the attendance of students in the classroom.

Second, the bill clarifies that the distance learning exemption covers the temporary copies necessarily made in networked servers in the course of transmitting material over the Internet.

Third, the current distance learning exemption only permits the transmission of the performance of ''nondramatic literary or musical works,'' but does not allow the transmission of movies or videotapes, or the performance of plays. The Kerrey Commission report cited this limitation as an obstacle to distance learning in current copyright law and noted the following examples: A music instructor may play songs and other pieces of music in a classroom, but must seek permission from copyright holders in order to incorporate these works into an online version of the same class. A children's literature instructor may routinely display illustrations from childrens' books in the classroom, but must get licenses for each one for on online version of the course.

To alleviate this disparity, the TEACH Act would amend current law to allow educators to show limited portions of dramatic literary and musical works, audiovisual works, and sound recordings, in addition to the complete versions of nondramatic literary and musical works which are currently exempted.

This legislation is a balanced proposal that expands the educational use

exemption in the copyright law for distance learning, but also contains a number of safeguards for copyright owners. In particular, the bill excludes from the exemption those works that are produced primarily for instructional use, because for such works, unlike entertainment products or materials of a general educational nature, the exemption could significantly cut into primary markets, impairing incentives to create. Indeed, the Web-Based Education Commission urged the development of ''high quality online educational content that meets the highest standards of educational excellence.'' Copyright protection can help provide the incentive for the development of such content.

In addition, the bill requires the use by distance educators of technological safeguards to ensure that the dissemination of material covered under the exemption is limited only to the students who are intended to receive it.

Finally, the TEACH Act directs the Copyright Office to conduct a study on the status of licensing for private and public school digital distance education programs and the use of copyrighted works in such programs, and to convene a conference to develop guidelines for the use of copyrighted works for digital distance education under the fair use doctrine and the educational use exemptions in the copyright law. Both the Copyright Office report and the Kerrey Commission noted dissatisfaction with the licensing process for digital copyrighted works. According to the Copyright Office, many educational institutions ''describe having experienced recurrent problems [that] . . . can be broken down into three categories: difficulty locating the copyright owner; inability to obtain a timely response; and unreasonable prices for other terms.'' Similarly, the Kerrey Commission report echoed the same concern. A study focusing on these licensing issues will hopefully prove fruitful and constructive for both publishers and educational institutions.

The Kerrey Commission report observed that ''[c]oncern about inadvertent copyright infringement appears, in many school districts, to limit the effective use of the Internet as an educational tool.'' For this reason, the Kerrey Commission report endorsed ''the U.S. Copyright Office proposal to convene education representatives and publisher stakeholders in order to build greater consensus and understanding of the 'fair use' doctrine and its application in web-based education. The goal should be agreement on guidelines for the appropriate digital use of information and consensus on the licensing of content not covered by the fair use doctrine.'' The TEACH Act will provide the impetus for this process to begin.

I appreciate that, generally speaking, copyright owners believe that current copyright laws are adequate to enable and foster legitimate distance learning activities. As the Copyright Office report noted, copyright owners are concerned that ''broadening the exemption would result in the loss of opportunities to license works for use in digital distance education'' and would increase the ''risk of unauthorized downstream uses of their works posed by digital technology.'' Based upon its review of distance learning, however, the Copyright Office concluded that updating section 110(2) in the manner proposed in the TEACH Act is ''advisable.'' I agree. At the same time we have made efforts to address the valid concerns of both the copyright owners and the educational and library community, and look forward to working with all interested stakeholders as this legislation is considered by the Judiciary Committee and the Congress.

Distance education is an important issue to both the chairman and to me, and to the people of our States. I commend him for scheduling a hearing on this important legislation for next week.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 45—HORNORING THE MEN AND WOMEN WHO SERVE THIS COUNTRY IN THE NATIONAL GUARD AND EXPRESSING CONDOLENCES OF THE UNITED STATES SENATE TO FAMILY AND FRIENDS OF THE 21 NATIONAL GUARDSMEN WHO PERISHED IN THE CRASH ON MARCH 3, 2001

Mr. BOND (for himself and Mr. LEAHY) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 45

Whereas on March 3, 2001, a tragic crash of a C-23 from the 171st Aviation Battalion of the Florida Army National Guard, carrying guardsmen from the 203rd Red Horse Unit of the Virginia Air National Guard took the lives of 21 guardsmen;

Whereas this unfortunate crash occurred during a routine training mission;

Whereas the National Guard is present in every state and four protectorates and is comprised of citizen-soldiers and airmen who continually support our active forces;

Whereas members of the Tragedy Assistance Program for Survivors were on site the day of the accident and generously rendered assistance to family members and friends; and

Whereas this is a somber reminder of the fact that the men and women in the United States Armed Forces put their lives on the line every day to protect this great Nation and that each citizen should forever be grateful for the sacrifices made by these men and women: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the contributions of the 21 National Guardsmen who made the ultimate sacrifice to their Nation on March 3, 2001;

(2) expresses deep and heartfelt condolences to the families and friends of the crash victims for this tragic loss;

(3) expresses appreciation for the members of the Tragedy Assistance Program for Survivors for their continued support to surviving family members; and

(4) honors the men and women who serve this country through the National Guard and is grateful for everything that each guardsman gives to protect the United States of America.

Mr. LEAHY. Mr. President, sadly, I rise today to talk about the recent crash of a National Guard aircraft in flying over Georgia. Last Friday, 21 members of the National Guard lost their lives in a horrible plane crash. How does one understand the death of 21 soldiers and airmen who dedicated their time and energy to contribute to our nation's defense?

While there perhaps is no easy answer to this question, the patriotism and dedication of these men is without doubt. Nineteen served with the Virginia Air National Guard in the 203d Red Horse Unit. Three were of the 171st Aviation Battalion of the Florida Army National Guard. All come from a proud citizen-soldier tradition that dates back to the War of Independence.

This was a routine mission for the fated C–23 Sherpa. With the Florida Guardsmen at the controls, the plane took off on Friday morning, headed for Virginia. Its passengers had just completed their two-weeks of annual training in Georgia, where they had honed their already refined construction abilities. They were heading back to their families and the civilian jobs. Alas, those reunions were never to occur.

It is a great loss whenever a member of the armed services gives his or her life in the lien of duty. But perhaps because these men came straight out of local communities, because they were juggling the demands of work and family along with their national service, we feel the losses like these especially deeply. Their departure reminds us that our friends, colleagues, and neighbors in the National Guard make sacrifices every time they report for duty. They leave the comfort of their homes for the rigors of service. It is a sacrifice that is worthy of honor and recognition, but often goes unnoticed until they make the ultimate sacrifice.

With that in mind, I join with my colleague Senator KIT BOND in introducing a resolution that honors their service and expresses our heartfelt condolences to the families of the victims.

SENATE RESOLUTION 46—AUTHORIZING EXPENDITURES BY THE SENATE COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL submitted the following resolution; from the Committee on Indian Affairs; which was referred to the Committee on Rules and Administration:

S. RES. 46

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, and making investigations as authorized by paragraphs 1 and

8 of rule XXVI of the Standing Rules of the Senate, the Committee on Indian Affairs is authorized from March 1, 2001, through February 28, 2003, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2001, through September 30, 2001, under this resolution shall not exceed $970,754.00, of which amount (1) no funds may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $1,000 may be expended for the training of professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2001, through September 30, 2002, expenses of the committee under this resolution shall not exceed $1,718,989.00, of which amount (1) no funds may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $1,000 may be expended for the training of professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2002, through February 28, 2003, expenses of the committee under this resolution shall not exceed $734,239.00, of which amount (1) no funds may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $1,000 may be expended for the training of professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its finding, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2001.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman of the committee, except that vouchers shall not be required (1) for the disbursement of the salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2001, through February 28, 2003, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations''.

SENATE RESOLUTION 47—AUTHORIZING EXPENDITURES BY THE SELECT COMMITTEE ON INTELLIGENCE

Mr. SHELBY submitted the following resolution; from the Select Committee on Intelligence; which was referred to the Committee on Rules and Administration:

S. RES. 47

Resolved,

That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Select Committee on Intelligence is authorized from March 1, 2001, through September 30, 2001; October 1, 2001, through September 30, 2002; and October 1, 2002 through February 28, 2003 in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2001 through September 30, 2001 under this resolution shall not exceed $1,859,933 of which amount not to exceed $37,917 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

(b) For the period October 1, 2001 through September 30, 2002, expenses of the committee under this resolution shall not exceed $3,298,074, of which amount not to exceed $65,000 be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

(c) For the period October 1, 2002 through February 28, 2003, expenses of the committee under this resolution shall not exceed $1,410,164, of which amount not to exceed $27,083 be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2003, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee, from March 1, 2001 through September 30, 2001; October 1, 2001 through September 30, 2002; and October 1, 2002 through February 28, 2003, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

SENATE RESOLUTION 48—HONORING THE LIFE OF FORMER GOVERNOR OF MINNESOTA HAROLD E. STASSEN, AND EXPRESSING DEEPEST CONDOLENCES OF THE SENATE TO HIS FAMILY ON HIS DEATH

Mr. DAYTON (for himself and Mr. WELLSTONE) submitted the following resolution; which was considered and agreed to:

S. RES. 48

Whereas the Senate has learned with sadness of the death of Harold E. Stassen;

Whereas Harold E. Stassen, born in St. Paul, Minnesota, greatly distinguished himself and his State by his long commitment to public service;

Whereas in 1938, Harold E. Stassen, at age 31, became the youngest person elected Governor in the history of the United States;

Whereas Harold E. Stassen, elected to 3 consecutive terms as Governor of Minnesota, was a visionary leader of the Republican Party and was nationally recognized for civil service and anti-corruption reforms while Governor;

Whereas during Harold E. Stassen's third term as Governor, he voluntarily resigned from that office to join the United States Navy in World War II, helping to free American prisoners of war from Japan and received promotion to the rank of captain;

Whereas Harold E. Stassen was an original signer of the United Nations charter of 1948, and in that same year undertook the first of 9 campaigns for President of the United States;

Whereas Harold E. Stassen served 5 years in the Eisenhower administration, first overseeing foreign aid programs, then serving as a Special Presidential Assistant on disarmament policy;

Whereas although Harold E. Stassen spent much of his life as a public servant, he was also highly respected as an international lawyer in private practice;

Whereas Harold E. Stassen, a major constructive force in shaping the course of the 20th Century, was a great intellectual force, a noble statesman, and a high moral example;

Whereas Harold E. Stassen was committed not only to his country and his ideals, but also to his late wife of 70 years, Esther, his daughter and son, his 7 grandchildren, and 4 great-grandchildren; and

Whereas in the days following the passing of Harold E. Stassen, many past and present Minnesota public servants and national leaders have praised the life he led: Now, therefore, be it

Resolved, That the Senate—

(1) honors the long life and devoted work of a great leader and public servant; and

(2) expresses its deepest condolences and best wishes to the family of Harold E. Stassen in this difficult time of loss.

SENATE RESOLUTION 49—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI submitted the following resolution; from the Committee on Energy and Natural Resources; which was referred to the Committee on Rules and Administration:

S. RES. 49

Resolved,

That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources is authorized from March 1, 2001, through September 30, 2001, October 1, 2001, through September 30, 2002; and October 1, 2001, through February 28, 2003, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2(a). The expenses of the committee for the period March 1, 2001, through September 30, 2001, under this resolution shall not exceed $2,504,922.

(b) For the period October 1, 2001, through September 30, 2002, expenses of the committee under this resolution shall not exceed $4,443,495.

(c) For the period October 1, 2002, through February 28, 2003, expenses of the committee under this resolution shall not exceed $1,900,457.

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2003, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SENATE CONCURRENT RESOLUTION 21—TO EXPRESS THE SENSE OF CONGRESS REGARDING THE USE OF A LEGISLATIVE ''TRIGGER'' OR ''SAFETY'' MECHANISM TO LINK LONG-TERM FEDERAL BUDGET SURPLUS REDUCTIONS WITH ACTUAL BUDGETARY OUTCOMES

Ms. SNOWE (for herself, Mr. BAYH, Mr. CHAFEE, Ms. LANDRIEU, Ms. COLLINS, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. TORRICELLI, Mr. SPECTER, Mr. CARPER, and Ms. STABENOW) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs and the Committee on the Budget, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged:

S. CON. RES. 21

Whereas the Congressional Budget Office (CBO) has projected that the Federal unified budget surplus over the 10-year period from fiscal year 2002 to fiscal year 2011 will total $5,610,000,000,000;

Whereas the projected Federal on-budget surplus over the same period of time is projected to be $3,122,000,000,000, which includes a surplus for the medicare program in the Federal Hospital Insurance (HI) Trust Fund of $392,000,000,000;

Whereas the projected surplus provides Congress with an opportunity to address a variety of pressing national needs, including Federal debt reduction, tax relief, and increased investment in the shared priorities of the American people, such as national defense, science, health, education, retirement security, and other areas;

Whereas although CBO projections properly serve as the basis for budgetary policies in Congress, actual economic and fiscal outcomes may differ substantially from projections;

Whereas for example, as CBO indicates in its January 2001 budget update, if the future record is like the past, there is about a 50 percent chance that errors in the assumptions about economic and technical factors will cause CBO's projection of the annual surplus 5 years ahead to miss the actual outcome by more than 1.8 percent of the Gross Domestic Product, with a resulting difference in the surplus estimate of $245,000,000,000 in the fifth year alone;

Whereas where appropriate, long-term changes to tax and spending policy that are predicated on the existence of significant budget surpluses should be linked to actual fiscal performance, such as meeting specified debt reduction or on-budget surplus targets, to ensure the Federal Government does not incur on-budget deficits or increase the publicly-held debt;

Whereas during his testimony before the Senate Budget Committee on January 25, 2001, Federal Reserve Chairman Alan Greenspan stated, ''In recognition of the uncertainties in the economic and budget outlook, it is important that any long-term tax plan, or spending initiative for that matter, be phased in. Conceivably, it could include provisions that, in some way, would limit surplus-reducing actions if specified targets for the budget surplus and Federal debt were not satisfied. Only if the probability was very low that prospective tax cuts or new outlay initiatives would send the on-budget accounts into deficit, would unconditional initiatives appear prudent'', and he reiterated this testimony before the Senate Banking Committee on February 13, 2001; and

Whereas in light of Chairman Greenspan's testimony and the uncertainty of surplus projections, while Members of Congress agree that the resources are available to address many pressing national needs in the 107th Congress, Congress should exercise great caution and not pass tax cuts or spending increases that are so large that they will necessitate future tax increases or significant spending cuts if anticipated budget surpluses fail to materialize: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) with respect to any long-term, Federal surplus-reducing actions adopted by the 107th Congress pursuant to the Congressional Budget Office's projected surpluses, such actions shall include a legislative ''trigger'' or ''safety'' mechanism that links the phase-in of such actions to actual budgetary outcomes over the next 10 fiscal years;

(2) this legislative ''trigger'' or ''safety'' mechanism shall outline specific legislative or automatic action that shall be taken should specified levels of Federal debt reduction or on-budget surpluses not be realized, in order to maintain fiscal discipline and continue the reduction of our national debt;

(3) the legislative ''trigger'' or ''safety'' mechanism shall be applied prospectively and not repeal or cancel any previously implemented portion of a surplus-reducing action;

(4) enactment of a legislative ''trigger'' or ''safety'' mechanism shall not prevent Congress from passing other legislation affecting the level of Federal revenues or spending should future economic performance dictate such action; and

(5) this legislative ''trigger'' or ''safety'' mechanism will ensure fiscal discipline because it restrains both Government spending and tax cuts, by requiring that the budget is balanced and that specified debt reduction targets are met.

SENATE CONCURRENT RESOLUTION 22—HONORING THE 21 MEMBERS OF THE NATIONAL GUARD WHO WERE KILLED IN THE CRASH OF A NATIONAL GUARD AIRCRAFT ON MARCH 3, 2001, IN SOUTH-CENTRAL GEORGIA

Mr. WARNER (for himself, Mr. ALLEN, Mr. GRAHAM, and Mr. NELSON of Florida) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 22

Whereas a C–23 Sherpa National Guard aircraft crashed in south-central Georgia on March 3, 2001, killing all 21 National Guard members on board;

Whereas of the 21 National Guard members on board, 18 were members of the Virginia Air National Guard from the Hampton Roads area of Virginia returning home following two weeks of training duty in Florida and the other 3 were members of the Florida Army National Guard who comprised the flight crew of the aircraft;

Whereas the Virginia National Guard members killed, all of whom were members of the 203rd Red Horse Engineering Flight of Virginia Beach, Virginia, were Master Sergeant James Beninati, 46, of Virginia Beach, Virginia; Staff Sergeant Paul J. Blancato, 38, of Norfolk, Virginia; Technical Sergeant Ernest Blawas, 47, of Virginia Beach, Virginia; Staff Sergeant Andrew H. Bridges, 33, of Chesapeake, Virginia; Master Sergeant Eric Bulman, 59, of Virginia Beach, Virginia; Staff Sergeant Paul Cramer, 43, of Norfolk, Virginia; Technical Sergeant Michael East, 40, of Parksley, Virginia; Staff Sergeant Ronald Elkin, 43, of Norfolk, Virginia; Staff Sergeant James Ferguson, 41, of Newport News, Virginia; Staff Sergeant Randy Johnson, 40, of Emporia, Virginia; Senior Airman Mathrew Kidd, 23, of Hampton, Virginia; Master Sergeant Michael Lane, 34, of Moyock, North Carolina; Technical Sergeant Edwin Richardson, 48, of Virginia Beach, Virginia; Technical Sergeant Dean Shelby, 39, of

Virginia Beach, Virginia; Staff Sergeant John Sincavage, 27, of Chesapeake, Virginia; Staff Sergeant Gregory Skurupey, 34, of Gloucester, Virginia; Staff Sergeant Richard Summerell, 51, of Franklin, Virginia; and Major Frederick Watkins, III, 35, of Virginia Beach, Virginia;

Whereas the Florida National Guard members killed, all of whom were members of Detachment 1, 1st Battalion, 171st Aviation, of Lakeland, Florida, were Chief Warrant Officer John Duce, 49, of Orange Park, Florida; Chief Warrant Officer Eric Larson, 34, of Land-O-Lakes, Florida; and Staff Sergeant Robert Ward, 35, of Lakeland, Florida;

Whereas these members of the National Guard were performing their duty in furtherance of the national security interests of the United States;

Whereas the members of the Armed Forces, including the National Guard, are routinely called upon to perform duties that place their lives at risk; and

Whereas the members of the National Guard who lost their lives as a result of the aircraft crash on March 3, 2001, died in the honorable service to the Nation and exemplified all that is best in the American people: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) honors the 18 members of the Virginia Air National Guard and 3 members of the Florida Army National Guard who were killed on March 3, 2001, in the crash of a C–23 Sherpa National Guard aircraft in south-central Georgia; and

(2) sends heartfelt condolences to their families, friends, and loved ones.

AMENDMENTS SUBMITTED AND PROPOSED

SA 13. Mr. LEAHY proposed an amendment to the bill S. 420, to amend title II, United States Code, and for other purposes.

SA 14. Mr. WELLSTONE proposed an amendment to the bill S. 420, supra.

SA 15. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

SA 16. Ms. COLLINS (for herself, Mr. KERRY, and Mr. STEVENS) submitted an amendment intended to be proposed by her to the bill S. 420, supra; which was ordered to lie on the table.

SA 17. Mr. DURBIN proposed an amendment to the bill S. 420, supra.

SA 18. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 13. Mr. LEAHY proposed an amendment to the bill S. 240, to amend title II, United States Code, and for other purposes; as follows:

At the end of title IV, add the following:

SEC. 446. PRIORITY FOR SMALL BUSINESS CREDITORS.

(a) CHAPTER 7.—Section 726(b) of title II, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)'';

(2) by striking ''paragraph, except that in a'' and inserting the following: ''paragraph, except that—

''(A) in a''; and

(3) by striking the period at the end and inserting the following: ''; and

''(B) with respect to each such paragraph, a claim of a small business has priority over a claim of a creditor that is a for-profit business but is not a small business.

''(2) In this subsection—

''(A) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(i) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(ii) is engaged in commercial or business activity; and

''(B) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(i) a parent corporation; and

''(ii) any other subsidiary corporation of the parent corporation.''.

(b) CHAPTER 12.—Section 1222 of title 11, United States Code, is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(e) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

(c) CHAPTER 13.—Section 1322(a) is amended—

(1) in subsection (a), as amended by section 213 of this Act, by adding at the end the following:

''(5) provide that no distribution shall be made on a nonpriority unsecured claim of a for-profit business that is not a small business until the claims of creditors that are small businesses have been paid in full.''; and

(2) by adding at the end the following:

''(f) For purposes of subsection (a)(5)—

''(1) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(A) has fewer than 25 full-time employees, as determined on the date on which the motion is filed; and

''(B) is engaged in commercial or business activity; and

''(2) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(A) a parent corporation; and

''(B) any other subsidiary corporation of the parent corporation.''.

On page 67, line 4, strike ''inserting '; and' '' and insert ''inserting a semicolon''.

On page 67, line 13, strike the period and insert ''; and''.

On page 69, line 13, strike ''inserting '; and' '' and insert ''inserting a semicolon''.

On page 69, line 22, strike the period and insert ''; and''.

Amend the table of contents accordingly.

SA 14. Mr. WELLSTONE proposed an amendment to the bill S. 240, to amend title II, United States Code, and for other purposes; as follows:

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) IN GENERAL.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the reason for the filing was a result of debts incurred through medical expenses, as defined in section 213(d) of the Internal Revenue Code of 1986, unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

SA 15. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. INVOLUNTARY CASES.

Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such undisputed claims''; and

(2) in subsection (h)(1), by inserting before the semicolon the following: ''as to liability or amount''.

SA 16. Ms. COLLINS (for herself, Mr. KERRY, and Mr. STEVENS) submitted an amendment intended to be proposed by her to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' includes—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products;

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A); and

''(C) the transporting by vessel of a passenger for hire (as defined in section 2101 of title 46) who is engaged in recreational fishing;

''(7B) 'commercial fishing vessel' means a vessel used by a fisherman to carry out a commercial fishing operation;'';

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation (including aquaculture for purposes of chapter 12)—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year

preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;''; and

(3) by inserting after paragraph (19A) the following:

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1201, by adding at the end the following:

''(e)(1) Notwithstanding any other provision of law, for purposes of this subsection, a guarantor of a claim of a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.

''(2) For purposes of a claim that arises from the ownership or operation of a commercial fishing operation, a co-maker of a loan made by a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.'';

(3) in section 1203, by inserting ''or commercial fishing operation'' after ''farm'';

(4) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property of a commercial fishing operation (including a commercial fishing vessel)''; and

(5) by adding at the end the following:

''§ 1232. Additional provisions relating to family fishermen

''(a)(1) Notwithstanding any other provision of law, except as provided in subsection (c), with respect to any commercial fishing vessel of a family fisherman, the debts of that family fisherman shall be treated in the manner prescribed in paragraph (2).

''(2)(A) For purposes of this chapter, a claim for a lien described in subsection (b) for a commercial fishing vessel of a family fisherman that could, but for this subsection, be subject to a lien under otherwise applicable maritime law, shall be treated as an unsecured claim.

''(B) Subparagraph (A) applies to a claim for a lien resulting from a debt of a family fisherman incurred on or after the date of enactment of this chapter.

''(b) A lien described in this subsection is—

''(1) a maritime lien under subchapter III of chapter 313 of title 46 without regard to whether that lien is recorded under section 31343 of title 46; or

''(2) a lien under applicable State law (or the law of a political subdivision thereof).

''(c) Subsection (a) shall not apply to—

''(1) a claim made by a member of a crew or a seaman including a claim made for—

''(A) wages, maintenance, or cure; or

''(B) personal injury; or

''(2) a preferred ship mortgage that has been perfected under subchapter II of chapter 313 of title 46.

''(d) For purposes of this chapter, a mortgage described in subsection (c)(2) shall be treated as a secured claim.''.

(d) CLERICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 12 of title 11, United States Code, is amended by adding at the end the following new item:

''1232. Additional provisions relating to family fishermen.''.

(e) APPLICABILITY.—

Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

Amend the table of contents accordingly.

SA 17. Mr. DURBIN proposed an amendment to the bill S. 420, to amend title II, United States Code, and for other purposes; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) the claim is based on a secured debt, if the creditor has failed to comply with any applicable requirement under subsection (a), (b), (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. 1639).''.

SA 18. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 420, to amend title II, United States Code, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title II, add the following:

SEC. 204. GAO STUDY ON REAFFIRMATION PROCESS.

(a) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study of the reaffirmation process under title 11, United States Code, to determine the overall treatment of consumers within the context of that process, including consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether there is abuse or coercion of consumers inherent in the process.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any abusive or coercive tactics found within the reaffirmation process.

Amend the table of contents accordingly.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MCCONNELL. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 4 p.m., Thursday, March 8, 2001, in room SR–301 Russell Senate Office Building, to consider the omnibus funding resolution for committees of the Senate for the 107th Congress.

For further information concerning this meeting, please contact Mary Suit Jones at the committee on 4–6352.

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Subcommittee on National parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources. The purpose of this oversight hearing is to review the National Park Service's implementation of management policies and procedures to comply with the provisions of title IV of the National Parks Omnibus Management Act of 1998.

The hearing will take place on Thursday, March 22, 2001, at 2:30 p.m. in room SD–192 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SRC–2, Russell Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole or Kevin Clark of the committee staff at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, March 7, 2001, at 9:30 A.M., on voting technology reform.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, March 7 following the first rollcall vote to conduct a business meeting to

consider the Committee's funding resolution and changes to the Committee rules.

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

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, March 7, 2001, to hear testimony regarding Marginal Rate Reduction.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, March 7, 2001, at 9:30 a.m.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 7, 2001 at 9:30 a.m. in room 485 of the Russell Senate Office Building to conduct a Business Meeting to adopt the rules of the Committee for the 107th Congress.

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

COMMITTEE ON SMALL BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Wednesday, March 7, 2001, beginning at 9:30 a.m. in room 428A of the Russell Senate Office Building to hold a forum entitled ''PNTR/WTO: A Good Deal for U.S. Small Businesses in China?''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, March 7, 2001 at 2:00 p.m. to hold a closed hearing on intelligence matters.

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

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Tara Magner and Maryam Mazloom be granted floor privileges for the remainder of the debate on the bankruptcy reform bill.

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

IN HONOR OF FORMER GOVERNOR HAROLD E. STASSEN

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 48 submitted earlier today by Senators DAYTON and WELLSTONE.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 48) honoring the life of former Governor of Minnesota, Harold E. Stassen, and expressing deepest condolences of the Senate to his family on his death.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

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

The resolution (S. Res. 48) was agreed to.

The preamble was agreed to.

(The text of S. Res. 48 is located in today's RECORD under ''Statements on Submitted Resolutions.'')

ORDERS FOR THURSDAY, MARCH 8, 2001

Mr. BROWNBACK. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Thursday, March 8. I further ask unanimous consent that on Thursday, immediately following the prayer, 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 then resume the pending bankruptcy bill.

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

PROGRAM

Mr. BROWNBACK. For the information of all Senators, the Senate will convene at 9:30 a.m. tomorrow and immediately resume the pending bankruptcy bill. Amendments and votes are expected to occur throughout the day and into the evening in an effort to make substantial progress on this vital piece of legislation. Members are encouraged to work with the bill managers if they intend to offer amendments.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. BROWNBACK. I am happy to yield to the Senator from Nevada.

Mr. REID. We have a group of Senators, with House Members, members of the Intelligence Committee, who are traveling to South America. Does the Senator think we can learn early in the morning if there are going to be votes past 5 o'clock so they can have some idea as to what to plan and what they can do?

Mr. BROWNBACK. I understand the leadership is trying to work out a finite list of amendments that could be worked on to the point that maybe we could get that group done and limit it so we could have a voting time set, and then those Members could plan what they are trying to do. I understand it is being worked on right now.

Mr. REID. Senator LEAHY has indicated he is willing to cooperate in any way he can.

Mr. BROWNBACK. Good. I thank my colleague from Nevada for the comments. Hopefully we can get a limited number of amendments and move this bill through. This could be a substantial piece of legislation for this body to pass.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. BROWNBACK. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:44 p.m., adjourned until Thursday, March 8, 2001, at 9:30 a.m.