STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. VOINOVICH:

S. 1326. A bill to establish the position of Assistant Secretary of Commerce for Manufacturing in the Department of Commerce; to the Committee on Commerce, Science, and Transportation.

Mr. VOINOVICH. 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. 1326

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

SECTION 1. ASSISTANT SECRETARY OF COMMERCE FOR MANUFACTURING.

(a) ESTABLISHMENT.—There is in the Department of Commerce the position of Assistant Secretary of Commerce for Manufacturing. The Assistant Secretary shall be appointed by the President by and with the advice and consent of the Senate.

(b) DUTIES.—The Assistant Secretary of Commerce for Manufacturing shall—

(1) represent and advocate for the interests of the manufacturing sector;

(2) aid in the development of policies that promote the expansion of the manufacturing sector;

(3) review policies that may adversely impact the manufacturing sector; and

(4) perform such other duties as the Secretary of Commerce shall prescribe.

(c) REPORTING REQUIREMENTS.—The Assistant Secretary of Commerce for Manufacturing shall submit to Congress an annual report that contains the following:

(1) An overview of the state of the manufacturing sector in the United States.

(2) A forecast of the future state of the manufacturing sector in the United States.

(3) An analysis of current and significant laws, regulations, and policies that adversely impact the manufacturing sector in the United States.

(d) COMPENSATION.—Section 5314 of title 5, United States Code, relating to Level IV of the Executive Schedule, is amended by inserting before ''and Assistant'' in the item relating to the Assistant Secretaries of Commerce the following: ''Assistant Secretary of Commerce for Manufacturing,''.

By Mr. CORZINE:

S. 1327. A bill to reduce unsolicited commercial electronic mail and to protect children from sexually oriented advertisements; to the Committee on Commerce, Science, and Transportation.

Mr. CORZINE. Mr. President, today I am introducing legislation, the Restrict and Eliminate the Delivery of Unsolicited Commercial Electronic Mail, REDUCE, Spam Act, to curb the influx of unwanted junk e-mail, or ''spam,'' that is clogging our inboxes and wasting the time and money of American consumers and businesses.

The flood of spam is growing so fast that it will soon account for more than half of all e-mail sent in the United States. Spam already accounts for nearly 40 percent of e-mail traffic, and costs U.S. businesses $10 billion annually in lost productivity and additional equipment, software and manpower costs necessary to manage this burden. Microsoft Inc. estimates that more than 80 percent of the more than 2.5 billion e-mail messages sent each day to Hotmail users are spam. And data suggests that the problem is only growing.

The problem of spam goes well beyond inconvenience and cost. The Federal Trade Commission examined a random sample of 1000 spam messages and, in a report issued on April 30, 2003, found staggering evidence of fraud. According to the report, 33 percent of the messages sampled contained false routing information; 22 percent contained false information in the subject line; 40 percent contained false statements in the text; and a full 66 percent contained false information of some sort. Most alarmingly, in the case of spam touting business or investment opportunities, 96 percent contained some sort of fraudulent information.

In addition, pornographic spam is a growing problem for parents trying to shield their children from such images. The FTC report found that 17 percent of spam advertising pornographic websites included adult images in the body of the message. This is not acceptable when our children are using email more and more each day.

Unfortunately, it is very difficult to track down those who send spam. Often, spammers use multiple e-mail addresses or disguise routing information to avoid being identified. Finding spammers can take not just real expertise, but persistence, time, energy and commitment.

To attack the problem of spam, my proposal adopts a two-prong approach championed by the leading thinker about cyberlaw, Professor Lawrence Lessig of Stanford Law School. Congresswoman ZOE LOFGREN also has introduced similar legislation in the House of Representatives. The approach is simple: first, anyone sending bulk unsolicited commercial e-mail would have to include on each e-mail a simple prefix—either ADV: or ADV:ADLT. Second, anyone who finds a spam-source who has failed to properly label unsolicited commercial e-mail would be eligible for a monetary reward from the FTC.

The first part of this proposal would enable Internet Service Providers, ISPs, employers and individual users to filter spam from business and personal email. This would give people the ability to tell their Internet service provider to block ADV e-mail, or they could automatically filter such e-mail into a spam folder on their own computer. This approach would enable far more effective filtering than currently possible.

The second part of my proposal would require the FTC to pay a bounty to anyone who tracks down a spammer who has failed properly to label unsolicited commercial e-mail. The proposal would invite anyone across the world who uses the Internet to hunt down these law-violating spammers. The FTC would then fine them and pay a portion of that fine as a reward to the bounty hunter who found them. The FTC could use the remainder of the fine to track down and prosecute other spammers.

Creating incentives for private individuals to help track down spammers is likely to substantially strengthen the enforcement of anti-spam laws. And with proper enforcement, spammers would soon learn that neglecting to label spam does not pay. In the end, that will mean that more spammers will label their spam or give up and stop spamming altogether. Either way, we will have fixed, or at least started to fix, the problem.

Professor Lessig is so convinced that this approach will substantially reduce spam that he has pledged to resign from his job at Stanford if it does not. While I will not hold him to that warranty, I do share his enthusiasm about this innovative approach, which is likely to be much more effective than relying exclusively on government investigators to identify spammers.

Having said that, I recognize that any domestic anti-spam legislation potentially is subject to evasion by spammers who relocate overseas in order to continue sending spam. To respond to that possibility, my bill also orders the Administration to study the possibility of an international agreement to reduce spam. This is an issue that affects us globally, and, in my view, we should consider a coordinated response.

In addition to these primary provisions, my bill would require marketers to establish a valid return e-mail address to which an e-mail recipient can write to ''opt-out'' of receiving further e-mails, and would prohibit marketers from sending any further e-mails after a person opts-out. The bill also would prohibit spam with false or misleading routing information or deceptive subject headings, and would authorize the Federal Trade Commission to collect civil fines against marketers who violate these requirements. Furthermore, my proposal would give Internet Service Providers the right to bring civil actions against marketers who violate these requirements and disrupt their networks, and, finally, the proposal would establish criminal penalties for fraudulent spam.

I know that the Commerce Committee recently ordered reported legislation to deal with the problem of spam, and I am hopeful that bill will come before the full Senate before long. When it does, it is my intention to work with my colleagues to see if some of the concepts in the REDUCE Spam Act, such as the establishment of individual rewards for bounty hunters, and a report on a possible international agreement on spam, can be incorporated into the broader package, to ensure that any legislation sent to the President will actually be effective in reducing spam.

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

RECORD at this point, along with a related article by Professor Lawrence Lessig.

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

S. 1327

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 ''Restrict and Eliminate the Delivery of Unsolicited Commercial Electronic Mail or Spam Act of 2003'' or the ''REDUCE Spam Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ''commercial electronic mail message'' means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(2) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(3) ELECTRONIC MAIL ADDRESS.—

(A) IN GENERAL.—The term ''electronic mail address'' means a destination (commonly expressed as a string of characters) to which an electronic mail message can be sent or delivered.

(B) INCLUSION.—In the case of the Internet, the term ''electronic mail address'' may include an electronic mail address consisting of a user name or mailbox (commonly referred to as the ''local part'') and a reference to an Internet domain (commonly referred to as the ''domain part'').

(4) FTC ACT.—The term ''FTC Act'' means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(5) HEADER INFORMATION.—The term ''header information'' means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

(6) INITIATE.—The term ''initiate'', when used with respect to a commercial electronic mail message, means to originate such message or to procure the transmission of such message, either directly or through an agent, but shall not include actions that constitute routine conveyance of such message by a provider of Internet access service. For purposes of this Act, more than 1 person may be considered to have initiated the same commercial electronic mail message.

(7) INTERNET.—The term ''Internet'' has the meaning given that term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3)).

(8) INTERNET ACCESS SERVICE.—The term ''Internet access service'' has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(9) PRE-EXISTING BUSINESS RELATIONSHIP.—

(A) IN GENERAL.—The term ''pre-existing business relationship'', when used with respect to a commercial electronic mail message, means that either—

(i) within the 5-year period ending upon receipt of a commercial electronic mail message, there has been a business transaction between the sender and the recipient, including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient and the recipient was, at the time of such transaction or thereafter, provided a clear and conspicuous notice of an opportunity not to receive further commercial electronic mail messages from the sender and has not exercised such opportunity; or

(ii) the recipient has given the sender permission to initiate commercial electronic mail messages to the electronic mail address of the recipient and has not subsequently revoked such permission.

(B) APPLICABILITY.—If a sender operates through separate lines of business or divisions and holds itself out to the recipient as that particular line of business or division, then such line of business or division shall be treated as the sender for purposes of subparagraph (A).

(10) RECIPIENT.—The term ''recipient'', when used with respect to a commercial electronic mail message, means the addressee of such message.

(11) SENDER.—The term ''sender'', when used with respect to a commercial electronic mail message, means the person who initiates such message. The term ''sender'' does not include a provider of Internet access service whose role with respect to electronic mail messages is limited to handling, transmitting, retransmitting, or relaying such messages.

(12) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term ''unsolicited commercial electronic mail message'' means any commercial electronic mail message that—

(A) is not a transactional or relationship message; and

(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

SEC. 3. COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT HEADER OR ROUTING INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1351. Unsolicited commercial electronic mail containing fraudulent header information

''(a) Any person who initiates the transmission of any unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is false or materially misleading, shall be fined or imprisoned for not more than 1 year, or both, under this title.

''(b) For purposes of this section, the terms 'unsolicited commercial electronic mail message' and 'header information' have the meanings given such terms in section 2 of the REDUCE Spam Act of 2003.''.

(b) CONFORMING AMENDMENT.—The chapter analysis at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Unsolicited commercial electronic mail.''.

SEC. 4. REQUIREMENTS FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) SUBJECT LINE REQUIREMENTS.—It shall be unlawful for any person to initiate the transmission of an unsolicited commercial electronic mail message to an electronic mail address within the United States, unless the subject line includes—

(1) except in the case of an unsolicited commercial electronic mail message described in paragraph (2)—

(A) an identification that complies with the standards adopted by the Internet Engineering Task Force for identification of unsolicited commercial electronic mail messages; or

(B) in the case of the absence of such standards, ''ADV:'' as the first four characters; or

(2) in the case of an unsolicited commercial electronic mail message that contains material that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older—

(A) an identification that complies with the standards adopted by the Internet Engineering Task Force for identification of adult-oriented unsolicited commercial electronic mail messages; or

(B) in the case of the absence of such standards, ''ADV:ADLT'' as the first eight characters.

(b) RETURN ADDRESS REQUIREMENTS.—

(1) ESTABLISHMENT.—It shall be unlawful for any person to initiate the transmission of an unsolicited commercial electronic mail message to an electronic mail address within the United States, unless the sender establishes a valid sender-operated return electronic mail address where the recipient may notify the sender not to send any further commercial electronic mail messages.

(2) INCLUDED STATEMENT.—All unsolicited commercial electronic mail messages subject to this subsection shall include a statement informing the recipient of the valid return electronic mail address referred to in paragraph (1).

(3) PROHIBITION OF SENDING AFTER OBJECTION.—Upon notification or confirmation by a recipient of the recipient's request not to receive any further unsolicited commercial electronic mail messages, it shall be unlawful for a person, or anyone acting on that person's behalf, to send any unsolicited commercial electronic mail message to that recipient. Such a request shall be deemed to terminate a pre-existing business relationship for purposes of determining whether subsequent messages are unsolicited commercial electronic mail messages.

(c) HEADER AND SUBJECT HEADING REQUIREMENTS.—

(1) FALSE OR MISLEADING HEADER INFORMATION.—It shall be unlawful for any person to initiate the transmission of an unsolicited commercial electronic mail message that such person knows, or reasonably should know, contains or is accompanied by header information that is false or materially misleading.

(2) DECEPTIVE SUBJECT HEADINGS.—It shall be unlawful for any person to initiate the transmission of an unsolicited commercial electronic mail message with a subject heading that such person knows, or reasonably should know, is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(d) AFFIRMATIVE DEFENSE.—A person who violates subsection (a) or (b) shall not be liable if—

(1)(A) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent such violations; and

(B) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures; or

(2) within the 2-day period ending upon the initiation of the transmission of the unsolicited commercial electronic mail message in violation of subsection (a) or (b), such person initiated the transmission of such message, or one substantially similar to it, to less than 1,000 electronic mail addresses.

SEC. 5. ENFORCEMENT.

(a) IN GENERAL.—Section 4 shall be enforced by the Commission under the FTC

Act. For purposes of such Commission enforcement, a violation of this Act shall be treated as a violation of a rule under section 18 (15 U.S.C. 57a) of the FTC Act prohibiting an unfair or deceptive act or practice.

(b) RULEMAKING.—Not later than 30 days after the date of enactment of this Act, the Commission shall institute a rulemaking proceeding concerning enforcement of this Act. The rules adopted by the Commission shall prevent violations of section 4 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the FTC Act were incorporated into and made a part of this section, except that the rules shall also include—

(1) procedures to minimize the burden of submitting a complaint to the Commission concerning a violation of section 4, including procedures to allow the electronic submission of complaints to the Commission;

(2) civil penalties for violations of section 4 in an amount sufficient to effectively deter future violations, a description of the type of evidence needed to collect such penalties, and procedures to collect such penalties if the Commission determines that a violation of section 4 has occurred;

(3) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected to the first person that—

(A) identifies the person in violation of section 4; and

(B) supplies information that leads to the successful collection of a civil penalty by the Commission;

(4) a provision that enables the Commission to keep the remainder of the civil penalty collected and use the funds toward the prosecution of further claims, including for necessary staff or resources; and

(5) civil penalties for knowingly submitting a false complaint to the Commission.

(c) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall conclude the rulemaking proceeding initiated under subsection (b) and shall prescribe implementing regulations.

SEC. 6. PRIVATE RIGHT OF ACTION.

(a) ACTION AUTHORIZED.—A recipient of an unsolicited commercial electronic mail message, or a provider of Internet access service, adversely affected by a violation of section 4 may bring a civil action in any district court of the United States with jurisdiction over the defendant to—

(1) enjoin further violation by the defendant; or

(2) recover damages in an amount equal to—

(A) actual monetary loss incurred by the recipient or provider of Internet access service as a result of such violation; or

(B) at the discretion of the court, the amount determined under subsection (b).

(b) STATUTORY DAMAGES.—

(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the amount determined under this subsection is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10.

(2) PER-VIOLATION PENALTY.—In determining the per-violation penalty under this subsection, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

(c) ATTORNEY FEES.—In any action brought pursuant to subsection (a), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

SEC. 7. INTERNET ACCESS SERVICE PROVIDERS.

Nothing in this Act shall be construed—

(1) to enlarge or diminish the application of chapter 121 of title 18, relating to when a provider of Internet access service may disclose customer communications or records;

(2) to require a provider of Internet access service to block, transmit, route, relay, handle, or store certain types of electronic mail messages;

(3) to prevent or limit, in any way, a provider of Internet access service from adopting a policy regarding commercial electronic mail messages, including a policy of declining to transmit certain types of commercial electronic mail messages, or from enforcing such policy through technical means, through contract, or pursuant to any other provision of Federal, State, or local criminal or civil law; or

(4) to render lawful any such policy that is unlawful under any other provision of law.

SEC. 8. EFFECT ON OTHER LAWS.

Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

SEC. 9. FTC STUDY.

Not later than 24 months after the date of enactment of this Act, the Commission, in consultation with appropriate agencies, shall submit a report to Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need, if any, for Congress to modify such provisions.

SEC. 10. STUDY OF POSSIBLE INTERNATIONAL AGREEMENT.

Not later than 6 months after the date of enactment of this Act, the President shall—

(1) conduct a study in consultation with the Internet Engineering Task Force on the possibility of an international agreement to reduce spam; and

(2) issue a report to Congress setting forth the findings of the study required by paragraph (1).

SEC. 11. EFFECTIVE DATE.

The provisions of this Act shall take effect 180 days after the date of enactment of this Act, except that subsections (b) and (c) of section 5 shall take effect upon the date of enactment of this Act.

[From the Philadelphia Inquirer, May 4, 2003]

HOW TO UNSPAM THE INTERNET

(By Lawrence Lessig)

The Internet is choking on spam. Billions of unsolicited commercial messages—constituting almost 50 percent of all e-mail traffic—fill the in-boxes of increasingly impatient Internet users. These messages offer to sell everything from human growth hormones to pornography. And increasingly the offers to sell pornography are themselves pornographic.

So far, Congress has done nothing about this burden on the Internet. Many states have passed laws that have tried. Virginia just passed the most extreme of these laws, making it a felony to send spam with a fraudulent return address. Other states are considering the same.

Yet all of these regulations suffer from a similar flaw: Spamsters know the laws will never be enforced. The cost of bringing a lawsuit is extraordinarily high. Most of us have better things to do than sue spamsters. Thus, despite a patchwork of regulation that in theory should be restricting spam, the practice of spam continues to increase at an astonishing rate.

But last week, U.S. Rep. Zoe Lofgren (D., Calif.) introduced a bill that, if properly implemented by the Federal Trade Commission, would actually work. I am so confident she is right that I've offered to resign my job if her proposal does not significantly reduce the burden of spam.

The Restrict and Eliminate Delivery of Unsolicited Commercial E-mail (REDUCE) Spam Act has two important parts. First, anyone sending bulk unsolicited commercial e-mail must include on each e-mail a simple tag—either ADV: or ADV:ADLT. Second, anyone who finds a spamster who fails properly to label unsolicited commercial e-mail will be paid a bounty by the FTC.

The first part of the proposal would enable simple filters to block unwanted spam. Users could tell their Internet service provider to block ADV e-mail, or they could automatically filter such e-mail into a spam folder on their own computer. These simple filters would replace the extraordinarily sophisticated filters companies have been developing to identify and block spam.

These complex filters, though ingenious, are necessarily one step behind. Spamsters will always find a way to trick them. The filters will be changed to respond, but the spamsters will in turn change their spam to find a way around the filters. Thus the filters will never block all spam, but they will always block a certain number of messages that are not spam.

But part one of the Lofgren legislation would never work if it weren't for part two: A spamster bounty. Lofgren's proposal would require the FTC to pay a bounty to anyone who tracks down a spamster who has failed properly to label unsolicited commercial e-mail. This proposal would invite savvy 18-year-olds from across the world to hunt down these law-violating spamsters. The FTC would then fine them, after paying a reward to the bounty hunter who found them.

The bounty would assure that the spam law was enforced. Properly enforced, the law would teach most spamsters that failing to label spam doesn't pay. The spamsters in turn would decide either to label their spam or give up and get a real job. Either way, the burden of spam would be reduced.

No doubt no solution would eliminate 100 percent of spam. Much is foreign; American laws would not easily reach those spamsters. But the question lawmakers should ask is what is the smallest, least burdensome regulation that would have the most significant effect. If Lofgren's proposal were passed, the vast majority of spamsters would have to change their ways. Technologists could then target their filters on the spamsters that remain.

What about free speech? Don't spamsters have First Amendments rights?

Of course they do. And many of the laws proposed right now go too far in censoring speech. Threatening a felony for a bad return address, as the Virginia law does, is a dangerous precedent. Laws that ban spam altogether are much worse.

But Lofgren's proposal simply requires a proper label so consumers can choose whether they want to receive the speech or not. And most important, by reducing the clutter of unsolicited and unwanted spam, the law would improve the opportunity for other speech—including political speech—to get through.

More fundamentally, free speech is threatened just as much by bad filters as by bad laws. A well-crafted law—narrow in its scope, and moderate in its regulation—can in turn eliminate the demand for bad filters. Lofgren's proposal would have just this effect. Congress should act to follow Lofgren's lead. In Internet time, not Washington time.

By Mr. HATCH (for himself and Mrs. CLINTON):

S. 1328. A bill to provide for an evaluation by the Institute of Medicine of the National Academy of Sciences of leading health care performance measures and options to implement policies that align performance with payment under the Medicare program under title XVIII of the Social Security Act; to the Committee on Finance.

Mr. HATCH. Mr. President, I rise today to address an issue of importance to all Americans, the quality and safety of health care in the United States.

Numerous studies have identified serious shortcomings in the quality and safety of health care. However, addressing these shortcomings and improving health care outcomes in a complex health care system requires long-range strategies and specific goals.

The Medicare program, as one of the largest purchasers of health care, is ideally situated to take a leadership role in encouraging quality improvement. Currently, however, Medicare's payment methods and regulations provide few incentives to pursue innovative quality improvement strategies and to reward those who achieve exemplary performance.

Traditional Medicare pays most physicians according to a fee schedule and pays hospitals according to a DRG-based payment system. Medicare+Choice plans are paid a capitated rate and, in turn, pay physicians using a range of approaches, from salary to capitation to fee-for-service, none of which directly reward enhanced quality.

Attempts to adjust Medicare payments to reward performance improvements in safety and quality have been hampered, in part, by the lack of measures and data for assessing performance. Although the Centers for Medicare and Medicaid Services recently began an initiative to develop voluntary consensus performance measures for 10 clinical conditions for hospitals, standardized measures of quality for hospitals and providers do not otherwise exist.

As the Senate considers a new Medicare prescription drug benefit and additional measures to reform the Medicare program, it is more important than ever that we consider also measures to ensure that these new benefits are provided as safely and effectively as possible.

That is why I am today introducing a bill charging the Institute of Medicine with performing a study to evaluate leading health care performance measures and options to implement policies that align performance with payment in Medicare.

We have learned much about health care quality in the last several years. The Institute of Medicine, in its studies entitled ''To Err Is Human,'' and ''Crossing the Quality Chasm,'' has identified the health care safety and quality shortcomings that exist and the need for improvement. In a recent study performed at the request of Congress, ''Leadership by Example,'' the Institute of Medicine identified the leadership role that Government can take in improving health care quality in government sponsored health care programs and those in the private sector.

The bill that I am introducing today, and the study that will result, represents the next step toward improving health care quality and safety in the United States. It is an important step and one that we must take in order to ensure that Medicare beneficiaries receive the highest quality health care services available. I urge my colleagues to join me in supporting this legislation.

Mrs. CLINTON. Mr. President, I am pleased to join my friend from Utah, Senator HATCH, today in introducing a bill that will commission a study from IOM to identify performance measures and payment incentives that reward high quality providers in Medicare.

Currently Medicare pays the same amount for good care as it does for poor quality care. It's easy to assume that the dollars that go to Medicare all yield high quality care, but the evidence is otherwise.

Take heart disease, the leading cause of death in the U.S. Cholesterol management after a heart attack can mean the difference between disability and an active lifestyle. Yet we don't have adequate data that show us whether most Medicare beneficiaries are getting this clinically appropriate care. And the only data that we do have, from NCQA, The State of Health Care Quality 2002, tells us that in 2001 almost one-quarter, 23 percent, of Medicare beneficiaries in health plans did not have their cholesterol managed after a heart attack.

In New York, between 14 and 22 percent of diabetic beneficiaries in health plans did not get a blood sugar control test in 2001.

When Medicare and Medicare enrollees pay the same amount to providers that give excellent care as it does to those who provide mediocre care, that may unintentionally create incentives for providers to skimp or cut corners on quality. We debate endlessly over ways to control costs in Medicare, but we have not taken one of the simple steps that will, almost certainly, drive quality up and assure that we are getting good value for the dollars we spend.

Medicare should be a leader in national efforts to improve quality. Medicare, with its $250 billion of purchasing power, 40 million enrollees, programs data, and professional experience can bring more resources to bear on these quality problems than any other purchaser.

The study we are proposing today would be the first step down this path. It would cost relatively little but yield great rewards as a guide to how to measure and pay for quality in the future. The study would develop measures to assess quality, including outcome measures. It would tell us what payment incentives have worked in the private sector. And it would identify approaches to use incentives to improve quality that can be implemented across all of Medicare.

So I am pleased that we are making this effort today, and hope that it is just the first step of many more that we will take down the path of improving Medicare for patients and consumers.

By Ms. MURKOWSKI:

S. 1330. A bill to establish the Kenai Mountains-Turnagain Arm National Heritage Area in the State of Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, the Kenai Mountains-Turnagain Arm National Heritage Area is one of the best examples for preserving the heritage of one of this Nation's first pioneer areas. This legislation will create a national heritage corridor that covers an area from Seward to Anchorage.

This national heritage corridor will protect the natural and cultural resources of a well established region. The Kenai Mountains-Turnagain Arm National Heritage Area will follow along a corridor that was established by pioneering Alaskans. This route will partially follow two nationally recognized treasures—the Iditarod Trail and the Seward Highway National Scenic Byway. It will honor Native traders, gold rush stampeders and the route of the Alaska Railroad. One of the biggest gold discoveries along this route was the Bear Creek gold find near Hope in 1895. The route of the Alaska Railroad was finished in 1923.

Unlike many others, this national heritage corridor will not be managed by the Federal Government, but instead, by a group of local community leaders. The preservation of historic areas depends largely upon the community and its support, and clearly, no one entity can provide the adequate management, protection and preservation for these extensive resources. In fact, over the past five years, a group of local community leaders has been working hard for this national heritage designation. They have been successful in garnering support from communities throughout this entire route. These local folks have extensive knowledge of the resources; they are personally acquainted with the area; they understand the ruggedness and the beauty of the land, and certainly appreciate the potential economic value this designation would bring to the area.

The preservation of history and heritage depends upon the mutual support and assistance from public and private groups. This national heritage designation has been a vision of many people from Seward to Anchorage, and comprises lands in the Kenai Mountains and the upper Turnagain Arm region. An 11-member board will be established and charged with seeing the vision become a reality. This non-profit board

will be tasked with coordinating and supporting the protection of trail resources; interpreting the trail, and identifying the cultural landscapes of the Kenai Mountains-Turnagain Arm historic transportation corridor. A plan will also be developed for the management of the heritage corridor, and will complement existing Federal, State, borough and local plans. To ensure even greater support of this designation, there will be opportunities provided to the public for their full participation as the plan is being developed.

The purposes of designating this national treasure are to: Enable all people to envision and experience the heritage and impacts of transportation routes used first by indigenous people, followed by pioneers to the Nation's first frontier;

Encourage economic viability in the affected communities.

This national heritage corridor is significant for a whole host of reasons: Allow citizens to help preserve the heritage of the pioneers; protect and honor the history of Native traders, gold seekers and pioneers; decisions and management will be made by local citizens; support of several historical associations, the cities of Seward, Girdwood, Hope and Anchorage; an 11-member non-profit local board will plan and operate the heritage corridor; increase public awareness and appreciation for the natural, historical and cultural resources, and modern resource development of the heritage corridor; restore historic buildings and structures that are located within the boundaries of the heritage corridor; and, no additional lands will be acquired by the Federal Government or by the local management group.

Rarely ever do we have such an opportunity when whole communities, Federal, State and local governments agree on and support such a national designation. Through adequate funding from the Department of the Interior, interpretation signs and technical assistance to conduct local planning will help to preserve and protect natural, historical, landscape and cultural resource values for current and future generations of the Kenai Mountains-Turnagain Arm National Heritage Area.

And, finally, with the passage of this bill, visitors to the area can enjoy the shore lines of Turnagain Arm and watch the world's second largest tidal range move 30 foot tides in and out. A traveler through the mountain passes of the heritage area can view evidence of retreating glaciers and avalanches. Visitors will be amazed at the abundant wildlife that make their home in the area. The history of early settlers will be preserved for current and future generations.

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. 1330

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 ''Kenai Mountains-Turnagain Arm National Heritage Area Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) The Kenai Mountains-Turnagain Arm transportation corridor is a major gateway to Alaska and includes a range of transportation routes used first by indigenous people who were followed by pioneers who settled the Nation's last frontier;

(2) the natural history and scenic splendor of the region are equally outstanding; vistas of nature's power include evidence of earthquake subsidence, recent avalanches, retreating glaciers and tidal action along Turnagain Arm, which has the world's second greatest tidal range;

(3) the cultural landscape formed by indigenous people and then by settlement, transportation and modern resource development in this rugged and often treacherous natural setting stands as powerful testimony to the human fortitude, perseverance, and resourcefulness that is America's proudest heritage from the people who settled the frontier;

(4) there is a national interest in recognizing, preserving, promoting, and interpreting these resources;

(5) the Kenai Mountains-Turnagain Arm region is geographically and culturally cohesive because it is defined by a corridor of historic routes—trail, water, railroad, and roadways through a distinct landscape of mountains, lakes, and fjords;

(6) national significance of separate elements of the region include, but are not limited to, the Iditarod National Historic Trail, the Seward Highway National Scenic Byway, and the Alaska Railroad National Scenic Railroad;

(7) national heritage area designation provides for the interpretation of these routes, as well as the national historic districts and numerous historic routes in the region as part of the whole picture of human history in the wider transportation corridor including early Native trade routes, connections by waterway, mining trail, and other routes;

(8) national heritage area designation also provides communities within the region with the motivation and means for ''grass roots'' regional coordination and partnerships with each other and with borough, State, and Federal agencies; and

(9) national heritage area designation is supported by the Kenai Peninsula Historical Association, the Seward Historical Commission, the Seward City Council, the Hope and Sunrise Historical Society, the Hope Chamber of Commerce, the Alaska Association for Historic Preservation, the Cooper Landing Community Club, the Alaska Wilderness Recreation and Tourism Association, Anchorage Historic Properties, the Anchorage Convention and Visitors Bureau, the Cook Inlet Historical Society, the Moose Pass Sportsman's Club, the Alaska Historical Commission, the Girdwood Board of Supervisors, the Kenai River Special Management Area Advisory Board, the Bird/Indian Community Council, the Kenai Peninsula Borough Trails Commission, the Alaska Division of Parks and Recreation, the Kenai Peninsula Borough, the Kenai Peninsula Tourism Marketing Council, and the Anchorage Municipal Assembly.

(b) PURPOSES.—The purposes of this Act are—

(1) to recognize, preserve, and interpret the historic and modern resource development and cultural landscapes of the Kenai Mountains-Turnagain Arm historic transportation corridor, and to promote and facilitate the public enjoyment of these resources; and

(2) to foster, through financial and technical assistance, the development of cooperative planning and partnership among the communities and borough, State, and Federal Government entities.

SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Kenai Mountains-Turnagain Arm National Heritage Area established by section 4(a) of this Act.

(2) MANAGEMENT ENTITY.—The term ''management entity'' means the 11 member Board of Directors of the Kenai Mountains-Turnagain Arm National Heritage Corridor Communities Association.

(3) MANAGEMENT PLAN.—The term ''management plan'' means the management plan for the Heritage Area.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. KENAI MOUNTAINS-TURNAGAIN ARM NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Kenai Mountains-Turnagain Arm National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall comprise the lands in the Kenai Mountains and upper Turnagain Arm region generally depicted on the map entitled ''Kenai Peninsula/Turnagain Arm National Heritage Corridor'', numbered ''Map #KMTA–1, and dated ''August 1999''. The map shall be on file and available for public inspection in the offices of the Alaska Regional Office of the National Park Service and in the offices of the Alaska State Heritage Preservation Officer.

SEC. 5. MANAGEMENT ENTITY.

(a) The Secretary shall enter into a cooperative agreement with the management entity, to carry out the purposes of this Act. The cooperative agreement shall include information relating to the objectives and management of the Heritage Area, including the following:

(1) A discussion of the goals and objectives of the Heritage Area;

(2) An explanation of the proposed approach to conservation and interpretation of the Heritage Area;

(3) A general outline of the protection measures, to which the management entity commits.

(b) Nothing in this Act authorizes the management entity to assume any management authorities or responsibilities on Federal lands.

(c) Representatives of other organizations shall be invited and encouraged to participate with the management entity and in the development and implementation of the management plan, including but not limited to: The State Division of Parks and Outdoor Recreation; the State Division of Mining, Land and Water; the Forest Service; the State Historic Preservation Office; the Kenai Peninsula Borough; the Municipality of Anchorage; the Alaska Railroad; the Alaska Department of Transportation; and the National Park Service.

(d) Representation of ex-officio members in the non-profit corporation shall be established under the bylaws of the management entity.

SEC. 6. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the Secretary enters into a cooperative agreement with the management entity, the management entity shall develop a management plan for the Heritage Area, taking into consideration existing Federal, State, borough, and local plans.

(2) CONTENTS.—The management plan shall include, but not be limited to—

(A) comprehensive recommendations for conservation, funding, management, and development of the Heritage Area;

(B) a description of agreements on actions to be carried out by Government and private organizations to protect the resources of the Heritage Area;

(C) a list of specific and potential sources of funding to protect, manage, and develop the Heritage Area;

(D) an inventory of the resources contained in the Heritage Area; and

(E) a description of the role and participation of other Federal, State, and local agencies that have jurisdiction on lands within the Heritage Area.

(b) PRIORITIES.—The management entity shall give priority to the implementation of actions, goals, and policies set forth in the cooperative agreement with the Secretary and the heritage plan, including assisting communities within the region in—

(1) carrying out programs which recognize important resource values in the Heritage Area;

(2) encouraging economic viability in the affected communities;

(3) establishing and maintaining interpretive exhibits in the Heritage Area;

(4) improving and interpreting heritage trails;

(5) increasing public awareness and appreciation for the natural, historical, and cultural resources and modern resource development of the Heritage Area;

(6) restoring historic buildings and structures that are located within the boundaries of the Heritage Area; and

(7) ensuring that clear, consistent, and appropriate signs identifying public access points and sites of interest are placed throughout the Heritage Area.

(c) PUBLIC MEETINGS.—The management entity shall conduct 2 or more public meetings each year regarding the initiation and implementation of the management plan for the Heritage Area. The management entity shall place a notice of each such meeting in a newspaper of general circulation in the Heritage Area and shall make the minutes of the meeting available to the public.

SEC. 7. DUTIES OF THE SECRETARY.

(a) The Secretary, in consultation with the Governor of Alaska, or his designee, is authorized to enter into a cooperative agreement with the management entity. The cooperative agreement shall be prepared with public participation.

(b) In accordance with the terms and conditions of the cooperative agreement and upon the request of the management entity, and subject to the availability of funds, the Secretary may provide administrative, technical, financial, design, development, and operations assistance to carry out the purposes of this Act.

SEC. 8. SAVINGS PROVISIONS.

(a) REGULATORY AUTHORITY.—Nothing in this Act shall be construed to grant powers of zoning or management of land use to the management entity of the Heritage Area.

(b) EFFECT ON AUTHORITY OF GOVERNMENTS.—Nothing in this Act shall be construed to modify, enlarge, or diminish any authority of the Federal, State, or local governments to manage or regulate any use of land as provided for by law or regulation.

(c) EFFECT ON BUSINESS.—Nothing in this Act shall be construed to obstruct or limit business activity on private development or resource development activities.

SEC. 9. PROHIBITION ON THE ACQUISITION OR REAL PROPERTY.

The management entity may not use funds appropriated to carry out the purposes of this Act to acquire real property or interest in real property.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) FIRST YEAR.—For the first year $350,000 is authorized to be appropriated to carry out the purposes of this Act, and is made available upon the Secretary and the management entity completing a cooperative agreement.

(b) IN GENERAL.—There is authorized to be appropriated not more than $1,000,000 to carry out the purposes of this Act for any fiscal year after the first year. Not more than $10,000,000, in the aggregate, may be appropriated for the Heritage Area.

(c) MATCHING FUNDS.—Federal funding provided under this Act shall be matched at least 25 percent by other funds or in-kind services.

(d) SUNSET PROVISION.—The Secretary may not make any grant or provide any assistance under this Act beyond 15 years from the date that the Secretary and management entity complete a cooperative agreement.

By Mr. SANTORUM (for himself, Mr. CONRAD, and Mr. BREAUX):

S. 1331. A bill to clarify the treatment of tax attributes under section 108 of the Internal Revenue Code of 1986 for taxpayers which file consolidated returns; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today I am introducing a bill along with Senator CONRAD that would close a gaping loophole in the Internal Revenue Code. This loophole involves the treatment of companies whose debt is cancelled in a bankruptcy proceeding. Under existing law, these companies are not required to immediately pay tax on their income from debt cancellation. The are, however, required to reduce their net operating losses, NOLs, and other tax attributes. These attribute reductions have the effect of allowing bankrupt companies to defer, but not permanently avoid, paying tax on income from debt cancellation.

It has come to my attention that MCI/WorldCom and certain other bankrupt companies are attempting to circumvent these rules. In plain English, MCI/WorldCom—the group of corporations that has perpetrated the greatest business fraud—is trying to relieve itself of $35 billion of debt and yet emerge from bankruptcy with an NOL that is estimated to range from $10 to $15 billion. Such an NOL will, post-bankruptcy, eliminate federal income tax of $3.5 billion to $5.25 billion on MCI/WorldCom's first $10 to $15 billion of income.

Plainly, if this tax loophole is not eliminated, MCI/WorldCom will not pay taxes for the foreseeable future. By attempting to utilize this loophole, MCI/WorldCom is demonstrating that it is not, in fact, a new company—instead, it is the same reckless company that we have come to know. The legislation I am introducing today will assure that MCI/WorldCom doesn't get away with this outrageous behavior. It will also prevent other companies from imitating this approach.

Such results would be bad tax policy for two reasons. First, they would clearly be contrary to the policy objectives that Congress intended to achieve when it enacted the current tax attribute reduction rules. Second, equivalent taxpayers would be treated differently under Section 108 based on their corporate structure and borrowing practices—factors that, form a tax policy standpoint, do not justify any difference in treatment.

Based on rulings and court cases, I believe this bill reflects the current tax position of the Treasury Department with respect to NOLs. Although it is also clear that aggressive taxpayers and their lawyers have utilized this tax loophole. The approach to this provision is contrary to United Dominion Industries, Inc. v. United States, 532 U.S. 822 (2001). Although not dealing directly with Section 108, the case is clear that the only NOL of a consolidated group is the group's entire NOL. I am introducing this bill with an effective date of today to provide notice to MCI/WorldCom, and all similarly situated taxpayers, that this Congress will not stand for this.

I encourage my colleagues to support closing this loophole to avoid such abuse in the future. I ask unanimous consent to have the Business Week story from May 12, 2003, ''Why This Tax Loophole For Losers Should End,'' and the text of the bill be printed in the RECORD.

S. 1331

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

SECTION 1. CLARIFICATION OF THE TREATMENT OF TAX ATTRIBUTES.

(a) IN GENERAL.—Section 108(b) of the Internal Revenue Code of 1986 (relating to reduction of tax attributes) is amended by adding at the end the following new paragraph:

''(6) AFFILIATED GROUPS.—If the taxpayer is a member of an affiliated group of corporations which files a consolidated return under section 1501, the tax attributes described in paragraph (1) shall be the aggregate tax attributes of such group. The Secretary shall prescribe such regulations as may be necessary under section 1502 to carry out the purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to discharges of indebtedness occurring after June 25, 2003, except that discharges of indebtedness under any plan of reorganization in a case under title 11, United States Code, shall be deemed to occur on the date such plan is confirmed.

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

[From Business Week, May 12, 2003]

(By David Henry)

WHY THIS TAX LOOPHOLE FOR LOSERS SHOULD END

Is there no end to the ugly superlatives that fallen telecom giant WorldCom Inc. is amassing? First, its top execs reigned over the greatest alleged accounting fraud in history. Then, the company filed the largest corporate bankruptcy. Now, it is lining up to collect what could be one of the biggest single corporate tax breaks of all time.

To the fury of its competitors, WorldCom is angling to snare a $2.5 billion benefit from Uncle Sam. How? By exploiting a provision in the Internal Revenue Service code so it

can hanging onto previous losses of at least $6.6 billion and enjoy years of tax-free earnings. What's more, the ploy would protect new management against any takeover for at least two years. And, WorldCom could use the losses to offset even income it picks up by taking over other companies. ''WorldCom is in an enviable position,'' says Robert Willens, tax accounting analyst at Lehman Brothers Inc. ''It will have a copious tax losses and can be a powerful acquirer.''

WorldCom's new owners—the holders of its $41 billion of dad debt—are driving a truck through a loophole that needs to be closed pronto. It was left open by Congress when the lawmakers overhauled IRS rules to stamp out a notorious trade in corporate tax losses. At one time, owners of loss-making businesses could sell their companies along with their accumulated tax loss—often their only asssit—to profitable companies. Now, tax losses are snuffed out when company ownership changes hands.

So, WorldCom is going through hoops to avoid that fate. Pending a final vote by creditors later this year, the company is changing its bylaws to prohibit anyone from building anyone from building a stake of more than 4.75 percent in the company. They have to keep bidders at bay for at least two years, otherwise the IRS would argue that control of WorldCom has changed hands and that the tax losses—which, assuming a 38 percent tax rate, could give a $2.5 billion boost to earnings—should be wiped out. ''It is the perfect poison pill,'' says Carl M. Jenks, tax expert at law firm Jones Day.

The perverse tactic is increasingly popular. The former Williams Communication Group put a similar 5 percent ownership limit in place last fall when it became WilTil Communications Group Inc. after a bankruptcy reorganization. The bankruptcy judge overseeing UAL Corp. agreed on Feb. 24 to a similar restriction on UAL securities in order to preserve its $4 billion of tax losses. ''We will generally recommend that any company with net operating losses worth anything adopt these restrictions,'' says Douglas W. Killip, a tax lawyer at Akin Gump Strauss Hauer & Field.

For WorldCom's rivals, the tax break is salt on a wound. William P. Barr, a former U.S. attorney general and now general counsel of Verizon Communications, fumes that WorldCom is trying to ''compound its fraud by escaping the payment of taxes.'' WorldCom's bankruptcy reorganization will eliminate the cost of servicing some $30 billion of debt. That, the company projects, will help it to make $2 billion before taxes next year. By using the tax losses, it will be able to keep about $780 million in cash it would otherwise owe the government. In fact, it won't be liable for any tax at least until the accumulated losses are worked through. And, because it racked up the $6.6 billion in losses just through 2001, WorldCom could have billions more to play with once the numbers for 2002 are finally worked out.

What's more, the poison pill is likely to deter any company from buying WorldCom and dumping some of the obsolete assets still clogging and telecom industry. That will slow and recovery in capital spending and hurt WorldCom's competitors. ''It is bad when business decisions are motivated by tax reasons and not based on sound economics,'' says Anthony Sabino, bankruptcy law professor at St. John's University.

Rivals are likely to push the IRS to find a way to stop WorldCom from utilizing the losses, observers say. But their chances of success are slim because the IRS never issued regulations that could have nullified the ploy. And the courts generally rule against the agency when it attempts to write rules retroactively, Willens says.

Still, it's time to close the stable door before any more horses bolt. Besides, Uncle Sam could use the money right now.

By Mr. HATCH:

S. 1332. A bill to amend title XVIII of the Social Security Act to provide regulatory relief, appeals process reforms, contracting flexibility, and education improvements under the Medicare program, and for other purposes; to the Committee on Finance.

Mr. HATCH. Mr. President, there is no question that our need to improve the Medicare program by adding prescription drug coverage for beneficiaries is extremely important, as this debate indicates.

But, our discussions would not be complete if we neglected another major Medicare improvement which is also long overdue, and that is the need to improve the climate in which providers strive to provide high quality services to patients.

Medicare's anticipated regulations—three times longer than the U.S. tax code—prevent providers from delivering health care efficiently and beneficiaries from receiving the care they need.

Complex Federal regulations and reams of paperwork require physicians to spend hours each day filling out government forms rather than caring for their patients. The array of Federal Medicare rules with which physicians must comply is overwhelming. Doctors are required to complete claims forms, advance beneficiary notices, certify medical necessity, file enrollment forms, and comply with code documentation guidelines. Indeed, these rules and mandates are not only extensive, they are constantly changing and they may be interpreted differently in different regions of the country.

The complexity of the rules and the variation in their interpretation has prompted outcries from all centers of our country. In fact, I have heard loud and clear from the physicians in my home State of Utah about the severity of the problem.

Leon Sorensen, Executive Vice President of the Utah Medical Association, recently wrote to me and said:

''The Utah Medical Association has long been concerned about the unnecessary burdens placed upon physicians by the voluminous regulations of Medicare. Not only does compliance with these regulations take physicians' time away from patients, but also the regulations contribute to the high cost of medical care while contributing little of value. They discourage physicians from participating fully in Medicare. They are often punitive in nature rather than an educational. They use tactics that would not be tolerated by businesses or government if applied to them.

An example is the practice of extrapolating a small sample of billing errors over the physician's entire practice, making the physician liable for payback of thousands of dollars of ''overpaid'' claims when demonstrated over billings may amount only to a few dollars. If this process were used by the IRS in a tax audit, the public outcry would be deafening.

Medicare also requires that alleged ''overpayments'' to physicians by repaid within 60 days, even if a physician chooses to appeal Medicare's allegations. When assessed a Medicare overpayment, the only way physicians can appeal is to subject their practices to another audit, using a ''statistically valid random sample.'' Statistical sample audits can shut down a physician's practice for days, preventing physicians from treating patients. Physicians are forced to settle with Medicare rather than be subjected to such unfair scrutiny.

Any defense against this kind of administrative abuse is extremely costly, time consuming and often ineffective.

Indeed, failure to follow Medicare's complex rules—or just the perception of such failure—can result in an audit of a physician's billing records, withholding of payments and crippling of a physician's practice.

And, physicians are not the only individuals affected by these rules. Medicare beneficiaries are affected—both directly and indirectly—by Medicare's onerous rules and burdensome paperwork. Both patients and providers are confused by obscure paperwork and apparently conflicting rules. Physicians have difficulty understanding how to bill for their services and beneficiaries find it difficult to understand the forms and billing information that they receive. Indeed, the administrative costs associated with managing this paperwork and the fear of harsh consequences in response to clerical errors has led some providers to consider whether they should continue to participate in the Medicare program.

The problem has not escaped the attention of the administration and addressing it is a priority for President Bush and it should be for Congress also. Secretary Thompson has said, ''Patients and providers alike are fed up with voluminous and complex paperwork. Rules are constantly changing. Complexity is overloading the system, criminalizing honest mistakes and driving doctors, nurses, and other health care professionals out of the program.''

Congress has considered legislation over the past few years to provide relief from this regulatory burden. Former Senator Frank Murkowski should be given great credit for drafting S. 452, the ''Medicare Education and Regulatory Fairness Act of 2001''—legislation that he introduced in the Senate on March 5, 2001 but which never came to a vote.

The legislation that I am introducing today, the ''Medicare Education Regulatory Reform and Contracting Improvement Act of 2003,'' MERCI, builds on that initiative. It will improve the Medicare program for beneficiaries and providers alike by clarifying regulations, rewarding quality and by enhancing services. I am introducing this legislation today because the need for Medicare regulatory reform remains. In fact, the need for Medicare regulatory reform has never been greater. In addition, the regulatory reform that I am proposing in MERCI fits hand in glove with the reforms that we have

proposed in S. 1, the ''Prescription Drug and Medicare Improvement Act of 2003.'' The reformed Medicare program must include reformed regulations if it is to provide efficient service to beneficiaries.

Let me take a moment to review a few of the important provisions in this bill. The educational provisions of the MERCI Act are designed to decrease Medicare billing and claims payment errors by improving education and training programs for Medicare providers. It includes also provisions that will improve communication between the Department of Health and Human Services and Medicare providers. Furthermore, the bill will improve communication with Medicare beneficiaries by providing for central toll-free telephone services to require free, appropriate referrals to individuals seeking information or assistance with Medicare.

The MERCI Act includes regulatory reform provisions that are designed to reduce waste, fraud and abuse in Medicare; provisions that are just and fair for beneficiaries, contractors, and providers. Among other things, the bill eliminates retroactive application of regulatory changes and expedites the appeals processes for beneficiaries, providers, and suppliers of Medicare services.

Finally, the MERCI Act will improve Medicare contracting; increasing competition, improving service and reducing costs by providing for a competitive bidding process for Medicare contractors that takes into account performance quality, price and other factors that are important to beneficiaries.

Medicare beneficiaries and Medicare providers have been suffering from burdensome and confusing regulations for too long. It is time that they received some mercy. The time for Medicare regulatory reform has come and the bill that I am introducing today provides that mercy. MERCI, the ''Medicare Education, Regulatory Reform and Contracting Improvement Act of 2003'' takes a common sense approach to providing relief for the Medicare beneficiaries and providers who have been suffering this burden for so long.

I believe that MERCI will improve the delivery of health care services to Medicare beneficiaries by enhancing the efficiency of the Medicare program for all concerned.

Finally, I would be remiss if I did not thank Chairman GRASSLEY and Senator BAUCUS for working with me to include the MERCI legislative language in S. 1, the ''Prescription Drug and Medicare Improvement Act of 2003.'' Senators GRASSLEY and BAUCUS have worked for many years to reform Medicare's complex regulations, as have I, and their agreement to include this language is appreciated greatly.

And so, it is with a great appreciation for my colleagues who have worked with me on this legislation and for those who have worked on similar legislation in the past, that I urge my colleagues in the Senate today to join me in addressing the needs of Medicare beneficiaries and providers by supporting this legislation.

By Mr. GRASSLEY (for himself, Mr. BINGAMAN, Mr. BUNNING, Mr. DASCHLE, Mr. ROCKEFELLER, Mr. BAUCUS, Ms. SNOWE, Mr. THOMAS, Mr. SMITH, Mr. CONRAD, Mr. GRAHAM of Florida, Mr. KERRY, Mr. BREAUX, Mrs. LINCOLN, and Mr. JEFFORDS):

S. 1333. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, the U.S. Postal Service provides a vital and important communication link for the Nation and the citizens of my home State of Iowa. Rural Letter Carriers play a special role and have a proud history as an important link in assuring the delivery of our mail. Rural letter carriers first delivered the mail with their own horses and buggies, later with their own motorcycles, and now in their own cars and trucks. They are responsible for maintenance and operation of their vehicles in all types of weather and road conditions. In the winter, snow and ice is their enemy, while in the spring, the melting snow and ice causes potholes and washboard roads. In spite of these quite adverse conditions, rural letter carriers daily drive over 3 million miles and serve 24 million American families on over 66,000 routes.

Although the mission of rural carriers has not changed since the horse and buggy days, the amount of mail they deliver has changed dramatically. As the Nation's mail volume has increased throughout the years, the Postal Service is now delivering more than 200 billion pieces of mail a year. The average carrier delivers about 2,300 pieces of mail a day to about 500 addresses.

Most recently, e-commerce has changed the type of mail rural letter carriers deliver. This fact was confirmed in a GAO study entitled ''U.S. Postal Service: Challenges to Sustaining Performance Improvements Remain Formidable on the Brink of the 21st Century,'' dated October 21, 1999. As this report explains, the Postal Service expects declines in its core business, which is essentially letter mail, in the coming years. The growth of e-mail on the Internet, electronic communications, and electronic commerce has the potential to substantially affect the Postal Service's mail volume.

First-Class mail has always been the bread and butter of the Postal Service's revenue, but the amount of revenue from First-Class letters is declining. E-commerce is providing the Postal Service with another opportunity to increase another part of its business. That is because what individuals and companies order over the Internet must be delivered, sometimes by the Postal Service and often by rural letter carriers. Currently, the Postal Service had about 33 percent of the parcel business. Rural letter carriers are now delivering larger volumes of business mail, parcels, and priority mail packages. But, more parcel business means more cargo capacity is necessary in postal delivery vehicles, especially in those owned and operated by rural letter carriers.

When delivering greeting cards or bills, or packages ordered over the Internet, rural letter carriers use vehicles they currently purchase, operate and maintain. In exchange, they receive a reimbursement from the Postal Service. This reimbursement is called an Equipment Maintenance Allowance, EMA. Congress recognizes that providing a personal vehicle to delivery the U.S. Mail is not typical vehicle use. So, when a rural letter carrier is ready to sell such a vehicle, it's going to have little trade-in value because of the typically high mileage, extraordinary wear and tear, and the fact that it is probably right-hand drive. Therefore, Congress intended to exempt the EMA allowance from taxation in 1988 through a specific provision for rural mail carriers in the Technical and Miscellaneous Revenue Act of 1988.

That provision allowed an employee of the U.S. Postal Service who was involved in the collection and delivery of mail on a rural route, to compute their business use mileage deduction as 150 percent of the standard mileage rate for all business use mileage. As an alternative, rural letter carrier taxpayers could elect to utilize the actual expense method, business portion of actual operation and maintenance of the vehicle, plus depreciation. If EMA exceeded the allowable vehicle expense deductions, the excess was subject to tax. If EMA fell short of the allowable vehicle expenses, a deduction was allowed only to the extent that the sum of the shortfall and all other miscellaneous itemized deductions exceeded two percent of the taxpayer's adjusted gross income.

The Taxpayer Relief Act of 1997 further simplified the tax returns of rural letter carriers. That Act permitted the EMA income and expenses ''to wash,'' so that neither income nor expenses would have to be reported on a rural letter carrier's return. That simplified taxes for approximately 120,000 taxpayers, but the provision eliminated the option of filing the actual expense method for employee business vehicle expenses. The lack of this option, combined with the dramatic changes the Internet is having on the mail, specifically on rural letter carriers and their vehicles, is a problem I believe Congress must address.

The mail mix is changing and already Postal Service management has, understandably, encouraged rural letter carriers to purchase larger right-hand

drive vehicles, such as Sports Utility Vehicles, SUVs, to handle the increase in parcel loads. Large SUVs are much more expensive than traditional vehicles. So without the ability to use the actual expense method and depreciation, rural letter carriers must use their salaries to cover vehicle expenses. Additionally, the Postal Service has placed 11,000 postal vehicles on rural routes, which means those carriers receive no EMA.

These developments have created a situation that is contrary to the historical Congressional intent of using reimbursement to fund the government service of delivering mail, and also has created an inequitable tax situation for rural letter carriers. If actual business expenses exceed the EMA, a deduction for those expenses should be allowed. To correct this inequity, I am introducing a bill today that reinstates the ability of a rural letter carrier to choose between using the actual expense method for computing the deduction allowable for business use of a vehicle, or using the current practice of deducting the reimbursed EMA expenses.

Rural letter carriers perform a necessary and valuable service and face may changes and challenges in this new Internet era. We must make sure that these public servants receive fair and equitable tax treatment as they perform their essential role in fulfilling the Postal Service's mandate of binding the Nation together.

I urge my colleagues to join Senators BINGAMAN, DASCHLE, BUNNING, ROCKEFELLER, SNOWE, THOMAS, SMITH of Oregon, CONRAD, GRAHAM of Florida, KERRY, BREAUX, LINCOLN and myself in sponsoring this legislation.

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

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

S. 1333

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

SECTION 1. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) IN GENERAL.—Section 162(o) of the Internal Revenue Code of 1986 (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

''(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.''.

(b) CONFORMING AMENDMENT.—The heading for section 162(o) of the Internal Revenue Code of 1986 is amended by striking ''REIMBURSED''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

Mr. BINGAMAN. Mr. President, I join Senator GRASSLEY, the chairman of the Finance Committee, and several of our colleagues in introducing legislation that will allow rural letter carriers to deduct their actual expenses when they use their own vehicle to deliver the mail. This Tax Code correction will reduce the out-of-pocket costs currently incurred by our Nation's rural letter carriers, giving them comparable tax treatment enjoyed by others using their vehicles in their line of business.

For many years, rural letter carriers were allowed to calculate their deductible expenses by using either a special formula or keeping track of their costs. In 1997, Congress simplified the tax treatment for letter carriers, but disallowed them the ability to use the actual expense method—business portion of actual operation and maintenance of the vehicle, plus depreciation—for calculating their costs. Unfortunately, this has resulted in many letter carriers being unable to account for their real expenses when using their own vehicle to deliver the mail. This problem is worse in more rugged parts of our country where road conditions and severe weather can require letter carriers to use an SUV or four-wheel-drive vehicle that are more expensive to maintain. This legislation will ensure that these mail carriers are fully reimbursed for the costs associated with the operation of their vehicles.

Although the Internet has made the world seem smaller, purchased goods must still be delivered. The benefits of Internet purchases in remote locations is limited if the purchased item cannot be delivered. For this reason, in rural States, such as New Mexico, these letter carriers play an important role in delivering the majority of the State's mail and parcels. On a daily basis across the Nation, rural letter carriers drive over 3 million miles delivering mail and parcels to over 30 million families. We need to be sure that we have not created a tax impediment for these dedicated individuals. I look forward to working with the chairman and my colleagues to get this legislation passed this year.

I ask unanimous consent that the text of the bill be printed in the RECORD immediately following the statement of Senator GRASSLEY on the introduction of this legislation.

By Mr. GRASSLEY (for himself, Mr. GRAHAM of Florida, Ms. MIKULSKI, and Mr. BREAUX):

S. 1335. A bill to amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce the Long-Term Care and Retirement Security Act. This legislation, which I sponsored in the 106th and 107th Congress with my distinguished colleague from Florida, Senator BOB GRAHAM, would ease the tremendous cost of long-term care.

The bill that Senator GRAHAM and I are re-introducing today would allow individuals a tax deduction for the cost of long-term care insurance premiums. Increasingly, Americans are interested in private long-term care insurance to pay for nursing home stays, assisted living, home health aides, and other services. However, most people find the policies unaffordable. The younger the person, the lower the insurance premium, yet most people aren't ready to buy a policy until retirement. A deduction would encourage more people to buy long-term insurance.

Our proposal would also give individuals or their care givers a $3,000 tax credit to help cover their long-term care expenses. This would apply to those who have been certified by a doctor as needing help with at least three activities of daily living, such as eating, bathing, or dressing. This credit would help care givers pay for medical supplies, nursing care and any other expenses incurred while caring for family members with disabilities.

One family that would benefit from this legislation is the Gardner family of Waterloo, IA. Ruth Gardner is a 70-year-old mother of nine who suffers from a degenerative tissue disorder, Scleroderma, atrial fibrillation, congestive heart failure and is a breast cancer survivor. For the last 3 years her nine children, their spouses and numerous grandchildren have worked tirelessly to fulfill Ms. Gardner's wish of spending her last months with dignity and respect at home.

While Ms. Gardner's wish may seem small, the task of managing her care is not. Each week family members meet to organize their schedules in an effort to provide over 20 hours of daily care for Ms. Gardner. Working relentlessly, and at a considerable cost, the Gardner family manages to provide around-the-clock care while balancing both work and their family lives. All this effort comes at a great cost, both emotionally and financially. The Gardners have been able to locate some funding to help support the care for Ms. Gardner; however, the family continues to bear considerable costs. These costs include weekly nursing visits that cost $102 per visit, emergency response service at $30 a month, daily hospice service at $32 an hour and not to mention the hours and hours of personal time donated by the family.

The Long-Term Care and Retirement Security Act would help the 22 million family caregivers like the Gardners. A $3,000 tax credit would help to pay for Ms. Gardner's monthly hospice care, weekly nurse visits or help to hire a nurse to cover some of the time that the family currently donates. This legislation would also help the increasing number of families placed in the difficult situation by allowing them to purchase long-term care insurance. Had this legislation been enacted earlier, long-term care insurance would

have been an affordable option for Ms. Gardner, alleviating the difficult situation that her family currently faces.

As it has in the past, the bill that Senator GRAHAM and I are introducing today has been endorsed by both the AARP and the Health Insurance Association of America. A companion bill sponsored by Representatives NANCY JOHNSON, Karen Thurman and EARL POMEROY is pending in the House of Representatives.

An aging nation has no time to waste in preparing for long-term care, and the need to help people afford long-term care is more pressing than ever. I look forward to working with Senator GRAHAM and our colleagues in the Senate to get our bill passed into law as soon as possible.

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. 1335

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 ''Long-Term Care and Retirement Security Act of 2003''.

SEC. 2. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

''SEC. 223. PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the amount of eligible long-term care premiums (as defined in section 213(d)(10)) paid during the taxable year for coverage for the taxpayer and the taxpayer's spouse and dependents under a qualified long-term care insurance contract (as defined in section 7702B(b)).

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a)—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the applicable percentage shall be determined in accordance with the following table based on the number of years of continuous coverage (as of the close of the taxable year) of the individual under any qualified long-term care insurance contracts (as defined in section 7702B(b)):

''If the number of years of continuous coverage is—	The applicable percentage is—
Less than 1	60
At least 1 but less than 2	70
At least 2 but less than 3	80
At least 3 but less than 4	90
At least 4	100.

''(2) SPECIAL RULES FOR INDIVIDUALS WHO HAVE ATTAINED AGE 55.—In the case of an individual who has attained age 55 as of the close of the taxable year, the following table shall be substituted for the table in paragraph (1):

''If the number of years of continuous coverage is—	The applicable percentage is—
Less than 1	70
At least 1 but less than 2	85
At least 2	100.

''(3) ONLY COVERAGE AFTER 2003 TAKEN INTO ACCOUNT.—Only coverage for periods after December 31, 2003, shall be taken into account under this subsection.

''(4) CONTINUOUS COVERAGE.—An individual shall not fail to be treated as having continuous coverage if the aggregate breaks in coverage during any 1-year period are less than 60 days.

''(c) COORDINATION WITH OTHER DEDUCTIONS.—Any amount paid by a taxpayer for any qualified long-term care insurance contract to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a).''.

(b) LONG-TERM CARE INSURANCE PERMITTED TO BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—Section 125(f) of the Internal Revenue Code of 1986 (defining qualified benefits) is amended by inserting before the period at the end '', except that such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount of such payment does not exceed the eligible long-term care premiums (as defined in section 213(d)(10)) for such contract''.

(2) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106 of such Code (relating to contributions by an employer to accident and health plans) is amended by striking subsection (c).

(c) CONFORMING AMENDMENTS.—

(1) Section 62(a) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (18) the following new paragraph:

''(19) PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—The deduction allowed by section 223.''.

(2) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

''Sec. 223. Premiums on qualified long-term care insurance contracts.

''Sec. 224. Cross reference.''.

(d) 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, 2003.

(2) CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2004.

SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable credit amount multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

''(2) APPLICABLE CREDIT AMOUNT.—For purposes of paragraph (1), the applicable credit amount shall be determined in accordance with the following table:

''For taxable years beginning in calendar year—	The applicable credit amount is—
2004	$1,000
2005	1,500
2006	2,000
2007	2,500
2008 or thereafter	3,000.

''(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $100 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(2) THRESHOLD AMOUNT.—For purposes of paragraph (1), the term 'threshold amount' means—

''(A) $150,000 in the case of a joint return, and

''(B) $75,000 in any other case.

''(3) INDEXING.—In the case of any taxable year beginning in a calendar year after 2004, each dollar amount contained in paragraph (2) shall be increased by an amount equal to the product of—

''(A) such dollar amount, and

''(B) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting '2003' for '1996' in subclause (II) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

''(c) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE INDIVIDUAL.—

''(A) IN GENERAL.—The term 'applicable individual' means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

''(i) which is at least 180 consecutive days, and

''(ii) a portion of which occurs within the taxable year.

Notwithstanding the preceding sentence, a certification shall not be treated as valid unless it is made within the 39½ month period ending on such due date (or such other period as the Secretary prescribes).

''(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this subparagraph if the individual meets any of the following requirements:

''(i) The individual is at least 6 years of age and—

''(I) is unable to perform (without substantial assistance from another individual) at least 3 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

''(II) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to perform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined), or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

''(ii) The individual is at least 2 but not 6 years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least 2 of the following activities: eating, transferring, or mobility.

''(iii) The individual is under 2 years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

''(2) ELIGIBLE CAREGIVER.—

''(A) IN GENERAL.—A taxpayer shall be treated as an eligible caregiver for any taxable year with respect to the following individuals:

''(i) The taxpayer.

''(ii) The taxpayer's spouse.

''(iii) An individual with respect to whom the taxpayer is allowed a deduction under section 151(c) for the taxable year.

''(iv) An individual who would be described in clause (iii) for the taxable year if section 151(c)(1)(A) were applied by substituting for the exemption amount an amount equal to the sum of the exemption amount, the standard deduction under section 63(c)(2)(C), and any additional standard deduction under section 63(c)(3) which would be applicable to the individual if clause (iii) applied.

''(v) An individual who would be described in clause (iii) for the taxable year if—

''(I) the requirements of clause (iv) are met with respect to the individual, and

''(II) the requirements of subparagraph (B) are met with respect to the individual in lieu of the support test of section 152(a).

''(B) RESIDENCY TEST.—The requirements of this subparagraph are met if an individual has as his principal place of abode the home of the taxpayer and—

''(i) in the case of an individual who is an ancestor or descendant of the taxpayer or the taxpayer's spouse, is a member of the taxpayer's household for over half the taxable year, or

''(ii) in the case of any other individual, is a member of the taxpayer's household for the entire taxable year.

''(C) SPECIAL RULES WHERE MORE THAN 1 ELIGIBLE CAREGIVER.—

''(i) IN GENERAL.—If more than 1 individual is an eligible caregiver with respect to the same applicable individual for taxable years ending with or within the same calendar year, a taxpayer shall be treated as the eligible caregiver if each such individual (other than the taxpayer) files a written declaration (in such form and manner as the Secretary may prescribe) that such individual will not claim such applicable individual for the credit under this section.

''(ii) NO AGREEMENT.—If each individual required under clause (i) to file a written declaration under clause (i) does not do so, the individual with the highest modified adjusted gross income (as defined in section 32(c)(5)) shall be treated as the eligible caregiver.

''(iii) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of married individuals filing separately, the determination under this subparagraph as to whether the husband or wife is the eligible caregiver shall be made under the rules of clause (ii) (whether or not one of them has filed a written declaration under clause (i)).

''(d) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under this section to a taxpayer with respect to any applicable individual unless the taxpayer includes the name and taxpayer identification number of such individual, and the identification number of the physician certifying such individual, on the return of tax for the taxable year.

''(e) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of subparagraph (L), by striking the period at the end of subparagraph (M) and inserting '', and'', and by inserting after subparagraph (M) the following new subparagraph:

''(N) an omission of a correct TIN or physician identification required under section 25C(d) (relating to credit for taxpayers with long-term care needs) to be included on a return.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Credit for taxpayers with long-term care needs.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 4. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-TERM CARE INSURANCE.

(a) ADDITIONAL PROTECTIONS APPLICABLE TO LONG-TERM CARE INSURANCE.—Subparagraphs (A) and (B) of section 7702B(g)(2) of the Internal Revenue Code of 1986 (relating to requirements of model regulation and Act) are amended to read as follows:

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to any contract if such contract meets—

''(i) MODEL REGULATION.—The following requirements of the model regulation:

''(I) Section 6A (relating to guaranteed renewal or noncancellability), and the requirements of section 6B of the model Act relating to such section 6A.

''(II) Section 6B (relating to prohibitions on limitations and exclusions).

''(III) Section 6C (relating to extension of benefits).

''(IV) Section 6D (relating to continuation or conversion of coverage).

''(V) Section 6E (relating to discontinuance and replacement of policies).

''(VI) Section 7 (relating to unintentional lapse).

''(VII) Section 8 (relating to disclosure), other than section 8F thereof.

''(VIII) Section 11 (relating to prohibitions against post-claims underwriting).

''(IX) Section 12 (relating to minimum standards).

''(X) Section 13 (relating to requirement to offer inflation protection), except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

''(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

''(XII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

''(ii) MODEL ACT.—The following requirements of the model Act:

''(I) Section 6C (relating to preexisting conditions).

''(II) Section 6D (relating to prior hospitalization).

''(III) The provisions of section 8 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) MODEL PROVISIONS.—The terms 'model regulation' and 'model Act' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of September 2000).

''(ii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

''(iii) DETERMINATION.—For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary.''.

(b) EXCISE TAX.—Paragraph (1) of section 4980C(c) of the Internal Revenue Code of 1986 (relating to requirements of model provisions) is amended to read as follows:

''(1) REQUIREMENTS OF MODEL PROVISIONS.—

''(A) MODEL REGULATION.—The following requirements of the model regulation must be met:

''(i) Section 9 (relating to required disclosure of rating practices to consumer).

''(ii) Section 14 (relating to application forms and replacement coverage).

''(iii) Section 15 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

''(iv) Section 22 (relating to filing requirements for marketing).

''(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C, except that—

''(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

''(II) no such requirements shall include a requirement to inquire or identify whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

''(vi) Section 24 (relating to suitability).

''(vii) Section 29 (relating to standard format outline of coverage).

''(viii) Section 30 (relating to requirement to deliver shopper's guide).

The requirements referred to in clause (vi) shall not include those portions of the personal worksheet described in Appendix B relating to consumer protection requirements not imposed by section 4980C or 7702B.

''(B) MODEL ACT.—The following requirements of the model Act must be met:

''(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

''(ii) Section 6G (relating to outline of coverage).

''(iii) Section 6H (relating to requirements for certificates under group plans).

''(iv) Section 6I (relating to policy summary).

''(v) Section 6J (relating to monthly reports on accelerated death benefits).

''(vi) Section 7 (relating to incontestability period).

''(C) DEFINITIONS.—For purposes of this paragraph, the terms 'model regulation' and 'model Act' have the meanings given such terms by section 7702B(g)(2)(B).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued more than 1 year after the date of the enactment of this Act.

Mr. GRAHAM of Florida. Mr. President, there has been a renewed interest in health issues, particularly the plight

of the uninsured. That issue presents lawmakers with significant challenges, particularly finding the right mixes of programs to provide health care coverage to the vastly different populations that make up this group.

There is an equally daunting health care issue facing our country, but it is one that has received far less attention. That issue is the increasing need for long-term care. Over 13 million people in the United States need help with basic activities of daily living such as eating, getting in and out of bed, getting around inside, dressing, bathing and using the toilet. While many Americans believe that long-term care is an issue primarily affecting seniors, the reality is that 5.2 million adults between the ages of 18 to 64 and over 450,000 children need long-term care services. These numbers are expected to double as the baby boom generation begins to retire.

Most long-term is provided at home or in the community by informal caregivers. However, in situations where individuals must enter nursing homes or other institutional facilities, costs are paid largely out-of-pocket. Such a financing structure jeopardizes the retirement security of many Americans who have worked hard their entire lives.

In order to help families address their long-term care needs, Senator GRASSLEY and I are re-introducing the ''Long-Term Care and Retirement Security Act.'' This legislation provides two important tools to help Americans and their families meet their immediate and future long-term care needs—an above-the-line income tax deduction for the purchase of long-term care insurance and a caregiver tax credit.

First, the bill provides an above-the-line deduction for long-term care premiums to make long-term care insurance more affordable for a greater number of Americans. Today, such premiums are deductible, but the availability of the deduction is severely limited. First, the current deduction is available only for the thirty percent of taxpayers who itemize their deductions. That leaves the remaining seventy percent of taxpayers with absolutely no benefit. Second, the deduction is limited to an amount, which in addition to other medical expenses exceeds 7.5 percent of the taxpayers adjusted gross income. This AGI limit further decreases the utilization of the current deduction.

The Graham-Grassley legislation removes these restrictions and makes the deduction for long-term care premiums available to all taxpayers.

In order to provide sufficient incentives for families to maintain long-term care coverage, the deduction allowed under this bill increases the longer the policy is maintained. The deduction starts at 60 percent for premiums paid during the first year of coverage and gradually increases each year thereafter until the deduction reaches 100 percent after at least 4 years of continuous coverage. This schedule is accelerated for those age 55 or older. For them, the deduction starts at 70 percent for the first year and increases to 100 percent with at least two years of continuous coverage.

Second, the bill provides an income tax credit for taxpayers with long-term care needs. The credit is phased in over 4 years, starting at $1,000 for 2003 and eventually reaching $3,000. To target assistance to those most in need, the credit phases out for married couples with income above $150,000, $75,000 for single taxpayers.

In addition to the deduction and tax credit, our bill allows employers to offer long-term care insurance under cafeteria plans and include long-term care services as reimbursable costs under flexible spending arrangements. The bill also updates the requirements that long-term care policies must meet in order to qualify for the income tax deduction. These updated requirements reflect the most recent model regulations and code issued by the National Association of Insurance Commissioners.

I urge my colleagues to join Senator GRASSLEY and me in cosponsoring this legislation.

By Mr. BROWNBACK (for himself and Mr. KENNEDY):

S. 1336. A bill to allow North Koreans to apply for refugee status or asylum; to the Committee on the Judiciary.

Mr. BROWNBACK. 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. 1336

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

SECTION 1. PURPOSE.

The purpose of this Act is to ensure that North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea. This Act is not intended in any way to prejudice whatever rights to citizenship North Koreans may enjoy under the Constitution of the Republic of Korea.

SEC. 2. TREATMENT OF NATIONALS OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA.

For purposes of eligibility for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or for asylum under section 208 of such Act (8 U.S.C. 1158), a national of the Democratic People's Republic of Korea shall not be considered a national of the Republic of Korea.

By Mr. SMITH:

S. 1337. A bill to establish an incentive program to promote effective safety belt laws and increase safety belt use; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH of Oregon. Mr. President, I rise today to introduce the Safe, Efficient, Automobile Travel to Better Ensure Lives in Transit, SEAT BELT, Act of 2003.

This bill will establish an incentive grant program that rewards States that have enacted or will enact primary seat belt laws. The bill also gives a premium to those States that increase seat belt usage.

According to the National Highway Traffic Safety Administration, NHTSA, motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries. It is estimated that in 2002, 42,850 people were killed in vehicle crashes and roughly 3 million more were injured. Motor vehicle crashes are ranked as the leading cause of death for Americans ages 1 to 34.

In addition to the thousands of transportation-related deaths and injuries, the economic costs associated with vehicle crashes constitute a serious public health problem and significant fiscal burden to the Nation. The total annual economic cost to the U.S. economy of all motor vehicle crashes is an astonishing $230.6 billion, or 2.3 percent of the U.S. gross domestic product. This translates into an average of $820 for every person living in the United States.

Increasing seat belt usage is a guaranteed and proven way to lower the number of transportation-related deaths and costs associated with vehicle crashes. In 2002, 59 percent of vehicle occupants killed were not restrained by seat belts or child safety seats. Safety experts agree that the best short-term and most immediate way to reduce traffic crash fatalities and serious injuries is to increase seat belt use.

Experience in the United States and other countries has shown that sound laws coupled with high-visibility enforcement are the keys to high seat belt use. Currently, the effectiveness of most State seat belt laws is reduced by secondary enforcement provisions that preclude law enforcement from stopping an unbelted motorist unless another traffic law violation is also observed.

Primary enforcement seat belt laws are significantly correlated with higher seat belt usage levels. States with primary enforcement laws have an average of 80 percent belt usage, compared to just 69 percent in States having secondary enforcement laws. Currently, only 19 jurisdictions have primary seat belt laws. Nearly 4000 lives would be saved each year if seat belt use were to increase from the national average of 75 percent to 90 percent.

The SEAT BELT Act creates two grant programs to encourage seat belt use. The first grant program rewards States that have or will have primary seat belt enforcement. Forty percent of the available funds for this program will be applied to the first grant category.

Every State that enacts a primary seat belt law or currently has one will receive two times their Section 402 allotment. Those States that enact a primary seat belt law sooner will receive

their incentive grant sooner. Any funds not obligated by the end of FY 2008 will be made available to States qualified to receive funds under the second grant category.

The second grant program would reward States that increase their seat belt usage. Sixty percent of the available funds for this program will be applied to the second grant category. The Secretary of Transportation shall carry out this program which is designed to maximize the effectiveness of the awarded funds and the fairness of the distribution of such funds; increase the national seat belt usage rate as expeditiously as possible; reward States that maintain a seat belt usage rate above 85 percent, as determined by NHTSA; and reward States that demonstrate an increase in their seat belt usage rates.

The SEAT BELT Act will ensure that funds are distributed fairly by rewarding the 19 jurisdictions, including my home state of Oregon, which took an early lead to enact a primary seat belt law. The Act also provides sufficient financial incentives to persuade the States that have not enacted a primary seat belt law to do so. And lastly, the Act provides continuing incentives to States to encourage them to have high seat belt usage rates and rewards them for their persistence in striving towards higher usage rates.

I urge my colleagues to cosponsor this important legislation and 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. 1337

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 ''Safe, Efficient Automobile Travel to Better Ensure Lives in Transit (SEATBELT) Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the National Highway Traffic Safety Administration (NHTSA), motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries.

(2) Motor vehicle crashes are the leading cause of death for Americans between the ages of 1 and 34.

(3) It is estimated that, in 2002, 42,850 people were killed and approximately 3,000,000 people were injured in vehicle crashes.

(4) NHTSA estimates that if safety belt use were to increase from 75 percent to 90 percent, nearly 4,000 lives would be saved each year.

SEC. 3. SAFETY BELT INCENTIVE GRANTS.

(a) REQUIREMENTS FOR GRANT PROGRAMS.—

(1) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

''§ 412. Safety belt incentive grants

''(a) PRIMARY ENFORCEMENT SAFETY BELT USE LAW INCENTIVE GRANTS.—

''(1) ELIGIBILITY.—The Secretary shall make a grant to each State that, as determined by the Secretary, has in effect a primary enforcement safety belt use law.

''(2) AMOUNT OF GRANT.—The amount of a grant for which a State qualifies under this subsection shall equal the amount of funds allocated to the State under section 402 of this title for fiscal year 2003 multiplied by 2.

''(3) DISTRIBUTION OF FUNDS.—Funds awarded to a State under this subsection shall be distributed over a 2-year period.

''(4) FUNDS AVAILABLE FOR GRANT PROGRAM.—Forty percent of the funds made available to carry out the occupant protection programs under section 405 of this title in a fiscal year shall be available for grants under this subsection during such fiscal year.

''(5) DISPOSITION OF UNUSED FUNDS.—Any funds available for grants under this subsection that have not been awarded by the end of fiscal year 2008 shall be made available for the safety belt usage grant program under subsection (b).

''(b) SAFETY BELT USAGE AWARD GRANTS.—

''(1) IN GENERAL.—The Secretary shall carry out a program for making safety belt usage award grants to eligible States. The program shall be designed to—

''(A) maximize the effectiveness of the awarded funds and the fairness of the distribution of such funds;

''(B) increase the national seat belt usage rate as expeditiously as possible;

''(C) reward States that maintain a seat belt usage rate above 85 percent (as determined by the National Highway Traffic Safety Administration); and

''(D) reward States that demonstrate an increase in their seat belt usage rates.

''(2) FUNDS AVAILABLE FOR GRANT PROGRAM.—Sixty percent of the funds made available to carry out the occupant protection programs under section 405 of this title in a fiscal year shall be available for grants under this subsection during such fiscal year.

''(c) USE OF FUNDS.—Grants awarded under this section may be used to carry out activities under this title.

''(d) DEFINITIONS.—In this section:

''(1) PASSENGER MOTOR VEHICLE.—The term 'passenger motor vehicle' has the meaning given the term in section 405(f)(5) of this title.

''(2) PRIMARY ENFORCEMENT SAFETY BELT USE LAW.—The term 'primary enforcement safety belt use law' means a law that meets the criteria for such laws published by the Secretary in a rule relating to the grant program under this section.

''(3) SAFETY BELT.—The term 'safety belt' has the meaning given the term in section 405(f)(6) of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 411 the following new item:

''412. Safety belt incentive grants.''.

(b) INTERIM FINAL RULE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall publish an interim final rule listing the criteria for awarding grants pursuant to section 412 of title 23, United States Code, as added by subsection (a), including the criteria to be used by the Secretary in determining whether a law is a primary enforcement safety belt use law for purposes of such section.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 183—COMMEMORATING 50 YEARS OF ADJUDICATION UNDER THE MCCARRAN AMENDMENT OF RIGHTS TO THE USE OF WATER

Mr. ENSIGN (for Mr. CAMPBELL (for himself, Mr. ENSIGN, Mr. KYL, Mr. BURNS, Mr. ALLARD, Mr. CRAPO, and Mr. CRAIG)) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 183

Whereas section 208 of the Department of Justice Appropriation Act, 1953 (commonly known as the McCarran Amendment) (43 U.S.C. 666) waived the sovereign immunity of the United States so that it could be joined in comprehensive State general adjudications of the rights to use water;

Whereas in United States v. District Court for Eagle County, 401 U.S. 520, 524 (1971), the Supreme Court confirmed that the McCarran Amendment was ''an all-inclusive statute concerning 'the adjudication of rights to the use of water of a river system' which . . . has no exceptions and . . . includes appropriative rights, riparian rights, and reserved rights'';

Whereas in Colorado River Water Conservation District v. United States, 424 U.S. 800, 819 (1976), the Supreme Court concluded that the concern over ''avoiding the generation of additional litigation through permitting inconsistent dispositions of property . . . Is heightened with respect to water rights, the relationships among which are highly interdependent'' and that the ''consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means of achieving these goals'';

Whereas since the passage of the McCarran Amendment, Federal and non-Federal users, along with numerous Western States, have invested millions of dollars in water right adjudications in those States to establish rights to the use of water that will determine priority of use during times of scarcity;

Whereas State water laws in the West have evolved to accommodate instream values such as recreation and environmental needs, while continuing to recognize and protect traditional consumptive uses for the West's cities and farms;

Whereas Federal claims for water have been recognized under both Federal and State laws within State general adjudications, thus enhancing the protection of Federal interests, as well as the certainty and reliability of non-Federal interests, in water in the West;

Whereas the significance of the McCarran Amendment, in providing States with the ability to determine the extent of federal claims to water resources, has become increasingly apparent as many of the Western States are experiencing a severe and sustained drought, where water supplies for all purposes are severely restricted; and

Whereas now more than ever there is a pressing need to recognize and support the availability of comprehensive systems for quantification of rights to use water in those Western States for all beneficial purposes: Now, therefore, be it

Resolved, that the Senate—

(1) reaffirms the policies and principles of the McCarran Amendment that have been recognized by Supreme Court decisions and recognizes that, as a matter of practice, the United States should adhere and defer to State water law; and