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Senate

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDING OFFICER. The Senate will now proceed to the consideration of S. 397, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. FRIST. Mr. President, yesterday, as everyone knows, we invoked cloture on the motion to proceed to this underlying legislation with a vote of 66 to 32. Although we are now proceeding to the substance of the bill, it has been made clear that the bill will be subjected to a filibuster. While we respect a Senator's right to debate this liability, it is apparent that a cloture vote will be needed to ultimately bring this very bipartisan bill to a final vote. For that reason, I send a cloture motion to the desk.

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

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close, debate on the motion to proceed to Calendar No. 15, S. 397: A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

Bill Frist, George Allen, Larry E. Craig, Craig Thomas, Michael B. Enzi, Jeff Sessions, Kit Bond, Lamar Alexander, Mitch McConnell, Sam Brownback, Tom Coburn, Richard Burr, John McCain, Richard Shelby, Saxby Chambliss, John Ensign, Chuck Hagel.

Mr. FRIST. Mr. President, this vote can technically ripen as early as 1 a.m., not tomorrow but the next day, Friday morning. I am not certain at this point if we will vote then or later that morning. I will continue and want to continue to consult with my colleagues on the schedule.

As we just discussed on the Senate floor, we have a lot of business to accomplish over the next several days. We have the energy conference report, the highway conference report, the Interior bill, the veterans health money attached, a number of nominations. Therefore, I hope that when cloture is invoked, we can find a way to bring this bill to a final vote so that we can expedite some of these other very important issues.

AMENDMENT NO. 1605

Having said that, I now send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for Mr. CRAIG, proposes an amendment numbered 1605.

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

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

The amendment is as follows:

(Purpose: To amend the exceptions)

On page 10, line 5, strike ''or'' and all that follows through line 16 and insert the following:

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1606 TO AMENDMENT NO. 1605

Mr. FRIST. I now send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 1606 to amendment No. 1605.

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will read the amendment.

The legislative clerk read as follows:

(Purpose: To make clear that the bill does not apply to actions commenced by the Attorney General to enforce the Gun Control Act and National Firearms Act)

At the end, insert the following:

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18, United States Code, or chapter 53 of the Internal Revenue Code of 1986.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the actions that have just taken place have put us on S. 397, the Protection of Lawful Commerce in Arms Act. Earlier this morning, I submitted for the RECORD some now 67 cosponsors, which demonstrates that this bill is clearly very bipartisan legislation, supported by a Republican and Democrat majority in the Senate.

The actions the leader has just taken to file cloture would allow the cloture motion to ripen by as early as 1 a.m. Friday morning. Amendments have just been filed by the leader, and we will begin the process of debate on this important legislation.

With that in mind, if this bill and this debate seem familiar to any of us,

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

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it should, because the Senate debated a very similar measure a little over a year ago. At that time, we had a full debate over a number of days. It is worth noting that the Senate defeated every amendment addressing the actual substance of the bill. However, opponents succeeded in attaching a couple of unrelated poison-pill amendments that ultimately caused the bill to fail.

The need for this legislation is very real. Over the course of yesterday and today, some of us have expressed what we believe is the urgency of this legislation. The Protection of Lawful Commerce in Arms Act would stop junk lawsuits that attempt to pin the blame and the cost of criminal behavior on businesspeople who are following the law and selling a legal product. In fact, the one consumer product where access is protected by nothing less than our Constitution itself is our firearms, and that is exactly what is at stake today: the right of law-abiding American consumers, American citizens, to have access to a robust and productive marketplace in the effective manufacturing and sale of firearms.

This bill responds to a series of lawsuits filed primarily by municipalities to shift the financial burden for criminal violence onto the law-abiding business community. These suits are based on a variety of legal theories. We heard some of them expressed by opposition to this bill earlier in the day seeking to hold gun manufacturers and sellers liable for the cost of injuries caused by people over whom they have no control—criminals who choose to use firearms illegally.

This is a bipartisan bill, as I mentioned. Let me acknowledge my primary Democrat sponsor, Senator MAX BAUCUS of Montana, and thank him for his work on this initiative. Senator BAUCUS and I introduced this bill in February, and more than half of the Senate, both Republicans and Democrats, have now joined us since it was formally introduced in its final form.

Earlier in the day, I inserted into the RECORD all of those who are now cosponsors. This range of cosponsorship reflects extraordinary, widespread support that crosses party and demographic lines and covers the spectrum of political ideologies represented in the Senate. It demonstrates a strong commitment by a majority of this body to take a stand against a trend toward predatory litigation that impugns the integrity of our courts, threatens a domestic industry that is critical to our national defense, jeopardizes hundreds of thousands of good-paying jobs of hard-working men and women across America, and puts at risk the access Americans have to a legal product used for hundreds of years across the Nation for lawful purposes such as recreation and, most important, self-defense.

I have used the term ''junk lawsuits,'' and I wish to make very clear to everyone listening to this debate that I do not mean any disrespect in any way whatsoever to the victims of gun violence who might be involved in these actions. Although their names are sometimes used in these lawsuits, they are not the people who came up with the notion of going after the industry instead of going after the criminals responsible for the injuries or the loss of life of their loved ones. That notion originated with bureaucrats, anti-gun advocates and the lawyers who work with them.

Victims, including their families and communities, deserve our support and compassion, not to mention our insistence on an aggressive law enforcement effort that puts punishment where it ought to be rendered—to the criminal.

In the nearly 6 years of the Bush administration, death by guns and crime in which guns were used in the commission of that crime have plummeted. Why? Because this Justice Department has gone after the criminal and not the law-abiding citizen.

It is the criminal who acts illegally. It is the criminal who ought to be prosecuted. But somehow, some who are involved in this movement have a tremendously distorted idea that the person who produces a legal product and sells that legal product somehow is responsible because they just should have known that product might fall into the hands of a criminal and might cost someone their life.

If those laws need to be toughened or if law enforcement efforts need to be improved, then the proper source of help is legislators and governments to ensure the tightening of the laws and not the courts and certainly not law-abiding businesses or workers who had nothing to do with those who were victimized by the criminal element of this country.

No. These junk lawsuits do not target the responsible party in those terrible crimes. This is predatory legislation, looking for a convenient deep pocket to pay for somebody else's criminal behavior, and by every definition it therefore deserves to be called a junk lawsuit. If one wants to stand on the floor and defend that kind of action in the courts of America, so be it. I believe in the democratic process. But Americans get it, they clearly understand it, and so do Senators, and that is why now 67 Senators support this legislation. These are junk lawsuits because they are driven for political motives to hobble or bankrupt the gun industry as a way of controlling guns.

For decades, anti-gunners have come to the Senate floor or the House with one scheme or one idea after another, and the American people, based on what they believe strongly to be their constitutional rights, have rejected this. Now the anti-gun community attempts once again to come through the back door of the Congress by going in through the front door of the courthouse. It simply has not worked, and it will not work.

But there is another motive in mind. By definition, the legislation we are considering today aims to stop lawsuits that are trying to force the gun industry to pay for the crimes of people over whom they have no control.

I used an analogy last year. I will use it again today. It is like saying to GM, General Motors, or any car manufacturer that because somebody buys their car and gets drunk and gets in that car and kills someone out on the road, gee whiz, they should have known that a drunk would drive that car, and therefore they should never have produced it, and therefore they are liable. For years, I have always understood that there are some in our society who say no one is responsible for their action, no one should be held responsible for their action, and that is an underlying core of the debate we are talking about or the issue we are talking about today.

Let me stop a minute and make sure everyone understands the limited nature of the bill. Some will argue it differently, but I would argue those who argue it differently are trying to expand the definition of what we believe to be very clear within the legislation. What this bill does not do is as important as what it does do. This is not a gun industry immunity bill. I think I have already heard that said since the clock tolled 12 noon. This bill does not create a legal shield for anybody who manufactures or sells a firearm. It does not protect members of the gun industry from every lawsuit or legal action that could be filed against them. It does not prevent them from being sued for their own misconduct.

This bill only stops one extremely narrow category of lawsuits, lawsuits that attempt to force the gun industry to pay for the crimes of third parties over whom they have no control. We have tried to make that limitation as clear as we possibly can and in several ways. For instance, section 2(b) of the bill says its No. 1 purpose is:

> to prohibit causes of action against manufacturers, distributors, dealers and importers of firearms or ammunition products and their trade associations for the harm solely caused by the criminal or unlawful use or misuse of firearms products or ammunition products by others when the product functions as designed and intended.

We have also tried to make the bill's narrow purpose clear by defining the kind of lawsuit that is prohibited. Section 5 defines the one and only kind of action prohibited by this bill as follows:

> [A] . . . civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . . .

We have also tried to make the narrow scope of the bill clear by listing specific kinds of lawsuits that are not prohibited. Section 5 says they include actions for harm resulting from defects

in the firearm itself when used as intended—in other words, a faulty product—that is, product liability suits; actions based on negligence or negligent entrustment; or breach of contract.

Furthermore, if someone has been convicted under title 18, section 924(h) of the U.S. Code or comparable State law—in plain English, that means someone who has been convicted of transferring a firearm knowing that the gun will be used in the commission of a crime of violence or drug trafficking—that individual is not shielded from civil lawsuits by anybody harmed by that firearm transfer.

I am not quite sure how much more clearly we can make the law.

Finally, this bill does not protect any member of the gun industry from lawsuits for harm resulting from any illegal actions they have committed. Let me repeat it. If a gun dealer or manufacturer violates the law, this bill is not going to protect them from a lawsuit brought against them for harm resulting from that misconduct. Section 5 further explains that this includes, but is not limited to, the situation in which these parties falsify the firearms records they are required to keep under Federal or State law or knowingly fail to make appropriate entries into those records or if they worked with others in making false statements about the lawfulness of the selling of firearms.

You will hear arguments on the floor about certain gun dealers and that we are now holding them harmless, even though on the surface of the argument it appears they violated the law. Let me again say, as I said, if in any way they violate State or Federal law or alter or fail to keep records that are appropriate as it relates to their inventories, they are in violation of law. This bill does not shield them, as some would argue. Quite the contrary. If they have violated existing law, they violated the law, and I am referring to the Federal firearms laws that govern a licensed firearm dealer and that govern our manufacturers today.

Another example of conduct that would not be shielded from a civil lawsuit under this bill is the case in which the manufacturer or seller aided, abetted or conspired with any other person to sell firearms or ammunition if they knew or had reasonable cause to believe that the purchaser intended to use those products for the furtherance of a crime.

How clear can you get? If a manufacturer or a federally licensed firearms dealer knew they were selling to somebody who had criminal intent in mind for the use of the weapon, the firearm they just purchased, they are in violation of the law and it does not protect them. This is not a shield to do just that.

What I have listed for the convenience of my colleagues is all spelled out in title V of the bill. For those who question it, read it. If you don't understand it, get your lawyer and read it again because we worked overtime to make this as clear as it possibly can be made. Again, this is a rundown of the universe of lawsuits against members of the firearms industry that would not be stopped by this narrowly targeted bill.

What all these nonprohibited lawsuits have in common is that they involve actual misconduct or wrongful actions of some sort by a gun manufacturer, a seller or a trade association. Whether you support or oppose the bill, I think you can all agree that individuals should not be shielded from the legal repercussions of their own lawless acts. The Protection of Lawful Commerce in Arms Act expressly does not provide such a shield.

I am going to repeat this because some opponents continue to mischaracterize the bill. My guess is, in the closing arguments on Friday of this week, that mischaracterization will continue. This is not a gun industry immunity bill. It prohibits one kind of lawsuit, a suit trying to fix the blame of a third party's criminal acts or misdeeds on the manufacturer or the seller of the firearm used in that crime.

Even though this is a narrowly focused bill, it is an extremely important one. The junk lawsuits we are addressing today would reverse a longstanding legal principle in this country, and that principle is that manufacturers of products are not responsible for the criminal misuse of those products. You don't have to be a lawyer to know that runaway juries and activist judges can turn common sense on its head in a lot of cases, setting precedents that have dramatic repercussions and are potentially devastating in their results.

If a gun manufacturer is held liable for the harm done by a criminal who misuses a gun, then there is nothing to stop the manufacturers of any product used in crimes from having to bear the costs resulting from the actions of those criminals. So as I mentioned earlier, automobile manufacturers will have to take the blame for the death of a bystander who gets in the way of the drunk driver. The local hardware store will have to be held responsible for a kitchen knife it sold, if later that knife is used in the commission of a rape. The baseball team whose bat was used to bludgeon a victim will have to pay the cost of the crime. The list goes on and on.

Did that sound silly? Tragically enough, some lawyers and some activist judges and some runaway juries have taken us in those directions in the past. That is why we constantly, in the Congress, talk about tort reform, trying to narrow it, trying to make it more clear—still recognizing that law-abiding citizens have their rights and should not in any way be jeopardized in the legal sense from their constitutional right to go to court. At the same time, I don't think any of us believed that the court system of America would be gamed the way it has been gamed or that we would see the myriad of junk lawsuits that are being filed today and the venue shopping that continues to go on.

It is not just unfair to hold law-abiding businesses and workers responsible for criminal misconduct with the products they have made and sell, but this would also bring havoc to our marketplace. Hold onto your wallets, America, because those businesses will have to pass those costs directly on to the consumer if they plan to stay in business. Worse, some of those businesses will not be able to pass on those costs and still stay competitive. For some of them, this will mean layoffs, and ultimate bankruptcies, and the closure of the manufacturer's door.

We have already seen this in some of the firearm industry. In fact, these lawsuits have the potential to bankrupt the gun industry, even if they are not successful.

How could that be? The sheer cost of litigation, the repetitive filing of laws, the need to defend those lawsuits literally costs hundreds of millions of dollars. It is important to keep in mind that the deep pocket of the gun industry is not all that deep. In hearings before the House of Representatives, experts testified that the sales of the firearms industry taken together would not equal those of a single Fortune 500 company.

Why would I say that? People think this is a monolithic, large industry. It is not. It is a lot of small businesses, small manufacturers. In other words, all of them combined in America today would not equal one Fortune 500 company.

As of this year, it was estimated—and we can only estimate because the cost of litigation is confidential business information—that these baseless lawsuits have cost the firearms industry more than $250 million. Half of them have already been thrown out of court. Furthermore, don't think these companies can pass the costs off to their insurers because in nearly every case insurance carriers have denied coverage.

The impact on innocent workers and communities is not the only potential repercussion of these lawsuits. If U.S. firearms manufacturers close their doors, where will our military and our peace officers go to obtain their guns? As my colleagues know, the United States of America is the only major world power that does not have a government-run firearms factory. This is a little known fact but a reality. Yet last year we purchased more than 200,000 small arms for our soldiers, sailors, airmen, and marines. The very same companies that supply our troops in the war on terrorism, both abroad and here at home, are the targets of these reckless lawsuits that could force them to close their doors.

Some would say: Oh, gee, we buy some of our arms already from foreign countries.

Yes, we do. Does that mean that is where we should buy all of them; that we should be dependent on foreign

countries for the supply of firearms to our military? Surely we do not want foreign suppliers to control our national defense and community law enforcement—not to mention the ability of individual American citizens to exercise their second amendment-protected rights through accessing firearms for self-defense, recreation or other lawful purposes.

For all of those reasons, more than 30 States have laws on the books offering some protection for the gun industry from these extraordinary threats. Support has already grown in Congress to take action at the Federal level. The House has passed this measure several times. The Senate is now attempting to do so.

This would not be the first time Congress acted to prevent a threat on an industry. Some would wring their hands and say: Oh, dare not, dare not change the Federal law; dare not, in some way offer some protection. But let me tell you this is not the first time, and my guess is, with the courts and the trial bar where it is, it will not be the last.

For example, there are a number of Members in this Chamber who were serving in Congress when the General Aviation Revitalization Act was passed barring product liability suits against manufacturers of planes more than 18 years ago. Just a few years ago in the Homeland Security Act, Congress placed limits on the liability of a half a dozen industries, including the manufacturers of smallpox vaccine and the sellers of antiterrorism technology.

These are only a couple of examples of a significant list of Federal tort reform measures that have been enacted over the years when Congress perceived a need to protect a specific sector of our economy or our defense interests from the burdensome, unfair and, as I believe, frivolous litigation of the kind we see today.

It is high time we act to stop this threat to our courts, our communities, our economy, and, yes, to our defense.

I have heard some Senators talking about loading up this bill with political amendments that have nothing whatsoever to do with the legislation. Let me say right here and now these are killer amendments. Many of them know that. That is why they are trying to place them.

I ask my colleagues to support the underlying legislation. It is well written, it is thoroughly vetted with all of the interested parties. I ask my colleagues to look at it as they have already looked at it—in a very strong, bipartisan way. Here now in the Senate a supermajority, Democrats and Republicans alike, supports this legislation. I hope they would resist the kinds of amendments that are obviously intended to drag this bill down once again. Some attempted it last year, and they were successful in doing so. I hope those who have signed on as cosponsors are sincere in their support of the bill, as I believe they are, and they will allow us to move it through the process over the next several days in a clean and effective way.

Our courts are supposed to be a forum to redress wrongs, not enact political agendas. How many times has the anti-gun community been rejected by the American public through the voice of their Senator or through the voice of their Congress men and women? Time and time again. And yet because of their political alignment and their philosophical bent, they stay at the issue even though clearly and profoundly we have described it as and believe it to be a constitutional right of an American citizen to own a firearm. Well, because they have not been successful at the doorsteps of Congress, they have turned to the doors of the courtroom. Lawsuits are being filed. Lawsuits are being rejected. Thousands upon thousands of dollars are used in legal fees to prepare the arguments. New and inventive ways are approached: Let's try this angle, let's try that angle. Surely we can get to the deep pocket.

I am also amazed at those who would not suggest that American citizens are responsible for their own actions, and most assuredly the criminal element ought to be. We have watched some administrations walk one direction. But I tell you where this administration is. It believes the criminal element ought to be prosecuted. And guess what happened in America when we started prosecuting the criminal element and putting them behind bars. Crime began to go down very rapidly. The streets of America and the communities of America became safer places because those who would violate the law and, more importantly, those who use a gun in the commission of a crime get locked up. That is gun control in the right sense. That is gun control that a majority of the American people support and that the Congress has continually supported.

This legislation, as I have mentioned, is clear. It is well defined, and it is narrow by its action. We believe that is why a bipartisan majority now supports it and why it deserves to become the law of the land, so we don't have venue-seeking, politically minded efforts to ignore the criminal element in the zealous support or approach to gun control but to go after the law-abiding citizen who either manufactures the firearm or sells it under a Federal firearms license.

That is the essence of S. 397, and I hope as we work through this bill, the clarity of that issue comes forward.

With that, Mr. President, I yield the floor.

Mr. REED. Mr. President, I ask unanimous consent to lay aside the pending amendment and send an amendment to the desk.

Mr. CRAIG. I object.

The PRESIDING OFFICER (Mr. THUNE). Objection is heard.

Mr. REED. Mr. President, I think the Senator from Idaho makes it very clear what seems to be going on now. I heard a few moments ago the majority leader's response to Senator KENNEDY, saying there would be an opportunity to present amendments, to debate this bill. I would also note that prior to any other action, cloture was filed on this bill.

Mr. CRAIG. Will the Senator yield?

Mr. REED. I would be happy to yield.

Mr. CRAIG. Obviously, I have an amendment on the floor now, or I should say an amendment that was filed by Leader FRIST. Under appropriate consultation, it is very possible there are a variety of amendments that could come to the floor prior to the ripening of the cloture motion. To now immediately move to that without consultation with the floor leader, myself, is something I will object to, and the Senator understands that. So let us not be tactical here. Let us work and cooperate. I am very happy to look at any amendments——

Mr. REED. If I may reclaim my time——

Mr. CRAIG. The Senator might have, but with that, my objection still stands until full consultation is brought, full cooperation is sought. I thank you.

Mr. REED. Reclaiming my time, I thank the Senator.

This amendment has been shared with the majority. It has been reviewed by the majority. We are not attempting to surprise anyone with this amendment. It deals with child safety locks. In fact, it is an amendment that was offered to the bill last year and passed overwhelmingly. It is my intent to provide opportunity to discuss issues with respect to gun legislation and to present them to the Senate.

Again, I would note when the majority leader requested unanimous consent to lay aside one of his amendments to offer another amendment, no one on my side objected because in fact we thought we were proceeding in good faith, that we shared amendments if we had an opportunity to look at the amendments beforehand, that we could proceed in an orderly and reasonable fashion. But I am a bit shocked. This amendment has been with the majority for the last, I would suggest, 30 or 40 minutes. It is an amendment that was presented in substance before to the floor. So I am a little bit surprised about the Senator's reaction.

Mr. CRAIG. Will the Senator yield again?

Mr. REED. I would be happy to yield.

Mr. CRAIG. Last year this amendment was offered by Senator BOXER, modified by Senator KOHL, and passed the Senate. We are examining the amendment now. We have only had it for 30 minutes or less. The Senator is absolutely right. And the amendment is substantively the same, but there are some differences in it. We are analyzing to see what those differences might be.

So, you see, there was a basis for my objection—until we clearly understand it. I think the agreement the Senator

was speaking to was one based on the exact amendment of Senator KOHL of a year ago. So let us examine what those changes might be in the amendment and then there may be no objection on this side. But until that time I believe we have adequate time here to resolve the issue, and my objection would have to stand.

Mr. REED. Reclaiming my time, again, I appreciate the Senator's comments with respect to the amendment, but once again I think we provided you the opportunity to look at the amendment.

There are several issues here. The first issue is whether you think it would be appropriate to support and vote for it, which presumptively comes after debate. But the first issue is allowing us to offer the amendment. You might very well object to the substance of the amendment. You might very well urge our colleagues to reject it. I respect that. But the right to deny the amendment since you object goes against what the majority leader said in how we conduct this debate.

I will make a few comments now in general and I hope perhaps during the course of my comments the review of the amendment would allow us to formally offer it.

Again, there have been some comments about these junk lawsuits. These comments might have some resonance in this Chamber, but I doubt if we were talking to the widow of Conrad Johnson we would have the temerity to say the suit she filed on behalf of the family was a junk lawsuit. Or if you had a working man, someone sitting in his bus seat in the early morning having a cup of coffee and reading the paper—and when I read about that, it reminded me of what my father did every day as a school custodian. He would get up in the morning, read the paper, have a cup of coffee either at the school or someplace else, in the kitchen—and then suddenly his life was ended by snipers, leaving a wife and children. Then they find after the tragic incident the weapon was obtained by the snipers because, in my view, of the incontrovertible evidence of gross negligence, 230 or more weapons misplaced by the dealer, not realizing that a teenage boy walked into his gun shop and took a 3-foot assault weapon off the counter and walked out. That is not negligence?

Oh, and, by the way, because we were able to stop this legislation last year and because in that case the defendant recognized that if they went to a jury of 12 Americans sitting and deciding whether they were responsible in their actions, they settled.

That is not a junk lawsuit. Is it a junk lawsuit when two police officers are called to a violent scene and find themselves in a crossfire, find themselves critically injured, brought to a hospital, given their last rites, and then it is discovered the weapon that harmed them was purchased by a straw purchaser? Or that an individual walked in with a female companion, pointed out the guns, bought 12 of them at one time for cash, had her buy them because he could not pass a weapons background check, jumped in a car, took off—in fact, so obviously that the dealer called the ATF and said I took the money, gave them guns, but watch out. Negligence.

Both those lawsuits would have been stopped by this legislation. Those are not frivolous suits. Those are examples of people being hurt, police officers, bus drivers, through the negligence of gun dealers and gun manufacturers.

There is this constant refrain, the law is clear, the law is clear, we can't blame someone else for criminal activities, when in fact the law is quite clear on this point. I mentioned it before. What is the law of the United States? Well, in terms of tort law these laws are summarized, updated constantly in what is known as restatement. Basically it is a catalog of different positions of the law. Everyone knows it. Everyone coming to the floor, having passed a bar in one State of this country, knows the restatement basically says what is the settled law, the settled law with respect to criminal activity. I will read it again.

Section 449 of the Restatement Second of Torts:

> If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act, whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby.

What does that mean? It means you have a duty to the public to take certain steps, and if you don't take those steps, even if in the chain of causation there is a criminal act by another party, you are still liable—not for that criminal act, you are still liable because you failed in your duty.

What this bill does is—this great talk about responsibility—it says everyone is responsible except the gun industry. Automobile manufacturers are responsible. In fact, when we get in our vehicles and drive home tonight, we are all going to benefit because years ago under the laws of tort and negligence, automobile companies were forced to improve the safety of their vehicles for the protection of the public. Now the logic that, oh, they can't be held liable for this because no one intends to crash the car, well, that is right; no one intends to crash an automobile, but if the design of the automobile is defective, if there are safety precautions that could be taken, those have to be adopted because they have a duty to the public to provide a safe product, to avoid obvious dangers.

This is a situation in which we have the obligation to take steps. So this notion about criminal intervening activities is not the law. That is not what the black letter law of this country says. The idea that manufacturers are not subject to the common obligation or duty to provide safe products, even if they are not required by statute, that is not the law either.

There is also a deliberate attempt to confuse two very different principles. We have criminal laws, we have regulations, we have statutes that require certain behavior. They define a range of activities that are impermissible. What this bill says is, if you violate a law, one of those aspects of impermissible behavior, yes, maybe you can sue a gun manufacturer. But there is a whole other range of activities—accidents, unreasonable behaviors—that are not defined by law. They are not the criminal, but they do involve opportunities under civil litigation to go to court and say this person acted unreasonably. They did not technically violate a statute. They acted unreasonably.

This statute essentially says, by and large, you can show they violated a very narrowly drawn legislative enactment or statute—they failed to fill out a record, et cetera—yes, maybe you can go to court.

What about all the cases we have talked about, the cases of the straw purchaser where weapons were sold and, obviously, to the casual observer, in a very peculiar way. Why didn't that fellow, I believe, in South Carolina, who is buying the pistols that eventually wounded officers Lamongello and McGuire, why didn't he offer his name? He obviously was picking out the weapon. Why did they buy 12 at one time? There is no law against buying 12 weapons at one time. Isn't it curious that would happen?

Again, we have a situation where this legislation has been carefully worked out to stop these lawsuits. Not the frivolous lawsuits, all lawsuits except under very narrow circumstances. And those circumstances do not seem to apply to the cases that have been filed. The exceptions would not have kept alive a suit by Officers Lamongello and McGuire or by the families of the victims of the Washington, DC, snipers or in the situation of Danny Guzman and Kahr Arms. That is more than coincidental. It is very deliberate.

Again, as I mentioned before, this legislation can't be the panacea for the gun industry, the one touted by the NRA, as we have to have this on one hand, and then allow all the good suits there, the really good suits, the ones, in fact, that have been filed. And it is not. It is designed to stop practically every attempt to be compensated for the negligence of a manufacturer, a gun dealer, or a trade association.

All of the particular aspects of the bill provide some window dressing—it sounds good, section XYZ of the United States Code—but when it doesn't work in practice, that is all it is. This explosion of suits, where are they? A small number of suits filed in this country involve anything covered by this legislation. The cost to the industry? This cost goes up $50 million every day we are here talking about it.

What we know for a fact is that the industry has pooled $100 million to protect themselves, preemptively, to ensure that the communications are covered by the attorney-client privilege, to ensure that doctors are all centralized so they cannot easily be accessed because of attorney-client privilege. They are using our system of civil justice in the courts very well to protect themselves. They are unwilling to let others use the same devices to protect themselves.

This great surge of lawsuits, as was indicated before many times in the Senate, financial reports filed with the SEC, many of the companies are privately held so only few report publicly, indicate to their shareholders there is no material financial risk involved with these suits by municipalities or individual litigants. The litigation costs out of pocket for one of these publicly reporting companies is about $4,500 in the last several months. Hardly a crisis.

And then there is the suggestion that our defense will be imperiled. As I pointed out in my opening remarks, voluntarily the Defense Department is contracting with foreign manufacturers. It is not because of lawsuits. In fact, I don't know what the status is of the civil law in Europe, but I would be surprised if it was more lenient than our laws at present, but they are doing it because they want better weapons.

I can recall as I entered the Army in 1967, the Colt .45 automatic was the side arm of the U.S. Army and had been since the Philippine insurrection in 1903. Now it is a Beretta Italian model produced by an American subsidiary, wholly owned subsidiary of an Italian company, and not, I don't believe, by a national armory of the Italian Government. They are a privately held company.

This notion that this has anything to do with the national defense is unsupported, unsubstantiated by any fact and by the behavior of the Pentagon. They are not coming to us and asking us for this bill so they can keep alive the necessary firearms manufacturers in the United States. They have made a conscious choice for many reasons to go overseas to buy these weapons.

Again, I am in a situation where we are attempting to reach into the courts of each State of the United States and tell them that their legislatures—that propound many of these rules with respect to civil liability—cannot do that. What can be more antidemocratic than that? Then, going to the Commonwealth of Massachusetts and saying: You know, those laws and rules you passed about liability? Can't do that. We don't like it. Or the gun industry doesn't like it.

The case most frequently cited to suggest a crisis is the result of the deliberations of the Washington, DC, council that passed a strict liability bill. That bill was upheld by the DC Court of Appeals. The DC Court of Appeals did not create a rule of strict liability. They said, essentially, the democratic process is working. Elected representatives of the people decided that would be the rule. As a court we cannot step in and overturn that. That is democracy. Of course, we are deciding we can step in and overturn the rules of 50 States. That is antidemocratic.

This legislation is going to deny people who have been hurt the right to bring their case. They might not succeed. As my colleagues have pointed out, many of these cases have been turned down because they could not show that the duty owed to the public was violated by the particular manufacturer or gun dealer. But they have the right now to make that showing. We are taking that right away from them. This right is something that I would think we all would protect, not try to circumscribe and deny, and you cannot go into court with a theoretical complaint saying: I do not like the law; make new law, Your Honor. You have to have a case. You have to show harm. You have to show what the duty of the defendant was, how that duty was breached, and how that breach caused the harm.

That is the way our system works. But not after this legislation passes. You can have the duty, you can have a breach of that duty, and you can have grievous harm. But the victim cannot go to court. It is not about an avalanche of lawsuits. There are a minuscule number of suits filed in this regard. It is not about courts out of control. In some sense it is Congress out of control, saying to State governments, we don't care what the State rules are, we are making the rule.

We should be able not only to talk about but to offer amendments. I hope in the intervening time we have had to analyze the amendments that we could offer amendments and talk about them. I hope that is the case.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will submit for the Record a letter from Beretta U.S.A. Corporation that the Senator just mentioned as an Italian subsidiary, fully owned U.S. corporation. It is a significant letter because it effectively refutes almost all of what the Senator has said. I say that in this respect. It is true everything the Senator has said, and that is not in dispute as it relates to who Beretta is and what they do. They make the standard sidearm for U.S. Armed Forces, and they have had a long-term contract right now to supply this pistol to our fighting forces in Iraq. These pistols have been used extensively in combat during the current campaign, just as they have been used since the adoption of the Armed Forces in 1985.

Beretta U.S.A. also supplies pistols to law enforcement departments throughout the United States, including the Maryland State Police, Los Angeles City Police Department, and Chicago Police Department.

But here is what is significant about Beretta. What Beretta says is exactly what the Senator refuses to recognize. The decision by the District Court of Appeals to uphold the DC strict liability statute as they have in the case of DC v. Beretta U.S.A. has the likelihood of bankrupting not only Beretta U.S.A. but every manufacturer of semiautomatic pistols and rifles since 1991.

The letter to this administration, to Vice President DICK CHENEY, goes on to say:

> There are hundreds of homicides committed with firearms each year in D.C. and additional hundreds of injuries involving criminal misuse of firearms. No firearm manufacturer has the resources to defend itself against hundreds of lawsuits each year and, if that company's pistol or rifle is determined to have been used in a criminal shooting in the District, these companies do not have the resources to pay the resultant judgment against them in which they would have no defense if the pistol or rifle was originally sold to a civilian consumer.

That is the essence of a lawsuit that has just been decided in the District.

Mr. REED. If the Senator will yield, I notice you read the letter, but the subject of that letter is strict liability, which in layman's terms—and I will consider myself a layman—means that there is no real judgment about the behavior of the defendants; that if they can prove it was a weapon manufactured by Beretta, and it was involved in a crime, they would be liable without a showing of duty or negligence and whether they took rational and reasonable steps. That is what strict liability is.

There is a difference between strict liability and negligence. The legislation we are considering is not about strict liability alone. It is about negligence. It goes way beyond that letter. If we were debating legislation that said essentially a company may not be held strictly liable for X, Y, and Z, this would be a different debate entirely.

This legislation goes way beyond strict liability. It says that negligence cases, those that you must show that, in fact, the manufacturer or the dealer had a duty and unreasonably failed to perform that duty, that is what you have to show. In fact, I think I accurately represented what was in the letter.

Mr. CRAIG. I did not say you didn't.

Mr. REED. I appreciate that. I do. But the point is we are taking a legal theory of strict liability, which they are upset about, obviously, and concerned about, but it does not translate to this bill. None of these cases I talked about—Lemongello or the case with respect to Guzman—is arguing these manufacturers or sellers are strictly liable. They are saying, essentially—now there might be other cases—but they are saying, essentially, they had a duty, they were negligent.

This legislation we are debating today would wipe away their rights to make a negligence claim. So I agree entirely with the letter in terms of its accuracy. That is what they are talking about. They are concerned about it.

Frankly, if I were the general counsel of Beretta, I would be concerned about it. It might not move me to do the same thing they are suggesting. But we have to be very clear about this legislation, which goes way beyond the strict liability. Again, if we were talking about limiting strict liability suits, this would be an entirely different debate. I do not think I would necessarily agree, but certainly I would be looking at an almost entirely different subject matter.

I thank the Senator for being extremely kind in yielding me time and also being extremely accurate in summarizing my views.

Mr. CRAIG. Mr. President, I thank my colleague.

Let me read another paragraph from that letter, which I think clearly spells out the fear that my colleague would wish to step aside from and argue that is simply not the case. He is dealing with a strict liability statute.

This paragraph says:

Passed in 1991, the D.C. statute had not been used until the District of Columbia recently filed a lawsuit against the firearm industry in an attempt to hold the firearm makers, importers and distributors liable for the cost of criminal gun misuse in the District. Although the Court of Appeals (sitting en banc in the case D.C. v. Beretta U.S.A. et al.) dismissed many parts of the case, it affirmed the D.C. strict liability statute and, moreover, ruled that victims of gun violence can sue firearm manufacturers simply to determine whether that company's firearm was used in the victim's shooting.

Now, does that take away the costs involved in the preparation, the hundreds of millions of dollars that are now being spent? No, it does not. This was a frivolous lawsuit from the beginning. It was clearly intended. And that is what the district court said. The District of Columbia did not hide it. They were after the industry because they believed the industry had produced the gun that the criminal used in the commission of a crime.

So it goes on. I submit this letter for the Record. I think the letter stands on its own. It clearly affirms why we are here on this floor debating S. 397 and the importance of this legislation.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

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

BERETTA U.S.A. CORP.
Accokeek, Maryland, May 11, 2005.

Hon. RICHARD B. CHENEY,
Vice President of the United States, Washington, DC.

DEAR MR. VICE PRESIDENT: A few weeks ago, the Washington, D.C. Court of Appeals issued a decision supporting a D.C. statute that holds the manufacturers of semiautomatic pistols and rifles strictly liable for any crime committed in the District with such a firearm.

Passed in 1991, the D.C. statute had not been used until the District of Columbia recently filed a lawsuit against the firearm industry in an attempt to hold firearm makers, importers and distributors liable for the cost of criminal gun misuse in the District. Although the Court of Appeals (sitting *en banc* in the case *D.C. v. Beretta U.S.A. et al.*) dismissed many parts of the case, it affirmed the D.C. strict liability statute and, moreover, ruled that victims of gun violence can sue firearm manufacturers simply to determine whether that company's firearm was used in the victim's shooting.

It is unlawful to possess most firearms in the District (including semiautomatic pistols) and it is unlawful to assault someone using a firearm. Notwithstanding these two criminal acts, neither of which are within the control of or can be prevented by firearm makers, the D.C. strict liability statute (and the D.C. Court of Appeals decision supporting it) will make firearm manufacturers liable for all costs attributed to such shootings, even if the firearm involved was originally sold in a state far from the District to a lawful customer.

Beretta U.S.A. Corp. makes the standard sidearm for the U.S. Armed Forces (the Beretta M9 9mm pistol). We have long-term contracts right now to supply this pistol to our fighting forces in Iraq and these pistols have been used extensively in combat during the current campaign, just as they have seen use since adopted by the Armed Forces in 1985. Beretta U.S.A. also supplies pistols to law enforcement departments throughout the U.S., including the Maryland State Police, Los Angeles City Police Department and to the Chicago Police Department. We also supply firearms used for self-protection and for sporting purposes to private citizens throughout our country.

The decision of the D.C. Court of Appeals to uphold the D.C. strict liability statute has the likelihood of bankrupting, not only Beretta U.S.A., but every maker of semiautomatic pistols and rifles since 1991. There are hundreds of homicides committed with firearms each year in D.C. and additional hundreds of injuries involving criminal misuse of firearms. No firearm maker has the resources to defend against hundreds of lawsuits each year and, if that company's pistol or rifle is determined to have been used in a criminal shooting in the District, these companies do not have the resources to pay the resultant judgment against them—a judgment against which they would have no defense if the pistol or rifle was originally sold to a civilian customer.

When the D.C. law was passed in 1991, it was styled to apply only to the makers of ''assault rifles'' and machineguns. Strangely, the definition of ''machinegun'' in the statute includes semiautomatic firearms capable of holding more than 12 rounds. Since any magazine-fed firearm is capable of receiving magazines (whether made by the firearm manufacturer or by someone else later) that hold more than 12 rounds, this means that such a product is considered a machinegun in the District, even though it is semiautomatic and even if it did not hold 12 rounds at the time of its misuse.

The Protection of Lawful Commerce in Arms Act (S. 397 and H.R. 800) would stop this remarkable and egregious decision by the D.C. Court of Appeals. The Act, if passed, will block lawsuits against the makers, distributors and dealers of firearms for criminal misuse of their products over which they have no control.

We urgently request your support for this legislation. Without it, companies like Beretta U.S.A, Colt, Smith & Wesson, Ruger and dozens of others could be wiped out by a flood of lawsuits emanating from the District.

This is not a theoretical concern. The instrument to deprive U.S. citizens of the tools through which they enjoy their 2nd Amendment freedoms now rests in the hands of trial lawyers in the District. Equally grave, control of the future supply of firearms needed by our fighting forces and by law enforcement officials and private citizens throughout the U.S. also rests in the hands of these attorneys.

We will seek Supreme Court review of this decision, but the result of a Supreme Court review is also not guaranteed. Your help in supporting S. 397 and H.R. 800 might provide our only other chance at survival.

Sincerest and respectful regards,

JEFFREY K. REH
General Counsel and Vice-General Manager.

Mr. CRAIG. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 1619, if possible.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object, we are going to make every effort, over the course of today and tomorrow, to screen the amendments that are coming forward because there is a pending amendment on the floor that would have to be set aside. We are looking at the Senator's amendment now. He has just submitted it to us. Once we have analyzed it, I will be happy to get with him to determine whether I feel comfortable or we feel comfortable with that amendment and go forward.

So at this time, clearly, I appreciate the Senator's sincerity, but I would have to object to the setting aside of the pending business on the floor, which is the amendment offered by the majority leader.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Jersey.

Mr. CORZINE. Mr. President, I ask the distinguished Senator if I might be able to understand the principles that would be involved in deciding whether there are particular avenues of exploration to make sure that this amendment is acceptable going forward? How would we look at this?

Mr. CRAIG. If the Senator will yield, Mr. President.

Mr. CORZINE. Certainly.

Mr. CRAIG. Mr. President, the rulings of the Senate. There is pending business before the Senate. It would take unanimous consent to set aside the pending business to go on to other business. So that is the circumstance we are involved in at this moment. And defending my right to the floor and the amendment before the floor, I am simply upholding that right to the rules of the Senate.

The leader has said, most sincerely, that we would examine all the amendments that are brought forth to determine if there are some that we can agree on, that ought to go forward, that fall, I think, into the conscript of those of us 67 Senators who are the supporters of this legislation and who would do so. But now it is the rules of the Senate that cause me to take the action I have taken.

Mr. CORZINE. Mr. President, I appreciate the Senator's candor. I hope we will be able to bring up my amendment, which will protect the rights of law enforcement officers who are victimized by gun violence to get justice through the American legal system.

I would note the presence of my colleague from the State of New Jersey in the Chamber, who has been a remarkable advocate for law enforcement and for the safety and security of people in our community.

This past Monday night, I missed a vote on the floor of the Senate because I went to a wake for a police officer, Officer Reeves, who was shot on the streets of Newark by a gang member. The gun that was used has not yet been traced to find out whether it was trafficked in the illegal or black market, or whether it was bought by a straw purchaser.

But there is one thing that is certain—there were five children sitting in the pew with their mother at that wake, all under the age of 11. Gun violence is real. The amendment I would like to bring up—which I appreciate the rules of the Senate and respect the judgment of the Senator from Idaho—but the Lemongello amendment I would like to offer to the gun immunity bill is about protecting police officers on the street and giving them the right to get justice in a court of law. If, by unfortunate circumstances, they are the victims of gun violence, we have the right in the State of New Jersey, within the legal system, to call to account those who have wrongfully allowed guns to get into the hands of criminals.

In the case of Detective Lemongello, 11 guns were sold to a gun trafficker out of a gunshop—11 guns. Why does one person happen to need 11 guns? These guns were bought by a straw-purchaser for a career criminal, who then put the guns in a car and drove them to New Jersey, where one was sold to the criminal who shot Detective Lemongello in Orange, NJ.

That gun was turned on this gentleman shown in this picture, Detective Lemongello, just as a gun was recently turned on the young police officer whose wake I recently attended in Newark on Monday night, Officer Dwayne Reeves. Officer Reeves was 31 years old, and he was married with five children.

I believe in the constitutional right of individuals to bear arms under circumstances that will protect the public. I have no argument with that. But I do not think there is a constitutional right to put guns into the hands of criminals who attack police officers and other innocent victims in our country.

I represent a State where crime rates are going down, but murder rates are going up because guns are freely available among gangs on the streets in our communities. This is completely unacceptable. And to allow gun trafficking to continue on, without giving the victims of gun violence the right to seek justice in a court of law, is just plain wrong. It should be enough for any individual with common sense to say: Enough is enough.

Prohibiting civil liability actions as this bill does—and I recognize that some may argue about limited exceptions to the general immunity given to the gun industry in this bill—would make it next to impossible for Detective Lemongello, his partner Officer McGuire, or the family of Officer Dwayne Reeves to have their day in court, to seek and receive justice through the American legal system.

So again, the purpose of my amendment is to protect the rights of law enforcement officers. I understand that this bill is going to pass with, I understand, 61 cosponsors. But I hope my colleagues will understand that, at a minimum, law enforcement officers should be permitted to bring lawsuits against culpable gun dealers and manufacturers.

In the Lemongello case, actually, the people who sold the guns recognized their own mistake, and settled with Detective Lemongello and Officer McGuire. They were able to reach this settlement because Congress did not pass this bill last year, which would have given the gun dealer immunity and removed these lawsuits from the courts.

Now, what's more, the gun dealer who sold the gun to the criminal who shot Detective Lemongello and Officer McGuire, along with several other purveyors of guns in that West Virginia city, changed their policies. These gun dealers now sell one gun at a time as a result of this lawsuit and they no longer make bulk sales.

So this is a real issue. This is not just a debate. There are people dying because we are not doing the right thing. There are lots of forums where we can make this case, and we will continue to, those of us who care about public safety, who want fewer guns on the streets, and who care about accountability.

It is hard for me to understand this legislation as it relates to States rights, in the sense that State legislatures, both Republican and Democratic, have supported the right of victims of gun violence to have access to the courts.

So this is my view, and I am only one Senator, but it is heartfelt. My opposition to this bill and my support for this amendment comes in the context of the real problems and the real tragedies that will occur if we do not have the right checks and balances in the system, if we take away the right of innocent victims to go to court when they are wronged.

I understand that this bill will pass but I am asking all my colleagues to, at the least, support this amendment to protect the brave men and women in uniform who risk their lives to protect the citizens of our country every single day—people like Detective Lemongello, Officer McGuire, and Officer Reeves.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from New Jersey and will share a little personal perspective.

I have been in law enforcement for the better part of my professional career as a prosecutor. Some of my best friends are law enforcement officers. I have stood shoulder to shoulder with them in prosecuting cases. I know the risks they undertake to carry out their duties. I believe in what they do, and I believe they should be supported.

These law enforcement officers are not telling me that if a criminal murders one of their brothers or sisters, that they want to sue Smith & Wesson. The thought does not cross their mind. They are concerned that if they catch the criminal who did it, that it is likely to be 15 or 20 years before the litigation and prosecution is over. If they are found guilty and sentenced to death—if the law provides for it, they should be—they get upset when it never seems to happen, and years and years and years go by. That disrespects police officers.

It seems to me some of the same people who are talking so much about defending police officers are not as aggressive as they should be on some of these issues that really mean much to them.

I would say that I think, on the Lemongello case that has been referred to, based on my experience and understanding of the law as a prosecutor in the Federal court, as a U.S. attorney who prosecuted individuals under Federal laws involving this, you cannot sell a firearm to a ''straw'' person who is holding it to move it to another person. And if you have reasonable evidence to believe the person you are selling it to is a ''straw'' person, and it is going to someone else, then that someone else must fill out all the forms, put their name on it, and qualify to receive the weapon. And if you do that, and sell the firearm under those circumstances to someone who is not the true purchaser, you are not only subject to a lawsuit under this bill for civil damages, but you are subject to criminal prosecution as violating a Federal law.

I have prosecuted people for that. I have even had the responsibility to prosecute a gun dealer for not accurately handling these kind of matters. If it is a crime, there is clearly a basis to sue the gun seller. But you don't want to sue the manufacturer off in Massachusetts or wherever they are making the gun. If a seller irresponsibly sells it or violates a law in selling a weapon, you don't sue the manufacturer. They don't become an insurer for criminal acts.

That is what we are trying to do here, to pass some legislation that does nothing more than restore the classical understanding of American civil liability. Who should be sued and under what

circumstances should they be sued? If they sell 11 guns and they don't make them comply with the waiting requirement, if they don't get the proper identification from the person who is actually buying the gun, then they have aided and abetted in getting the gun to someone illegally. That is something for which they can be prosecuted and sued under this legislation. What we are talking about is abusive lawsuits where people are being held liable for criminal intervening acts. That is not a principle of American law.

People say: Enough is enough. We just have to do something.

What do you mean we have to do something? We are the legislative branch. We can consider laws if there are enough votes to pass them. But that doesn't mean we allow improper lawsuits to go forward. Senator CRAIG just read the letter from Beretta. One city, Washington, DC, if its laws are allowed to stand, which make gun manufacturers liable strictly for every crime committed by a criminal in DC, it will bankrupt every gun company in America. One city can do that. And these companies sell guns to our police officers. They sell guns to our military people. They are an important part of our American economy. Are we going to now buy our guns from foreign companies? We are not going to have any left in the United States that can survive this flood of lawsuits. It is a serious matter.

The bill is carefully crafted. That is why the Democratic leader, Senator REID, and former Democratic leader, Senator BYRD, and others are cosponsoring this bill. It has been here for several years. It has been reviewed. The loopholes in it have been examined and closed. It has gained support. Now we have a bill that should have already been passed.

I find it passing strange that our colleagues who filibustered a motion to proceed to consider the bill—they filibustered that and delayed this process over a day on that issue alone, when we could have already had the bill up, debated, and voted on. The votes are here to pass it. Let's move forward and get it done. It is quite odd that our colleagues would complain about wasting time on the bill. They are just unhappy because they don't have the votes to defeat it up or down. They don't have the votes to sustain a filibuster. They are conducting delaying tactics that make this legislation that is needed, that has strong bipartisan support, cost more days and more hours of the Senate's time than it ought to.

I wish to share an overall perspective on gun law enforcement in America. Back when I was a U.S. attorney, I came to believe that we should aggressively prosecute criminals who utilize guns during the course of criminal activity, that felons ought not to possess firearms. Both of these have been in our Federal law for many years. We enhanced penalties. Not too many years ago, in the 1980s, they made it a mandatory 5 years in jail, 60 months without parole, for anybody to carry a firearm during the commission of a Federal felony or any felony. That is a strong tool. I believe we ought to prosecute those cases because I am convinced that a lot of the murders in this country are caused by drug dealers and gang members carrying guns around as they do their criminal work. And if somebody crosses them, they pull out a gun and shoot them, and people get killed.

Let me say this first: Most Americans are not murderers. Most Americans are not criminals. Most Americans who have guns—and most Americans do have guns—are law-abiding, decent, peaceful citizens. They are not ever going to murder somebody. This is some sort of myth out there that we are going to fill up the jails if we enforce these laws. There are not that many people out here trying to kill somebody or commit crimes carrying firearms. That is a hardcore group of criminals who deserve to be targeted.

I created my own program called ''project trigger lock'' in the 1980s. I created a newsletter on it. We sent out news to our sheriffs and our police chiefs about these kind of crimes and the policies of my office to prosecute cases that they may be working on involving these kind of criminals. We enhanced our prosecutions.

Then I was elected to the Senate. I come in here in the middle of the 1990s. All I heard is, we have to pass more laws to crack down on innocent people who own guns, people who don't commit crimes. They are the ones for whom they want to make it more difficult. They want to constrict the constitutional right to keep and bear arms through any number of devices. At that time, it was thought to be politically popular, that we would just keep voting more and more restrictions on private ownership of guns. Pretty soon, I guess they thought people would just give up and Americans would capitulate and not stand up for their right to keep and bear arms. But it didn't happen that way. The American people got their back up on it.

The politicians are beginning to hear it now, and the people expect to be able to maintain their constitutional right to have a firearm. That is just what has happened.

As all this happened—and I am in the Senate—I am thinking, This isn't going to affect crime. Ninety percent of convictions in Federal firearms cases have to do with using a firearm or carrying a firearm during the commission of a felony and the possession of a firearm after having been convicted of a felony. Those are the bread-and-butter cases. Many of them are being brought. And when you effectively enforce justice, just those two laws—and there are many others, such as machine guns and other kinds of sawed-off shotguns—that is a common case that used to be prosecuted, and I prosecuted lots of them. I personally tried sawed-off shotgun cases. I personally tried and prosecuted cases where the serial number had been erased from a firearm. It is a crime to erase it. It is a crime to sell or to carry a firearm that has a serial number erased. It is a crime to transfer a firearm to somebody else that has the serial number erased. We have all kinds of laws. It is a crime to go to a gun dealership and provide any false statement on a document that you have to sign before you get a firearm or to violate any of the myriad of laws out there.

What I am saying again is that the most common cases are the possession of a sawed-off shotgun, carrying of a firearm during a criminal offense, or possession of a firearm after having been convicted of a felony. For the rest of your life, unless your disabilities are removed, if you are convicted of a felony, you cannot be allowed to possess any firearm, even to go hunting. That really galls some people, but that is the law. We enforce that. It is enforced right now in Federal court.

So we had all these cases. And the other side, President Clinton and Vice President Gore, was declaring that if you did not support all these new restrictions on legitimate ownership of guns—these laws and regulations that they were putting up, one right after another; as soon as one passed, they would come up with another one—then you didn't believe in law enforcement, you didn't believe in fighting crime, that you were allowing murders to take place, that you didn't love children. We heard all that.

I went down to the Department of Justice to pull their statistical book. I have seen the statistical book. I used to get it when I was U.S. attorney. It would show the number of prosecutions in every category of crime. What did I find? That under President Clinton's Attorney General Reno, Department of Justice gun prosecutions had declined rather significantly. At the same time they were accusing Members on this side of being soft on gun crimes and not supporting efforts to protect the innocent from criminals and all of these things, they were reducing the number of Federal prosecutions for gun crimes. I raised that in hearing after hearing after hearing. By the time the Clinton administration was leaving office, the numbers had picked up a little bit.

President Bush came in. At the first hearing, I asked new Attorney General John Ashcroft: Are you going to make it a priority of the U.S. Department of Justice to increase the number of gun prosecutions in this country? Attorney General Ashcroft said: Yes, that is my mandate. That is what the President wants. That is what I believe in, and we are going to do it. And prosecutions have gone up. Murders continue to decline. That is one of the more remarkable things that has happened.

We can celebrate. Murder and violent crime have been on a period of decline. I am absolutely convinced that one of

the reasons that has occurred is because of the steadfast, consistent, tough prosecution of criminals who carry guns, either former criminals or criminals while they are conducting their crimes on the streets. I believe it works. In fact, it is known throughout the criminal community that if you carry a firearm during drug-trafficking offenses, if you carry a firearm during any other kind of crime you are committing, you are likely to go to Federal court to be tried by a Federal prosecutor. And in addition to the sentence you get for the underlying crime you committed, such as selling drugs or robbery or burglary, you get whacked by another 5 years in jail without parole. If you carried a machine gun, a fully automatic weapon, that is 20 years consecutive without parole. It is goodbye, so long, throw away the key. You are exiled from our community. That is what happened.

During the Clinton administration, a very fine U.S. attorney in Richmond began to drive this issue. He called it ''Project Exile.'' He put out the word in the street. They had billboards. They put up signs. If you are convicted of carrying a gun during a crime—you are a felon and you carried a gun—we will prosecute you. You will be guaranteed a long time in jail without parole. You will be sent off to a Federal institution, maybe in a distant city. That is why he called it ''Project Exile.'' The violent crime rate in Richmond plummeted. They did what they said they were going to do. They prosecuted those cases.

All I am saying is, with great sincerity, based on my personal experience and a fair analysis of what has happened out there, let's continue to be aggressive with these prosecutions.

Let's not let up. Let's make sure that even more people understand with crystal clarity that if they are a criminal and they are out using a gun in the course of their work, or carrying one as they go about their business, they will be prosecuted. And when they are prosecuted, they will not only be convicted, but they can be assured they are not going to get probation, some sort of halfway house, a couple of months on probation, or something like that, but they are going to the slammer for a significant period of time—perhaps a very long period of time. And if we keep that pressure on, we are going to continue to see the crime rate drop.

That is my hope and that is what is happening. I believe that is the fact. Fortune magazine, in the last few months, had an article about it. They said very few people have commented on the obvious fact that, yes, our prison population has gone up, but our crime rate has dropped. Can we add 2 and 2? Most people in America are not criminals. We are not going to continue to have the prison population go through the roof because most people don't commit robbery, burglary, or carry guns during illegal activities. Very few people do that.

What we were doing in the 1960s and 1970s was calling the criminal the victim. We forgot the true victims. We wanted to see what we could do to help the person who was committing the crimes. We finally realized that some of these people are just dangerous criminals and they have to be punished and removed from society. If you let them back out, they will commit more crimes.

So this has been occurring in our society. We are doing a better job of targeting repeat offenders. We are doing a better job of targeting violent offenders. Can we do better? Yes, we can. Can we be more sophisticated? Yes. Are our current laws a bit too heavyhanded? Probably so. We could probably reduce the penalties on some of the defendants. But the very principle that there is certainty and tough punishment for violation of Federal gun laws is one of the concepts that has led to the reduction of violent crime in America, for which we all ought to be excited.

Mr. President, I will conclude by saying we are doing some things right in law enforcement. Our law enforcement officers really are doing a fine job. We have turned the tide, in some ways. It is a mathematical thing. I have come to understand that.

Back in the 1960s, the crime rate was increasing 10, 15, 18 percent a year. People went from the 1950s when they never locked their doors to being terrified, raped, robbed, and murdered in the 1960s and 1970s. The crime rate had more than doubled in 20 years. Now there has been a decline. It has been declining for the reasons I just stated. We can be more sophisticated. I have personally offered legislation that would reduce the mandatory penalties for crack cocaine. Some on my side think that is soft on crime. I think we need to be sophisticated in enforcement. Every year in jail should be carefully considered, and people should not serve longer than they need to serve. I think we can modify that. Judges tell me they think it ought to be modified. I stepped up to the plate to do that.

But the basic principle that you crack down and you are tough on people who commit crime, and you are consistent, and they know if they are carrying a gun and committing a crime in our country they are going to be sentenced to a long time in jail, that will deter them. The word is out in Philadelphia, Richmond, and Alabama that if you carry a gun during your crimes, you are likely to go to Federal court and serve hard time, without parole. And they are not doing it so much.

I say this: It is likely that the number of gun prosecutions are going to begin to decline because criminals are not carrying guns anymore because they know it is a ticket to the big house. It is something that has worked. It has saved hundreds and thousands of innocent lives in this country. It has saved thousands of people from being permanently disabled by being victims of crime, whether it is guns, knives, or anything else. It has been a good thing that has been accomplished. I love the law enforcement community, our law officers with whom I served. They put their lives on the line for us. They work very hard for us.

As the crime rate has declined, we now have more police officers per crime. They are able to give even closer focus on each individual crime. At one point, there were so many crimes they hardly had time to investigate or prosecute them. Now, we have trends going our way. We need to keep after it. But having the right to bring out bogus lawsuits against an honest seller of a legal firearm, or against an honest manufacturer of a legal firearm, is not the right approach. It is just not consistent with our American principles of law; it is not what we believe in. It is not a legitimate tactic. It is an abuse of the legal system to carry out a political agenda, and it should not be done.

Every company, every person who has a license to sell guns, according to the law, ought to be able to do so without fear of being brought into some bogus lawsuit. That is all we are saying. I think this bill does that. I see my colleague from New Jersey, the great advocate that he is on this issue.

I yield the floor.

The PRESIDING OFFICER (Mr. COBURN). The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I want to say a few words about this bill and how I see it.

I think this is a terrible period for America—the fact that we are taking an action and making it a preceding action to considering some other issues that are, I think, far more important than the subject at hand.

I heard an accusation by our friends on the other side that the Democrats were using delaying tactics and just not permitting us to get this bill—this important piece of legislation that says if a gun manufacturer does something, or the dealer is careless and leaves the gun on the counter and someone picks it up and goes out and kills someone, you cannot sue them; there is no civil action. That is determined to be more important than getting a defense authorization through that said give our troops everything they need to protect themselves. No, no, no, we have to put that aside because what we want to protect today in this place—and it is shameful, in my view—is gun manufacturers who might knowingly make guns available to a criminal or someone who is deranged and not yet a criminal—he is not a criminal until he pulls the trigger—or a distributor or a gun dealer.

We saw a case not too long ago regarding the Washington sniper, and the fact that the shop owner could not tell whether this fellow had stolen the gun or whether he sold him the gun. There were no records kept. It is shocking. We have heard this: When a car manufacturer produces a car and a drunk

driver takes that car and kills somebody on the road, should the automobile manufacturer be liable? I don't think that is a proper comparison. I say that if a gun shop owner walks away from his counter and leaves a pistol on the counter and somebody takes it and goes out and kills somebody, he ought to be punished—not only punished by having a civil action against him, but punished by going to jail. That is what the sentence ought to be.

When we talk about whether a product is used to harm others, automobiles typically are not produced to harm others. But guns are lethal. When you pull a trigger, something happens. I carried a gun. I carried a gun in the uniform of my country. I knew what I was supposed to do with that gun. I was supposed to kill the other guy, if I saw him first. So guns are not play toys and they ought not to have such a place in our society that we can delay getting onto our Defense bill, getting onto other legislation that we desperately need, such as the Transportation bill or Energy bill.

We cannot discuss those things, no. The majority says: No, America. I want Americans to listen to this. The most important thing we could do in this Senate—all 100 of us representing every State in the country—is make sure that gun manufacturers, or gun distributors, or gun retailers who may be careless—hear that—or grossly negligent, or reckless in the way they are handling their records or weapons—no, come on, America, stand up and protect those gun manufacturers and dealers. The heck with the rest of this other stuff that affects everyday lives, affects a family who has someone sitting in Iraq, maybe with not enough armor on their humvee, or not enough weapons.

I met with a group of veterans the other day who had returned from Iraq. They were here for some rehabilitation. They had gone through traumatic experiences, wounds, et cetera. I asked them: Was there anything you were missing? A young woman soldier who had seen combat said: We don't have enough ammunition to practice using a .50-caliber machine gun so that when we are in combat, we are not quite sure how to use it.

That is more important than protecting a gun manufacturer or dealer who is negligent in their behavior. I cannot get this. Negligence, gross negligence, recklessness, carelessness—in other words, you can behave any way you want. It is like calling out ''fire'' in a theater. You get punished for that. That is a crime. But for a gun dealer who doesn't handle the weapons inventory properly—no, we have to make sure we don't go after those guys.

Talk to the parents. Talk to those who have seen what happens with their child, in terms of gun violence, and see how they feel about the Senate spending time on this issue and holding up everything else. You cannot do other things, no, because artfully, craftily, the other side has shut down the ability to offer amendments. I don't want to get too complicated in explaining the process to the American public. They are not interested in the process.

My colleague was on the floor a moment ago, JON CORZINE, the distinguished Senator and my friend, and I enjoy serving with him. He tried to introduce an amendment that would make it a special penalty if a police officer was killed by a gun. You could then pierce this wall of immunity that says you cannot bring a lawsuit against a gun manufacturer, a gun distributor, a gun dealer—no, you cannot do that because that is important.

After all, these guys give money. They give money for campaigns. The NRA—a small organization in numbers—controls what we do in this body. It is shocking. It is shocking that that organization, which is bent on making sure that everyone who wants a gun can get it—that is what they are saying. No, we have to protect them.

But the remaining 290 million people—or whatever the number is—are not entitled to the same protections as we want to give the gun industry.

We heard talks about how can you, said one of our distinguished colleagues—and these people are my friends; we differ so much on this issue—how can you take a legitimate business and take away their ability to do business and punish them if somebody they sell a weapon to has a record of mental delinquency, a disability, a bent to violence? How can we blame the gun dealer? We make sure we protect gun dealers who are not licensed. It is a gun show loophole. Those are dealers who don't have to have a license, and they can sell a gun to anybody—Osama bin Laden, and the whole thing—and not get punished for it. They don't ask for any identification, no address, no phone number. They sell the person a gun and get the money. Those poor people, why should we make them go through the rigors of getting a license just because they are selling lethal weapons, the kind of weapons policemen carry and the FBI carries, and criminals? Why should we make them go through that?

My colleague talked about the policeman in New Jersey who just lost his life, Dwayne Reeves. He loved being a cop. He was following in his father's footsteps. Officer Reeves was breaking up a fight when a gang member pulled a gun and shot and killed him.

While this is another American tragedy, unfortunately it is not unique. We see lots of people every year perish because of a gun mishandled or a gun directed at innocent people. In the State of New Jersey, we had 415 gun deaths in 2002, according to the CDC. Mr. President, 2002 is the last full year of statistics they have. According to the CDC, 2,867 children and teenagers died from gunshot incidents in the United States in 2002. Again, that is the last year for which complete statistics are available.

We see that in the United States, 30,000 people were killed, including suicides, homicides, unintentional, accidental shootings. But when we look at other countries, we see how few households there are with firearms and gun homicides per million. In Japan, it was less than 1. In the United Kingdom, it was 1.3. In America, it is 62, 62 guns per million where homicide is involved. So we see we are especially susceptible in this society of ours to casual gun ownership, gun use, very frankly.

We see incidents in my State, as we see in every State. A young woman in Atlantic City, NJ, was at a dance. An older man with a history of mental disturbance met her at a friend's home and tried to engage her physically. He shot her through the eyes. She was 15 years old. Like every child killed by gun violence, the girl mentioned left behind many anguished loved ones—parents, grandparents, brothers, sisters, friends, and classmates.

I heard those parents ask: How did a gun fall into the hands of a deranged person? I heard police officers question how guns were obtained by gangsters, such as the man accused of murdering Dwayne Reeves, the police officer murdered the other day. I heard teachers, pastors, and neighbors bemoan the gun violence that has ripped communities apart and destroyed lives. But in my 20 years in the Senate, no one in New Jersey has ever come up to me and said: You know, Frank, I am worried about the fact that gun manufacturers might be held accountable for all this violence and bloodshed. Can you make sure we protect the gun dealers and gun manufacturers?

That is why I cannot believe the Republican leadership is wasting the Senate's time on this gun violence immunity bill. I believe it illustrates just how badly we as a Senate have lost touch with reality, with the concerns of the average American families.

If this bill passed the last time it was brought to the floor, the families of the six victims of the Washington snipers would have lost their right to sue the gun dealer who negligently put a gun in the hands of those murderers. The gun dealer, in that case, ultimately settled a lawsuit for $2.5 million. Why did they settle? Because they knew they were negligent.

Instead of debating gun violence immunity, we should be pressing forward with the Defense bill, as I said earlier, to support our troops, to really show concern for the average family because the average family are the ones supplying the sons and daughters to fight for our interests in the Middle East. But the majority leader decided that protecting gunmakers, distributors, and dealers from legitimate legal redress for their careless or reckless behavior is more important than making sure our troops have the armor, the weapons and, as I said, the ammunition they need. The Senate is setting aside the safety of our troops in order to protect gun dealers. What an outrage that is.

During the July recess, I had the chance, as I mentioned, to meet with some soldiers and military families in New Jersey. They have been affected by the Iraq war. The effects are so enormous that when you look at the problems they encounter, you shake your head and wonder, how can we do more to take care of them.

I talked with one young man who says, when he applies for a job, he doesn't list the fact that he is a member of the National Guard. Why? Because an employer does not want to hire someone who is going to be away for a couple of years.

We ought to be trying to shorten that term of duty. We ought to make sure we have more troops engaged so we can send some who are in Iraq home because they accidentally have been called up and are now doing tours of duty never dreamt about.

The soldiers and their families talk about not getting the resources they need to fight the war. They talk about shortages of tires for humvees. So there are not enough vehicles in working order. The shortage of humvees means troops don't get the appropriate practice of what to do when the convey is attacked.

As if that isn't bad enough, a soldier told me there is not enough Gatorade for them to drink while they are working in 125-degree heat. We know what it is like outside here, but we are not wearing full battle gear, and it is not 125 degrees.

When soldiers find a roadside bomb, when one explodes, they like to mark the spot with spray paint so it will be easy for them to tell if another bomb is put in the same place. But one soldier told me that the Army doesn't have any spray paint available. Soldiers were told to use their own money to buy paint to identify a place that is comfortable for someone to place a roadside bomb. They should use their own money to buy spray paint in a local market.

In short, I learned that our troops in Iraq are facing unnecessary danger because of inadequate training, lack of resources, but here we are in the Senate shoving the Defense bill aside so we can do this gun violence immunity bill. I dare these colleagues to call the families I met with and tell them we cannot help them because the NRA is asking us to grant legal immunity to these gun manufacturers, distributors, and sellers.

We should be taking up a bill to expand stem cell research. But rather than work on the stem cell bill to save lives, we are working to protect those who negligently sell guns to criminals which result in people being killed.

Most American families would prefer we devote our time to the Stem Cell Research Enhancement Act of 2005, the stem cell bill that I am proud to cosponsor, which would expand Federal funding for embryonic stem cell research. There are many other issues.

When we look just at the stem cell situation, as many as 100 million Americans could benefit from stem cell research, but we don't do that. Stem cell research can help Americans living with diseases such as diabetes or asthma—which afflicts 9 million children under the age of 18, including one of my grandchildren—- cancer, Parkinson's disease, autism, spinal cord injury.

I find it amazing that the leadership of the Senate, a brilliant physician, the majority leader, is more concerned at this point with providing immunity for rogue gun dealers than giving a ray of hope to 100 million Americans who might benefit from stem cell research. Talk about misplaced priorities.

The Republican leadership in this Senate and this administration have lost touch with the priorities of the average family. What is the one thing that touches the life of every American every day? Transportation. We should have passed the highway bill 2 years ago. Once again, we are bogged down and the President is threatening to veto the highway bill if the final version is closer to the one passed by the Senate.

So we have a lot of debate, a lot of argument to go through. If it were up to the American people, they would pass a highway bill and veto this bill on gun violence immunity. The list of misplaced priorities goes on and on. We cannot address issues such as childcare and job training, but we can waste our time on gun violence immunity, and instead of letting a jury decide the merits of the case involving gun violence, Congress wants to give special protection to rogue gun dealers and restrict the right of all other Americans to plead their case before a judge and jury. That does not make sense.

When most Americans think about gun violence, they pray that their loved ones don't become a statistic. They are not looking to grant special legal immunity to the companies that sell guns. This bill is another example of the Republican leadership taking its marching orders from a rightwing special interest group and ignoring the interests of average families.

I don't know if this bill will pass, but I know one thing. If we spent our time addressing the issues that really matter to average families, this bill would never have seen the light of day. I hope the majority leader will take a cue from the American people and turn our attention to issues that matter to them—stem cell research, national defense, and transportation.

In fairness and equity, I have a disagreement with some of my friends in the Democratic Party also, and I urge them to put aside the time devoted to this gun immunity bill and let us get on with other issues.

Mr. President, I offer an amendment that poses a question to the Senate. The question is simple, Is it more important to protect our Nation's children or a special interest lobbying group? This bill gives immunity to the gun industry even when they are grossly negligent. What my amendment says is there should not be a blanket grant of immunity in cases in which a child is the victim.

How can we look a mother in the eye and tell her she cannot hold accountable the people who caused the death of her child? What the bill says now is that the parents of a child killed by gunfire when someone else is at fault cannot seek redress. What we are saying is, too bad about your child, but we cannot let you harm these friendly donors of ours.

I call up amendment No. 1620 and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Reserving the right to object, we appreciate the Senator coming to the floor. I know he is committed to these issues and has been for a good number of years. We are reviewing the amendment now consistent with all of the amendments that are being submitted at this moment. We have not yet completed that review. We received the amendment about 25 or 30 minutes ago.

With that, I object to the unanimous consent request.

The PRESIDING OFFICER. The objection has been heard to the amendment.

The Senator from Rhode Island.

Mr. REED. Reserving my right to object—and I will not object, obviously—I know the Senator is looking carefully at these amendments. I make a point, I have served in the House of Representatives where there is a Rules Committee that looks at every amendment and decides what is coming to the floor. In the Senate that was never the practice. We are trying to be extremely cooperative and transparent in what we are doing, going, we hope, the extra mile. I hope it is reciprocated so we can get to amendments and get to votes. That is how in the Senate amendments are decided, not by a committee putting them up or down for consideration, but by Members voting. I do not object.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, we are examining these amendments closely. As I had mentioned to the Democratic floor leader a few moments ago on the trigger lock amendment, it was not last year's amendment. We are examining it now. It is quite extensive. It is a new approach toward trigger locks and licensed gun dealers and a much broader issue than before.

I see another Senator on the floor to speak. Let me speak only briefly because the Democratic floor leader, Senator REID, had mentioned in his debate a few moments ago a statement by Smith & Wesson in relation to the expenses involved as it relates to defending themselves in these frivolous lawsuits.

I have a letter from Smith & Wesson to Senator BILL FRIST that I think is

important to recognize because it does put in context something that can very easily be taken out of context.

Michael Golden, president and CEO of Smith & Wesson, put it this way. He speaks to a letter in response to the Brady Center's wire story, obviously trying to knock down the claims of gun manufacturers in their support of the Protection of Lawful Commerce in Arms Act. He stated:

In the article, the Brady Center attempts to minimize the financial implications that the numerous ''junk'' lawsuits have had on the firearms industries. To support their position, they cite, among other things, Smith & Wesson's most recent 10–Q, filed with the Securities and Exchange Commission. They quote Smith & Wesson's filing, stating, ''In the nine months ended January 31, 2005, we incurred $4,535 in defense costs, net of amounts received from insurance carriers, relative to product liability and municipal litigation.''

As stated in our filing, the figure report reflects fees incurred over a 9-month period, and is exclusive of settlement amounts received from our insurers. Smith & Wesson entered into settlement agreements with two of its insurance carriers following years of coverage disputes. The settlement amounts equal a fraction of the total fees incurred by Smith & Wesson in defending against frivolous lawsuits. In fact, over the past 10 years, Smith & Wesson has spent millions of dollars defending itself against precisely the type of ''junk'' lawsuits that the legislation—

Referencing the legislation that is before us today—

is designed to prevent.

So they do openly support passage of the Protection of Lawful Commerce in Arms Act. They feel it is critical to not only the survival of Smith & Wesson but to the firearms industry of America.

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

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

SMITH & WESSON,
Springfield, MA, July 26, 2005.

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

DEAR SENATOR FRIST: This letter is in response to the Brady Center's newswire released yesterday regarding the Protection of Lawful Commerce in Arms Act. The newswire was entitled ''The Biggest Lie Yet: Hoping to Ram Bill Through Senate, NRA Supporters Use Phony Scare Tactics, Says Brady Campaign.

In the article, the Brady Center attempts to minimize the financial implications that the numerous ''junk'' lawsuits have had on the firearms industry. To support their position, they cite, among other things, Smith & Wesson's most recent 10-Q, filed with the Securities and Exchange Commission. They quote Smith & Wesson's filing stating, ''In the nine months ended January 31, 2005, we incurred $4,535 in defense costs, net of amounts received from insurance carriers, relative to product liability and municipal litigation.''

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Passage of Protection of Lawful Commerce in Arms Act is obviously critical to Smith & Wesson, the firearm industry, our nation's economy and America's hunting traditions and firearm freedoms. Thank you for your sponsorship of this very important piece of legislation.

Very truly yours,

MICHAEL F. GOLDEN,
President and CEO.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. I ask unanimous consent to speak as in morning business.

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

(The remarks of Mrs. LINCOLN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, as most of our colleagues know, we are now on S. 397, the Protection of Lawful Commerce in Firearms Act. There is an amendment on the Senate floor for consideration at this moment. Cloture on the bill has been filed.

What I thought I might do is take a few moments to discuss some of the differences between S. 397, the one currently on the Senate floor, and S. 1805, the previous version of the Protection of Lawful Commerce in Firearms Act, which was considered in the Senate in the 108th Congress. Language has been added in this version to address developing issues or concerns expressed last Congress, garnering more support and adding more cosponsors on both sides.

As I announced this morning and submitted for the RECORD, we now have 61 cosponsors including myself. In some cases, the changes are just technical in their character.

But before I get to the changes, let me assure my colleagues that these changes do not alter the essential purpose and effect of the bill. As we have stressed repeatedly, this legislation will not bar the courthouse doors to victims who have been harmed by the negligence or misdeeds of anyone in the gun industry. Well recognized causes of action are protected by the bill. Plaintiffs can still argue their cases for violations of law, breach of warranty, and knowing transfers to dangerous persons. Specific language has been added to make it clear that the bill is not intended to prevent suits for damage caused by defective firearms or ammunition. The only lawsuits this legislation seeks to prevent are novel causes of action that have no history or grounding in legal principle.

This bill places blame where blame is due. If manufacturers or dealers break the law or commit negligence, they are still liable. However, if the cause of harm is the criminal act of a third person, this bill will prevent lawsuits targeting companies that have ''deep pockets'' but no control over those third persons.

The first change we made in this bill was to add the words ''injunctive or other relief' in the title of the bill. This is to make sure S. 397 will prevent all qualified suits and respond to concerns that the 108th version would only have prevented suits for damages. The version of the bill before us today will prevent suits that seek injunctive or other relief besides those seeking only money damages. Without adding this language, law-abiding firearms businesses could still be crippled by being prevented from manufacturing or selling firearms. Any court decision that incorrectly finds dealers or manufacturers liable for criminal acts of others will destroy an industry whether there is an award of money damages or not.

In the ''findings'' section of the bill, we have made a couple of changes that do not alter but strengthen and clarify the second amendment principles that are reviewed there.

That same section contains a new paragraph responding to questions about the bill's Commerce Clause implications. That new section expresses the reality that the bill actually strengthens federalism and protects interstate commerce. Thirty-three states have already forbidden lawsuits like the ones this bill seeks to eliminate. Advocates of gun control are trying to usurp State power by circumventing the legislative process through judgments and judicial decrees. Allowing activist judges to legislate from the bench will destroy state sovereignty. This bill will protect it.

A new paragraph in the ''purposes'' section of the bill echoes this change.

In the ''definitions'' section of the bill spelling out what we mean by a ''qualified civil liability action,'' we have added the words ''or administrative proceeding . . .''. This change responds to the experience of some in the industry, who have found themselves not only the target of junk lawsuits filed by a municipality but also the target of administrative proceedings, such as those to change zoning restrictions, also aimed at putting a law-abiding manufacturer or seller out of business just because it made or sold a firearm that was later used in a crime. However, it must be remembered that not all administrative proceedings involving someone in the firearms industry would be covered by this addition—only those that were ''resulting from the criminal or unlawful misuse of a qualified product by the person [bringing the action] or a third party . . .''. Let me emphasize: this change is not intended to, and would not, have the effect of preventing ATF or any other Federal, State, or local agency from using administrative proceedings to enforce Federal or State regulations that control the firearms business. So we are not trying to circumvent the Justice Department in any sense of the

word; or, as I have said, State or local agencies that have the right to enforce the law. For example, if a dealer actually violated a zoning regulation or local licensure requirement, this provision would not prevent an action against the dealer. Likewise, if a dealer knowingly violated the law or committed any other infraction for which he or she could lose a Federal firearms dealer's license, this provision would not prevent ATF from initiating an administrative proceeding to revoke or suspend that dealer's license. This addition of the words ''administrative proceeding'' is simply intended to clarify that whether it is a reckless court or court-like administrative proceeding that is brought against a law-abiding business, based on a third party's misuse of a firearm, it is covered by this bill.

Also in this section of the bill, we have added the words ''injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief . . .''. This is to ensure that the bill encompasses all qualified lawsuits, regardless of the relief being sought.

In the section relating to causes of action that would not be barred by this legislation, we have specifically listed circumstances in which manufacturers or sellers ''knowingly'' violate a statute. In the last Congress, we had two different versions of this section: one required the violation to be both knowing and willful, and the other version didn't require either. Since a person cannot violate the law ''willfully'' without doing so ''knowingly,'' we have dropped the word ''willfully'' in this version.

Also in the section relating to causes of action that would not be barred by this legislation, we have made some clarifying changes to the paragraph concerning product liability actions. Again, this bill is not intended to prevent lawsuits against the industry for damages resulting from a defective product. Language was added to this section of the bill to make clear that even if the person who discharged a defective product was technically in violation of some law relating to possession of the product, that alone would not bar the lawsuit. For instance, if a juvenile were target shooting without written permission from his parents—that is a violation of current law, a violation of 18 U.S.C. 922y—and was injured by defective ammunition, the juvenile would still be able to bring a suit against the ammunition manufacturer.

The final major change, other than clarifications and emphasizing language, is the provision conforming the definition of trade association to the definition in the Internal Revenue regulations. The purpose of the change was to address some arguments that were made in the last Congress, attempting to stretch the concept of ''trade association'' to include groups that no one has ever considered to be a trade association. So, for anyone who might have been concerned that the National Rifle Association would somehow be protected by this bill—as was argued last time—being defined as a trade association, this change will prevent that from happening. We want that to be perfectly clear. It will also prevent illegitimate gun sellers, such as gangs or gun traffickers, from somehow qualifying as a trade association under the bill.

I believe that I have addressed most, if not all, of the significant changes in the bill. As we often find with legislation, while they are relatively small changes in the language itself, it took a lot of words to describe them. Even so, I hope this explanation is helpful to my colleagues.

This legislation is not identical to the legislation of the 108th, but it is to all intents and purposes the same, with the kind of clarifying examples I have just given. I certainly welcome the debate on the importance of this measure. I hope we can move it quickly through the Senate and conclude our work and provide this country with the Protection of Lawful Commerce in Firearms as should be the case.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I don't know how many of our colleagues during this past number of hours have had the time to listen to the comments of our colleague from Rhode Island. I know we all have busy schedules and appointments in our offices and with the hearings we attend. I have had those meetings in my office as well. One thing I have not done today, which I do under normal circumstances, is put on the mute button when constituents come to my office. In the last couple of hours, I have not done that. I have been transfixed, listening to our colleague from Rhode Island.

I have witnessed a lot of people over my 24 years in the Senate make a case for or against a piece of legislation, and I do not recall another instance when someone has been as eloquent, as thoughtful, as well prepared as JACK REED of Rhode Island has in presenting his case here today as to why this bill is a bad idea. I publicly commend him for his well-prepared, well-thought-out, passionate arguments on why this is a troublesome piece of legislation. I thank him for being a good educator on this subject matter.

Let me take a few minutes, if I can, to express some views. It is not every day that I question at all the majority leader's decision to seek to bring a particular piece of legislation to the floor of the Senate. As someone who has been in this body for almost a quarter of a century, I have great respect for the role of majority leader and how difficult a job it is. In fact, it is the job of the majority leader to set the agenda and to exercise his or her prerogatives to move that the Senate proceed to a particular matter. So I am not questioning his right to do so. I am questioning the wisdom of having made this decision.

In this case, I cannot let pass the decision the majority leader has made to bring us to consideration of a gun liability bill. By his actions, the Senate has been prevented from concluding consideration of the Defense authorization bill. We were making very good progress on that bill on a number of issues that were very important to our men and women in uniform, to the families of our service men and women, to their survivors, and to the veterans of this country who were also the subject of numerous amendments that would have been offered on the bill had it remained on the floor of the Senate for another couple of days.

In my years here, good debates on a Defense authorization bill, which is what this body is all about, have gone on 9, 10, and 11 days before a cloture motion would be filed. There have been other occasions when it has been filed in less time, but never in less than 5 days of debate. You always look forward to the week or two prior to the August break when we gather to debate and discuss the Defense authorization bill.

For the good part of the last 24 years, we have not had a debate on the subject matter of that legislation at a time of war. This time, of course, we were. Therefore, it was stunning to me to know, at a time when our men and women are in a dangerous place, when there are literally hundreds who have lost their lives, thousands who have been injured, and thousands every day who are putting themselves in harm's way, that the decision was made by this body, by the leadership of this body, to put aside that bill, which might do some things to make their lives safer, provide some security for the survivors of those who lost their lives, and be of some help to veterans. It is stunning that we would set aside those issues to take up this bill that is now before us. In my quarter of a century in this body, I don't recall the Senate ever being forced off of a Defense bill in this manner.

The distinguished chairman of the Armed Services Committee put it simply and succinctly several months ago in this Chamber. Senator WARNER of Virginia said the following—when confronted, by the way, with a similar fact situation. There was a movement a year or so ago to take up the class action reform bill, of which I was the principal author at that time. I am a strong supporter of tort reform. There was a movement to bring up the class action reform bill.

In fact, I wrote a letter, with several other Members of this body, urging the leadership, as strongly as we felt about class action reform, not to set aside the Defense authorization bill in order to bring up the class action reform bill. That point of view prevailed and we stayed on the Defense authorization bill. But during consideration of that motion or that effort, the chairman of

the Armed Services Committee said, ''We are at war.''

We have men and women wearing the uniform of the United States Armed Forces who are this very moment being hunted by enemies of our Nation. They are in combat. They are under siege. They are enduring some of the harshest conditions ever faced by American soldiers.

That is exactly where we are today. Yet, unlike a year or so ago when we turned back the efforts of those who would have put aside the Defense authorization bill to deal with a class action bill, this time when it comes to the gun lobby we said no, the gun lobby is more important than the men and women in uniform, more important than the people who are putting their lives on the line every day.

So here we have now the majority of the Senate saying those soldiers will have to wait a while. This is evidently a higher priority, and it is this bill, a bill that would confer special privileges on a small but very powerful industry. I am frankly incredulous, to say the least, that we will apparently recess for an entire month having spent barely 2 days to decide on the critical needs of the soldiers, sailors, airmen, marines, veterans, and their survivors. I think we should finish our job. It is the least the Senate could do for our troops before we take a month-long break from our work.

Our business is about choices, sometimes very difficult choices. You can't do everything at the same time. But I don't know how you could possibly draw the conclusion that this immunization bill for the gun industry is a more important piece of legislation than the Defense authorization bill, to provide additional protection and the needs of the people in uniform, for veterans, for survivors. I do not know how anyone could possibly draw that conclusion at a time we are at war. What do people think happened in London a few days ago, in Sharm el-Sheik a few days ago? What event has to occur to convince this body that we ought to be about the business of doing everything we can to protect this Nation? Instead, we decide it isn't quite that important, that this is more important.

I am stunned in many ways that anyone would even suggest this legislation in lieu of the Defense authorization bill. I can only imagine what the reaction would be if I were to come to this Chamber and offer a similar amendment that would exclude another entire industry from exposure to potential liability for wrongdoing.

I have more than a passing knowledge of the gun industry. The State of Connecticut, which I am proud to represent, has been, and to my knowledge remains, home to more gun manufacturers than any other State in America. I know of nine such companies that currently call Connecticut their home: Colt Manufacturing, Sturm Ruger, U.S. Repeating Arms, Marlin Firearms, U.S. Firearms Manufacturing, Charter Arms, L.W. Seecamp, Wildey, and O.F. Mossbert and Sons. From 1972 to 1997, more guns were manufactured in my home State of Connecticut than any other State. More than 25 million in all were produced in my small State of Connecticut. These are good people. These are good companies. And I represent good people who work in this industry. We produce fabulous guns. They are well constructed. They are the envy of the world.

Eli Whitney, of course, is best known as the inventor of the cotton gin. He also built a musket armory in New Haven, CT in the late 1700s. Since then, Connecticut has been the gun manufacturing capital of the country of our Nation, if not the world, for that matter. The first revolver was developed and mass produced in Connecticut in the 1830s by Samuel Colt and his wife Elizabeth who ran that company after Sam passed away at a very young age. That company today bears his name and that revolver became known as ''the gun that won the West.''

I also represent probably more insurance companies and more pharmaceutical companies in the State of Connecticut than almost any other State in the Nation. I am very proud to represent these industries. They do a first-rate job. But even though I support the people who work in these businesses and respect what they do, the idea that we would take any one of these industries in this Senator's State and absolve it from its legal responsibilities is stunning to me.

I have been a strong advocate of legal reform. I authored the securities litigation reform bill with the Senator from New Mexico. I wrote the uniform standards litigation bill. I coauthored the tort reforms on the Y2K litigation with Senator BENNETT of Utah. I have been a proponent of asbestos litigation reform. I coauthored the Class Action Fairness Act. I am proud of the work I have done in the area of tort reform. We need it. It is necessary. In my view, these bills have struck the right balance between frivolous lawsuits, while retaining citizens' rights to seek the redress of wrongs in a court of law.

But the idea that we would take an entire industry and give it immunity from wrongdoing is simply wrong, in my view. We are saying to this industry, if you act irresponsibly or wrongfully, and if you can foresee the consequences of your irresponsible or wrongful conduct, you do not have to worry about being held accountable for your actions. No matter how much harm you may cause, no matter how many people die or are injured at least in part as a result of your wrongful conduct, you will not be held responsible. In this day and age that this body would so overwhelmingly endorse an idea such as this is breathtaking. And it is little more than ironic that such an idea would be put forward by some who routinely lecture others about the need to take ''responsibility'' for their actions.

Evidently, taking responsibility is a fine philosophy for some, the poor, the elderly, schoolchildren, and men and women who struggle each and every day to put food on the table for themselves and their families. But the gun industry is being absolved in this legislation of virtually all responsibility for its actions.

Let's consider some of the consequences of enacting this legislation. First, it will have absolutely no impact whatsoever on reducing the rate of gun violence in our Nation. In fact, this bill ignores the devastating toll firearm violence continues to take on our fellow citizens.

According to the Centers for Disease Control and Prevention, there were more than 30,000 deaths in the United States from firearms in the year 2002 alone—30,000 deaths. That is, of course, 10 times the number of lives that were tragically lost on September 11 at the World Trade Center, here in Washington, and in a field in Pennsylvania. In fact, a year of gun violence in America nearly equals the number of Americans who died in the Korean war and almost half the Americans lost in the entire Vietnam conflict. The numbers are staggering. These numbers exceed by a huge margin the number of firearms-related deaths on a per capita basis in countries such as Canada, the United Kingdom, Germany, Japan, and France.

Among those individuals most affected by gun violence are children. Firearms are the second leading cause of death among young Americans age 19 and under. Approximately 2,700 children under the age of 19 are killed each year as a result of gun violence or the improper use of guns.

The rate of firearm deaths of children under the age of 14 is already 12 times higher in the United States than 25 other industrialized nations combined.

Let me repeat that. The firearms death rate of children under the age of 14 is 12 times higher in the United States than in 25 other industrialized nations in the world. One study noted the firearms injury epidemic among children is nearly 10 times larger than the polio epidemic in the first half of the 20th century.

Yet we are about to exclude an entire industry from even being brought to the bar to question whether they might be liable for some of these deaths.

The human cost of gun-related deaths and injuries is tragic in itself, but the economic loss is also significant. According to a study published in the year 2000, the average cost of treating gunshot wounds was $22,000 for each unintentional shooting and $18,000 for each of the gun injuries. These costs would undoubtedly be much higher today. The total societal cost of firearms is estimated to be between $100 billion and $126 billion each year. Who pays these expenses? By large measure, the American taxpayer does.

My colleagues speak against unfunded mandates, and yet this bill, if

enacted, burdens the Nation's cities and counties with billions and billions of dollars in medical care, emergency services, police protection, courts, prisons, and school security. It is shameful that, while tens of thousands of people are dying each year due to firearms and while the American taxpayers pay tens of billions of dollars to cope with the effect of gun violence, the Senate is doing absolutely nothing to make our streets and homes safer, in my view. In fact, we are doing quite the opposite through our actions today.

Second, the legislation will give this industry special legal protections no other industry in the United States has. Neither cigarette companies nor asbestos companies nor polluters have such sweeping immunity as we are about to give this industry.

Let me quote from a recent letter sent to all Senators and Representatives from over 75 law professors from across our Nation. According to them the bill:

> . . . would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

Gun manufacturers and sellers are already exempt from Federal Consumer Product Safety Commission regulation, despite the fact that firearms are among the most dangerous and deadly products in our society. We have more regulations on toy guns than we do on the ones that fire real bullets. Imagine a toy gun that you buy from Mattel. The Consumer Product Safety Commission issues literally pages of regulations on what must be included in the production of that gun. There is not a single word in the regulations of the Consumer Product Safety Commission about the production of guns that may kill 30,000 people each year in this country.

The National Rifle Association made sure of this exemption 30 years ago, just as highly addictive tobacco products are not subject to regulation by the Food and Drug Administration.

I have supported tort reform in specific areas where I believe it is appropriate. My colleagues know I worked with many of them on these issues. At the same time I recognize that litigation has been a powerful tool in holding parties accountable for their negligence and providing them with the incentive to improve the safety of their products. It has been employed on behalf of other potentially dangerous products such as automobiles, lawnmowers, household products, and medicines to protect the health of the American people. The fact that guns are already specifically exempt from the oversight of the Consumer Product Safety Commission is reason enough, in my view, why we can't afford to grant the firearms industry legal immunity.

Third, this legislation is likely to increase criminal behavior, in my view, in our Nation. Consider the views of the people who know best, our Nation's law enforcement officers. Yesterday some 80 sheriffs, police chiefs, and others wrote to each and every Senator that this bill will ''strip away the rights of gun violence victims, including law enforcement officers and their families, to seek redress against irresponsible gun dealers and manufacturers.''

This legislation will do nothing to help our Nation's law enforcement officers to stop these criminals or to receive justice if they are shot or killed. Who better to listen to than our own police chiefs? Law enforcement officers will tell you this is a bad bill. It is a bad bill, and it is going to cause more problems in the streets of our country. And here is what two former Directors of the Bureau of Alcohol, Tobacco, and Firearms had to say about this bill:

> To handcuff ATF, as this bill does, will only serve to shield corrupt gun sellers, and facilitate criminals and terrorists who seek to wreak havoc with deadly weapons. To take such anti-law enforcement action in the post 9/11 age, when we know that suspected terrorists are obtaining firearms, and may well seek them from irresponsible gun dealers, is nothing short of madness.

If this legislation is enacted, it would remove any incentive under current tort law for gun manufacturers to make their firearms safer. Studies have shown that the technology is both readily available and very inexpensive to help avoid future gun-related tragedies. For example, a load indicator could be included to tell the user that the gun is still loaded. That is never going to happen now, I promise you. A magazine disconnect safety could be installed by the manufacturers to prevent guns from firing if the magazine is removed. Even childproofing the gun with safety locks can be done relatively easily. However, if this bill is enacted into law, gun manufacturers will lose the huge incentive to include such reasonable safety devices in their products.

Evidence has been uncovered that reveals that the gun industry has been engaged in irresponsible behavior for many years. Senator REED and others have already mentioned one such industry actor, Bull's Eye Shooter Supply in Takoma, WA.

This gun store claims it ''lost'' the gun used by the Washington, DC, snipers, John Muhammad and John Lee Malvo, as well as more than 200 other guns. Many of these firearms were traced to other crimes. Bull's Eye Shooter Supply had no record of the gun ever being sold and did not report it until the Bureau of Alcohol and Firearms recovered the weapon and traced it back. After the rifle was linked to the sniper shootings and the newspaper reported on the disappearance of the gun from Bull's Eye, the rifle manufacturer, Bushmaster, still considered Bull's Eye a good customer and was happy to keep selling to that shop.

The judge in this case has since ruled twice that the suit brought by the families of the DC area sniper victims against Bull's Eye and Bushmaster should proceed to trial, and a preliminary ruling has been rejected.

Nevertheless, this case, as well as other important pending and future lawsuits against negligent gun dealers and manufacturers, would be banned if this bill becomes law, as I suspect it will, according to the opinion of some of our Nation's most prominent legal scholars.

There are many more instances of the gun industry not taking steps to prevent guns from reaching the illegal market. According to Federal data from the year 2000, 1.2 percent of dealers account for 57 percent of all guns recovered in criminal investigations. Undercover sting operations in Illinois, Michigan, and Indiana have found that such dealers routinely permit gun sales ''to straw purchasers,'' individuals with clean records who buy guns for criminals, juveniles, or other individuals barred by law from purchase.

If the Senate bill is enacted, police officers shot by a gun bought by a ''straw purchaser'' would no longer get his day or her day in court.

Gun shows are also an important source of guns for criminals. Studies have shown that unlicensed dealers often sell large quantities of weapons at these shows without having to run criminal background checks or keeping records. Many of my colleagues might recall that a gun show was the source of the firearm purchased by Eric Harris and Dylan Klebold before they went on their murderous rampage at Columbine high school, but the Senate bill would not hold such gun dealers responsible for the injuries and deaths their firearms cause.

Supporters of this legislation contend that there is a gun litigation crisis in America and that many of the cases being brought against the gun industry are frivolous. Nothing could be further from the truth. In fact, there are no massive backlogs of claims against the gun dealers and manufacturers burdening our court system. About 10 million tort suits were filed in State courts from 1993 through the year 2003; 57 of them were against gunmakers or dealers, 57 out of 10 million cases. Is that a litigation crisis, with 57 lawsuits out of 10 million other suits filed in the same relevant area? And the result of those 57 cases. The impact on the gun industry has hardly been crushing. Some of these suits have been dismissed. Some have been settled. Some have been appealed.

The industry claims it is spending $200 million a year on litigation costs. Yet it offers absolutely no data to support this. There is evidence that litigation costs are virtually insignificant: 57 cases in 10 years out of 10 million tort cases being filed. That alone ought to tell you this is a frivolous piece of legislation. This is what is frivolous, to suggest we need to clean up a problem involving 57 cases, many of which were dismissed.

One major gun manufacturer in a filing last November with the Securities and Exchange Commission—a filing, by the way, that it made under the pain and penalty of perjury—said this:

It is not probable and is unlikely that litigation, including punitive damage claims, will have a material adverse effect on the financial position of the company.

Another gun manufacturer said this to the SEC in March of 2005:

In the nine months ended January 31, 2005, we incurred $4,535 in defense costs . . . relative to product liability and municipal litigation.

That is a litigation crisis? It is outrageous to claim it is.

Of the small number of lawsuits filed against this industry, none to my knowledge have been dismissed as frivolous. On the contrary, there have been favorable rulings on the legal merits of many of these cases. Courts have recognized such cases are based upon well-established legal principles, negligence, product liability, and public nuisance. Important information on the gun industry's wrongful actions, which has been cloaked in secrecy for many years, has been revealed and injured parties have been compensated, fairly and justly. These cases, however, will be precluded, and the information gleaned from them will be lost if the gun industry is granted immunity, as it seeks with this legislation.

Rather than giving special immunity to those manufacturers and dealers who wrongfully make and sell guns to criminals, the Senate should be today or at some point—again I wish we were back on the Defense authorization bill—at some point we should work to protect our police officers and the people they protect every single day. Instead of zeroing out the COPS program we ought to take our time to do something about strengthening the police departments of our Nation. Rather than placing more guns on the streets, the Senate should be considering more responsible gun legislation such as making the ban on assault weapons permanent and closing the gun show loophole.

Rather than encouraging reasonable and safe gun use, the Senate is destroying any incentive for gun manufacturers to improve the safety of their deadly wares. This legislation, to this Senator, is an outrage. And, I represent more of these manufacturers than any other Member of this body. I know it is not common for a Senator to get up and speak against an industry in his State, and I have at least nine of them, as I said earlier, that have produced 25 million guns in the last 12 or 13 years. I respect my manufacturers. They are good people. But the idea that I would immunize nine industries in my State from their wrongdoings is incredible. While it may seem strange to have the Senator from the largest gun-producing State making these statements, I feel strongly. It is wrong to be doing it. It is an outrage.

You can say this is wrong, and we ought to be ashamed of ourselves for taking an entire industry and not holding it liable for the harm it may cause to people across the country. Thirty thousand people die every year, almost 3,000 kids, and we are about to say to the manufacturer of the products that kill them to take a walk and that you never have to show up again in court. That is shameful.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I will be very brief.

Mr. President, in the context of what the Senator from Connecticut has said, let me read some statistics from the National Safety Council injury fact sheet. I am talking about some very important statistics: Between 1993 and 2003, accidental or unintentional deaths by firearms has gone down 40 percent in America. Between 2002 and 2003, that reduction of accidental deaths has again gone down by 33 percent. Very significant numbers.

Here also are other significant numbers that my colleagues would want to be aware of that are tremendously important. Total unintentional accidental deaths in America, 101,500 in 2003; motor vehicle deaths of that year, 44,000; falls at home and work and on the streets of America, 16,000; drownings, 13,000; fire and burns, 4,300; ingestion of food objects, 2,900; firearms was down into the number of 700. That is less than 1 percent.

Here is what is most significant, because I don't take 700 unintentional accidental deaths by firearms lightly. But these are important statistics to understand as we look at the total scope of the legislation and even what the Senator from Connecticut said that I don't think pertains to this legislation.

Here are the statistics from the National Safety Council. Accidental firearms-related fatalities have been consistently decreasing for many years. Primarily, statistics show accidental firearms-related fatalities decline by 13 percent in one category, 2002 to 2003. Here is what is most important because we are all concerned about the young people of America. Over the past 7 years, accidental firearms-related fatalities among children under 14 years of age has decreased by 60 percent. Why? Because there are tremendous safety efforts not by the Federal Government but by private organizations and by responsible parents to teach their young people how to deal with firearms when they are either subject to them or find them in a location. These numbers are important in the context of this debate.

Again, this debate has nothing to do with crime on the street. This has everything to do with frivolous lawsuits against law-abiding citizens. I am afraid we have to start dealing with the criminal element instead of the law abiding.

I yield the floor.

Mr. DODD. Correct me if I am wrong, but I cited statistics between 1993 and 2003. There were 10 million lawsuits brought in the United States for wrongful death under the tort system. Of those 10 million, we have been able to find 57 in 10 years, 57 cases brought against gun manufacturers and gun dealers. Is the Senator telling me those are frivolous, 57 lawsuits out of 10 million? Is that a crisis in litigation?

Mr. CRAIG. Will the Senator yield?

Mr. DODD. I am happy to yield.

Mr. CRAIG. What the Senator is saying, there have been 24 or 25 lawsuits filed against gun manufacturers and dealers by municipalities. Half of them have been thrown out of the courts as being frivolous.

Mr. DODD. So what is the problem?

Mr. CRAIG. The problem is, and the Senator well knows, this Congress has, from time to time when they have seen industries subjected to wrongful lawsuits, chosen to exempt them from the wrongful lawsuit but not from liability.

Mr. DODD. For 24 cases in 10 years?

Mr. CRAIG. And millions and millions and millions of dollars spent. I appreciate the Senator's mindset on this issue. He is fundamentally wrong, and that is why we have the legislation now to provide a very narrow scope of protection, but certainly not from malfunctioning, not from bad product, only from that third-party criminal issue.

I am sorry to say the Senator would disagree with me, but a person who manufacturers a firearm is not the criminal who pulls the trigger and therefore should not be liable for that criminal act.

Mr. DODD. You are going to have your way if this bill is adopted, but that is the only industry in America with this special status. You would not do it for the automobile or chemical industry.

Mr. CRAIG. We did it for aircraft industry some years ago because of frivolous lawsuits that nearly bankrupted them until Congress stepped in and said, No, in certain categories that is unfair, and it allowed them to stabilize their economy and continue to build aircraft for the American consumer.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I am concerned about what is going on in the Senate procedurally. This is the first time I can remember, during the tenure of Senator FRIST, we have had a bill where the so-called ''tree'' has been filled, allowing no amendments to be offered.

Senator FRIST, I have stated, has been very fair in allowing bills to go forward, with rare exception.

I am concerned about what has gone on very recently: filing cloture on the Defense bill after 1 day of debate. I direct these remarks through the Chair to the distinguished manager of the bill. Mr. President, I direct these remarks through you to the distinguished manager of the bill.

Mr. CRAIG. I apologize.

Mr. REID. I participated in a conversation I am confident the manager of the bill was in on this morning where the distinguished majority leader said he wanted to take a little bit of time, after having filled the tree, which is very unusual, and he would look at the amendments offered by the Senator from Rhode Island and make a decision as to which of those he would allow to be debated. He did say he had no problem with him offering amendments and we would be able to debate—and I do not recall him saying ''vote on them''—but at least debate specific amendments that were up. But I assumed in the tenor of the conversation there would be votes on the amendments.

We have been on this bill now for 3 hours, after proceeding to it, and my friend from Rhode Island has been unable to offer any amendments. So I say to the manager of the bill, through the Chair, how much longer is it going to take before the majority makes a decision on something that should be fairly routine, as to when the Senator from Rhode Island can have some of his amendments heard before the body?

Mr. CRAIG. If the Senator will yield.

Mr. President, let me address the minority leader.

Certainly, all that he has said is exactly the conversation from my reference point that went on between him and the majority leader. There is no intent to block all amendments. That is not the intent of what the majority leader did.

We have seen these amendments less than 30 minutes, in almost every instance, prior to the time they were offered. Certainly, the Senator from Nevada knows the opportunity to examine and look at these amendments, in light of similar amendments offered last year, is a reasonable request. That is the request the majority leader and I, as the floor manager, have made. Those amendments are under review now.

The floor leader for the Democrats, Senator REED, and I have visited about some of them that may well meet that scope, and we are reviewing them at this moment. This is not unprecedented, and the Senator from Nevada knows that. This is a procedure under the rules of the Senate that has been used over time. Has Majority Leader FRIST used it? I don't know. I am not that good of a historian. But I have been here not quite as long as the Senator from Nevada, and I do know that both his side and our side have used it from time to time. It is clearly within the prerogative of the Senate to do so under its rules.

At the same time, clearly, what the majority leader has expressed was expressed in good faith with the minority leader. I would hope in the course of the evening—and we will certainly be on this legislation all day tomorrow because the cloture motion does not ripen until early Friday morning—that it would be adequate time to consider several of these amendments that have been offered. I know that is the intent of this floor leader. And certainly I believe it is the intent of the majority leader to do so.

Mr. REID. Mr. President, I am happy to hear the review is still taking place. I would hope that during the tenure of this reviewing of the amendments, a decision could be made so the Senator from Rhode Island can offer his amendments. I am happy to hear the decision has been made to allow him to do that, in keeping with my conversation with the majority leader, that amendments would be debated here on the floor.

I would also say something else as to how I look at all this. I know the majority leader has a real problem with trying to jam a lot of things in this final week before we go back to our States.

I say my friend from Rhode Island, who feels so strongly about this issue, has been willing—and I am saying publicly on his behalf and announcing to the Senate—in that we have conference reports that need to be completed, hopefully on the Energy bill, the highway bill, the Interior bill, the Legislative Branch appropriations bill, and that we have to do something on the Native Americans legislation, and other incidentals that crop up as we are trying to finish a period such as this for a 5-week break, the Senator from Rhode Island has said he is willing to allow the Senate to go forward with all these other items we have before us that I have outlined and, in fact, will waive the second 30 hours he will be entitled to after cloture is probably invoked on the underlying bill. The only thing he requires is that final passage of the bill take place, not on Saturday morning, in keeping with the rules here, but as soon as we get back, whenever the majority leader would want to do this bill when we get back. He can do it the first hour we get back here, the first day we get back here.

But I want the Senate to understand, both Democrats and Republicans, who are clamoring to go places—home or other places they have set to go during this recess—that Senator REED is not holding this up. Under the procedures of the Senate, he has a right and will keep us here until Saturday morning, unless there is a decision made that we can finish all this as quickly as possible, eliminating the 30 hours, and going forward with the other business of the Senate. Otherwise, it is going to be real tough to jam all that in.

I see nothing lost. There has been some talk: Well, during the 5-week period both sides will run ads and things of that nature. I have no doubt that may be true. But I cannot imagine it will change any votes.

But I want everyone to understand, when people come to me and say, ''Why is Senator REED of Rhode Island being so unreasonable?'' the Senator from Rhode Island is being totally reasonable. Some of us have spoken to him. I think it is reasonable what he has agreed to do. So if people come to me and say, ''Senator REED is not letting us leave here when we want to, and we have all this work to do,'' everyone should be disabused of that. It certainly is not true.

We are willing to finish our work here. We could finish all the work we have to do here tomorrow, early in the evening, and not have to be here Saturday. The rest is up to the majority. They are the ones, we understand, who control what amendments we can offer on this bill. They control when we will finally dispose of this bill. It can either be Saturday morning or it can be when we get back here in September.

Mr. REED. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. REED. For the record, there are three amendments we have attempted to offer. One is an amendment authored by Senator KOHL, which I offered on child safety locks. The floor manager and I have discussed this amendment. There are some technical concerns about it. But that is one.

The second is an amendment Senator CORZINE would like to offer about exempting law enforcement officers from the provisions of the bill.

The third is an amendment Senator LAUTENBERG would like to offer with respect to the denial of immunity when the victims are children.

These are the three amendments. But we are not seeking any extraordinary, provocative amendments. We are trying to get amendments up that are relevant to this discussion about gun safety. I honestly believe that 3 hours—my amendment is going to take 3 hours—and at least several hours for the other amendments will be sufficient time to review this.

I am not going to make a formal parliamentary inquiry now, but I am not under the impression, under the rules of the Senate, that a Senator must get the permission of any other Senator to offer an amendment. If he has the floor, and particularly before cloture, the amendment can be offered. I will seek to clarify that. I do not want to be in error on that point.

But we have gone to great lengths to be cooperative, collegial, to be able to offer these amendments, and to this point we have got this sort of silence—or not silence, but simply: We are looking at it, we are looking at it, we are looking at it. I do not think we can continue in this posture indefinitely.

I thank the Democratic leader.

Mr. REID. Mr. President, I would say—and I meant to say this in my response to the Senator from Idaho—no one has said he or the majority leader are violating the rules. Everyone is going by the rules here. I know them. I am just saying, it is very unusual for Majority Leader FRIST. In fact, I have nothing in my memory that he has ever done this before; that is, immediately going to a bill and filling the tree so no other amendments can be offered. I have never, ever known him to do this. It is so unusual. It is not in keeping with how he has done business

here during his tenure as majority leader. While filling the tree is within the rules, it is done very rarely. And again, I am surprised that Senator FRIST did this.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. REID. Yes, I have yielded the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, we should be using our time right now to continue our work on the Department of Defense authorization bill, working through important amendments relating to the needs of our military and our Nation's security and giving these issues the time and careful attention that they so clearly deserve. At a time when our brave men and women in uniform are deployed in Afghanistan, Iraq, and elsewhere—risking and, too often, losing their lives in service to this country—we ought to be working intensively on the Defense bill. At a time when terrorist networks continue to strike at our allies, killing innocent civilians in an attempt to intimidate everyone who rejects their violent, extremist agenda, we ought to be focusing sustained attention on ensuring that our military has the tools that it needs, and our country has the policy that it needs, to create a more secure world for our children. And as a part of that effort, we must devote more time and more attention to a realistic assessment of where we stand today in Iraq, and where we should be going.

As my colleagues know, I have submitted a resolution calling for the President to provide a public report clarifying the mission that the U.S. military is being asked to accomplish in Iraq and laying out a plan and timeframe for accomplishing that mission. This doesn't seem like much to ask for. After all, if we don't have a clear plan and timeframe, how can we even hold ourselves accountable for giving the military the tools they need to succeed in achieving those goals? The resolution also calls on the President to submit a plan for the subsequent return home of U.S. troops that is also linked to a timeframe, so that we provide some clarity about our intentions and restore confidence at home and abroad that U.S. troops will not be in Iraq indefinitely.

My resolution does not dictate deadlines or dates certain. And it does request flexible timeframes for achieving our goals in Iraq rather than imposing any, because drawing up timeframes is best and most appropriately left to the administration, in consultation with military leaders. And, of course, any timeframe has to be flexible. There are variables that will affect how quickly various missions can be accomplished. But it is hard to conceive of an effective strategic plan that isn't linked to some timeframes. That is what the administration needs to share.

I want to respond directly to some of the criticisms I have heard of this approach.

Some have suggested that to question the path that we are on is to undermine our united commitment to support the courageous men and women who have been deployed in harm's way.

And some believe that any discussion of timeframes, flexible or otherwise, is basically a code for a ''withdraw now'' agenda.

Neither of these charges is credible. Just this morning, General Casey spoke publicly—publicly—of the potential to reduce our troop levels fairly substantially by the spring and summer of 2006. I think his comments, and Iraqi Prime Minister Jafari's frank acknowledgement that ''the great desire of the Iraqi people is to see the coalition forces be on their way out,'' are constructive. And I hardly that General Casey be accused of failing to support his fellow service men and women.

My support for our troops has not wavered one inch. And it will not. I did not support the administration's decision to go to war in Iraq, but I have consistently voted to provide our service men and women with the resources they need in Iraq. And I know that our troops have done, and continue to do, a remarkable job. The brave men and women of the U.S. Armed Forces deserve our admiration, our respect, and our unflagging support. But that is not all that they deserve. They deserve sound policy from elected officials. They don't have that right now. The administration must not leave them in the lurch any longer. Are U.S. forces supposed to be waging a counterinsurgency campaign? Are they supposed to be taking sides in what may be an emerging civil war? Are they supposed to be focused primarily on training Iraqi forces so that the Iraqis can be in the driver's seat when it comes to taking the decisions, and the risks, associated with achieving their own stability? I hope the administration knows the answers to these questions, but until they provide them, all of us are in the dark.

It is also clear that we must not accept a false choice between supporting the status quo in Iraq and the so-called idea of cutting and running. The status quo—staying a rudderless course without a clear destination—would be a mistake. The course we are on is not leading to strength. In fact, I am concerned that the course we are on is making America weaker and our enemies stronger.

The ill-defined and open-ended military commitment that characterizes our current policy in Iraq is actually strengthening the very forces who wish to do us harm. I am not talking about disgruntled Baathists, although I am concerned that nationalist sentiments will make it more and more difficult for many Iraqis to accept a massive foreign troop presence on soil—something that they regard as a humiliation. But, more alarmingly, I am talking about the forces that attacked this country on September 11, 2001. These forces were not active in Iraq before the invasion, but they came once disorder in Iraq took hold. And today, as CIA Director Porter Goss has made plain in testimony before Congress:

> Islamic extremists are exploiting the Iraqi conflict to recruit new, anti-U.S. jihadists.

Just recently, President Bush told the country that ''with each engagement, Iraqi soldiers grow more battle-hardened and their officers grow more experienced.''

Unfortunately, the same is true of the foreign fighters. Iraq has become a prime on-the-job training ground for jihadists from around the world, terrorists who are getting experience in overcoming U.S. countermeasures, experience in bombing, and experience in urban warfare. They may well be getting a better education in terrorism than jihadists received at al-Qaida's camps in Afghanistan. And they don't just have skills. They now have contacts. They are building new, transnational networks, making the most of al-Qaida's new model of supporting loosely affiliated franchise-type organizations. Press reports suggest that the CIA is calling this emerging threat the ''class of '05 problem.'' All of us, on both sides of the aisle, should be thinking about how to ensure that there is no similar class of '06.

It would be nice to believe that these terrorists will be swept into Iraq only to be annihilated by U.S. forces. But that kind of ''roach motel'' approach to fighting is hardly a strategic vision. At its best, it is wishful thinking, and more wishful thinking is just what our Iraq policy and our strategy for fighting terrorism do not need. I agree wholeheartedly with the President that we must not waver in our commitment to defeating the terrorist networks that wish to do us harm. And I know, as he must know, that these networks exist around the world. Fighting terrorists in Baghdad does not mean that we won't have to fight them elsewhere. Sadly, we need only look at the headlines over the past few weeks to find the terrible evidence of this hard fact.

I am gravely concerned that not only are our enemies gaining strength under the administration's current policies. I am concerned that we are getting weaker. The U.S. Army is being hollowed out by the administration's policies. The Army is straining to maintain the cycle of rotations and training that we know it needs to sustain its capacities, and recruitment efforts have been in serious trouble for some time now. Meanwhile, costs for the Future Combat System—a system that depends on technology that is not yet even developed—spiral out of control. We cannot stand by and allow the U.S. Army to be broken. We cannot stay this course.

The current course of action simply is not inspiring confidence among the American people. I know that my constituents are terribly troubled by the

administration's handling of the war in Iraq. After the shifting justifications for this war, the rosy scenarios that bore no resemblance to reality, and the unreliable declarations of ''mission accomplished,'' they sense that our policy is adrift. A democracy cannot succeed in achieving its goals without the support of the people. They deserve clarity and candor and so do our troops on the ground.

Finally, I want to talk about the most common criticism leveled at anyone who invokes the phrase ''timetable'' in talking about our military deployment in Iraq. The charge goes something like this: if the insurgents know when we plan to go, they will simply hunker down and lie in wait for the time when we are no longer present in large numbers, and then they will attack.

If that were the insurgents' plan, why wouldn't they cease all attacks now, lay low, let everyone believe that stability has been achieved, and spring up again once the security presence in Iraq is dramatically reduced? If we really believe the argument that any kind of timetable is a ''lifeline'' to the insurgents, then why wouldn't they try to induce us to throw them that lifeline?

We cannot know all the reasons behind the choices made by the diverse elements waging Iraq's insurgency. But one thing is clear: Ultimately, we will withdraw from Iraq, and it will not be secret when we do. Does the administration believe that the insurgents will be entirely defeated at that point? Is it really our policy to stay in Iraq until every last insurgent and every last terrorist is defeated? Recently Secretary of Defense Rumsfeld made news when he said that the insurgency could well last a decade or more, and that ultimately, ''foreign forces are not going to repress that insurgency,'' rather it is going to be defeated by the Iraqis themselves. I think this analysis makes good sense, especially given the fact that our very presence in Iraq is helping to recruit more foreign jihadists every day. But the Secretary's candor made waves, because for long, costly months we lacked clarity on this critical point regarding just what the remaining U.S. military mission is in Iraq. Is it to defeat the insurgency, or is it to give the Iraqis the tools to do that themselves?

If the remaining military mission is to train Iraqis to provide for their own security, we ought to be able to articulate a clear plan for getting that job done. If we know how many troops we need to train, and we know how long it takes to train effectively, then we ought to have some sense of how long it will take to accomplish our mission.

When I was in Baghdad in February, a senior coalition officer told me that he believes the U.S. could ''take the wind out of the sails of the insurgents'' by providing a clear, public plan and timeframe for the remaining U.S. mission. He thought very clearly, that this could rob them of their recruiting momentum. I also think it could rob them of some unity. All reports indicate that the forces fighting U.S. troops and attacking Iraqi police, soldiers, and civilians are a disparate bunch with different agendas, from embittered former regime elements to foreign fighters. The one thing that unites them is opposition to America's presence in Iraq. Remove that factor, and we may see a more divided, less effective, more easily defeated insurgency.

Intense American diplomatic and political engagement in and support for Iraq will likely last long after the troops' mission is accomplished and they are withdrawn. I expect that we will continue some important degree of military and security cooperation with the Iraqis, as we work with them and with others around the world to combat terrorist networks, whether they are operating in Iraq or Afghanistan or England. And we have to be working diligently to combat a burgeoning culture of corruption in Iraq, or the rule of law doesn't stand a chance. We need to make reconstruction work and deliver real democracy dividends for the Iraqi people. The situation in Iraq is complex, and it requires a long-term political commitment from the U.S. What my resolution addresses is just one piece of the puzzle for achieving our interests in Iraq and helping the people of Iraq and the region move toward a more stable future.

I certainly don't have all the answers to the complex problem we confront in Iraq. But I know that it's time to restore confidence in the American people that this President and this administration know where we are going and how we plan to get there. It's time to put Iraq in the context of a broader vision for our security. It's time to regain a position of strength. That starts with sustained attention, focus, and debate—and we should be doing that right here in this Congress, right now.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise to ask my colleagues to support the Protection of Lawful Commerce in Arms Act. This act has strong bipartisan support. Sixty-one Senators are cosponsoring this legislation. I am very proud to be an original cosponsor of this bill. I thank my good friend from Idaho, Senator CRAIG, for his leadership in introducing the legislation and bringing the bill to the Senate floor, managing the legislation and doing an exemplary job.

The legislation we are considering will correct a significant injustice that threatens the viability of a lawful U.S. industry; that is, the firearms industry. An increasing number of lawsuits are being filed against the firearms industry seeking damages for wrongs committed by persons who have misused the industry's products. These lawsuits seek to impose liability on lawful businesses for the actions of people over whom the industry has no control. Outrageous. Businesses that comply with all applicable Federal and State laws and produce a product fit for its intended lawful purpose, including elk hunting, duck hunting, target shooting, or personal protection, should not be subjected to frivolous lawsuits that have only one goal—to put them out of business. This is an unacceptable burden on lawful interstate commerce. No other law-abiding industry faces this kind of attack.

People in my State are proud of their independence. We are proud of our outdoor heritage. Montanans are avid sports men and women. We cherish our right to hunt and fish and enjoy the outdoors. Passing this bill will allow us to protect that right by ensuring that the firearms industry stays in business.

Each year, hunters, shooters spend nearly $21 billion. This, in turn, generates more than 366,000 jobs that pay more than $8.8 billion in salaries and wages and provide $1.2 billion in State tax revenues. In addition, excise taxes imposed on firearms under the Federal Aid to Wildlife Restoration Act, also known as the Pittman-Robertson Act, generate critical revenues for State fish and wildlife conservation efforts and hunter safety training. For example, the Pittman-Robertson Act generated more than $150 million in revenue in 2002 alone.

In Montana, hunters and sportsmen generated $250 million in retail sales, generating about 5,592 jobs, over $100 million in salaries and wages, and $11 million in State tax revenues—no small matter.

In addition, threats to the U.S. gun industry also pose a threat to the U.S. military. Many domestic gun manufacturers supply the military with necessary firearms. If these companies are forced out of business, the U.S. military must look abroad to arm itself, and we cannot let that happen.

In short, the U.S. firearms industry serves America's gun owners, serves our sportsmen, and our military very well. It provides good-paying jobs for many Americans. It provides revenues that benefit all Americans. The industry should not be penalized for legally producing or selling a product that functions as designed and as intended. But that is exactly what certain groups are trying to do by asking the courts to step in and micromanage the industry. The Congress and most State legislators have refused to do so.

Let me list some of the demands so you get a flavor of how credible these lawsuits are. Some of these lawsuits would require one-gun-a-month purchase restrictions not required by State law. Others require firearm manufacturers and distributors to participate in a court-ordered study of lawful demand for firearms and to cease sales in excess of lawful demand, if you can imagine. Others require a prohibition on sales to dealers who are not stocking dealers with at least $250,000 in inventory, talking about the small gun

dealers. Others would require systematic monitoring of dealers' practices by manufacturers and distributors.

These are just a few of the sweeping demands made in the lawsuits that the Protection of Lawful Commerce in Arms Act seeks to stop. As you can tell, these suits are asking the courts to step well outside of their jurisdiction, to legislate regulation of the industry. They also have nothing to do with holding accountable those who actually misuse the firearms.

Most courts have dismissed such lawsuits that are brought before them. A New York appellate court judge stated:

> The plain fact is that the courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate or micromanage the manufacturing, marketing, distribution, and sale of handguns.

However, the time, expense, and effort that goes into defending these nuisance suits is a significant drain on the firearms industry, costing jobs and millions of dollars, increasing business operating costs, including skyrocketing insurance costs, and threatening to put dealers and manufacturers out of business. That is why this bill is so necessary.

Let me be clear about a couple the things. This bill will not close the courthouse doors to legitimate suits against the firearms industry. It will not shield the industry from its own wrongdoing or from its negligence or if the industry puts out a bad product. For example, the bill will not require dismissal of a lawsuit if a member of the industry breaks the law or if someone in the industry acts negligently in supplying a firearm to someone they have reason to believe is likely to misuse the firearm or supplies a firearm to someone they had reason to know was barred by Federal law from owning a firearm or a representative of the industry who designs a defective product. The bill also doesn't protect unlicensed dealers. The bill would only protect federally licensed manufacturers, dealers, or importers of firearms.

This bill is only intended to protect law-abiding members of the firearms industry from nuisance suits that have no basis in current law, that are only intended to regulate the industry or harass the industry or put it out of business, none of which are appropriate purposes for a lawsuit.

Certainly, regulating the industry is well outside the appropriate role of the courts.

We could all agree that when a firearm is used in a criminal or careless manner that causes serious injury or loss of life, that is a terrible tragedy. Those responsible should be punished to the full extent of the law in both the civil and criminal areas. That includes the firearms industry, if one of its members breaks the law or acts negligently in selling a firearm to a criminal or other person they should have known would use the firearm to hurt another person. The Protection of Lawful Commerce in Arms Act will do nothing to change that or shield the arms industry from criminal wrongdoing.

At the same time, it is not right or fair to hold law-abiding members of the industry accountable for independent actions of third parties who use a firearm in a manner that industry never intended. Why, for example, should the industry be held liable if a member of the industry sells a gun to a lawful customer and that gun is then stolen from a customer and used in a crime? That makes no sense.

Again, the fact that a crime occurred is sad and tragic, but that doesn't mean that the firearms industry is in any way responsible for such a gross misuse of its product. But that is exactly what is happening in some of these lawsuits. This bill would put a stop to that. It is a very short, simple bill with a simple purpose. Nothing is hidden in it. It is also critically important to a vital national industry. We need to pass it, pass it now, as the situation will only get worse. I ask my colleagues to give it their full support.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as in morning business.

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

HEALTH CARE AND COMPETITIVENESS

Mr. BAUCUS. Mr. President, every few minutes, a new Chevy Malibu, a popular family sedan, rolls off the assembly line of General Motors Corporation's Fairfax plant Kansas City, KS. The invoice price starts at $17,600.

And every few minutes, across the ocean, a new Toyota Camry, a popular family sedan, rolls off the assembly line of the Toyota Motor Corporation plant in near Nagoya, Japan. The invoice price starts at about $16,600, a full $1,000 less than the Malibu.

One reason for the price difference between the Malibu and the Camry is health care. Yes, health care. For GM, health care costs amount to more than $1,500 for every vehicle it produces. For Toyota, health care costs account for closer to $500 for every vehicle that it produces. That is about the thousand dollars difference.

Two-thirds of Americans get their health insurance at their jobs. The system started in World War II, when the Government capped wages. Employers competed for workers by offering more generous fringe benefits. After the war, a Government tax preference further encouraged employers to provide health insurance.

Almost all Japanese get their health insurance through their government. That is true of pretty much every other major industrialized country.

America's system has yielded high health care costs. The average American spends more than $5,000 a year on health care. That is 53 percent more than the next most costly country. The average Japanese spends only about $2,000 a year on health care.

Last year, GM paid $3.6 billion in health care costs for about 450,000 retirees and their spouses. When GM workers retire, GM continues to pay much of their health care costs as part of the worker retiree benefits plan.

This year, 1,200 Japanese Toyota employees will retire. Within 2 years, pretty much every one of them will switch from Toyota's health insurance plan to the Japanese national plan. At that point, Toyota will pay absolutely nothing in health care costs for those 1,200 retirees and their spouses.

General Motors provides more medical benefits than any other private entity. GM covers 1.1 million Americans, including workers, retirees, and their families. Last year, GM paid for more than 11 million prescriptions for its hourly workers.

Premiums for health insurance have increased 15 percent or more in many years. GM expects that its health care bill will go up $1 billion this year, to $6.2 billion total. That is a year. Last year, GM spent $1.4 billion on prescription drugs alone. Last year, GM put $9 billion into a trust fund to pay for health care costs.

Remember, when those retirees leave Toyota, they do not cover the health care costs. The government does it in Japan.

In the late 1970s, GM controlled nearly half of the American car market. Since then, competitors such as Toyota, Nissan, and Honda have cut GM sales to about a quarter of the American market.

In the fiscal year ending March 2004, Toyota earned $10 billion in profits. GM has now been losing money for three quarters in a row. GM lost more than a billion dollars in the first quarter of this year alone.

Toyota is making nearly $1,500 a car in profit. GM is losing more than $2,300 per car.

Now, part of the blame for GM's declining market share lies with GM's inability to adjust to change. In the wake of the OPEC oil embargo, Japanese car makers sold low-cost, fuel-efficient cars to American families. But OPEC imposed its oil embargo more than 30 years ago, and Japanese car companies still lead the way in energy-efficient cars. Today, only Toyota and Honda mass produce fuel-efficient hybrid sedans.

But part of the blame also lies with the American health care system. Carrying the burden of health care costs handicaps American companies in their race for global markets.

Americans are smart. Americans work hard. But American manufacturers cannot compete with foreign manufacturers when American companies have to bear the extra load of these higher health care costs.

You might think that because Americans pay more for health care, well, at least we get better health care. But we do not.

The average American does not have better access to health services. Forty-five million Americans lack health insurance. Fifteen percent of our population is uninsured. Japan offers better

access to the dialysis and diagnostic image services—MRIs and so forth—than America does.

Nor do we have better outcomes. That is a fancy term for saying our people are not healthier after they see a doctor and go to the hospital. We are not better. The average American woman can expect to live to age 79. The average Japanese woman can expect to live 5 years longer, to age 84. People can expect to live longer in Canada, France, Germany, Sweden, Switzerland, and Britain. And all of those countries spend less per person on health care than do we.

America's fragmented system yields high administrative costs. In 2003, administrative costs accounted for nearly a quarter of American health care costs. That is $400 billion—a quarter of what we spend on health care.

America is the only country in the industrialized world without a national health system. We do not have a single-payer system like Canada, Britain, or Switzerland. Instead, we have a system of uncoordinated payers, from private insurers to Medicare, from employers to State Medicaid programs. It is very uncoordinated, very diverse.

America's massive $2 trillion health care bill ought to buy more. America's health care system needs serious reform.

National health care reform appears unlikely any time soon. But we have at our disposal—if Congress can act—the means to attack some of the most glaring inefficiencies in our health care system and reduce unnecessary costs.

We can improve health care by facilitating the use of health information technology. We can improve health care by tying payment to the quality and value of care, rather than just spending on whatever services the doctors and hospital provide, irrespective of the quality and the outcome.

By encouraging investment in health information—technology, computers, interoperability, getting rid of the paperwork—we can reduce unnecessary administrative costs, and we can enhance patient safety and clearly improve the quality of care.

Let me explain. America often invents new medical technologies. We often adopt new medical technologies early. We are leaders in the areas of drugs and devices, pills and procedures, science and surgeries.

But we have not complemented this innovation with the proper use of health information technology. The staggering cost of administering American's pen and paper system of health care claims proves the point.

Mr. President, 30 to 40 percent of American health care transactions still rely on paper claims. That is according to health economist, Ken Thorpe of Emory University. These claims can cost from $5 to $20 each.

But administering health care claims electronically can cut those costs to as little as 50 cents each. Professor Thorpe estimates that requiring automated claims processing would save the Federal Government nearly $80 billion over 10 years. Significant savings would also accrue to the private sector, if it fully automated claims.

And proper use of health IT can prevent unnecessary medical errors, hospitalizations, and other health care services.

Each year, about 7,000 Americans die because of errors in administering their medication. I also had a figure—and nobody disputed this—that the equivalent of two 747s crashing today is the number of Americans who die today because of medical errors. That is many more than people who die of gun deaths or in traffic accidents. The equivalent of two 747s crashing every day is the number of Americans who died on account of medical errors—not bad outcomes but medical errors.

Technology can help ensure that medical professionals give the right drug to the right patient at the right time. We are talking about drugs. We can help to do that by putting bar codes on all drugs, and by using health information technology to link medication administration to a patient's clinical information.

The inability to exchange clinical data among providers often causes duplication of diagnostic tests. Clearly, if you take somebody in Montana who goes on vacation in the great State of Louisiana and gets ill—maybe has a heart attack—and he goes to see a doctor, or goes to the emergency room, that doctor looks at the Montanan, administers some tests, and has no record of the Montanan who happens to be there on vacation—no idea what is going on. He has to start from scratch and run all these tests all over again. Clearly, it is unnecessary duplication. Just think how much more efficient we would be if that Louisiana doctor in that hospital could push a button and my Montanan's health care record would be available. Clearly, it could protect the right of privacy and confidentiality, but just think of the savings that can be made. Think of how much better the health care would be to my Montanan in Louisiana.

We could help make it easier for one doctor to pull up that x ray that another doctor took a week before. Duplication is eliminated and the quality of care clearly improves.

Medicare spends $50,000 more for the average 65-year-old in Miami than for the average 65-year-old in Minneapolis, MN—$50,000 more per beneficiary in Miami than in Minneapolis, MN. You might ask, why is that? In their last 6 months of life, Medicare beneficiaries in Miami visited specialists six times more often than those in Minneapolis. You might say, they are healthier; more is spent on them. Or they go because there are more specialists in Miami compared to Minneapolis. But that is not what is happening.

By using health IT appropriately, we can reduce error and duplication and overuse of services. We can also coordinate senior care to ensure that they receive adequate preventive care and management for their chronic conditions. In fact, patients who see primary care physicians in Minneapolis tend to be healthier, where fewer dollars are spent, than do seniors in Miami who see more specialists. That is counter-intuitive, but that is the fact.

Why is America falling behind in health information technology? Part of the reason is lack of investment. The health care industry invests only about 2 percent of its revenues in health information technology. Other information-intensive industries invest about 10 percent. Think of the banking industry.

As a result, many health practitioners in America have limited information technology capability. In Britain, nearly all general practitioners—98 percent—have a computer somewhere in their office. In America, extremely few small physician practices—just 5 percent—use anything but a pen and paper.

We have to help ensure that health information systems can communicate with one another. We need an agreed-upon set of standards so that health information technology systems can work together. Otherwise, we will have a Tower of Babel preventing communication of critical health information.

We can do better, and that is why I have worked with my colleagues on the Finance Committee and on the HELP Committee to introduce the Better Healthcare Through Information Technology Act, a bill which facilitates nationwide adoption of information technologies in the health care field. It will help those systems to talk to one another, it will set up loans and grants to encourage the use of more health IT, and it will help us to improve health care quality.

We need to emphasize quality care. Medicare is the dominant care in America's health system, but Medicare is at best neutral and at worst negative toward quality. Medicare pays for the delivery of a service; Medicare does not pay for the achievement of health. And we see the effect. Patients receive recommended treatments only about half the time, and more care is often not producing better care.

Among the 50 States, levels of cost and quality vary greatly. In my home State of Montana, for example, Medicare spends about $5,000 per year per beneficiary. Quality of care ranks near the top. By contrast, some States spending around $7,000 a year per beneficiary—$2,000 more—have quality that ranks near the bottom.

States such as Montana, with its higher proportion of primary care practitioners, often produce lower costs and better quality. Less expensive care, when concentrated and patient centered, can do more for a patient than high-cost services.

I have introduced a bill with my colleagues, Senators Grassley, Enzi, and Kennedy, that will build value into the

way Medicare pays for its services. The Medicare Value Purchasing Act of 2005 will provide higher Medicare reimbursements to providers who show they are working to improve the quality of care they deliver.

Together, these two bills I mentioned form a package. This quality bill goes hand in hand with the health IT bill I just mentioned. Together, they will help improve American health care and help keep American businesses competitive.

In his recent book about competitiveness, ''The World is Flat,'' Tom Friedman talks about the need to strengthen what he calls the ''muscles'' of the individual American worker. Part of the solution to global competition, he says, lies in ensuring that the American health care system provides our workers with access to health care services without placing them or their employers in financial jeopardy. That means congressional action on health quality, and it means congressional action on health IT. I stand ready to work with my colleagues to realize that goal. Until we act, health care costs will continue to make America less competitive. Until we start investing in health IT, we risk falling further behind. And until we start paying for health care quality, we risk slowing our progress to a better future.

A little more than a century ago, in 1903, a man named Henry Ford established the Ford Motor Company in Detroit, MI. That same year, a man named Orville Wright became the first person to pilot an airplane in powered flight. Americans have been at the forefront of transportation ever since. In 1929, the Duesenberg J, a premier four-door luxury sedan, began rolling off the assembly line. The price was expensive at that time, starting at $13,000.

Like the automotive industry, health care has come a long way in the last century. And like the automotive industry, health care needs to adjust and adjust dramatically to change. If we invest in health IT and start paying for health care quality, we can help both the American automobile industry and the American health care system to keep moving forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, in a moment or two, I am going to propound a unanimous-consent request while the manager is here. Before I do that, I congratulate the Senator from Montana for his analysis of health care costs in relationship to the manufacturing situation in which we find ourselves.

He has pointed out something which is critically important, which is that of all the competition faced by American manufacturers, one of the competitive disadvantages we put them in is the health care system we have compared to the health care systems their competitors have, leading to, for instance, in the automotive area, a disadvantage of something like $1,000 or $1,500 a car.

I congratulate him for his efforts in this particular area and many other areas as well.

I have one little minor note, and that is, the Senator from Montana is currently looking at the proud owner of a Ford hybrid. So America now is manufacturing hybrids.

Mr. BAUCUS. And may Ford produce many more.

Mr. LEVIN. May they produce many more. I thank the Senator from Montana.

Mr. President, I want to for a couple minutes comment on the bill and then make a unanimous-consent request that the amendment I will offer be in order and that other amendments be laid aside. But first a moment or two of commentary.

The bill before us, S. 397, says that its purpose is ''to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting''—and here are the keywords—''from the misuse of their products by others.''

On page 3, in section 2, findings and purposes, finding No. 6 is:

> The possibility of imposing liability on an entire industry for harm that is solely—

And that is the keyword—

> solely caused by others is an abuse of the legal system. . . .

I happen to agree with that. If harm is solely caused by others, it would be an abuse of the legal system to impose liability on someone who did not contribute to somebody else's damage.

My amendment would make it clear, and I will just read one paragraph from my amendment:

> That nothing in this act shall be construed to prohibit a civil liability action from being brought or continued against a person if the gross negligence or reckless conduct of that person was a proximate cause of death or injury.

What my amendment would do is basically take the words that are in the stated purpose of this bill, which is that it is wrong that anyone have liability imposed on them for harm that is solely caused by others, and say that basically I accept that premise.

The problem with the bill is that it does not or could not or might not allow for damages to be imposed where someone's own reckless or gross misconduct is a cause, a proximate cause, or contributes to damages which others have.

This is an important part of this bill. We have a number of exceptions in the bill which are set forth. If somebody negligently entrusts a weapon to somebody else knowing that person will misuse it or if there is a violation of law or there are two other allowed lawsuits, but we surely should allow a lawsuit, particularly if State law allows it—and that is the key—but if State law allows the lawsuit, which most States do, against a person whose own gross negligence, whose own recklessness is a proximate cause of somebody else's damages, we should not prevent advertently or inadvertently that cause of action from being brought. State law would be displaced by this bill. This is a radical departure in terms of tort liability because it would displace State law.

The traditional role of the States in tort liability would be displaced in this instance, and I think it is important that we take the language that this bill says in its purpose is the purpose of the bill—that where harm is solely caused by others, that we should not allow liability to be imposed on some person who had no contributing cause or was not a contributing cause—it takes that stated purpose and puts into amendment form ''that nothing in this act would be construed to prohibit a civil liability action from being brought or continued against a person if that person's own gross negligence or own reckless conduct was a proximate cause of the death or injury.''

That is the explanation of my amendment. Now, with the manager's attention, I ask unanimous consent that the pending amendment be laid aside so that my amendment No. 1623, which I believe has been at the desk for a number of hours, be in order.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object, my colleague is most sincere in his effort. We received the amendment about 30 minutes ago. We are taking a look at it now. I remind my colleagues, Senator LEVIN offered a similar amendment last year that dealt with gross negligence and reckless conduct.

I must say, my frustration with these kinds of amendments are that these are not well-defined terms. There are thousands, if not millions, of pages of case law that have attempted to define them, but not successfully.

I suggest to the Senator, he refers to State law and State venue. Thirty-three States have already very specifically restricted liability in the context of what we are attempting to do here. Thirty-three States have already spoken. We did table this amendment last year by a fairly substantial margin. So at this time, until I have had a chance to review——

Mr. LEVIN. I wonder if the Senator will withhold that objection for 30 more seconds so I can respond to one point the good Senator said.

Mr. CRAIG. I will.

Mr. LEVIN. The term ''gross negligence'' is defined in my amendment as the term is defined in 42 United States Code 1791(B), and the term ''reckless'' has the meaning given under section 2(A)1.4 of the Federal Sentencing Guidelines. So we do define both terms very precisely as they are already defined in two laws.

I appreciate the Senator withholding his objection at this time so I could make that statement. I yield the floor.

Mr. CRAIG. Mr. President, I do appreciate the Senator's effort, but at this time, until we have effectively reviewed the amendment, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from North Dakota.

TRADE

Mr. DORGAN. Mr. President, late this evening or perhaps tomorrow morning, there will be a vote in the U.S. House on something called the Central American Free Trade Agreement. I have come to the Senate floor to speak about trade issues, but I especially want to discuss the Central American Free Trade Agreement, which passed in the Senate by a very narrow margin. The estimate is that the votes do not exist to pass this agreement it in the House.

Lord knows how many bridges and highways have been promised in the last 48 hours, and it may very well be, at midnight tonight, magically the votes sufficient to pass this trade agreement will appear and we will have miles of highways and all kinds of bright bridges built in this country in order to persuade wavering House Members to vote for this awful trade agreement. It will be one more chapter in a boom of failed trade strategy and will mean more Americans will lose their jobs.

Incidentally, there are some people today from the textile area of this country saying there will be some changes in CAFTA to protect the textile industry, which presumably would require some other legislation to be passed to implement these changes.

Let me just say to anybody who thinks there are going to be any changes to this, there will be nothing coming through this Senate that will not be slowed down to the nth degree, and we will try in every way possible to block it. But also if anybody promises you that they will do something in a trade agreement, don't believe it, it is not worth the paper it is written on. I have papers in my desk going all the way back to the United States-Canadian Free Trade Agreement, that have promises in writing from the Trade Ambassador, Clayton Yeutter, that didn't mean a thing, wasn't worth the paper it was written on. The same is true with sugar and sweeteners in Mexico. It could go on and on.

My hope is that those few who have been promised the Moon with respect to some changes for the textile folks will not swallow that minnow tonight.

(Mr. CRAIG assumed the Chair.)

I hope they will vote against CAFTA, and I hope the CAFTA trade agreement will be defeated. Let me say why. Similar to all the other trade agreements, it sets us up for losing more jobs.

I am going to talk about a company I have spoken about a number of times on the Senate floor, but there is new news about this company which is what brings me to the floor at a time when we are all talking about international trade. This company is kind of a poster child for what is going wrong in our economy. It is called the Huffy Bicycle Company.

Now I have talked about this company before, and the reason I come to the floor tonight is there is new news about Huffy Bicycles. Huffy Bicycles makes a lot of bicycles. At one point in one plant I believe they were making 19,000 bicycles a day. Huffy Bicycles had a substantial portion of the bicycle market in our country. They could be bought in Wal-Mart, Kmart, and Sears Roebuck. Everybody remembers Huffy Bicycles. They can be found in most of our communities.

The problem is, Huffy Bicycles left this country. Their first plant in Dayton, OH dates back to 1898. They made bicycles under the brand name of Huffy for many decades. In fact, between the handle bar and the front tire they had a little emblem on it that had the U.S. flag. When Huffy escaped our country, as have so many companies, to produce their bicycles in China, they replaced the flag with a little decal of the globe. I am told it was the last job that the U.S. employees had when that company moved its jobs to China. They had to take the existing inventory of bikes and change the U.S. flag on the bicycle to a globe.

Well, let me talk about the production plant in Celina, OH. This was the headline in the Dayton Daily News, June 29, 2005. Now I told my colleagues that Huffy Bicycles are not made in America any more. All the folks that work for Huffy lost their jobs because these jobs are now in China. Here is what happened last month: Huffy Corporation, a 117-year-old bicycle and sporting goods company, on Tuesday, announced it wants to quit paying pension benefits and become a Chinese-controlled company.

Let me read that again. Huffy wants to quit paying its pension benefits and become a Chinese-controlled company.

So how did that come to pass? Well, in 1998, the company celebrated its 100th anniversary by laying off 1,800 workers from its three plants. The jobs were outsourced both to Mexico and a plant in Shenzhen, China. That plant is located in the very same Chinese city where Wal-Mart held its annual board meeting last year. Eight hundred fifty workers got fired by Huffy, and they earned $11 an hour, plus benefits. The company felt that was way too much money to pay people to build bicycles.

Now those employees were not getting wealthy but they liked their jobs. I have talked to some of them. They enjoyed working at Huffy. Many of them worked there for a lifetime, but their jobs went to a plant in Shenzhen, China. The workers there make 33 cents an hour. They work 15-hour shifts, according to the reports from those who visited the plants, they work from 7 a.m. until 11 p.m., 7 days a week. They are housed in crowded barracks and fed two meals a day. They have no health benefits, and when they get sick, as many do, they are fired. If, of course, they tried to organize—there is no evidence that these workers tried to organize—they not only would be fired, but precedent would suggest some of them would be sent to prison for organizing for workers' rights.

Even though the jobs are gone, the bicycles are still sold in America, made in China but sold in America. Now, Huffy wants to become a Chinese company. The vice president of the Chinese company that is planning to buy Huffy said this:

> We look forward to Huffy's future growth as one of America's leading bicycle brands . . .

Notice he did not say one of America's leading bicycles because those bicycles are not made here any more, just ''one of America's leading bicycle brands.''

Meanwhile, the U.S. workers who lost their jobs read this in the Dayton Daily News: Huffy to quit paying pension benefits and become a Chinese company.

This is a letter that former Huffy employees received a couple of weeks ago. I obtained a copy of this letter from a former Huffy Corporation worker in Ohio with whom I spoke yesterday. This says that as a result of its Chapter XI, Huffy will be filing a motion asking the U.S. Bankruptcy Court to approve a distress termination of the Huffy retirement plan. If approved, the PBGC, Pension Benefit Guaranty Corporation, the Government agency that ensures these plans, will take over. It says: You are still going to get your benefits. That will not be affected by this action. It is just that the PBGC, or the American taxpayer, the Federal Government, will pay your retirement.

Then, down in the other portion, it says, but some may lose a portion of their retirement. You may not get all of your retirement.

So they want to become a Chinese company, make all their bikes in China, sell their bikes in America and pawn off pensions that were promised to workers who used to work for Huffy to the Pension Benefit Guaranty Corporation, which is guaranteed, of course, by the American taxpayers.

The letter says: Your retirement benefits will not be affected by this action, but after it states that retirees will receive their full pension benefits, it says some may lose benefits. That is the fine print.

As I said, I recently spoke to a former Huffy employee. The reason I am talking about this company is that it is symbolic of so many companies in exactly the same position. He told me that there are many people who worked a lifetime for Huffy, and now they are worried sick. They earned a pension because they worked every day, came to work every day, liked their job, were proud of the work they did, and now they are worried sick. Many older workers could only find low-wage jobs after being laid off and losing their jobs to China, so they were counting on their pensions to be there.

The workers at the Celina, OH, plant took a 30-percent wage and benefit cut to keep their jobs at one point, only to have Huffy decide it did not matter.

The Huffy worker whom I spoke to yesterday told me something poignant. He said, when the workers at the plant in Celina, OH, lost their jobs, on the last day of work, as those employees left the parking lot for the last time, they left a pair of shoes in the place where their car had been parked. So when the last car left the lot, there was a parking lot full of shoes. Workers wanted to tell this company that they had worked a lifetime for that company and loved their jobs. They wanted to say to that company: You are not going to find people to fill our shoes, you just will not find people to fill our shoes. You can find people who will work for 30 cents an hour. You can find people whom you can fire who want to join a labor union. You can find people whom you put in a plant working 15 hours a day, 7 days a week, but you will not find people who will fill these shoes.

Another worker who worked at the Celina plant was Ruth Schumaker. I did not know Ruth Schumaker, but I came across her name when I began looking at this case—I looked at many cases, Fruit of the Loom, Levis, Fig Newton cookies, I can talk forever about these companies who have left our country and taken their production elsewhere—Ruth Schumaker was one of those employees who made bicycles. She had been paid $12 an hour. She worked 28 years and was very proud of her job. When she was told she was going to be laid off, she was going to lose her job because it was going to China, she was not able to retire because she still had many costs to deal with.

The only job she could find at that point was a part-time job at $7 an hour at the breakfast bar at the Holiday Inn. Her daughter said she never quite got over the stress of losing that job. Ruth died 2 years ago of cancer.

At the time they closed this plant, by the way, and moved these jobs to China and laid off Ruth and the last car left that parking lot with shoes in the parking spaces saying you will not fill these shoes, the CEO of that company was paying himself $771,000 a year. And, oh, by the way, Wal-Mart has expanded now in Celina. A Wal-Mart supercenter has been built on 50 acres that used to belong to Huffy. So it comes full circle.

I talk about Huffy only because of this news, this venerable old bicycle company with bicycles built by American hands that were proud of their jobs, announces that it wants to become a Chinese company after having moved all of its production to China. I have 33 pages—single-spaced, front and back—of information from the Department of Labor that describes jobs lost in this country this year by companies that have certified to the Department of Labor, so their employees can get trade adjustment assistance, that they have moved certain jobs overseas or that certain jobs have been displaced by overseas trade. I have 33 pages—front and back, single-spaced, in small lines—of the names of the companies and the number of employees. That is just since the first of this year.

The question is: Does anybody care? The answer likely is, not people who matter, not people who can affect the outcome of this, certainly not this Senate because by a handful of votes this Senate said, let us just keep doing this. Let us continue to give tax breaks to companies that move their jobs overseas. Let us keep rewarding those who fire American workers and move those jobs overseas. Let us say to the American worker, you ought to have to compete against 30-cent-an-hour labor, you ought to have to compete against people who work in unsafe plants and are put in jail if they try to join a labor union.

Tonight there will be a vote in the House on CAFTA, and likely the message coming from the House will be, let us do more of the same. My colleagues from the South have all of these sayings, and former Congressman Stenholm always used to talk about the law of holes: When you find yourself in a hole, you ought to stop digging. But that does not seem to be the case with this Congress and international trade.

It is obvious to everyone this is not working. We have the biggest trade deficit in the history of this country. We have massive job loss. We have jobs that are moving outside of this country very quickly, and when American workers can find a job to replace the job they have lost, in most cases, they find a job paying 75 or 80 percent of their former income.

The question for our kids and their kids is what kind of a country will they inherit? We fought for a century over the conditions of production. We became the most productive country in the world. We are the world's leading economic power and military power. But we will not long remain the world's leading economic power without our major manufacturing base, and that manufacturing base is shrinking dramatically. Again, nobody seems to care very much.

I have introduced legislation to address this. We get blocked. It cannot even come to the Senate floor, regrettably. When the next trade agreement comes to the floor that does exactly the same thing and sets up American workers against unfair foreign competition, this Congress embraces it like a teddy bear.

In September, I intend to provide three or four lengthier discussions about international trade and talk about the specifics and remedies. Today, on the eve of the CAFTA vote in the House, I wished to call the attention of my colleagues to this company's story. It is so symbolic of the failure of our trade policy.

My hope is that perhaps, instead of talking about the general and instead of talking about the theory of it all, perhaps we can start thinking about and talking about real Americans who go to work every morning proud of their jobs, and who believe that this country they have inherited ought to give them an opportunity to do well if they play by the rules and do the things that are necessary.

The Pledge of Allegiance is not said everywhere these days. There is a pledge in the board room, and a pledge to profits, but not necessarily a pledge to this country's long-term economic health. I hope very much that is going to change, and I hope that the circumstances that existed for these employees will one day call to action the conscience of this Congress, and that it will say, this ought not to continue, this country can do better than that.

These people in this company, similar to the people in so many other companies I have talked about, did not lose their jobs and were not fired because they were not good Americans. It is because they could not compete against 30-cent labor, and they could not compete against a country that says: Try to organize, and we will fire you. They could not compete against a country that says to companies: Come on in, build your plants here and dump your chemicals into the streams and into the air. They could not compete against a country that says: Come on in and put your workers in an unsafe plant because we are not going to have OSHA here, and we are not going to enforce safe workplaces. We cannot compete against countries in which little kids are taken into a workplace at ages 9, 10, 11, and 12 and locked into that workplace, and where then the work product comes out and goes to the shelves of stores in Fargo or Toledo or St. Louis, and then the American worker is told: Compete with that, compete with, that; if you cannot, you lose your job.

That is not the way we built this country. It is not the way Congress should allow this trade strategy to continue. It is my hope that at some point, some way, somehow in the days ahead we will be able to take action on the floor of the Senate and further strengthen this country's long-term opportunities, help rebuild a manufacturing base, and give people the opportunity in this country, and the belief in this country there is an opportunity, for them and their families to have a good job that pays well, with job security.

I yield the floor.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment?

The Senator from Idaho is recognized.

Mr. CRAIG. Reserving the right to object, I know the intent of the Senator from Virginia is to file an amendment at the desk and not usurp the position of the current amendment that is before the Congress. I would have to ask the Parliamentarian as to the priority of that.

The PRESIDING OFFICER. The pending amendment can only be laid aside by unanimous consent.

Mr. CRAIG. The Senator does not have to lay the pending amendment aside to file an amendment?

The PRESIDING OFFICER. No, he does not.

Mr. CRAIG. I would object to the laying aside of the pending amendment, which would not restrict the Senator's right to file an amendment at the desk and speak about it.

The PRESIDING OFFICER. The amendment may be submitted for the RECORD.

Mr. WARNER. Mr. President, I so amend my request to the Presiding Officer for the purpose of filing the amendment. I marvel at the parliamentary situation of the managing of this bill. Perhaps if I had done something similar, I would now be on the Defense bill. But nevertheless, we are where we are.

Mr. President, I rise to offer an amendment, but I will file it at the present time and hope at some point I can be recognized for the purpose of having this placed into the queue.

The PRESIDING OFFICER. The Senator can be recognized to discuss his amendment at this time if he so desires.

Mr. WARNER. I thought I made that request to the Chair. I failed to communicate. I now make that request.

The PRESIDING OFFICER. The Senator is recognized to discuss his amendment.

Mr. WARNER. From the outset, let me make it clear I have long been a supporter of tort reform. I believe the proliferation of baseless lawsuits and runaway jury awards is having a profound negative effect on many Americans, and indeed on the American economy. For these reasons I was a strong supporter of the Class Action Fairness Act that was signed into law earlier this year. I also support reforming the asbestos litigation system and I support medical malpractice liability reform.

In my view, measured, balanced reforms to our tort system can address very real problems. That is the purpose of this amendment.

Indeed, throughout history Congress has responded to very real problems in our tort system by passing reasonable tort reform measures. In 1994, Congress passed the General Aviation Revitalization Act. The law does not bar lawsuits altogether against the airline industry. Instead, it bars any product liability suit against a manufacturer involving planes more than 18 years old with fewer than 20 seats.

I remember that legislation as if it were yesterday, to the everlasting credit of one of my classmates, who joined when I came into the Senate 20-some-odd years ago, Nancy Kassebaum. She was the author of that historic breakthrough in tort reform as a Senator.

In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act. This law, which was intended to address the legal uncertainties that prevented food donation, provided limited immunity to certain individuals who are involved in the donation of food. It is important to note, however, that immunity does not apply in cases of gross negligence or intentional misconduct.

In 2001, Congress passed the Paul Coverdell Teacher Protection Act. What a wonderful man Senator Coverdell was. I so cherish the memories, having served with him here in this Chamber. This measure provided teachers with immunity from negligence lawsuits when teachers' actions are legal and in furtherance of efforts to control classroom discipline. The act did not immunize teachers from lawsuits claiming gross negligence or reckless or willful misconduct. So we see there has been a slow evolution of the law so that you don't give absolute immunity, but immunity that is in a balanced way. That is the purpose of my amendment.

In my view, the proponents of the gun immunity bill have undoubtedly acted in good faith by trying to respond to another very real problem. Without question, the gun industry in America is under legal siege, fighting lawsuits, many of them frivolous, all over the country.

I will have a letter printed in the RECORD from a gun manufacturer in my State who indicates the seriousness of this problem and the likelihood that the facility in Virginia may not survive unless some protection is given to the manufacturing industry. I strongly support protection to the manufacturing industry as provided in this bill.

My amendment goes to another provision in the bill, which I will enumerate momentarily.

I ask unanimous consent this letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WARNER. The costs incurred by the gun industry in defending these lawsuits is staggering. Indeed, the costs are so great that Beretta USA, an American company that supplies weapons for the U.S. Armed Forces, has written to me claiming that their "ability to continue operations is threatened by these lawsuits." That is from the letter I placed in the RECORD.

Without a doubt, I think some reasonable measure of tort reform is necessary to protect the manufacturers. However, I must say I am deeply concerned about the broad scope of this litigation in other areas. In my view, it will undoubtedly have unintended consequences, but it is likely that we in the Senate will not be able to recognize some of these inequities until they occur. However, experiences in my State of Virginia make it clear to me that there is currently one unintended consequence in the bill as drafted that, if not corrected now, could impose a glaring inequity.

It is absolutely clear that this bill, if it had become law in a previous Congress, would have prevented certain lawsuits brought by victims of the snipers who wreaked havoc in the Virginia, DC, and Maryland area. In particular, this bill would have prevented the victims and their families from ever having their day in court, to sue a gun dealer, from which the snipers John Allen Muhammad and John Lee Malvo illegally received their weapon.

The facts surrounding this gun dealer continue to amaze me. According to reports, the DC area snipers "stole" a gun from this particular gun dealer in Washington State who had lost over 200 guns in the previous 3 years.

I say those words "lost" or "stolen" carefully, because I am not sure how any legitimate, law-abiding dealer can lose or have stolen from its possession over 200 guns. But these were the facts that were developed in this case.

In my view, gun dealers such as this one, which at best have an established history of irresponsibility of securing its firearm inventory and at worst show signs of illegal activity in who they sell their guns to, ought not to have the blanket immunity as provided in this bill.

I can understand the need to protect responsible gun dealers from frivolous lawsuits. I join those in seeking that effort. After all, if a gun dealer is selling legal products to people legally entitled to buy weapons, then the dealer has done nothing wrong and should not be legally held responsible.

Indeed, in my view, the vast majority of gun dealers in America are faithfully abiding by the law. They are deserving of protection, and I would like to support the provisions of the bill that try to give that protection.

But we need to make sure this bill does not immunize the irresponsible behavior of a gun store such as the one in Washington State. How do you "lose" or "have stolen" more than 200 weapons? In my view, gun dealers who have established histories of lost or stolen weapons should not be immune from lawsuits when such a weapon is used to commit a violent crime. To give these dealers immunity in these cases is to give them a completely free pass from having to exercise any type of responsibility in securing or accounting for their weapons. That is plain wrong.

Accordingly, the amendment I am offering tonight would make it absolutely clear that victims of these types of crimes would be absolutely able to pursue their cases against those very few irresponsible or unscrupulous gun dealers in America. My amendment

simply says if a gun dealer has an established history of lost or stolen guns as defined by the Attorney General of the United States, and the lost or stolen gun is used in a way that causes death or injury to another, then that lawsuit would not be barred from its outset from going forward by the legislation now before the Senate.

In sum, this Warner amendment, which is based on the very real instances in the Virginia, DC, and Maryland sniper cases, makes it clear that irresponsible gun dealers will not be given a free pass by the Congress. It is a narrowly tailored amendment that will directly address a very real scenario. I would like at this time to read the language of the bill, together with my amendment.

I go to a section of the bill. I refer colleagues to page 8 of S. 397, copies of which are on each Senator's desk. It provides as follows:

An action brought against a seller for negligent entrustment or negligence per se. . . .

I would add the following to it. My amendment reads: ''On page 8, line 21''—that is the line to which I have drawn the attention of the Senate—''before the semicolon, insert the following:''

. . . or an action against a seller that has an established history of qualified products being lost or stolen, under such criteria as shall be established by the Attorney General by regulation—

That is the Attorney General of the United States—

—for an injury or death caused by a qualified product that was in the possession of the seller, but subsequently lost or stolen.

That provides, I think, and reposes in the proper authority the responsibility to look at these cases and determine what has, in fact, been the record of this dealer.

As I understand it, the ATF keeps certain records, and other records are kept, perhaps, by the States to determine how this gun dealer conducted its business. The regulations would spell out the criteria, first of their record, and then how this weapon was stolen. So, in my judgment, I think it strengthens the legislation. If it is a case, as I say, such as the sniper case in Virginia and Maryland—it captivated with fear the people in this region. I think it is our duty, in drawing up this legislation, to ensure we are doing everything possible not to have a repetition of that chapter.

I remember it so well because I was heavily involved with others in it. Certainly it was in my State. People didn't go out at night. People didn't go to gas stations; they didn't go to the market. They lived in fear, and it was a serious impact on the economy in this region, not to mention the tragedy of the loss of life and injury inflicted by these two extraordinary criminal individuals who had obtained a gun in the State of Washington from a dealer who had a horrible record, a record which on its face spelled out the highest degree of negligence.

So I ask the managers, at the appropriate time, if I may bring up this amendment, and I entrust to them a sense of fairness.

Mr. CRAIG. Will the Senator yield.

Mr. WARNER. Yes, of course. I would ask the Parliamentarian if they would look at the amendment to determine whether, should cloture be filed, it would be a germane amendment.

The PRESIDING OFFICER. The amendment will be reviewed for the Senator.

Mr. WARNER. Which is to say that at this point in time I cannot obtain such ruling; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. Then I yield to the wisdom of the Presiding Officer and the Parliamentarian and at some point in time that judgment can be made.

I yield the floor to my good friend.

Mr. CRAIG. I thank the Senator from Virginia. I know he is sincere in the offering of this amendment. Of course, it will be reviewed by the Parliamentarian as to its germaneness postcloture. I would ask the Senator and his staff to examine the Frist amendment that was laid down and that is now pending because what we attempt to do by that amendment is to send a message, if you will, downline to federally licensed firearms dealers that there is no forgiveness here to bad faith and/or to the misuse or the misconduct within the current Federal statutes. We are examining now, but clearly that Washington dealer that the Senator referred to—

Mr. WARNER. Washington State.

Mr. CRAIG. Washington State dealer the Senator referred to—yes, there are no gun dealers in Washington, this city—those were actions in violation of Federal firearms law. And of course the question is the administering of the law, and clearly that amendment does so.

But I have seen the amendment in quick glance, will review it to see if there can be some accommodation here. I know the intent of the Senator. It is intent in good faith to do exactly what he said and that is exactly what we want done. We do not want those who are under the umbrella of a federally licensed dealer to in any way misuse that law and not to be prosecuted for the misuse of that law.

That is the intent here. It is the frivolous lawsuits that we are attempting to block. We have been very clean and specific in the language of the bill. We have even refined it over last year in a way that I hope the Senator might be able to support in the end because I think it clarifies a complicated situation that is currently before manufacturers and licensed dealers.

Mr. WARNER. Mr. President, I will look at the Frist amendment.

Mr. CRAIG. I thank the Senator.

EXHIBIT 1

BERETTA U.S.A. CORP.,
BERETTA DRIVE,
Accokeek, MD, May 11, 2005.

Hon. RICHARD B. CHENEY,
Vice President of the United States, Eisenhower Executive Office Building, Washington, DC.

DEAR MR. VICE PRESIDENT: A few weeks ago, the Washington, D.C. Court of Appeals issued a decision supporting a D.C. statute that holds the manufacturers of semiautomatic pistols and rifles strictly liable for any crime committed in the District with such a firearm.

Passed in 1991, the D.C. statute had not been used until the District of Columbia recently filed a lawsuit against the firearm industry in an attempt to hold firearm makers, importers and distributors liable for the cost of criminal gun misuse in the District. Although the Court of Appeals (sitting *en banc* in the case *D.C. v. Beretta U.S.A. et al.*) dismissed many parts of the case, it affirmed the D.C. strict liability statute and, moreover, ruled that victims of gun violence can sue firearm manufacturers simply to determine whether that company's firearm was used in the victim's shooting.

It is unlawful to possess most firearms in the District (including semiautomatic pistols) and it is unlawful to assault someone using a firearm. Notwithstanding these two criminal acts, neither of which are within the control of or can be prevented by firearm makers, the D.C. strict liability statute (and the D.C. Court of Appeals decision supporting it) will make firearm manufacturers liable for all costs attributed to such shootings, even if the firearm involved was originally sold in a state far from the District to a lawful customer.

Beretta U.S.A. Corp. makes the standard sidearm for the U.S. Armed Forces (the Beretta M9 9mm pistol). We have long-term contracts right now to supply this pistol to our fighting forces in Iraq and these pistols have been used extensively in combat during the current campaign, just as they have seen use since adopted by the Armed Forces in 1985. Beretta U.S.A. also supplies pistols to law enforcement departments throughout the U.S., including the Maryland State Police, Los Angeles City Police Department and to the Chicago Police Department. We also supply firearms used for self-protection and for sporting purposes to private citizens throughout our country.

The decision of the D.C. Court of Appeals to uphold the D.C. strict liability statute has the likelihood of bankrupting, not only Beretta U.S.A., but every maker of semiautomatic pistols and rifles since 1991. There are hundreds of homicides committed with firearms each year in D.C. and additional hundreds of injuries involving criminal misuse of firearms. No firearm maker has the resources to defend against hundreds of lawsuits each year and, if that company's pistol or rifle is determined to have been used in a criminal shooting in the District, these companies do not have the resources to pay the resultant judgment against them—a judgment against which they would have no defense if the pistol or rifle was originally sold to a civilian customer.

When the D.C. law was passed in 1991 it was styled to apply only to the makers of ''assault rifles'' and machineguns. Strangely, the definition of ''machineguns'' in the statute includes semiautomatic firearms capable of holding more than 12 rounds. Since any magazine-fed firearm is capable of receiving magazines (whether made by the firearm manufacturer or by someone else later) that hold more than 12 rounds, this means that such a product is considered a machinegun in the District, even though it is semi-automatic and even if it did not hold 12 rounds at the time of its misuse.

The Protection of Lawful Commerce in Arms Act (S. 397. H.R. 800) would stop this remarkable and egregious decision by the D.C. Court of Appeals. The Act, if passed, will block lawsuits against the makers, distributions and dealers of firearms for criminal misuse of their products over which they have no control.

We urgently request your support for this legislation. Without it, companies like Beretta U.S.A., Colt, Smith & Wesson, Ruger and dozens of others could be wiped out by a flood of lawsuits emanating from the District.

This is not a theoretical concern. The instrument to deprive U.S. citizens of the tools through which they enjoy their 2nd Amendment freedoms now rests in the hands of trial lawyers in the District Equally grave, control of the future supply of firearms needed by our fighting forces and by law enforcement officials and private citizens throughout the U.S. also rests in the hands of these attorneys.

We will seek Supreme Court review of this decision, but the result of a Supreme Court review is also not guaranteed. Your help in supporting S. 397 and H.R. 800 might provide our only other chance at survival.

Sincerest and respectful regards,

JEFFREY K. REH,

General Counsel and Vice-General Manager.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I think if Senator REID is ready, I am ready to propound a unanimous consent request.

Mr. REED. I am. Go ahead.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CRAIG. Mr. President, I ask unanimous consent that the pending amendments be temporarily set aside and that Senator REED then be recognized in order to call up amendment No. 1626 on behalf of Senator KOHL; provided further that on Wednesday there be 1 hour equally divided for debate in relation to the Kohl amendment and that following the use or yielding back of time, the Senate proceed to a vote in relation to the Kohl amendment, with no amendment in order to the amendment prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. I should say, yes, I would amend that unanimous consent to say Thursday, not Wednesday.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? The Chair hears none, and it is so ordered.

Mr. CRAIG. If the Senator wishes to make brief remarks, then I would put the Senate in morning business.

Mr. REED. I will bring up the amendment and make brief remarks.

Mr. CRAIG. Surely.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 1626

Mr. REED. Mr. President, I will call up amendment 1626 on behalf of Senator KOHL.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED], for Mr. KOHL, proposes an amendment numbered 1626.

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to require the provision of a child safety lock in connection with the transfer of a handgun)

At the end of the bill, add the following:

SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Lock Act of 2005''.

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

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(B) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(3) LIABILITY; EVIDENCE.—

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

Mr. REED. I thank the Chair.

Very briefly, this amendment is a very important one related to safety for children with respect to firearms. There are more than 10,000 accidental shootings a year in this country, and many of these shootings result in the senseless deaths of children, and many of those accidental deaths do not fully take into account the violence because, in addition to that, there are many young people who tragically use a firearm to take their own lives. So we are looking at a situation where nearly 3,000 children, young people, die each year from gun-related injuries. And this recitation of numbers is not only

grim but to all of us, I believe, unacceptable and particularly painful to families who must bear this terrible loss.

This legislation is simple, straightforward, and effective. I must commend Senator KOHL for his authorship and for his persistence in pursuing this legislation. It mandates that a child safety lock device or trigger lock be sold with every handgun. Most locks resemble a padlock that locks around the gun trigger and immobilizes the trigger, preventing it from being used. These and other locks can be purchased for every gun for less than $10 and thus used by thousands of gun owners to protect their firearms from unauthorized use.

This approach is supported by a huge number of individuals. In fact, this Senate has gone on record previously overwhelmingly supporting this amendment. Polls have shown that 73 percent of the American public supports this amendment, including 6 out of 10 gun owners.

This legislation is not only well meaning and well intended, but it could be very effective if we adopt it. I am pleased to see we are now moving to consider this amendment. I am delighted that tomorrow morning we will get a chance for further debate and a vote on this amendment.

I yield my time.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, let me thank Senator REED for his cooperation and effort today as we work our way through this legislation. Several amendments that had have been brought to the floor with an attempt to offer them we are looking to see if we can work with our colleagues in acceptance of them. We have a broad base of support for the underlying legislation, and we want to be able to sustain that support as we go into final passage.

Mr. WARNER. Mr. President, I have now had the opportunity to review the Frist amendment, No. 1606. This amendment simply restates that the Attorney General of the United States can continue to enforce current Federal firearms laws against those who violate them, including dealers. In my view, nothing in S. 397 would prohibit the Attorney General from going forward in those matters. Nevertheless, at this time, I have no objection to restating that authority, as proposed in amendment No. 1606.

In my view, though, amendment No. 1606 does not address the circumstances that my amendment seeks to remedy. The Attorney General has always had the authority to enforce its gun laws yet some dealers continue to act irresponsibly. My concern is that the provisions of S. 397 would completely immunize from lawsuits those irresponsible gun dealers who have an established history of repeatedly losing guns or have an established history of firearms being stolen again and again from their inventory. If enacted without my amendment, S. 397 could cause the relatively small number of irresponsible gun deales to grow, not shrink.

My amendment is precisely aimed at these irresponsible and unscrupulous gun dealers who repeatedly lose firearms and have firearms stolen from their inventory. This is exactly what happened in the DC area sniper case. The snipers, both of whom were not allowed under the law to purchase a firearm, apparently stole their weapon from a gun store in Washington state that had previously lost or had stolen more than 200 weapons over a short period of time. When a gun dealer has an established history of lost or stolen guns and that lost or stolen gun is used in the commission of a serious crime that causes death or injury, it is a grave inequity to lock those victims out of the courthouse doors.

While I have no objection to amendment No. 1606, it clearly does not address the very real problem remedied by my amendment.

MORNING BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent there now be a period of morning business with Senators permitted to speak up to 10 minutes each.

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

Mr. CRAIG. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

PENSION REFORM

Mr. WYDEN. Mr. President, there has been a significant development in private pension law this week, and I have come to the floor to discuss it briefly because I think it is something that will be of enormous interest to working families across the country who, of course, have been reading for months now about their pension plans going belly up. These are workers who work hard, play by the rules, hope to have a dignified retirement and have understood that Social Security was never going to cover all of their retirement security needs. So they have sought to have a private pension, and companies across this country have given them the impression—falsely, in a number of instances—that their private pension would be secure and there for them when they retire.

One of the aspects of this whole challenge, with respect to pension security, has been to eliminate what I believe is a double standard today in private pension laws. There is in fact a double standard in private pension law because so often the executive retirement benefits get hidden in a lockbox while the worker ends up getting creamed in the process.

What we have done, on a bipartisan basis in the Senate Finance Committee, is to say that that double standard, the standard that protects the executives while it clobbers the workers, will no longer be tolerated under our private pension statutes.

As a result of a change that a number of our colleagues worked on, which was backed by Chairman GRASSLEY and Senator BAUCUS, if this provision that we have developed becomes law, if a company pension plan is funded at less than 80 percent, then the executive pensions cannot be hidden under the ruse of being ''deferred compensation.'' That is what we have seen come to light in the last few months, that somehow the executives walk away with millions of dollars worth of pension benefits under the guise of it somehow being something called deferred compensation while the workers end up seeing their pensions disappear by 40, 50, 60 percent.

This provision, in my view, is extremely important because it will prevent companies whose pension plans are at risk of going under from protecting the executive pension while allowing the employees' pensions to sink like a stone.

An example of this would be a flight attendant from Tigard, OR, who gave United Airlines 16 years of service, saw her pension fall recently to a net of $138 a month, while the CEO of United is going to continue to receive $4.5 million. Now, of course, the CEO claims it is not really a pension, that this was compensation worked out before the executive came to United. But I can tell you that elderly woman in Tigard, OR, would sure like to have what the United executive has, regardless of what it is technically referred to under pension law.

A lot more needs to be done to ensure that the executives are not going to reap these huge gains at the expense of their workers. Captain Duane Woerth of the Airline Pilots Association said it well, in my view, when he said, ''While thousands of pilots will retire with only a fraction of the pension benefits they earned and expected, airline executives can look forward to retirements knowing that their nest eggs are solid gold.'' This was reported in Fortune magazine. And there are numerous other examples where generous executive pensions have been protected at the expense of the workers' retirement.

In March of 2002, for example, US Air CEO Stephen Wolf took a lump-sum pension payout of $15 million, including benefits, for 24 years of service that he never actually performed. Six months later, the company filed for bankruptcy and terminated its pilot pension plan, leaving the Pension Benefit Guarantee Corporation with $2.2 billion in liabilities. Where is the fairness in all of that? The executive takes this huge golden parachute away while the workers try to figure out how to make ends meet when the company files for bankruptcy and terminates the pension plan.

Three months before United filed for bankruptcy in 2002, the company

placed $4.5 million in a special bankruptcy protected trust for their CEO, Mr. Glenn Tilton. United then terminated all of its pension plans in 2005, leaving the Pension Benefit Guarantee Corporation with $6.6 billion in liability.

In 2002, the Motorola Company chose to not make any contributions to its pension plan for 70,000 employees and retirees, a plan that was underfunded by $1.4 billion. At the same time, Motorola found another $38 million to give its top executives a variety of pension perks.

In 1999, IBM's cash balance conversion resulted in dramatic pension cuts for the older workers. It is still being litigated in the courts, but in 2002, IBM CEO Lou Gerstner, who oversaw the cash conversion, retired with a pension of $1.1 million per year.

In November of 2002, Delta began phasing out its traditional defined benefit plan for 56,000 employees and replaced it with a cash balance pension plan. As Delta was shorting its workers, their former CEO got a generous guaranteed pension plan of $1 million per year that will be available to him when he turns 65.

These are a few examples, Mr. President, of excessive executive generosity, and they have been particularly egregious in the airline sector, where there have been numerous threats of bankruptcy and actual problems with respect to keeping the workers' pensions intact or even a portion of them secure.

I am pleased the Finance Committee took a significant first step yesterday toward cutting off this corporate spigot that has been gushing millions of dollars for executive pensions but produces less than a trickle of funds for tens of thousands of hard-working Americans. There is more to do.

Certainly the first step that began yesterday in the Senate Finance Committee at ending this double standard came about because Chairman GRASSLEY and Senator BAUCUS worked in a bipartisan fashion, and Senator BINGAMAN, Senator KERRY, Senator SCHUMER, and others joined me in pressing for this change. But suffice it to say there is more to do in this area. Certainly the question of what companies are required to do in terms of making their premium payments is important. In the days ahead the Finance Committee and eventually the Senate as a body will have to take up these issues.

What I wanted to bring to the Senate's attention today is that this is an important start. It is a start that keeps faith with American workers who have come to my townhall meetings. The Presiding Officer is from Georgia and represents a number of workers affected by the financial problems of Delta Airlines. People come to our town meetings and ask, how is it that the executives get off scot-free with respect to these pension issues while we are getting clobbered? I am tired of reading about how the executives have somehow been able, under the guise of deferred compensation or special retirement benefits that are protected from bankruptcy proceedings, and I am tired of seeing how the executives always come out hunky-dory while the workers end up trying to figure how to make ends meet when their pensions have been slashed by 40, 50, or 60 percent.

There is more to do in terms of reforming private pension law, but this effort to eliminate the double standard where executives get protected and workers get hurt, eliminating that double standard is at the center of what good bipartisan pension reform ought to be all about. Fortunately, the Senate Committee on Finance took a big step in the right direction by saying yesterday that if a company's pension plan is not actually funded, then the executives cannot find their way to yet another lockbox and protect themselves with these deferred compensation arrangements.

I yield the floor.

TRIBUTE TO JERMAIN TAYLOR

Mrs. LINCOLN. Mr. President, I thank my colleagues for allowing me to take a few moments for an important recognition for Arkansans. Today I rise to pay tribute to two very distinguished Arkansans, first to the new and undefeated, undisputed middleweight champion of the world, Jermain Taylor.

Jermain Taylors' skill in the boxing ring is only one reason for me to recognize him on the Senate floor. Jermain is one of boxing's rising young stars.

He is known for his skill and his power in the ring, but he is also known for his grace and humility outside of the ring.

On July 16, Jermain, a Little Rock native, thrilled the people of Arkansas when he stepped into a ring in Las Vegas, NV and took the middleweight championship of the world from Bernard Hopkins.

Jermain's victory that night was the culmination of a lifetime of hard work and sacrifice that began when he was just a small boy. When Jermain was 5, he had to take on the responsibility of being the man of the house after his father left the family.

Even at that young age, he took responsibility for his younger sisters without hesitation.

At the age of 13, he made his way into Ozell Nelson's gym and, though he lost his first sparring session, he enjoyed the challenge and believed he would improve, and he could improve with hard work.

He did, and in 1996 he won the U.S. Under 19 Championships. In 2000, he won a bronze medal while representing his country in the Olympic Games held in Sydney, Australia. Shortly thereafter he began his pro career.

By all accounts and by every measure, Jermain Taylor is a great fighter, but he is an even better person. He has been described as humble, determined and one who knows that family comes first.

In short, he embodies the best of what being an Arkansan is all about.

He is a self described country boy with country values. Being an old farmer's daughter myself, I can vouch for the fact that there is nothing wrong with that.

Thousands of Arkansans traveled to Las Vegas to support their local hero. Chants of J.T. and the calling of the hogs could be heard throughout the fight as Jermain outworked and outboxed his opponent.

TRIBUTE TO JACKSON T. ''JACK'' STEPHENS

Mrs. LINCOLN. Mr. President, I also now go to a sadder note and rise to pay tribute to a fallen pillar of the Arkansas business and philanthropy community, Mr. Jack Stephens. Jack passed away quietly at his home on Saturday, July 23, after a period of illness. He has been remarked to have been one of the most incredible businessmen in his lifetime. We have truly lost a visionary businessman who invested in hundreds of Arkansas companies, many of which became leaders in their industry.

He also became one of my home State's most active philanthropists, never forgetting his humble roots and the value of rural life. Jackson T. Stephens was born during the Roaring Twenties and was raised during the Great Depression on a farm in south central Arkansas. He picked cotton and worked a mule on the farm before taking jobs in nearby Hope, AR, during his teens.

The Depression helped to shape a generation of Americans who valued every penny and deeply respected the opportunities that freedom brings, the opportunity to earn a living and to give back. Those lessons were not lost on Jack Stephens. His parents A. J. and Ethel taught him the values of self-reliance, diligence, integrity, and hard work. His father once told Jack, ''Success is not a destiny to be reached but the quality of the journey we make.''

After attending public schools in Prattsville, AR, and graduating high school from Columbia Military Academy in Columbia, TN, Jack Stephens became a 1947 graduate of the U.S. Naval Academy. For the rest of his life, he remained close to many of his Naval Academy buddies, particularly ADM William Crowe, Ambassador Vernon Weaver, and President Jimmy Carter. He never forgot the important value of that education at a service academy and, more importantly, his service to this great Nation.

After finishing up at the Naval Academy, Jack joined his brother Witt Stephens at his financial company, Stephens, Inc. The two of them built one of the country's most premier investment banking firms, the largest off Wall Street.

In recent years, Jack has been recognized for his philanthropy. He once told a reporter there are only two pleasures associated with money: making it and giving it away.

For over 20 years, Jack has been the principal benefactor for the Delta Project, a program designed to assist and educate underprivileged children in Arkansas's delta. He also supported the City Educational Trust Fund. For 20 years, the trust fund has provided scholarships for students and incentive awards for innovative teachers.

Jack also gave $48 million to the University of Arkansas for Medical Sciences. The money was used to build, equip, and support the Jackson T. Stephens Spine and Neuroscience Institute.

In 1997, he gave $5 million to support First Tee, a program designed to allow underprivileged children to learn about and play the game of golf. He viewed First Tee as a teaching tool for children. He understood that the lessons of patience, respect, and following the rules the game of golf teaches could be used in any area of a child's life and, more important, provided them the life skills they needed to be a success in the future.

He also served from 1991 to 1998 as the fourth chairman of the Augusta National Golf Club, home of the Master's Golf Tournament. Jack also gave about $20 million to the University of Arkansas at Little Rock for a special events center that will be used for basketball.

In closing, I want to say a word about the character of Jack Stephens and the men and women of his generation. Jack came from a time when Arkansans believed in the spirit of Arkansas. We in Arkansas believe in ourselves. We believe in our family and our family of Arkansas people. We believe in our dreams and the things we can accomplish when we work hard and we reach out to one another.

Men such as J. B. Hunt, Sam Walton, John Tyson, Witt Stephens, and Jack Stephens believed in the values they were taught in Arkansas and knew that the best place to build a business was right there in their own backyard.

All of these men along with Jack Stephens, nurtured and invested in the businesses and the people of their great State of Arkansas, knowing full well that Arkansas, Arkansas's hard work, its ethics, its values, could be marketed all across the globe.

In the 1980s, Jack Stephens was one of the first to venture and look toward places in the East where investments could be made and relationships built for future of the global economy in the 21st century. They set a high standard for all of Arkansas to follow. Many of us look to the image of Jack Stephens to know of the success that can happen in Arkansas.

My thoughts and prayers go to the family and friends of Jack Stephens this week, as we celebrate his wonderful life and cherish the moments that were spent with him. The people of Arkansas can all be proud of Jack Stephens and the life he lived. He contributed mightily to the well-being of our State and to its people, all because he never forgot where he came from. I am sure the entire Senate will join with me as I honor the well-lived life of Jackson T. ''Jack'' Stephens.

TECHNICAL EXPLANATION OF H.R. 6

I ask unanimous consent that a document entitled ''Description and Technical Explanation of the Conference Agreement of H.R. 6, Title XIII, ''Energy Tax Incentives Act of 2005,'' prepared by the Joint Committee on Taxation, dated July 27, 2005, be printed in the RECORD.

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

DESCRIPTION AND TECHNICAL EXPLANATION OF THE CONFERENCE AGREEMENT OF H.R. 6, TITLE XIII, ''ENERGY TAX INCENTIVES ACT OF 2005''

A. ENERGY INFRASTRUCTURE TAX INCENTIVES

1. Natural gas gathering lines treated as seven-year property (sec. 1301 of the House bill, sec. 1326 of the conference agreement, and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Revenue Procedure 87–56 includes two asset classes either of which could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. In each of three recent cases, appellate courts have held that natural gas gathering lines owned by nonprocedures fall within the scope of Asset class 13.2 (i.e., seven-year recovery period). The appellate court in each case reversed a lower court holding that natural gas gathering lines owned by nonproducers fall within the scope of Asset class 46.0 (i.e., 15-year recovery period). The IRS has not yet indicated whether it acquiesces in the result in these three appellate decisions in cases arising in other circuits.

HOUSE BILL

The House bill establishes a statutory seven-year recovery period and a class life of 14 years for natural gas gathering lines. In addition, no adjustment will be made to the allowable amount of depreciation with respect to this property for purposes of computing a taxpayer's alternative minimum taxable income. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or (d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

Effective date.—The House bill provision is effective for property placed in service after April 11, 2005. No inference is intended as to the proper treatment of natural gas gathering lines placed in service on or before April 11, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the provision requires that the original use of the property begin with the taxpayer. The provision does not apply to property with respect to which the taxpayer (or a related party) had a binding acquisition contract on or before April 11, 2005.

2. Natural gas distribution lines treated a fifteen-year property (sec. 1302 of the House bill, sec. 1515 of the Senate amendment, sec. 1325 of the conference agreement, and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

HOUSE BILL

The House bill establishes a statutory 15-year recovery period and a class life of 35 years for natural gas distribution lines.

Effective date.—The House bill provision is effective for property placed in service after April 11, 2005.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment requires that the original use of the property being with the taxpayer and that the property be placed in service prior to January 1, 2008.

Effective date.—The Senate amendment provision is effective for property placed in service after the date of enactment. However, the provision does not apply to property subject to a binding contract on or before June 14, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. The conference agreement is effective for property, the original use of which begins with the taxpayer after April 11, 2005, which is placed in service after April 11, 2005 and before January 1, 2011. The provision does not apply to property subject to a binding contract on or before April 11, 2005.

3. Transmission property treated as fifteen-year property (sec. 1301 of the House bill, sec. 1308 of the conference agreement, and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the ''class life of the property.'' The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56. Assets used in the transmission and distribution of electricity for sale and related land improvements are assigned a 20-year recovery period and a class life of 30 years.

HOUSE BILL

The House bill provision establishes a statutory 15-year recovery period and a class life

of 30 years for certain assets used in the transmission of electricity for sale and related land improvements. For purposes of the provision, section 1245 property used in the transmission at 69 or more kilovolts of electricity for sale, the original use of which commences with the taxpayers after April 11, 2005, will qualify for the new recovery period.

Effective date.—The House bill provision is effective for property placed in service after April 11, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the provision does not apply to property which is the subject of a binding contract on or before April 11, 2005.

4. Amortization of atmospheric pollution control facilities (sec. 1304 of the House bill, sec. 1309 of the conference agreement, and sec. 169 of the Code)

PRESENT LAW

In general, a taxpayer may elect to recover the cost of any certified pollution control facility over a period of 60 months. A certified pollution control facility is defined as a new, identifiable treatment facility which (1) is used in connection with a plant in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes or heat; and (2) does not lead to a significant increase in output or capacity, a significant extension of useful life, a significant reduction in total operating costs for such plant or other property (or any unit thereof), or a significant alteration in the nature of a manufacturing production process or facility. Certification is required by appropriate State and Federal authorities that the facility complies with appropriate standards.

For a pollution control facility with a useful life greater than 15 years, only the portion of the basis attributable to the first 15 years is eligible to be amortized over a 60-month period. In addition, a corporate taxpayer must reduce the amount of basis otherwise eligible for the 60-month recovery by 20 percent. The amount of basis not eligible for 60-month amortization is depreciable under the regular tax rules for depreciation.

HOUSE BILL

The House bill expands the provision allowing a taxpayer to recover the cost of certain certified air pollution control facilities (but not water pollution control facilities) over 60 months by repealing the requirement that only certified pollution control facilities used in connection with a plant in operation before January 1, 1976 qualify. Under the House bill, a certified air pollution control facility which used in connection with an electric generation plant which is primarily coal fired will be eligible for 60-month amortization regardless of whether the associated plant or other property was in operation prior to January 1, 1976. In the case of a facility used in connection with a plant or other property not in operation before January 1, 1976, the facility must be property that either (i) the construction, reconstruction, or erection of which is completed by the taxpayer after April 11, 2005 (to the extent of the portion of the basis properly attributable to the construction, reconstruction, or erection after that date), or (ii) is acquired after April 11, 2005, if the original use of the property commences with the taxpayer after that date. The House bill does not change the present-law rules relating to corporate taxpayers or to pollution control facilities with a useful life greater than 15 years, and the House bill does not modify in any way the treatment of water pollution control facilities.

Effective date.—The provision is effective for air pollution control facilities placed in service after April 11, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the amortization period is 84 months (rather than 60 months) for certified air pollution control facilities used in connection with an electric generation plant which is primarily coal fired and which was not in operation before January 1, 1976.

5. Modification of credit for producing fuel from a non-conventional source (sec. 1305 of the House bill, secs. 1321 and 1322 of the conference agreement, and sec. 29 and new sec. 45K of the Code)

PRESENT LAW

Certain fuels produced from ''non-conventional sources'' and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation) per barrel or Btu oil barrel equivalent (''section 29 credit''). Qualified fuels must be produced within the United States.

Qualified fuels include:

oil produced from shale and tar sands;

gas produced from geopressured brine, Devonian shale, coal seams, tight formations, or biomass; and

liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

Generally, the section 29 credit has expired, except for certain biomass gas and synthetic fuels sold before January 1, 2008, and produced at facilities placed in service after December 31, 1992, and before July 1, 1998.

The section 29 credit may not exceed the excess of the regular tax liability over the tentative minimum tax. Unused section 29 credits may not be carried forward or carried back to other taxable years. However, to the extent the section 29 credit is disallowed because of the tentative minimum tax, the minimum tax credit allowable in future years is increased by the amount so disallowed.

Other business credits are included in the general business credit (sec. 38). Generally, the general business credit may not exceed the excess of the taxpayer's net income tax over the greater of the taxpayer's tentative minimum tax or 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000. General business credits in excess of this limitation may be carried back one year and forward up to 20 years. The section 29 credit is not part of the general business credit.

The section 29 credit includes definitional cross-references and a credit limitation relating to the Natural Gas Policy Act of 1978. The Natural Gas Policy Act of 1978 has been repealed.

HOUSE BILL

The provision makes the credit for producing fuel from a non-conventional source part of the general business credit. Thus, the credit for producing fuel from a non-conventional source will be subject to the limitations applicable to the general business credit. Any unused credits may be carried back one year and forward 20 years.

The provision also makes certain clerical changes in cross-references to the Natural Gas Policy Act of 1978, which has been repealed.

Effective date.—The provision applies to credits determined for taxable years ending after December 31, 2005. The clerical changes are effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House provision with modifications. In addition to making the section 29 credit part of the general business credit, the conference agreement adds a production credit for qualified facilities that produce coke or coke gas. Qualified facilities must have been placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010. The conferees understand that a single facility for the production of coke or coke gas is generally composed of multiple coke ovens or similar structures.

The production credit may be claimed with respect to coke and coke gas produced and sold during the period beginning on the later of January 1, 2006, or the date such facility is placed in service and ending on the date which is four years after such period began. The amount of credit-eligible coke produced may not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. The $3.00 credit for coke or coke gas is indexed for inflation using 2004 as the base year instead of 1979. A facility that has claimed a credit under Code section 29(g) is not eligible to claim the new credit for producing coke or coke gas.

The conferees understand that the Internal Revenue Service has stopped issuing private letter rulings and other taxpayer-specific guidance regarding the section 29 credit. The conferees believe that the Internal Revenue Service should consider issuing such rulings and guidance on an expedited basis to those taxpayers who had pending ruling requests at the time the moratorium was implemented.

6. Modification to special rules for nuclear decommissioning costs (sec. 1306 of the House bill, sec. 1310 of the conference agreement, and sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were enacted in the Deficit Reduction Act of 1984 (''1984 Act''), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a ''qualified fund'') is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the ''cost of service requirement''). Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer's income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for

the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant's estimated useful life. In order to prevent accumulations of funds over the remaining life of a nuclear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the ''ruling amount''). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a nontaxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor's basis in the fund. The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.

Nonqualified nuclear decommissioning funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules. The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund's owner as it is earned.

HOUSE BILL

Repeal of cost of service requirement

The House bill repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, are allowed a deduction for amounts contributed to a qualified fund.

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The House bill also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post–1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The House bill does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Exception to ruling amount for certain decommissioning costs

The House bill permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of total nuclear decommissioning costs with respect to a nuclear powerplant previously excluded under section 468A(d)(2)(A). It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule is allowed as a deduction over the remaining useful life of the nuclear powerplant. If a qualified fund that has received amounts under this rule is transferred to another person, the transferor will be permitted a deduction for any remaining deductible amounts at the time of transfer.

Effective date.—The provision is effective for taxable years beginning after December 31, 2005.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modification. The conference agreement requires that a taxpayer apply for a new ruling amount with respect to a nuclear powerplant in any tax year in which the powerplant is granted a license renewal, extending its useful life.

7. Arbitrage rules not to apply to prepayments for natural gas (sec. 1307 of the House bill, sec. 1327 of the conference agreement, and sec. 148 of the Code)

PRESENT LAW

Arbitrage restrictions

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax. Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the ''arbitrage restrictions''). One such restriction limits the use of bond proceeds to acquire ''investment-type property.'' The term investment-type property includes the acquisition of property in a transaction involving a prepayment if a principal purpose of the prepayment is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

On August 4, 2003, the Treasury Department issued final regulations deeming to be customary, and not in violation of the arbitrage rules, certain prepayments for natural gas and electricity. Generally, a qualified prepayment under the regulations requires that 90 percent of the natural gas or electricity purchased with the prepayment be used for a qualifying use. Generally, natural gas is used for a qualifying use if it is to be (1) furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility, however, gas used to produce electricity for sale is not included under this provision (2) used by the issuing municipal utility to produce electricity that will be furnished to retail electric service area customers of the issuing utility, (3) used by the issuing municipal utility to produce electricity that will be sold to a utility owned by a governmental person and furnished to the service area retail electric customers of the purchaser, (4) sold to a utility that is owned by a governmental person if the requirements of (1), (2) or (3) are satisfied by the purchasing utility (treating the purchaser as the issuing utility) or (5) used to fuel the pipeline transportation of the prepaid gas supply. Electricity is used for a qualifying use if it is to be (1) furnished to retail service area electric customers of the issuing municipal utility or (2) sold to a municipal utility and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser.

Private activity bond tests

State and local bonds may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or the debt is repaid with governmental funds. Private activity bonds are bonds where the State or local government serves as a conduit providing financing to private businesses or individuals. A bond will be treated as a private activity bond if more than five percent of the proceeds of the bond issue, or, if less, more than $5,000,000 is used (directly or indirectly) to make or finance loans to persons other than governmental units (the ''private loan financing test'') or if it meets the requirements of a two-part private business test.

The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain purposes permitted by the Code. Section 141(d) of the Code provides that the term ''private activity bond'' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of five percent of such proceeds or $5 million. ''Nongovernmental output property'' generally means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (other than a facility for the furnishing of water). An exception applies to output property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in (1) a qualified service area of the governmental unit acquiring the property, or (2) a qualified annexed area of such unit.

HOUSE BILL

In general

The House bill creates a safe harbor exception to the general rule that tax-exempt bond-financed prepayments violate the arbitrage restrictions. The term ''investment type property'' does not include a prepayment under a qualified natural gas supply contract. The provision also provides that such prepayments are not treated as private loans for purposes of the private business tests.

Under the House bill, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas for service area customers of a governmental utility is not treated as the acquisition of investment-type property. A contract is a qualified natural gas contract if the volume of natural gas secured for any year covered by the prepayment does not exceed the sum of (1) the average annual natural gas purchased (other than for resale) by customers of the utility within the service area of the utility (''retail natural gas consumption'') during the testing period, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. The testing period is the 5-calendar-year period immediately preceding the calendar year in which the bonds

are issued. A retail customer is one who does not purchase natural gas for resale. Natural gas used to generate electricity by a utility owned by a governmental unit is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the governmental electric utility.

Adjustments

The volume of gas permitted by the general rule is reduced by natural gas otherwise available on the date of issuance. Specifically, the amount of natural gas permitted to be acquired under a qualified natural gas contract for any period is to be reduced by the applicable share of natural gas held by the utility on the date of issuance of the bonds and natural gas that the utility has a right to acquire for the prepayment period (determined as of the date of issuance). For purposes of the preceding sentence, ''applicable share'' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

For purposes of the safe harbor, if after the close of the testing period and before the issue date of the bonds (1) the government utility enters into a contract to supply natural gas (other than for resale) for a commercial person for use at a property within the service area of such utility and (2) the gas consumption for such property was not included in the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period, then the amount of gas permitted to be purchased may be increased to accommodate the contract.

The calculation of average annual retail natural gas consumption for purposes of the safe harbor, however, is not to exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

Intentional acts

The safe harbor does not apply if the utility engages in intentional acts to render (1) the volume of natural gas covered by the prepayment to be in excess of that needed for retail natural gas consumption, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility.

Definition of service area

Service area is defined as (1) any area throughout which the governmental utility provided (at all times during the testing period) in the case of a natural gas utility, natural gas transmission or distribution services, or in the case of an electric utility, electricity distribution services; (2) limited areas contiguous to such areas, and (3) any area recognized as the service area of the governmental utility under State or Federal law. Contiguous areas are limited to any area within a county contiguous to the area described in (1) in which retail customers of the utility are located if such area is not also served by another utility providing the same service.

Ruling request for higher prepayment amounts

Upon written request, the Secretary may allow an issuer to prepay for an amount of gas greater than that allowed by the safe harbor based on objective evidence of growth in gas consumption or population that demonstrates that the amount permitted by the exception is insufficient.

Nongovernmental output property restrictions

A qualified natural gas supply contract as defined in the provision is not nongovernmental output property for purposes of subsection (d) of section 141. Subsection (d) of section 141 does not apply to prepayment contracts for natural gas or electricity that either under the Treasury regulations or statutory safe harbor are not investment-type property for purposes of the arbitrage rules under section 148. No inference is intended regarding the application of subsection 141(d) to prepayment contracts not covered by the statutory safe harbor or Treasury regulations.

Application to joint action agencies

In a number of States, joint action agencies serve as purchasing agents for their member municipal gas utilities. The provision is intended to allow municipal utilities in a State to participate in such buying arrangements as established under State law, subject to the same limitations that would apply if an individual utility were to purchase gas directly. When acting on behalf of its municipal gas utility members, the total amount of gas that can be purchased by a joint action agency under the provision's exception to the arbitrage rules is the aggregate of what each such member could purchase for itself on a direct basis. Thus, with respect to qualified natural gas supply contracts entered into by joint action agencies for or on behalf of one or more member municipal utilities, the requirements of the safe harbor are tested at the individual municipal utility level based on the amount of gas that would be allocated to such member during any year covered by the contract.

Effective date.—The provision is effective for bonds issued after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Determination of small refiner exception to oil depletion deduction (sec. 1308 of the House bill, sec. 1328 of the conference agreement, and sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed. A refinery run is the volume of inputs of crude oil (excluding any product derived from oil) into the refining stream.

HOUSE BILL

The bill increases the current 50,000-barrel-per-day limitation to 75,000. In addition, the bill changes the refinery limitation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery runs for the taxable year may not exceed 75,000 barrels. For this purpose, the taxpayer calculates average daily refinery runs by dividing total refinery runs for the taxable year by the total number of days in the taxable year.

Effective date.—The provision is effective for taxable years ending after date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

9. Extension and modification of renewable electricity production credit (secs. 1501–1503 of the Senate amendment, secs. 1301 and 1302 of the conference agreement, and sec. 45 of the Code)

PRESENT LAW

In general

An income tax credit is allowed for the production of electricity from qualified facilities sold by the taxpayer to an unrelated person (sec. 45). Qualified facilities comprise wind energy facilities, closed-loop biomass facilities, open-loop biomass (including agricultural livestock waste nutrients) facilities, geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities. In addition, an income tax credit is allowed for the production of refined coal.

Credit amounts and credit period

In general

The base amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.9 cents per kilowatt-hour for 2005. A taxpayer may claim credit for the 10-year period commencing with the date the qualified facility is placed in service. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits. The amount of credit a taxpayer may claim is phased out as the market price of electricity (or refined coal in the case of the refined coal production credit) exceeds certain threshold levels.

Reduced credit amounts and credit periods

In the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities, the 10-year credit period is reduced to five years commencing on the date the facility is placed in service. In general, for eligible pre-existing facilities and other facilities placed in service prior to January 1, 2005, the credit period commences on January 1, 2005. In the case of a closed-loop biomass facility modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period begins no earlier than October 22, 2004.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrient facilities), small irrigation power facilities, landfill gas facilities, and trash combustion facilities, the otherwise allowable credit amount is 0.75 cent per kilowatt-hour, indexed for inflation measured after 1992 (currently 0.9 cents per kilowatt-hour for 2005).

Credit applicable to refined coal

The amount of the credit for refined coal is $4.375 per ton (also indexed for inflation after 1992 and equaling $5.481 per ton for 2005).

Other limitations on credit claimants and credit amounts

In general, in order to claim the credit, a taxpayer must own the qualified facility and sell the electricity produced by the facility (or refined coal in the case of the refined coal production credit) to an unrelated party. A lessee or operator may claim the credit in lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities originally placed in service on or before the date of enactment and in the case of a closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and

other biomass. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee or operator of a facility owned by a governmental unit.

For all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the amount of credit a taxpayer may claim is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but the reduction cannot exceed 50 percent of the otherwise allowable credit. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit for electricity produced from renewable sources is a component of the general business credit (sec. 38(b)(8)). Generally, the general business credit for any taxable year may not exceed the amount by which the taxpayer's net income tax exceeds the greater of the tentative minimum tax or so much of the net regular tax liability as exceeds $25,000. Excess credits may be carried back one year and forward up to 20 years.

A taxpayer's tentative minimum tax is treated as being zero for purposes of determining the tax liability limitation with respect to the section 45 credit for electricity produced from a facility (placed in service after October 22, 2004) during the first four years of production beginning on the date the facility is placed in service.

Qualified facilities

Wind energy facility

A wind energy facility is a facility that uses wind to produce electricity. To be a qualified facility, a wind energy facility must be placed in service after December 31, 1993, and before January 1, 2006.

Closed-loop biomass facility

A closed-loop biomass facility is a facility that uses any organic material from a plant which is planted exclusively for the purpose of being used at a qualifying facility to produce electricity. In addition, a facility can be a closed-loop biomass facility if it is a facility that is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both coal and other biomass, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation.

To be a qualified facility, a closed-loop biomass facility must be placed in service after December 31, 1992, and before January 1, 2006. In the case of a facility using closed-loop biomass but also co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass, a qualified facility must be originally placed in service and modified to co-fire the closed-loop biomass at any time before January 1, 2006.

Open-loop biomass (including agricultural livestock waste nutrients) facility

An open-loop biomass facility is a facility using open-loop biomass to produce electricity. Open-loop biomass is defined as (1) any agricultural livestock waste nutrients, or (2) any solid, nonhazardous, cellulosic or lignin waste material which is segregated from other waste materials and which is derived from certain forest-related resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are mill residues, other than spent chemicals from pulp manufacturing, precommercial thinnings, slash, and brush. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage), gas derived from biodegradation of solid waste, or paper that is commonly recycled. In addition, open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (co-firing) beyond such fossil fuel required for start up and flame stabilization.

Agricultural livestock waste nutrients are defined as agricultural livestock manure and litter, including bedding material for the disposition of manure.

To be a qualified facility, an open-loop biomass facility must be placed in service after October 22, 2004 and before January 1, 2006, in the case of a facility using agricultural livestock waste nutrients and must be placed in service at any time prior to January 1, 2006 in the case of a facility using other open-loop biomass.

Geothermal facility

A geothermal facility is a facility that uses geothermal energy to produce electricity. Geothermal energy is energy derived from a geothermal deposit which is a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). To be a qualified facility, a geothermal facility must be placed in service after October 22, 2004 and before January 1, 2006.

Solar facility

A solar facility is a facility that uses solar energy to produce electricity. To be a qualified facility, a solar facility must be placed in service after October 22, 2004 and before January 1, 2006.

Small irrigation facility

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility must be not less than 150 kilowatts but less than five megawatts. To be a qualified facility, a small irrigation facility must be originally placed in service after October 22, 2004 and before January 1, 2006.

Landfill gas facility

A landfill gas facility is a facility that uses landfill gas to produce electricity. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. To be a qualified facility, a landfill gas facility must be placed in service after October 22, 2004 and before January 1, 2006.

Trash combustion facility

Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. To be a qualified facility, a trash combustion facility must be placed in service after October 22, 2004 and before January 1, 2006.

Refined coal facility

A qualifying refined coal facility is a facility producing refined coal that is placed in service after October 22, 2004 and before January 1, 2009. Refined coal is a qualifying liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high-carbon fly ash, including such fuel used as a feedstock. A qualifying fuel is a fuel that when burned emits 20 percent less nitrogen oxides and either SO_2 or mercury than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003, and if the fuel sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. In addition, to be qualified refined coal the fuel must be sold by the taxpayer with the reasonable expectation that it will be used for the primary purpose of producing steam.

Summary of credit rate and credit period by facility type

TABLE 1.—SUMMARY OF SECTION 45 CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES AND REFINED COAL

Electricity produced from renewable resources	Credit amount for 2005 (cents per kilowatt-hour; dollars per ton)	Credit period (years from placed-in-service date)[1]
Wind	1.9	10
Closed-loop biomass	1.9	10
Open-loop biomass (including agricultural livestock waste nutrient facilities)	0.9	5
Geothermal	1.9	5
Solar	1.9	5
Small irrigation power	0.9	5
Municipal solid waste (including landfill gas facilities and trash combustion facilities)	0.9	5
Refined Coal	5.481	10

[1] For eligible pre-existing facilities and other facilities placed in service prior to January 1, 2005, the credit period commences on January 1, 2005. In the case of certain co-firing closed-loop facilities, the credit period begins no earlier than October 22, 2004.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. Generally, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative. The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative. Present law does not permit cooperatives to pass any portion of the income tax credit for electricity production through to their patrons.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extension of placed-in-service date for qualifying facilities

The provision extends the placed-in-service date by three years (through December 31, 2008) for the following qualifying facilities: wind facilities; closed-loop biomass facilities (including a facility co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass); open-loop biomass facilities; geothermal facilities; small irrigation power facilities; landfill gas facilities; and trash combustion facilities. The proposal does not extend the terminating placed-in-service date for solar facilities (December 31, 2005) or refined coal facilities (December 31, 2008).

New qualifying energy resources

The provision adds three new qualifying energy resources: fuel cells; hydropower; and wave, current, tidal, and ocean thermal energy.

Fuel cells

A qualifying fuel cell facility is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means. A qualifying facility must have an electricity-

only generation efficiency of greater than 30 percent, generate at least 0.5 megawatt of electricity, and be placed in service after December 31, 2005 and before January 1, 2009.

Hydropower

A qualifying hydropower facility is (1) a facility that produced hydroelectric power (a hydroelectric dam) prior to the date of enactment at which efficiency improvements or additions to capacity have been made after the date of enactment and before January 1, 2009, that enable the taxpayer to produce incremental hydropower or (2) a facility placed in service before the date of enactment that did not produce hydroelectric power (a nonhydroelectric dam) on the date of enactment and to which turbines or other electricity generating equipment have been added after the date of enactment and before January 1, 2009.

At an existing hydroelectric facility, the taxpayer may only claim credit for the production of incremental hydroelectric power. Incremental hydroelectric power for any taxable year is equal to the percentage of average annual hydroelectric power produced at the facility attributable to the efficiency improvement or additions of capacity determined by using the same water flow information used to determine an historic average annual hydroelectric power production baseline for that facility. The Federal Energy Regulatory Commission will certify the baseline power production of the facility and the percentage increase due to the efficiency and capacity improvements.

At a nonhydroelectric dam, the facility must be licensed by the Federal Energy Regulatory Commission and meet all other applicable environmental, licensing, and regulatory requirements and the turbines or other generating devices are added to the facility after the date of enactment and before January 1, 2009. In addition there must not be any enlargement of the diversion structure, or construction or enlargement of a bypass channel, or the impoundment or any withholding of additional water from the natural stream channel.

In the case of electricity generated from a qualifying hydropower facility, the taxpayer may claim a credit equal to one-half the otherwise allowable amount.

Wave, current, tidal, and ocean thermal energy

A qualifying wave, current, tidal, and ocean thermal energy facility is a facility placed in service after the date of enactment and before January 1, 2009 that uses free flowing ocean water derived from tidal currents, ocean currents, waves, or estuary currents, ocean thermal energy, or free flowing water in rivers, lakes, man-made channels, or streams to produce electricity. However, a qualifying facility does not include any facility that includes impoundment structures or a small irrigation power facility.

Equalization of credit period for all qualifying renewable resources

The provision extends the credit period from five years to 10 years for electricity produced from qualifying open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal facilities, solar facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities placed in service after the date of enactment. The provision also provides that for electricity produced from the energy resources newly qualified under the bill—fuel cells, hydropower, and wave, current, tidal, and ocean thermal energy—the credit period is 10 years.

Clarification of units added to pre-existing trash combustion facilities

The provision clarifies that a qualifying trash combustion facility includes a new unit, placed in service after October 22, 2004, that increases electricity production capacity at an existing trash combustion facility. A new unit generally would include a new burner/boiler and turbine. The new unit may share certain common equipment, such as trash handling equipment, with other pre-existing units at the same facility. Electricity produced at a new unit of an existing facility qualifies for the production credit only to the extent of the increased amount of electricity produced at the entire facility.

Taxation of cooperatives and their patrons

The Senate amendment allows eligible cooperatives to elect to pass any portion of the credit through to their patrons. An eligible cooperative is defined as a cooperative organization that is owned more than 50 percent by agricultural producers or entities owned by agricultural producers.

Under the Senate amendment, the credit may be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. The election must be made on a timely filed return for the taxable year, and once made, is irrevocable for such taxable year.

The amount of the credit apportioned to patrons is not included in the organization's credit for the taxable year of the organization. The amount of the credit apportioned to a patron is included in the taxable year the patron with or within which the taxable year of the organization ends. If the amount of the credit for any taxable year is less than the amount of the credit shown on the cooperative's return for such taxable year, an amount equal to the excess of the reduction in the credit over the amount not apportioned to patrons for the taxable year is treated as an increase in the cooperative's tax. The increase is not treated as tax imposed for purposes of determining the amount of any tax credit.

Effective date.—The provision generally is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications.

Extension of placed-in-service date for qualifying facilities

The conference agreement extends the placed-in-service date by two years (through December 31, 2007) for the following qualifying facilities: wind facilities; closed-loop biomass facilities (including a facility co-firing the closed-loop biomass with coal, other biomass, or coal and other biomass); open-loop biomass facilities; geothermal facilities; small irrigation power facilities; landfill gas facilities; and trash combustion facilities. The conference agreement does not alter the terminating placed-in-service date for solar facilities (December 31, 2005) or refined coal facilities (December 31, 2008).

New qualifying energy resources

The conference agreement adds two new qualifying energy resources: hydropower; and Indian coal.

Hydropower

The conference agreement follows the Senate amendment with respect to hydropower.

Indian coal

The conference agreement adds Indian coal as a new energy source. The taxpayer may claim a credit for sales of coal to an unrelated third party from a qualified facility for the seven- year period beginning on January 1, 2006, and ending after December 31, 2012. The value of the credit is $1.50 per ton for the first four years of the seven-year period and $2.00 per ton for the last three years of the seven-year period. The credit amounts are indexed for inflation. A qualified Indian coal facility is a facility that produces coal from reserves that on June 14, 2005, were owned by a Federally recognized tribe of Indians or were held in trust by the United States for a tribe or its members.

Equalization of credit period for all qualifying renewable resources

The conference agreement follows the Senate amendment with respect to equalization of the credit period for qualifying open-loop biomass facilities (including agricultural livestock waste nutrient facilities), geothermal facilities, solar facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and hydropower facilities. The conference agreement provides a seven-year credit period for Indian coal facilities, as explained above.

Clarification of units added to pre-existing trash combustion facilities

The conference agreement follows the Senate amendment with respect to clarification of units added to pre-existing trash combustion facilities.

Taxation of cooperatives and their patrons

The conference agreement follows the Senate amendment with respect to the taxation of cooperatives and their patrons.

Effective date.—The provision generally is effective on the date of enactment. With respect to the taxation of cooperatives and their patrons, the provision applies to taxable years ending after the date of enactment.

10. Clean renewable energy bonds (sec. 1504 of the Senate amendment, sec. 1303 of the conference agreement, and new sec. 54 of the Code)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Subject to certain restrictions, activities that can be financed with these tax-exempt bonds include electric power facilities (i.e., generation, transmission, distribution, and retailing).

Generally, interest on State or local government bonds to finance activities of private persons (''private activity bonds'') is taxable unless a specific exception is contained in the Code. The term ''private person'' generally includes the Federal Government and all other individuals and entities other than States or local governments. The Code includes exceptions permitting States or local governments to act as conduits providing tax-exempt financing for certain private activities. In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2005, the State volume cap is the greater of $80 per resident or $239 million. The Code imposes several additional restrictions on tax-exempt private activity bonds that do not apply to bonds for governmental activities.

The tax exemption for State and local bonds also does not apply to any arbitrage bond. An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'') before funds are needed for the purpose of the borrowing or on specified types of investments

(e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal government.

An issuer must file with the IRS certain information in order for a bond issue to be tax-exempt. Generally, this information return is required to be filed no later the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue ''qualified zone academy bonds.'' ''Qualified zone academy bonds'' are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a ''qualified zone academy'' and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds. A school is a ''qualified zone academy'' if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

Financial institutions that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The credit is includable in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and AMT liability. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond.

There is an annual limitation of $400 million on the amount of qualified zone academy bonds that may be issued in calendar years 1998 through 2005. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

Tax credits for production of electricity from renewable sources

An income tax credit is allowed for the production of electricity from qualified facilities sold by the taxpayer to an unrelated person. The base amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.9 cents per kilowatt-hour for 2005. A taxpayer may claim credit for the 10–year period commencing with the date the qualified facility is placed in service. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits. The amount of credit a taxpayer may claim is phased out as the market price of electricity (or refined coal in the case of or refined coal production credit) exceeds certain threshold levels.

Qualified facilities comprise wind energy facilities, closed-loop biomass facilities, open-loop biomass (including agricultural livestock waste nutrients) facilities, geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities. In addition, an income tax credit is allowed for the production of refined coal.

For purposes of the credit, qualified facilities must be placed in service by certain dates. However, with the exception of qualifying refined coal facilities, in no event may qualifying facilities be placed in service after December 31, 2005.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision creates a new category of tax credit bonds: Clean Renewable Energy Bonds (''CREBs''). CREBs are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for facilities that qualify for the tax credit under section 45 (''qualified projects''), without regard to the placed-in-service date requirements of that section.

Like qualified zone academy bonds, CREBs are not interest-bearing obligations. Rather, the taxpayer holding CREBs on a credit allowance date would be entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of CREBs without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

The provision also imposes a maximum maturity limitation on any CREBs. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a CREBs being equal to 50 percent of the face amount of such bond. Moreover, the provision requires level amortization of CREBs during the period such bonds are outstanding.

For purposes of the provision, ''qualified issuers'' include (1) governmental bodies (including Indian tribal governments); (2) the Tennessee Valley Authority; (3) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (4) clean energy bond lenders. A clean energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002. The term ''qualified borrower'' includes a governmental body, the Tennessee Valley Authority, and a mutual or cooperative electric company.

Under the provision, CREBs are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder shall apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to CREBs. For example, for arbitrage purposes, the yield on an issue of CREBs is computed by taking into account all payments of interest, if any, on such bonds, i.e., whether the bonds are issued at par, premium, or discount. However, for purposes of determining yield, the amount of the credit allowed to a taxpayer holding CREBs is not treated as interest, although such credit amount is treated as interest income to the taxpayer.

In addition, to qualify as CREBs, the qualified issuer must reasonably expect to and actually spend 95 percent or more of the proceeds of such bonds on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as CREBs if unspent proceeds are used within 90 days from the end of such five-year period to redeem any ''nonqualified bonds.'' For these purposes, the amount of nonqualified bonds is to be determined in the same manner as Treasury regulations under section 142. In addition, the provision provides that the five-year spending period may be extended by the Secretary upon the qualified issuer's request.

Unlike qualified zone academy bonds, the provision requires issuers of CREBs to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. Under the provision, there is a national limitation of $1 billion of CREBs that the Secretary may allocate, in the aggregate, to qualified projects. The authority to issue CREBs expires December 31, 2008.

Effective date.—The provision is effective for bonds issued after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. Under the conference agreement, the term ''qualified issuers'' includes (1) governmental bodies (including Indian tribal governments); (2) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (3) clean energy bond lenders. The term ''qualified borrower'' includes a governmental body (including an Indian tribal government) and a mutual or cooperative electric company.

Under the conference agreement, there is a national limitation of $800 million of CREBs that the Secretary may allocate, in the aggregate, to qualified projects. Qualified projects are any ''qualified facilities'' within the meaning of section 45 (without regard to the placed-in-service date requirements of that section), other than Indian coal production facilities. In addition, the conference agreement provides that the authority to issue CREBs expires December 31, 2007. However, the Secretary shall not allocate more than $500 million of CREBs to finance qualified projects for qualified borrowers that are governmental bodies (as defined under the conference agreement).

11. Treatment of income of certain electric cooperatives (sec. 1505 of the Senate amendment, sec. 1304 of the conference agreement, and sec. 501(c)(12) of the Code)

PRESENT LAW

In general

Under present law, an entity must be operated on a cooperative basis in order to be treated as a cooperative for Federal income tax purposes. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The Internal Revenue Service requires that cooperatives must operate under

the following principles: (1) subordination of capital in control over the cooperative undertaking and in ownership of the financial benefits from ownership; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost).

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. As described below, income from the sale of electric energy by an electric cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member of a cooperative.

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative. The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooperative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative.

Taxation of electric cooperatives exempt from subchapter T

In general, the cooperative tax rules of subchapter T apply to any corporation operating on a cooperative basis (except mutual savings banks, insurance companies, other tax-exempt organizations, and certain utilities), including tax-exempt farmers' cooperatives (described in sec. 521(b)). However, subchapter T does not apply to an organization that is ''engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.'' Instead, electric cooperatives are taxed under rules that were generally applicable to cooperatives prior to the enactment of subchapter T in 1962. Under these rules, an electric cooperative can exclude patronage dividends from taxable income to the extent of all net income of the cooperative, including net income derived from transactions with patrons who are not members of the cooperative.

Tax exemption of rural electric cooperatives

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The IRS takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12). The 85-percent test is determined without taking into account any income from: (1) qualified pole rentals; (2) open access electric energy transmission services; (3) open access electric energy distribution services; (4) any nuclear decommissioning transaction; (5) any asset exchange or conversion transaction.

Income from open access transactions

Income received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities) is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

In addition, income is excluded for purposes of the 85-percent test if it is received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy distribution services or ancillary services, provided such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the cooperative: (1) to end-users who are served by distribution facilities not owned by the cooperative or any of its members; or (2) generated by a generation facility that is not owned or leased by the cooperative or any of its members and that is directly connected to distribution facilities owned by the cooperative or any of its members.

The exclusion for income from open access transactions does not apply to taxable years beginning after December 31, 2006.

Income from nuclear decommissioning transactions

Income received or accrued by a rural electric cooperative from any ''nuclear decommissioning transaction'' also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term ''nuclear decommissioning transaction'' is defined as—

1. any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit;

2. any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

3. any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

The exclusion for income from nuclear decommissioning transactions does not apply to taxable years beginning after December 31, 2006.

Income from asset exchange or conversion transactions

Gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or natural gas.

The exclusion for income from asset exchange or conversion transactions does not apply to taxable years beginning after December 31, 2006.

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives

Under present law, income received or accrued by a tax-exempt rural electric cooperative from a ''load loss transaction'' is treated under section 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). In addition, income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term ''load loss transaction'' is generally defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the ''start-up year'' does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The ''start-up year'' is defined as the first year that the cooperative offers nondiscriminatory open access or, if later and at the election of the cooperative, 2004.

Present law also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

The special rule for income received or accrued by a tax-exempt rural electric cooperative from a load loss transaction does not apply to taxable years beginning after December 31, 2006.

Taxable electric cooperatives

The receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. In addition, income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The special rule for income received or accrued by a taxable electric cooperative from a load loss transaction does not apply to taxable years beginning after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment eliminates the sunset date for the rules excluding income received or accrued by tax-exempt rural electric cooperatives from open access electric energy transmission or distribution services,

any nuclear decommissioning transaction, and any asset exchange or conversion transaction for purposes of the 85-percent test under section 501(c)(12). The provision also eliminates the sunset date for the rule that allows income from load loss transactions to be treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test. In addition, the provision eliminates the sunset date for the rule that permits taxable electric cooperatives to treat the receipt or accrual of income from load loss transactions as income from patrons who are members of the cooperative.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Dispositions of transmission property to implement FERC restructuring policy (sec. 1506 of the Senate amendment, sec. 1305 of the conference agreement, and sec. 451 of the Code)

PRESENT LAW

Generally, a taxpayer selling property recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

One such special tax provision permits taxpayers to elect to recognize gain from qualifying electric transmission transactions ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period (the ''reinvestment property''). If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain is recognized to the extent of such excess in the year of the qualifying electric transmission transaction.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2007. In general, an independent transmission company is defined as: (1) an independent transmission provider approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a ''market participant'' and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than January 1, 2007; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the reinvestment property may be purchased by any member of the affiliated group (in lieu of the taxpayer).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision extends the treatment under the present-law deferral provision to sales or dispositions to an independent transmission company prior to January 1, 2008.

Effective date.—The Senate amendment provision is effective for transactions occurring after the date of enactment. However, because the provision is an extension of a present law provision which expires on December 31, 2006, only transactions occurring after December 31, 2006 and prior to January 1, 2008 will be affected.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

13. Credit for production from advanced nuclear power facilities (sec. 1507 of the Senate amendment, sec. 1306 of the conference agreement, and new sec. 45J of the Code)

PRESENT LAW

An income tax credit is allowed for production of electricity from qualified facilities sold by the taxpayer to an unrelated person (sec. 45). Qualified facilities comprise wind energy facilities, ''closed-loop'' biomass facilities, open-loop biomass (including agricultural livestock waste nutrients) facilities, geothermal energy facilities, solar energy facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities. The base amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.9 cents per kilowatt-hour for 2005. However, electricity produced at open-loop biomass, small irrigation power, and municipal solid waste facilities receives only 50 percent of the credit, or 0.9 cents per kilowatt-hour for 2005. Generally, wind and closed-loop biomass facilities may claim this credit for 10 years from the placed-in-service date of the facility. Other qualified facilities may claim the credit for only five years from the placed-in-service date.

Present law does not provide a credit for electricity produced at advanced nuclear power facilities.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision permits a taxpayer producing electricity at a qualifying advanced nuclear power facility to claim a credit equal to 1.8 cents per kilowatt-hour of electricity produced for the eight-year period starting when the facility is placed in service. The aggregate amount of credit that a taxpayer may claim in any year during the eight-year period is subject to limitation based on allocated capacity and an annual limitation as described below.

A qualifying advanced nuclear facility is an advanced nuclear facility for which the taxpayer has received an allocation of megawatt capacity from the Secretary and is placed in service before January 1, 2021. The taxpayer may only claim credit for production of electricity equal to the ratio of the allocated capacity that the taxpayer receives from the Secretary to the rated nameplate capacity of the taxpayer's facility. For example, if the taxpayer receives an allocation of 750 megawatts of capacity from the Secretary and the taxpayer's facility has a rated nameplate capacity of 1,000 megawatts, then the taxpayer may claim three-quarters of the otherwise allowable credit, or 1.35 cents per kilowatt-hour, for each kilowatt-hour of electricity produced at the facility (subject to the annual limitation described below). The Secretary may allocate up to 6,000 megawatts of capacity.

A taxpayer operating a qualified facility may claim no more than $125 million in tax credits per 1,000 megawatts of allocated capacity in any one year of the eight-year credit period. If the taxpayer operates a 1,350 megawatt rated nameplate capacity system and has received an allocation from the Secretary for 1,350 megawatts of capacity eligible for the credit, the taxpayer's annual limitation on credits that may be claimed is equal to 1.35 times $125 million, or $168.75 million. If the taxpayer operates a facility with a nameplate rated capacity of 1,350 megawatts, but has received an allocation from the Secretary for 750 megawatts of credit eligible capacity, then the two limitations apply such that the taxpayer may claim a credit equal to 1.35 cents per kilowatt-hour of electricity produced (as described above) subject to an annual credit limitation of $93.75 million in credits (three-quarters of $125 million).

An advanced nuclear facility is any nuclear facility for the production of electricity, the reactor design for which was approved after 1993 by the Nuclear Regulatory Commission. For this purpose, a qualifying advanced nuclear facility does not include any facility for which a substantially similar design for a facility of comparable capacity was approved before 1994.

In addition, the credit allowable to the taxpayer is reduced by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits, but such reduction cannot exceed 50 percent of the otherwise allowable credit. The credit is treated as part of the general business credit.

Effective date.—The provision applies to electricity produced in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

14. Credit for investment in clean coal facilities (sec. 1508 of the Senate amendment, sec. 1307 of the conference agreement, and new secs. 48A and 48B of the Code)

PRESENT LAW

Present law does not provide an investment credit for electricity production facilities property that uses coal as a fuel or for the gasification of coal or other materials. However, a nonrefundable, 10–percent investment tax credit (''energy credit'') is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) that is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage (sec. 48). The energy credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision creates two new 20–percent investment tax credits. Both credits are available only to projects certified by the Secretary of Treasury, in consultation with the Secretary of Energy. Certifications are issued using a competitive bidding process.

With respect to the first investment tax credit, the provision establishes a 10–year program to produce 7,500 megawatts of power generation capacity using integrated gasification combined cycle (''IGCC'') and other advanced coal-based electricity generation technologies. Qualified projects must be economically feasible and use the appropriate clean coal technologies. The Secretary of

Treasury, in consultation with the Secretary of Energy, must allocate up to 4,125 megawatts of power generation capacity to credit-eligible projects using IGCC technology. The remaining 3,375 megawatts of power generation capacity must be allocated to credit-eligible projects that use other advanced coal-based technologies.

In determining which projects to certify that use IGCC technology, the Secretary must allocate power generation capacity in relatively equal amounts to projects that use bituminous coal, subbituminous coal, and lignite as primary feedstock. In addition, the Secretary must give high priority to projects which include greenhouse gas capture capability, increased by-product utilization, and other benefits.

With respect to the second investment tax credit, the provision authorizes the certification of certain gasification projects. Qualified gasification projects convert coal, petroleum residue, biomass, or other materials recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion. Under the provision, certified gasification projects are eligible for the new 20 percent investment tax credit. The total qualified investment which may be certified as eligible for credit under the gasification program may not exceed $4 billion. In addition, the Secretary may certify a maximum of $1 billion in qualified investment as eligible for credit with respect to any single project.

Effective date.—The credits apply to periods after the date of enactment, under rules similar to the rules of section 48(m) (as in effect before its repeal).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. Under the conference agreement, the Secretary may allocate investment credits for projects using IGCC and other advanced coal-based technologies based on the amount invested, rather than on megawatts of power generation capacity. The Secretary may allocate $800 million of credits to IGCC projects and $500 million of credits to projects using other advanced coal-based technologies.

Under the agreement, the credit available to IGCC projects remains 20 percent of qualified investments; however, the credit for other advanced coal-based projects is reduced to 15 percent of qualified investments. With respect to IGCC projects, the conference agreement narrows the definition of credit-eligible investments to include only investments in property associated with the gasification of coal, including any coal handling and gas separation equipment. Thus, investments in equipment that could operate by drawing fuel directly from a natural gas pipeline do not qualify for the credit.

The conference agreement retains the 20 percent investment credit for certified gasification projects. The agreement, however, reduces the total amount of gasification credits allocable by the Secretary to $350 million. A maximum of $650 million of credit-eligible investment may be allocated to any single gasification project. The conference agreement also clarifies that only property which is part of a qualifying gasification project and necessary for the gasification technology of such project is eligible for the gasification credit.

15. Clean energy coal bonds (sec. 1509 of the Senate amendment)

PRESENT LAW

Tax-exempt bonds

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Subject to certain restrictions, activities that can be financed with these tax-exempt bonds include electric power facilities (i.e., generation, transmission, distribution, and retailing).

Generally, interest on State or local government bonds to finance activities of private persons (''private activity bonds'') is taxable unless a specific exception is contained in the Code. The term ''private person'' generally includes the Federal Government and all other individuals and entities other than States or local governments. The Code includes exceptions permitting States or local governments to act as conduits providing tax-exempt financing for certain private activities. In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. For calendar year 2005, the State volume cap is the greater of $80 per resident or $239 million. The Code imposes several additional restrictions on tax-exempt private activity bonds that do not apply to bonds for governmental activities.

The tax exemption for State and local bonds also does not apply to any arbitrage bond. An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'') before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government.

An issuer must file with the IRS certain information in order for a bond issue to be tax-exempt. Generally, this information return is required to be filed no later than the 15th day of the second month after the close of the calendar quarter in which the bonds were issued.

Qualified zone academy bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue ''qualified zone academy bonds.'' ''Qualified zone academy bonds'' are defined as any bond issued by a State or local government, provided that (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a ''qualified zone academy'' and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds. A school is a ''qualified zone academy'' if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code, or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

Financial institutions that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The credit is includable in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and AMT liability. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond.

There is an annual limitation of $400 million on the amount of qualified zone academy bonds that may be issued in calendar years 1998 through 2005. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision creates a new category of tax credit bonds: Clean Energy Coal Bonds (''ClECos''). ClECos are defined as any bond issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred by qualified borrowers for ''certified coal property.'' Certified coal property is defined as any property that is part of a qualifying advanced coal project certified by the Secretary.

Like qualified zone academy bonds, ClECos are not interest-bearing obligations. Rather, the taxpayer holding a ClECos on a credit allowance date would be entitled to a tax credit. The amount of the credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit rate on the bonds is determined by the Secretary and is to be a rate that permits issuance of ClECos without discount and interest cost to the qualified issuer. The credit accrues quarterly and is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability.

For purposes of the provision, ''qualified issuers'' include (1) governmental bodies; (2) the Tennessee Valley Authority; (3) mutual or cooperative electric companies (described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or guarantee under the Rural Electrification Act); and (4) clean energy bond lenders. A clean energy bond lender means a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002. The term ''qualified borrower'' includes a governmental body, the Tennessee Valley Authority, and a mutual or cooperative electric company.

Under the provision, ClECos are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. In addition, to qualify as ClECos, the qualified issuer must reasonably expect to and actually spend 95 percent or more of the proceeds of such bonds on certified coal property within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five- year spending period, bonds will continue to qualify as ClECos if unspent proceeds are used

within 90 days from the end of such five-year period to redeem any ''nonqualified bonds.'' For these purposes, the amount of nonqualified bonds is to be determined in the same manner as Treasury regulations under section 142. In addition, the provision provides that the five-year spending period may be extended by the Secretary upon the qualified issuer's request.

The provision also imposes a maximum maturity limitation on any ClECos. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on a ClECos being equal to 50 percent of the face amount of such bond. Moreover, the provision requires level amortization of ClECos during the period such bonds are outstanding.

Unlike qualified zone academy bonds, the provision requires issuers of ClECos to report issuance to the IRS in a manner similar to the information returns required for tax-exempt bonds. Under the provision, there is a national limitation of $1 billion of ClECos that the Secretary may allocate, in the aggregate, to certified coal property projects. The authority to issue ClECos expires December 31, 2010.

Effective date.—The provision is effective for bonds issued after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

16. Credit for investment in clean coke/cogeneration manufacturing facilities (sec. 1511 of the Senate amendment)

PRESENT LAW

Present law does not provide a credit for investment in clean coke/cogeneration manufacturing facilities property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a 20-percent investment tax credit for qualified investments in clean coke/cogeneration facilities property. The provision defines clean coke/cogeneration manufacturing facilities property as depreciable real and tangible personal property located in the United States that meets certain emission standards and is used for the manufacture of metallurgical coke or for the production of steam or electricity from waste heat generated during the production of metallurgical coke.

The qualified investment for any taxable year is the basis of each coke/cogeneration facilities property placed in service by the taxpayer during such taxable year. The provision excludes the credit from the basis adjustment rules for investment credit property set out in section 50(c) of the Code. Under the basis adjustment rules, the basis in investment credit property is generally reduced by the amount of the investment credit.

Effective date.—The provision applies to periods after December 31, 2004, and before January 1, 2010, under rules similar to the rules of section 48(m) (as in effect before its repeal).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

17. Temporary expensing for equipment used in the refining of liquid fuels (sec. 1512 of the Senate amendment, sec. 1323 of the conference agreement, and new sec. 179C of the Code)

PRESENT LAW

Depreciation of refinery assets

Under present law, depreciation allowances for property used in a trade or business generally are determined under the Modified Accelerated Cost Recovery System (''MACRS'') of section 168 of the Internal Revenue Code. Under MACRS, petroleum refining assets are depreciated for regular tax purposes over a 10-year recovery period using the double declining balance method. Petroleum refining assets are assets used for distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components. Present law also provides a special expensing rule for small refiners for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. Generally, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative. The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision provides a temporary election to expense qualified refinery property. Qualified refinery property includes assets, located in the United States, used in the refining of liquid fuels: (1) with respect to the construction of which there is a binding construction contract before January 1, 2008; (2) which are placed in service before January 1, 2012; (3) which increase the capacity of an existing refinery by at least five percent or increase the percentage of total throughput attributable to qualified fuels (as defined in present law section 29(c), which is redesignated as section 45K(c) by section 1322(a)(1) of the Act) such that it equals or exceeds 25 percent; and (4) which meet all applicable environmental laws in effect when the property is placed in service.

The expensing election is not available with respect to identifiable refinery property built solely to comply with Federally mandated projects or consent decrees. For example, a taxpayer may not elect to expense the cost of a scrubber, even if the scrubber is installed as part of a larger project, if the scrubber does not increase throughput or increased capacity to accommodate qualified fuels and is necessary for the refinery to comply with the Clean Air Act. This exclusion applies regardless of whether the mandate or consent decree addresses environmental concerns with respect to the refinery itself or the refined fuels.

The Senate amendment provision allows cooperative organizations to pass through to the owners of such organizations the expensing deduction for qualified refinery property. To the extent the deduction is passed through to owners, the cooperative is denied deductions it would otherwise be entitled with respect to qualified refinery property.

As a condition of eligibility for the expensing of equipment used in the refining of liquid fuels, the Senate amendment provision provides that a refinery must report to the IRS concerning its refinery operations (e.g. production and output).

Effective date.—The Senate amendment provision is effective for property placed in service after the date of enactment, the original use of which begins with the taxpayer, provided the property was not subject to a binding contract for construction on or before June 14, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modifications. Under the conference agreement, the expensing election is limited to 50% of the taxpayer's qualifying expenditures. The remaining 50% is recovered as under present law.

Under the conference agreement, the five percent capacity requirement refers to the output capacity of the refinery, as measured by the volume of finished products other than asphalt and lube oil, rather than input capacity, as measured by rated capacity.

The conference agreement includes a clarification that the expensing election is not available with respect to identifiable refinery property built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

Finally, an exception to the original use requirement is provided for property which would meet the requirement but for a sale-leaseback transaction within the first three months after the property is originally placed in service.

Under the conference agreement, a cooperative organization electing to pass the expensing deduction through to its owners must make such an election on the tax return for the taxable year to which the deduction relates. Once made, the election is irrevocable. Moreover, the organization making the election must provide cooperative owners receiving an allocation of the deduction written notice of the amount of such allocation.

18. Allow pass through to owners of deduction for capital costs incurred by small refiner cooperative in complying with Environmental Protection Agency sulfur regulations (sec. 1513 of the Senate amendment, sec. 1324 of the conference agreement, and sec. 179B of the Code)

PRESENT LAW

Expensing and credit for small refiners

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions. In addition, the Code permits small business refiners to immediately deduct as an expense up to 75 percent of the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency (''EPA''). Costs qualifying for the deduction are those costs paid or incurred with respect to any facility of a small business refiner during the period beginning on January 1, 2003 and ending on the earlier of the date that is one year after the date on which the taxpayer must comply with the applicable EPA regulations or December 31, 2009.

The Code also provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year that is in compliance with the Highway Diesel Fuel Sulfur Control Requirements. The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. As with the deduction permitted under present law, costs qualifying for the credit are those costs paid or incurred with respect to any facility of a small business refiner during the period beginning on January 1, 2003 and ending on the earlier of the date that is one year after the date on which the taxpayer must comply with the applicable EPA regulations or December 31, 2009. The taxpayer's basis in property with respect to which the credit applies

is reduced by the amount of production credit claimed.

For these purposes a small business refiner is a taxpayer who is within the business of refining petroleum products employs not more than 1,500 employees directly in refining and has less than 205,000 barrels per day (average) of total refinery capacity. The deduction is reduced, pro rata, for taxpayers with capacity in excess of 155,000 barrels per day.

In the case of a qualifying small business refiner that is owned by a cooperative, the cooperative is allowed to elect to pass any production credits to patrons of the organization. Present law does not permit cooperatives to pass through to members the deduction permitted for the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements.

Taxation of cooperatives and their patrons

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative. The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooperative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows cooperatives to pass through to their owners the deduction permitted for costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements. To the extent the deduction is passed through to owners, the cooperative is denied deductions it would otherwise be entitled with respect to costs attributable to complying with the Highway Diesel Fuel Sulfur Control Requirements.

Effective date.—The provision is effective as if included in the amendments made by section 338(a) of the American Jobs Creation Act of 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The conference agreement clarifies the manner in which a cooperative organization may elect to pass through to cooperative owners the deduction for costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements. Specifically, the election must be made on the tax return of the organization for the taxable year to which the deduction relates. Once made, the election is irrevocable. Moreover, the organization making such an election must provide cooperative owners receiving an allocation of the deduction written notice of the amount of such allocation. The written notice must be provided by the due date for the tax return on which the election is made.

19. Modification of enhanced oil recovery credit (sec. 1514 of the Senate amendment)

PRESENT LAW

Taxpayers may claim a credit equal to 15 percent of enhanced oil recovery (''EOR'') costs (sec. 43). Qualified EOR costs include the following costs associated with an EOR project: (1) amounts paid for depreciable tangible property; (2) intangible drilling and development expenses; (3) tertiary injectant expenses; and (4) construction costs for certain Alaskan natural gas treatment facilities.

The EOR credit is ratably reduced over a $6 phase-out range when the reference price for domestic crude oil exceeds $28 per barrel (adjusted for inflation after 1991). The reference price is determined based on the annual average price of domestic crude oil for the calendar year preceding the calendar year in which the taxable year begins (sec. 29(d)(2)(C)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the EOR credit to increase the credit rate to 20 percent with respect to any new EOR project or substantial expansion of an existing EOR project that occurs after December 31, 2005, and uses carbon dioxide flooding or injection as an oil recovery method. The increased credit is available only for qualified EOR projects that use carbon dioxide that is (1) from an industrial source or (2) separated from natural gas and natural gas liquids at a natural gas processing plant.

The provision also expands the definition of a qualified EOR project to include qualified deep gas well projects. A qualified deep gas well project is defined as any project located in the United States which involves the production of natural gas from onshore formations deeper than 20,000 feet. Under the provision, the credit for qualified deep gas well projects phases out as crude oil prices increase using the same formula applicable to other EOR projects.

Effective date.—The provision applies to costs paid or incurred in taxable years ending after December 31, 2005, but terminates for costs paid or incurred after December 31, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

B. MISCELLANEOUS ENERGY TAX INCENTIVES

1. Credit for residential energy efficient property (sec. 1311 of the House bill, sec. 1527 of the Senate amendment, sec. 1335 of the conference agreement, and new sec. 25D of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for residential solar hot water, photovoltaic, or fuel cell property.

HOUSE BILL

The provision provides a personal tax credit for the purchase of qualified photovoltaic property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent of qualified investment up to a maximum credit of $2,000 for solar water heating property and $2,000 for rooftop photovoltaic property. The provision also provides a 15-percent personal tax credit for the purchase of qualified fuel cell power plants. The credit may not exceed $500 for each 0.5 kilowatt of capacity. The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit.

Qualifying solar water heating property is property that heats water for use in a dwelling unit if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent.

To qualify for the credit, the property must be installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer. If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusines purposes shall be taken into account. Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations.

Effective date.—The credit applies to expenditures made after the date of enactment in taxable years ending before January 1, 2008.

SENATE AMENDMENT

The provision provides a personal tax credit for the purchase of qualified photovoltaic property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 30 percent of qualifying expenditures, with a maximum credit for each of these systems of property of $2,000. The provision also provides a 30 percent credit for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent, and (3) generates at least 0.5 kilowatts of electricity. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

Effective date.—The credit applies to property placed in service after December 31, 2005 and prior to January 1, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, but only for property placed in service prior to January 1, 2008.

Effective date.—The credit applies to property placed in service after December 31, 2005 and prior to January 1, 2008.

2. Credit for business installation of qualified fuel cells and stationary microturbine power plants (sec. 1528 of the Senate amendment, sec. 1336 of the conference agreement, and sec. 48 of the Code)

PRESENT LAW

A 10-percent business energy investment tax credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy investment tax credit is a component of the general business credit. The general business credit generally may not exceed the excess of the taxpayer's net income tax over the greater of (1) the tentative minimum tax or (2) 25 percent of net regular tax liability in excess of $25,000. A general business credit in excess of the tax limitation generally may be carried back one year and carried forward up to 20 years.

There is no present-law credit for fuel cell or microturbine power plant property.

HOUSE BILL

The provision provides a 15-percent credit for the purchase of qualified fuel cell power plants for businesses. The credit is part of the business energy investment tax credit. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent. The credit may not exceed $500 for each 0.5 kilowatt of capacity. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

Effective date.—The provision applies to property placed in service after April 11, 2005, and before January 1, 2008, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

SENATE AMENDMENT

The provision provides a 30 percent business energy credit for the purchase of qualified fuel cell power plants for businesses. A qualified fuel cell power plant is an integrated system composed of a fuel cell stack assembly and associated balance of plant components that (1) converts a fuel into electricity using electrochemical means, (2) has an electricity-only generation efficiency of greater than 30 percent, and (3) generates at least 0.5 kilowatts of electricity. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatts of capacity.

Additionally, the provision provides a 10-percent credit for the purchase of qualifying stationary microturbine power plants. A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components that converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

Additionally, for purposes of the fuel cell and microturbine credits, and only in the case of telecommunications companies, the provision removes the present-law section 48 restriction that would prevent telecommunication companies from claiming the new credit due to their status as public utilities.

The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

Effective date.—The credit applies to periods after December 31, 2005 and before January 1, 2010 (January 1, 2009 in the case of micro turbines), for property placed in service in taxable years ending after December 31, 2005, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, but only for periods before January 1, 2008.

Effective date.—The credit applies to periods after December 31, 2005 and before January 1, 2008, for property placed in service in taxable years ending after December 31, 2005, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

3. Business solar investment tax credit (sec. 1529 of the Senate amendment, sec. 1337 of the conference agreement, and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of so much of the net regular tax liability as exceeds $25,000 or (2) the tentative minimum tax. An unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the 10-percent credit to 30-percent in the case of solar energy property. Additionally, the provision provides that equipment that uses fiber-optic distributed sunlight to illuminate the inside of a structure is solar energy property eligible for the 30-percent credit. The provision provides that property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

Effective date.—The provision applies to periods after December 31, 2005 and before January 1, 2012 for property placed in service in taxable years ending after December 31, 2005, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, but only for periods before January 1, 2008 with respect to the 30-percent credit and the fiber-optic distributed sunlight. The conference agreement makes permanent the provision that provides that property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property.

Effective date.—The provision with respect to the heating of swimming pools applies to periods after December 31, 2005. The increase in the credit rate and the provision related to fiber-optic distributed sunlight applies to periods after December 31, 2005 and before January 1, 2008 for property placed in service in taxable years ending after December 31, 2005, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

4. Diesel-water fuel emulsion (sec. 1313 of the House bill, sec. 1343 of the conference agreement, and sec. 4081 of the Code)

PRESENT LAW

A 24.3-cents-per-gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund.

The tax rate for certain special motor fuels is determined, on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane)	13.6 cents per gallon
Liquefied natural gas	11.9 cents per gallon
Methanol derived from natural gas	9.15 cents per gallon
Compressed natural gas	48.54 cents per MCF

No special tax rate is provided for diesel fuel blended with water to form a diesel-water fuel emulsion.

HOUSE BILL

A special tax rate of 19.7 cents per gallon is provided for diesel fuel blended with water into a diesel-water fuel emulsion to reflect the reduced Btu content per gallon resulting from the water. Emulsion fuels eligible for the special rate must consist of not more than 83.1 percent diesel (and other minor chemical additives to enhance combustion) and at least 16.9 percent water. The emulsion addition must be registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on

March 31, 2003). A refund of the difference between the regular rate (24.3 cents per gallon) and the incentive rate (19.7 cents per gallon) is available to the extent tax-paid diesel is used to produce a qualifying emulsion diesel fuel. Anyone who separates the diesel fuel from the diesel-water fuel emulsion on which a reduced rate of tax was imposed is treated as a refiner of the fuel and is liable for the difference between the amount of tax on the latest removal of the separated fuel and the amount of tax that was imposed upon the pre-mixture removal.

Effective date.—The provision is effective on January 1, 2006.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except the diesel-water emulsion fuels eligible for the special rate must consist of least 14 percent water. In addition, the person claiming entitlement to the special rate of tax must be registered with the Secretary. The conference agreement clarifies that claims for refund based on the incentive rate may be filed quarterly if such person can claim at least $750. If the person cannot claim at least $750 at the end of quarter, the amount can be carried over to the next quarter to determine if the person can claim at least $750. If the person cannot claim at least $750 at the end of the taxable year, the person must claim a credit on the person's income tax return.

5. Amortization of delay rental payments (sec. 1314 of the House bill)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for ''delay rental payments'' as a condition of their extension. The Internal Revenue Service has taken the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.

HOUSE BILL

The provision allows delay rental payments incurred in connection with the development of oil or gas within the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The provision applies to amounts paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this provision as to the proper treatment of pre-effective date delay rental payments.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House provision.

6. Amortization of geological and geophysical expenditures (sec. 1315 of the House bill, sec. 1329 of the conference agreement, and sec. 167 of the Code)

PRESENT LAW

In general

Geological and geophysical expenditures (''G&G costs'') are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. A key issue with respect to the tax treatment of such expenditures is whether or not they are capital in nature. Capital expenditures are not currently deductible as ordinary and necessary business expenses, but are allocated to the cost of the property.

Courts have held that G&G costs are capital, and therefore are allocable to the cost of the property acquired or retained. The costs attributable to such exploration are allocable to the cost of the property acquired or retained. As described further below, IRS administrative rulings have provided further guidance regarding the definition and proper tax treatment of G&G costs.

Revenue Ruling 77–188

In Revenue Ruling 77–188 (hereinafter referred to as the ''1977 ruling''), the IRS provided guidance regarding the proper tax treatment of G&G costs. The ruling describes a typical geological and geophysical exploration program as containing the following elements:

It is customary in the search for mineral producing properties for a taxpayer to conduct an exploration program in one or more identifiable project areas. Each project area encompasses a territory that the taxpayer determines can be explored advantageously in a single integrated operation. This determination is made after analyzing certain variables such as (1) the size and topography of the project area to be explored, (2) the existing information available with respect to the project area and nearby areas, and (3) the quantity of equipment, the number of personnel, and the amount of money available to conduct a reasonable exploration program over the project area.

The taxpayer selects a specific project area from which geological and geophysical data are desired and conducts a reconnaissance-type survey utilizing various geological and geophysical exploration techniques. These techniques are designed to yield data that will afford a basis for identifying specific geological features with sufficient mineral potential to merit further exploration.

Each separable, noncontiguous portion of the original project area in which such a specific geological feature is identified is a separate ''area of interest.'' The original project area is subdivided into as many small projects as there are areas of interest located and identified within the original project area. If the circumstances permit a detailed exploratory survey to be conducted without an initial reconnaissance-type survey, the project area and the area of interest will be coextensive.

The taxpayer seeks to further define the geological features identified by the prior reconnaissance-type surveys by additional, more detailed, exploratory surveys conducted with respect to each area of interest. For this purpose, the taxpayer engages in more intensive geological and geophysical exploration employing methods that are designed to yield sufficiently accurate sub-surface data to afford a basis for a decision to acquire or retain properties within or adjacent to a particular area of interest or to abandon the entire area of interest as unworthy of development by mine or well.

The 1977 ruling provides that if, on the basis of data obtained from the preliminary geological and geophysical exploration operations, only one area of interest is located and identified within the original project area, then the entire expenditure for those exploratory operations is to be allocated to that one area of interest and thus capitalized into the depletable basis of that area of interest. On the other hand, if two or more areas of interest are located and identified within the original project area, the entire expenditure for the exploratory operations is to be allocated equally among the various areas of interest.

If no areas of interest are located and identified by the taxpayer within the original project area, then the 1977 ruling states that the entire amount of the G&G costs related to the exploration is deductible as a loss under section 165. The loss is claimed in the taxable year in which that particular project area is abandoned as a potential source of mineral production.

A taxpayer may acquire or retain a property within or adjacent to an area of interest, based on data obtained from a detailed survey that does not relate exclusively to any discrete property within a particular area of interest. Generally, under the 1977 ruling, the taxpayer allocates the entire amount of G&G costs to the acquired or retained property as a capital cost under section 263(a). If more than one property is acquired, it is proper to determine the amount of the G&G costs allocable to each such property by allocating the entire amount of the costs among the properties on the basis of comparative acreage.

If, however, no property is acquired or retained within or adjacent to that area of interest, the entire amount of the G&G costs allocable to the area of interest is deductible as a loss under section 165 for the taxable year in which such area of interest is abandoned as a potential source of mineral production.

In 1983, the IRS issued Revenue Ruling 83–105, which elaborates on the positions set forth in the 1977 ruling by setting forth seven factual situations and applying the principles of the 1977 ruling to those situations. In addition, Revenue Ruling 83–105 explains what constitutes ''abandonment as a potential source of mineral production.''

HOUSE BILL

The provision allows geological and geophysical amounts incurred in connection with oil and gas exploration in the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The provision is effective for geological and geophysical costs paid or incurred in taxable years beginning after the date of enactment. No inference is intended from the prospective effective date of this provision as to the proper treatment of pre-effective date geological and geophysical costs.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

7. Alternative technology vehicle credits (sec. 1316 of the House bill, sec. 1553 of the Senate amendment, secs. 1341 and 1348 of the conference agreement, sec. 179A of the Code, and new sec. 30B of the Code)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether). The maximum amount of the deduction is $50,000 for a truck or van with a

gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction is reduced to 25 percent of the otherwise allowable deduction in 2006 and is unavailable for purchases after December 31, 2006.

HOUSE BILL

The House bill provides a credit for each new qualified advanced lean-burn technology motor vehicle placed in service by the taxpayer during the taxable year. The amount of the credit for any vehicle is the sum of an amount for fuel efficiency and an amount for conservation. The amount for fuel efficiency is based on a comparison of the fuel efficiency of the vehicle compared to the Environmental Protection Agency's 2000 model year city fuel economy for a vehicle in the same inertia weight class. The amount for conservation is based on the qualifying vehicle's estimated lifetime fuel savings compared to the same 2000 model year standard.

Table 2, below, shows the credit amount for fuel efficiency of a qualified advanced lean- burn technology motor vehicle.

TABLE 2.—FUEL EFFICIENCY CREDIT AMOUNT FOR QUALIFIED ADVANCED LEAN-BURN TECHNOLOGY MOTOR VEHICLES

Credit Amount	If Fuel Economy of the Vehicle Is:	
	at least	but less than
$500	125% of base fuel economy	150% of base fuel economy
1,000	150% of base fuel economy	175% of base fuel economy
1,500	175% of base fuel economy	200% of base fuel economy
2,000	200% of base fuel economy	225% of base fuel economy
2,500	225% of base fuel economy	250% of base fuel economy
3,000	250% of base fuel economy	

The credit amount for conservation of a qualified advanced lean burn technology vehicle is computed as follows. The vehicle is assumed to be driven 120,000 miles over its life. The 120,000 miles of lifetime mileage is divided by the fuel economy rating of the vehicle. The 120,000 miles of lifetime mileage also is divided by the 2000 model year city economy for a vehicle in the same inertia weight class. The difference is the lifetime fuel savings. If the vehicle achieves a lifetime motor fuel savings between 1,500 and 2,500 gallons of fuel, the credit amount for the vehicle is $250. If the vehicle achieves a lifetime fuel savings of at least 2,500 gallons of motor fuel, the credit amount is $500.

The base fuel economy is the 2000 model year city fuel economy for vehicles by inertia weight class by vehicle type. The ''vehicle inertia weight class'' is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act. A qualifying advanced lean-burn technology motor vehicle means a motor vehicle the original use of which commences with the taxpayer, powered by an internal combustion engine that is designed to operate primarily using more air than is necessary for complete combustion of the fuel and incorporates direct injection, that uses only diesel fuel (as defined in section 4083(a)(3)), has sufficient fuel economy to qualify for the credit, and meets the Environmental Protection Agency's Tier II bin 8 emissions standards. In addition, in order to qualify for a credit, a vehicle must be in compliance with the applicable provisions of the Clean Air Act and the motor vehicle safety provisions.

In general, the credit is allowed to the vehicle owner, including the lessor of a vehicle subject to a lease. If the use of the vehicle is described in paragraph (3) or (4) of section 50(b) (relating to use by tax-exempts, governments, and foreign persons) and is not subject to a lease, the seller of the vehicle may claim the credit so long the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

The provision permits the credit to offset both the regular tax and the alternative minimum tax. Credits in excess of this limitation may be carried forward for up to 20 years; credits may not be carried back to earlier years.

Effective date.—The provision is effective for property placed in service after the date of enactment and before January 1, 2008.

SENATE AMENDMENT

Alternative motor vehicle credits

The Senate amendment provides a credit for each new qualified fuel cell vehicle, each new qualified hybrid motor vehicle, and each new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

In general, the credit is allowed to the vehicle owner, including the lessor of a vehicle subject to a lease. If the use of the vehicle is described in paragraphs (3) or (4) of section 50(b) (relating to use by tax-exempts, governments, and foreign persons) and is not subject to a lease, the seller of the vehicle may claim the credit so long as the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

Any deduction otherwise allowable under section 179A is reduced by the amount of the credit allowable.

The provision permits the credit to offset the excess of the regular tax (reduced by certain credits) over the alternative minimum tax. Credits in excess of this limitation may be carried back for up to three years and forward for up to 20 years; credits may not be carried back to taxable years beginning before the date of enactment and credits for vehicles used for personal use may not be carried back.

Fuel cell vehicles

A qualifying fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle and may or may not require reformation prior to use. The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2002 model year city fuel economy rating for vehicles of various weight classes (see below). Table 3, below, shows the proposed base credit amounts.

TABLE 3.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle Gross Weight Rating in Pounds	Credit Amount
Vehicle ≤ 8,500	$8,000
8,500 < vehicle ≤ 14,000	$10,000
14,000 < vehicle ≤ 26,000	$20,000
26,000 < vehicle	$40,000

In the case of a fuel cell vehicle weighing less than 8,500 pounds and placed in service after December 31, 2009, the $8,000 amount in Table 3, above is reduced to $4,000.

Table 4, below, shows the proposed additional credits for passenger automobiles or light trucks.

Table 4.—CREDIT FOR QUALIFYING FUEL CELL VEHICLES

Credit	If Fuel Economy of the Fuel Cell Vehicle Is:	
	At least	but less than
$1,000	150% of base fuel economy	175% of base fuel economy
1,500	175% of base fuel economy	200% of base fuel economy
2,000	200% of base fuel economy	225% of base fuel economy
2,500	225% of base fuel economy	250% of base fuel economy
3,000	250% of base fuel economy	275% of base fuel economy
3,500	275% of base fuel economy	300% of base fuel economy
4,000	300% of base fuel economy	

Hybrid motor vehicles

A qualifying hybrid vehicle is a motor vehicle that draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). A qualifying hybrid motor vehicle must be placed in service before January 1, 2010.

In the case of an automobile or light truck (vehicles weighing 8,500 pounds or less), the amount of credit for the purchase of a hybrid vehicle varies with the rated fuel economy of the vehicle compared to a 2002 model year. A qualifying hybrid automobile or light truck must have a maximum available power from the rechargeable energy storage system of at least five percent. In addition, the vehicle must meet or exceed certain EPA emissions standards. For a vehicle with a gross vehicle weight rating of 8,500 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards.

Table 5, below, shows the fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy.

Table 5.—Fuel Economy Credit

Credit	If Fuel Economy of the Fuel Cell Vehicle Is:	
	At least	but less than
$400	125% of base fuel economy	150% of base fuel economy
800	150% of base fuel economy	175% of base fuel economy
1,200	175% of base fuel economy	200% of base fuel economy
1,600	200% of base fuel economy	225% of base fuel economy
2,000	225% of base fuel economy	250% of base fuel economy
2,400	250% of base fuel economy	

In the case of a qualifying hybrid motor vehicle weighing more than 8,500 pounds, the amount of credit is determined by the estimated increase in fuel economy and the incremental cost of the hybrid vehicle compared to a comparable vehicle powered solely by a gasoline or diesel internal combustion engine and that is comparable in weight, size, and use of the vehicle. For a vehicle that achieves a fuel economy increase of at least 30 percent but less than 40 percent, the credit is equal to 20 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of at least 40 percent but less than 50 percent, the credit is equal to 30 percent of the incremental cost of the hybrid vehicle. For a vehicle that achieves a fuel economy increase of 50 percent or more, the credit is equal to 40 percent of the incremental cost of the hybrid vehicle.

The credit is subject to certain maximum applicable incremental cost amounts. For a qualifying hybrid motor vehicle weighing more than 8,500 pounds but not more than 14,000 pounds, the maximum allowable incremental cost amount is $7,500. For a qualifying hybrid motor vehicle weighing more than 14,000 pounds but not more than 26,000 pounds, the maximum allowable incremental cost amount is $15,000. For a qualifying hybrid motor vehicle weighing more than 26,000

pounds, the maximum allowable incremental cost amount is $30,000.

A qualifying hybrid motor vehicle weighing more than 8,500 pounds but not more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 10 percent. A qualifying hybrid vehicle weighing more than 14,000 pounds must have a maximum available power from the rechargeable energy storage system of at least 15 percent.

Alternative fuel vehicle

The credit for the purchase of a new alternative fuel vehicle would be 50 percent of the incremental cost of such vehicle, plus an additional 30 percent if the vehicle meets certain emissions standards, but not more than between $4,000 and $32,000 depending upon the weight of the vehicle. Table 8, below, shows the maximum permitted incremental cost for the purpose of calculating the credit for alternative fuel vehicles by vehicle weight class.

TABLE 6.—MAXIMUM ALLOWABLE INCREMENTAL COST FOR CALCULATION OF ALTERNATIVE FUEL VEHICLE CREDIT

Vehicle Gross Weight Rating in Pounds	Maximum Allowable Incremental Cost
Vehicl ≤ 8,500	$5,000
8,500 < vehicle ≤ 14,000	10,000
14,000 < vehicle ≤ 26,000	25,000
26,000 < vehicle	40,000

Alternative fuels comprise compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid fuel that is at least 85 percent methanol. Qualifying alternative fuel motor vehicles are vehicles that operate only on qualifying alternative fuels and are incapable of operating on gasoline or diesel (except in the extent gasoline or diesel fuel is part of a qualified mixed fuel, described below).

Certain mixed fuel vehicles, that is vehicles that use a combination of an alternative fuel and a petroleum-based fuel, are eligible for a reduced credit. If the vehicle operates on a mixed fuel that is at least 75 percent alternative fuel, the vehicle is eligible for 70 percent of the otherwise allowable alternative fuel vehicle credit. If the vehicle operates on a mixed fuel that is at least 90 percent alternative fuel, the vehicle is eligible for 90 percent of the otherwise allowable alternative fuel vehicle credit.

Base fuel economy

The base fuel economy is the 2002 model year city fuel economy for vehicles by inertia weight class by vehicle type. The ''vehicle inertia weight class'' is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act.

Table 7, below, shows the 2002 model year city fuel economy for vehicles by type and by inertia weight class.

TABLE 7.—2002 MODEL YEAR CITY FUEL ECONOMY

Vehicle Inertia Weight Class (Pounds)	Passenger Automobile (miles per gallon)	Light Truck (miles per gallon)
1,500	45.2	39.4
1,750	45.2	39.4
2,000	39.6	35.2
2,250	35.2	31.8
2,500	31.7	29.0
2,750	28.8	26.8
3,000	26.4	24.9
3,500	22.6	21.8
4,000	19.8	19.4
4,500	17.6	17.6
5,000	15.9	16.1
5,500	14.4	14.8
6,000	13.2	13.7
6,500	12.2	12.8
7,000	11.3	12.1
8,500	11.3	12.1

Effective date.—The provision applies to vehicles placed in service after the date of enactment and, in the case of qualified fuel cell motor vehicles, before January 1, 2015; in the case of qualified hybrid motor vehicles, before January 1, 2010; and in the case of qualified alternative fuel motor vehicles, before January 1, 2011.

CONFERENCE AGREEMENT

The conference agreement follows both the House bill and the Senate amendment with modifications.

Fuel cell vehicles

The conference agreement follows the Senate amendment with respect to fuel cell vehicles.

Alternate fuel vehicles

The conference agreement follows the Senate amendment with respect to alternate fuel vehicles.

Hybrid vehicles and advanced lean-burn technology vehicles

Qualifying hybrid vehicle

A qualifying hybrid vehicle is a motor vehicle that draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine or heat engine using combustible fuel and a rechargeable energy storage system (e.g., batteries). A qualifying hybrid motor vehicle must be placed in service before January 1, 2011 (January 1, 2010 in the case of a hybrid motor vehicle weighing more than 8,500 pounds).

HYBRID VEHICLES THAT ARE AUTOMOBILES AND LIGHT TRUCKS

In the case of an automobile or light truck (vehicles weighing 8,500 pounds or less), the amount of credit for the purchase of a hybrid vehicle is the sum of two components: a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard and a conservation credit based on the estimated lifetime fuel savings of a qualifying vehicle compared to a comparable 2002 model year vehicle. A qualifying hybrid automobile or light truck must have a maximum available power from the rechargeable energy storage system of at least four percent. In addition, the vehicle must meet or exceed certain EPA emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards.

Table 8, below, shows the fuel economy credit available to a hybrid passenger automobile or light truck whose fuel economy (on a gasoline gallon equivalent basis) exceeds that of a base fuel economy.

TABLE 8.—FUEL ECONOMY CREDIT

Credit	If Fuel Economy of the Hybrid Vehicle Is:	
	at least	but less than
$400	125% of base fuel economy	150% of base fuel economy
800	150% of base fuel economy	175% of base fuel economy
1,200	175% of base fuel economy	200% of base fuel economy
1,600	200% of base fuel economy	225% of base fuel economy
2,000	225% of base fuel economy	250% of base fuel economy
2,400	250% of base fuel economy	

Table 9, below, shows the conservation credit.

TABLE 9.—CONSERVATION CREDIT

Estimated Lifetime Fuel Savings	Conservation Amount
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	500
At least 2,400 but less than 3,000	750
At least 3,000	1,000

Advanced lean-burn technology motor vehicles

The conference agreement a credit for the purchase of a new advanced lean burn technology motor vehicle. The amount of credit for the purchase of an advanced lean burn technology motor vehicle is the sum of two components: a fuel economy credit amount that varies with the rated fuel economy of the vehicle compared to a 2002 model year standard as described in Table 8, above and a conservation credit based on the estimated lifetime fuel savings of a qualifying vehicle compared to a comparable 2002 model year vehicle as described in Table 9 above.

A qualifying advanced lean burn technology motor vehicle that incorporates direct injection, achieves at least 125 percent of the 2002 model year city fuel economy, and 2004 and later model vehicles meets or exceeds certain Environmental Protection Agency emissions standards. For a vehicle with a gross vehicle weight rating of 6,000 pounds or less the applicable emissions standards are the Bin 5 Tier II emissions standards. For a vehicle with a gross vehicle weight rating greater than 6,000 pounds and less than or equal to 8,500 pounds, the applicable emissions standards are the Bin 8 Tier II emissions standards. A qualifying advanced lean burn technology motor vehicle must be placed in service before January 1, 2011.

Limitation on number of qualified hybrid and advanced lean-burn technology motor vehicles eligible for the credit

The conference agreement imposes a limitation on the number of qualified hybrid motor vehicles and advanced lean-burn technology motor vehicles sold by each manufacturer of such vehicles that are eligible for the credit. Taxpayers may claim the full amount of the allowable credit up to the end of the first calendar quarter after the quarter in which the manufacturer records its sale of the 60,000th hybrid and advanced lean-burn technology motor vehicle. Taxpayers may claim one half of the otherwise allowable credit during the two calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale. In the third and fourth calendar quarters subsequent to the first quarter after the manufacturer has recorded its 60,000th such sale, the taxpayer may claim one quarter of the otherwise allowable credit.

Thus, summing the sales of qualifying hybrid motor vehicles of all weight classes and all sales of qualifying advanced lean-burn technology motor vehicles, if a manufacturer records the sale of its 60,000th in February of 2007, taxpayers purchasing such vehicles from the manufacturer may claim the full amount of the credit on their purchases of qualifying vehicles through June 30, 2007. For the period July 1, 2007, through December 31, 2007, taxpayers may claim one half of the otherwise allowable credit on purchases of qualifying vehicles of the manufacturer. For the period January 1, 2008, through June 30, 2008, taxpayers may claim one quarter of the otherwise allowable credit on the purchases of qualifying vehicles of the manufacturer. After June 30, 2008, no credit may be claimed for purchases of hybrid motor vehicles or advanced lean-burn technology motor vehicles sold by the manufacturer.

Hybrid vehicles that are medium and heavy trucks

In the case of a qualifying hybrid motor vehicle weighing more than 8,500 pounds, the conference agreement follows the Senate amendment.

Other rules

The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as a portion of the general business credit; the remainder of the credit is allowable to the extent of the excess of the regular tax (reduced by certain other credits) over the alternative minimum tax for the taxable year.

Termination of Code section 179A

The conference agreement provides that section 179A sunsets after December 31, 2005.

Effective date.—The provision applies to vehicles placed in service after December 31, 2005, in the case of qualified fuel cell motor vehicles, before January 1, 2015; in the case of qualified hybrid motor vehicles that are automobiles and light trucks and in the case of advanced lean-burn technology vehicles, before January 1, 2011; in the case of qualified hybrid motor vehicles that medium and heavy trucks, before January 1, 2010; and in the case of qualified alternative fuel motor vehicles, before January 1, 2011.

8. Modification and extension of credit for electric vehicles (sec. 1532 of the Senate amendment)

PRESENT LAW

A 10–percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle generally is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current. The full amount of the credit is available for purchases prior to 2006. The credit is reduced to 25 percent of the otherwise allowable amount for purchases in 2006, and is unavailable for purchases after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision repeals the phase out of the credit under present law. The provision also modifies present law to provide for a credit equal to the lesser of $1,500 or 10 percent of the manufacturer's suggested retail price of certain vehicles that conform to the Motor Vehicle Safety Standard 500. For all other electric vehicles, Table 10, below describes the credit.

TABLE 10.—CREDIT FOR QUALIFYING BATTERY ELECTRIC VEHICLES

Vehicle Gross Weight Rating in Pounds	Credit Amount
Vehicle ≤ 8,500	$4,000
8,500 < vehicle ≤ 14,000	10,000
14,000 < vehicle ≤ 26,000	20,000
26,000 < vehicle	40,000

If an electric vehicle weighing not more than 8,500 pounds has an estimated driving range of at least 100 miles on a single charge of the vehicle's batteries or if it is capable of a payload capacity of at least 1,000 pounds, then the credit amount in Table 10 is $6,000.

In general, the credit is allowed to the vehicle owner, including the lessor of a vehicle subject to a lease. If the use of the vehicle is described in paragraph (3) or (4) of section 50(b) (relating to use by tax-exempts, governments, and foreign persons) and is not subject to a lease, the seller of the vehicle may claim the credit so long the seller clearly discloses to the user in a document the amount that is allowable as a credit. A vehicle must be used predominantly in the United States to qualify for the credit.

The provision permits the credit to offset the excess of the regular tax (reduced by certain credits) over the alternative minimum tax. Credits in excess of this limitation may be carried back for up to three years and forward for up to 20 years; credits may not be carried back to taxable years beginning before the date of enactment and credits for vehicles used for personal use may not be carried back.

Effective date.—The provision is effective for property placed in service after the date of enactment and before January 1, 2010.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Credit for installation of alternative fuel refueling property (sec. 1533 of the Senate amendment, sec. 1342 of the conference agreement, and new sec. 30C of the Code)

PRESENT LAW

Clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Clean-fuel vehicle refueling property comprises property for the storage or dispensing of a clean-burning fuel, if the storage or dispensing is the point at which the fuel is delivered into the fuel tank of a motor vehicle. Clean-fuel vehicle refueling property also includes property for the recharging of electric vehicles, but only if the property is located at a point where the electric vehicle is recharged. Up to $100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location. The deduction is unavailable for costs incurred after December 31, 2006.

For the purpose of sec. 179A clean fuels comprise natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity, and any other fuel at least 85 percent of which is methanol, ethanol, or any other alcohol or ether.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision permits taxpayers to claim a 50–percent credit for the cost of installing clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail clean-fuel vehicle refueling property the allowable credit may not exceed $30,000. In the case of residential clean-fuel vehicle refueling property the allowable credit may not exceed $1,000.

Under the provision clean fuels are any fuel at least 85 percent of the volume of which consists of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen and any mixture of diesel fuel and biodiesel containing at least 20 percent biodiesel.

The taxpayer's basis in the property is reduced by the amount of the credit and the taxpayer may not claim deductions under section 179A with respect to property for which the credit is claimed. In the case of refueling property installed on property owned or used by a tax-exempt person, the taxpayer that installs the property may claim the credit. To be eligible for the credit, the property must be placed in service before January 1, 2010. The credit allowable in the taxable year cannot exceed the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. The taxpayer may carry forward unused credits for 20 years.

Effective date.—The provision is effective for property placed in service December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that the credit rate is 30 percent rather than 50 percent.

The portion of the credit attributable to property of a character subject to an allowance for depreciation is treated as a portion of the general business credit; the remainder of the credit is allowable to the extent of the excess of the regular tax (reduced by certain other credits) over the alternative minimum tax for the taxable year.

The conference agreement provides that the credit may not be claimed for property placed in service after December 31, 2007.

Effective date.—The provision is effective for property placed in service December 31, 2005 and before January 1, 2008.

10. Volumetric excise tax credit for alternative fuels (sec. 1534 of the Senate amendment)

PRESENT LAW

A 24.3–cents-per-gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund. The statutory rates for certain special motor fuels are determined on an energy equivalent basis, as follows:

Liquefied petroleum gas (propane)	13.6 cents per gallon
Liquefied natural gas	11.9 cents per gallon
Methanol derived from petroleum or natural gas.	9.15 cents per gallon
Compressed natural gas	48.54 cents per MCF

Under section 4041, tax is imposed on special motor fuels (any liquid other than gas oil, fuel oil or any product taxable under section 4081) when there is a taxable sale by any person to an owner, lessee or other operator of a motor vehicle or motorboat, for use as fuel in the motor vehicle or motorboat or used by any person as a fuel in a motor vehicle or motorboat unless there was a prior taxable sale. No excise tax credit is provided for the sale or use of those fuels.

Liquid hydrogen is a special motor fuel for purposes of the tax on special motor fuels and is subject to a tax of 18.3 cents per gallon. Compressed hydrogen gas used or sold as a fuel is not subject to tax.

Prior to the American Jobs Creation Act of 2004, gasohol and gasoline to be blended into gasohol was taxed at a reduced rate based on the amount of ethanol contained in the mixture (e.g., 10 percent, 7.7 percent or 5.5 percent alcohol in the mixture). The Act eliminated reduced rates of excise tax for most alcohol-blended fuels. In place of the reduced rates, the Act amended the Code to create two new excise tax credits: the alcohol fuel mixture credit and the biodiesel mixture credit. The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). A person may also file a claim for payment equal to the amount of these credits for biodiesel or alcohol used to produce an eligible mixture. The credits and payments are paid out of the General Fund. If the alcohol is ethanol with a proof of 190 or greater, the credit or payment amount is 51 cents per gallon. For agri-biodiesel, the credit or payment amount is $1.00 per gallon; for biodiesel other than agri-biodiesel, the credit or payment amount is 50 cents per gallon. Under the Code's coordination rules, a claim may be taken only once with respect to any particular gallon of alcohol or biodiesel.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the liquefied petroleum gas, and P Series fuels (as defined by the Secretary of Energy under 42

U.S.C. sec. 13211(2)) are taxed at 18.3 cents per gallon under section 4041. Compressed natural gas is taxed at 18.3 cents per energy equivalent of a gallon of gasoline. Liquefied natural gas, any liquid fuel derived from coal (other than ethanol or methanol) and liquid hydrocarbons derived from biomass are taxed at 24.3 cents per gallon under section 4041. Under the provision, hydrogen (whether in liquid or gas form) is exempt from the tax imposed by section 4041; however, persons selling hydrogen as fuel are required to register with the Secretary. Collectively, these fuels (including hydrogen) are referred to as ''alternative fuels.''

In addition, the Senate amendment creates two new excise tax credits, the alternative fuel credit, and the alternative fuel mixture credit. The credits are allowed against section 4041 liability. The alternative fuel credit is 50 cents per gallon of alternative fuel or gasoline gallon equivalents of nonliquid alternative fuel sold by the taxpayer for use as a motor fuel in a highway vehicle. The alternative fuel mixture credit is 50 cents per gallon of alternative fuel used in producing an alternative fuel mixture for sale or use in a trade or business of the taxpayer. The mixture must be sold by the taxpayer for use as a fuel in a highway vehicle or used by the taxpayer for use as a fuel in a highway vehicle. Liquid fuel derived from coal would only qualify for the credits if derived from the Fisher-Tropsch process. The credits generally expire after September 30, 2009. The provision also allows persons to file a claim for payment equal to the amount of the alternative fuel credit and alternative fuel mixture credits. These payment provisions generally also expire after September 30, 2009. With respect to hydrogen, the credit and payment provisions expire after December 31, 2014. Both credits and payments are made out of the General Fund. Under coordination rules, a claim for payment or credit may only be taken once with respect to any particular gallon or gasoline-gallon equivalent of alternative fuel.

Effective date.—The provision is effective for any sale, use or removal for any period after September 30, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Extend excise tax provisions and income tax credit for biodiesel and create similar incentives for renewable diesel (sec. 1535 of the Senate amendment, secs. 1344 and 1346 of the conference agreement, and secs. 40A, 6426 and 6427 of the Code)

PRESENT LAW

Biodiesel income tax credit

Overview

The Code provides an income tax credit for biodiesel and qualified biodiesel mixtures, the biodiesel fuels credit.[80] The biodiesel fuels credit is the sum of the biodiesel mixture credit plus the biodiesel credit and is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions discussed below. The credit may not be carried back to a taxable year ending before or on December 31, 2004. The provision does not apply to fuel sold or used after December 31, 2006.

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act and (2) the requirements of the American Society of Testing and Materials D6751. Agri-biodiesel is biodiesel derived solely from virgin oils including oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of the biodiesel and agri-biodiesel in the product.

Biodiesel mixture credit

The biodiesel mixture credit is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture. For agri-biodiesel, the credit is $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Biodiesel credit

The biodiesel credit is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel (100 percent biodiesel or B–100) and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle. For agri-biodiesel, the credit is $1.00 per gallon.

Biodiesel mixture excise tax credit

The Code also provides an excise tax credit for biodiesel mixtures.[81] The credit is 50 cents for each gallon of biodiesel used by the taxpayer in producing a biodiesel mixture for sale or use in a trade or business of the taxpayer. In the case of agri-biodiesel, the credit is $1.00 per gallon. A biodiesel mixture is a mixture of biodiesel and diesel fuel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. No credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

The credit is not available for any sale or use for any period after December 31, 2006. This excise tax credit is coordinated with the income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Payments with respect to biodiesel fuel mixtures

If any person produces a biodiesel fuel mixture in such person's trade or business, the Secretary is to pay such person an amount equal to the biodiesel mixture credit. To the extent the biodiesel fuel mixture credit exceeds the section 4081 liability of a person, the Secretary is to pay such person an amount equal to the biodiesel fuel mixture credit with respect to such mixture. Thus, if the person has no section 4081 liability, the credit is refundable. The payment provision does not apply with respect to biodiesel fuel mixtures sold or used after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the income tax credit, excise tax credit, and payment provisions through December 31, 2010.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement extends the income tax credit, excise tax credit, and payment provisions through December 31, 2008. The conference agreement also creates a similar income tax credit, excise tax credit and payment system for renewable diesel; however, there is no credit for small producers of renewable diesel. Renewable diesel means diesel fuel derived from biomass (as defined in section 29(c)(3), thus excluding petroleum oil, natural gas, coal, or any product thereof) using a thermal depolymerization process. Renewable diesel must meet the requirements of the American Society of Testing and Materials D975 or D396, and meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 USC 7545). The amount of the credit for renewable diesel is $1.00 per gallon. In addition, all producers of renewable diesel must be registered with the Secretary.

Effective date.—The extension of incentives is effective on the date of enactment. The renewable diesel provisions are effective for fuel sold or used after December 31, 2005.

12. Credit for certain nonbusiness energy property (sec. 1317 of the House bill, sec. 1524 of the Senate amendment, sec. 1333 of the conference agreement, and new sec. 25C of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present law credit for energy efficiency improvements to existing homes.

HOUSE BILL

The provision provides a 20–percent credit for the purchase of qualified energy efficiency improvements to existing homes. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $2,000. A qualified energy efficiency improvement is any energy efficiency building envelope component that meets or exceeds the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code as supplemented and as in effect on the date of enactment (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component reasonably can be expected to remain in use for at least five years. The credit is nonrefundable.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; (2) exterior windows (including skylights) and doors; and (3) metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat loss or gain for a dwelling.

The taxpayer's basis in the property is reduced by the amount of the credit. Special rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

In the case of expenditures that exceed $1,000, certain certification requirements

must be met in order to qualify for the credit.

Effective date.—The provision is effective for qualified energy efficiency improvements installed after the date of enactment and before January 1, 2008.

SENATE AMENDMENT

The provision provides a personal tax credit equal to the greater of (1) the total of the allowable credits for the purchase of certain property, or (2) the credit with respect to a highly energy-efficient principal residence.

The allowable credit for the purchase of certain property is (1) $50 for each advanced main air circulating fan, (2) $150 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $300 for each item of qualified energy efficient property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace originally placed in service by the taxpayer during the taxable year, and which has an annual electricity use of no more than two percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

A qualified natural gas, propane, or oil furnace or hot water boiler is a natural gas, propane, or oil furnace or hot water boiler with an annual fuel utilization efficiency rate of at least 95.

Qualified energy-efficient property is: (1) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13, (3) a geothermal heat pump which (i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3, (ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and (iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5, (4) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 13, and (5) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80.

The credit with respect to a highly energy-efficient principal residence is $2,000 if the principal residence achieves a 50 percent reduction in energy costs relative to the original condition of the building. In the case of a new home, the original condition of the building is deemed to be a home constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code as in effect (including supplements) on the date of enactment, and for which and any applicable Federal minimum efficiency standards for equipment are met. In the case of a principal residence that achieves a reduction in energy costs between 20 and 50 percent, the allowable credit is $4,000 times the percentage reduction. No credit is allowed in the case of energy cost savings of less than 20 percent.

The residence must be located in the United States, and, in the case of a new residence, not be acquired from a contractor eligible for a credit for the production of a new energy efficient home under Code section 45K (as added by the bill).

If a credit is allowed under Code section 25D (as added by the bill) relating to residential solar, photovoltaic and fuel cell property, for the purpose of measuring energy efficiency improvements under this provision, the original condition of the home, or the comparable building in the case of a new home, is determined assuming the building contains the property for which the credit is allowed. Additionally, if a credit is allowed under this provision for any expenditure, the increase in the basis of the property that would result from such expenditure is reduced by the amount of the credit.

In order to be eligible for the credit, the residence's energy savings must be demonstrated by performance-based compliance and be certified according to regulations established by the Secretary that follow various rules and procedures, including the use of computer software based on the 2005 California Residential Alternative Calculation Method Approval Manual. The determination of compliance may be provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider. All providers shall be accredited, or otherwise authorized to use approved energy performance measurement methods, by the Residential Energy Services Network (RESNET).

Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. Certain restrictions and limitations apply with respect to property financed by subsidized energy financing or obtained through grant programs. If less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account. If a credit is allowed under this provision with respect to any property, the basis of such property is reduced by the amount of the credit so allowed.

EFFECTIVE DATE.—The credit applies to property placed in service after December 31, 2005 and prior to January 1, 2009.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with modifications. The conference agreement follows the House bill with respect to energy efficient improvements to the building envelope, but the credit rate is reduced to 10 percent. The conference agreement includes the Senate amendment provisions related to (1) advanced main air circulating fans, (2) natural gas, propane, or oil furnace or hot water boilers and (3) qualified energy-efficient property, The conference agreement does not include the Senate amendment provision related to highly energy-efficient principal residences. The credit allowed under the conference agreement may not exceed $500 in total across all taxable years, and no more than $200 dollars of such credit may be attributable to expenditures on windows. There is no requirement for certification of expenditures.

The conference agreement modifies the energy efficiency requirements for qualifying central air conditioners to be the highest efficiency tier established by the Consortium for Energy Efficiency as in effect on Jan. 1, 2006.

The conference agreement also modifies the effective date.

EFFECTIVE DATE.—The credit applies to property placed in service after December 31, 2005 and prior to January 1, 2008.

13. Energy efficient commercial buildings deduction (sec. 1521 of the Senate amendment sec. 1331 of the conference agreement, and new sec. 179D of the Code)

PRESENT LAW

No special deduction is provided for expenses incurred for energy-efficient commercial building property.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The provision provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (''ASHRAE/IESNA''), (2) which is installed as part of (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope, and (3) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 (as in effect on April 2, 2003). The deduction is limited to an amount equal to $2.25 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual or, in the case of residential property, the 2005 California Residential Alternative Calculation Method Approval Manual.

The Committee intends that the methods for calculation be fuel neutral, such that the same energy efficiency features qualify a building for the deduction under this provision regardless of whether the heating source is a gas or oil furnace or boiler or an electric heat pump. The Committee also intends that the calculation methods provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either Standard 90.1–2001 or in the 2005 California Nonresidential Alternative Calculation Method Approval Manual, including the following: (i) Natural ventilation (ii) Evaporative cooling (iii) Automatic lighting controls such as occupancy sensors, photocells, and timeclocks(iv) Daylighting (v) Designs utilizing semi-conditioned spaces which maintain adequate comfort conditions without air conditioning or without heating (vi) Improved fan system efficiency, including reductions in static pressure (vii) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors (viii) On-site generation of electricity, including combined heat and power systems, fuel cells, and renewable energy generation such as solar energy (ix) Wiring with lower energy losses than wiring satisfying Standard 90.1–2001 requirements for building power distribution systems. The calculation methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance which exceeds typical performance

The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the

Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the Secretary shall promulgate regulations that allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

If a deduction is allowed under this section, the basis of the property shall be reduced by the amount of the deduction. Additionally, if a deduction is allowed for business energy property under section 1523 of the Senate amendment, or an individual credit for nonbusiness energy property or principal residence is allowed under section 1524 of the Senate amendment, then with respect to property for which a deduction under this provision may be claimed, the annual energy and power costs of the reference building is to be determined assuming the reference building contains the property for which the deduction or credit has been allowed, and any cost of such property taken into account under those other provisions of the bill cannot be taken into account under this provision.

Partial allowance of deduction

In the case of a building that does not meet the overall building requirement of a 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary of the Treasury. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system specific target. The separate building systems are (1) the interior lighting system, (2) the heating, cooling, ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is $0.75 per square foot for each separate system.

In the case of system-specific partial deductions, in general no deduction is allowed until the Secretary establishes system-specific targets. However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in Lighting Power Density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1–2001. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 37.5 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions.

Effective date.—The provision is effective for property placed in service after the date of enactment and prior to January 1, 2010.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that the deduction amount is reduced to $1.80 per square foot, and that the partial deduction for building subsystems is reduced to $0.60 per square foot. The conference agreement also modifies the effective date.

Effective date.—The provision is effective for property placed in service after December 31, 2005 and prior to January 1, 2008.

14. Deduction for business energy property (sec. 1523 of the Senate amendment)

PRESENT LAW

There is no special deduction provided for energy-efficient property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a deduction equal to the greater of (1) the total of the allowable deductions for the purchase of certain property, or (2) the allowable deduction with respect to energy-efficient residential rental building property.

The allowable deduction for the purchase of certain property is (1) $150 for each advanced main air circulating fan, (2) $450 for each qualified natural gas, propane, or oil furnace or hot water boiler, and (3) $900 for each item of qualified energy efficient property.

An advanced main air circulating fan is a fan used in a natural gas, propane, or oil furnace originally placed in service by the taxpayer during the taxable year, and which has an annual electricity use of no more than two percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

A qualified natural gas, propane, or oil furnace or hot water boiler is a natural gas, propane, or oil furnace or hot water boiler with an annual fuel utilization efficiency rate of at least 95.

Qualified energy-efficient property is: (1) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure, (2) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13, (3) a geothermal heat pump which (i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3, (ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and (iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5, (4) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 13, and (5) a natural gas, propane, or oil water heater which has an energy factor of at least 0.80.

The allowable deduction with respect to energy-efficient residential rental building property is $6,000 if the building achieves a 50 percent reduction in energy costs relative to the original condition of the building (in the case of new construction, the original condition of the building is deemed to be a building built to the standards necessary for compliance with applicable local building construction codes). In the case of a building that achieves a reduction in energy costs between 20 and 50 percent, the allowable deduction is $12,000 times the percentage reduction. No deduction is allowed in the case of energy cost savings of less than 20 percent. In order to be eligible for the deduction, the building's energy savings must be certified according to regulations established by the Secretary that follow various rules and procedures. In the case of energy efficient residential rental building property which is public property, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the improvements to the property in lieu of the public entity which is the owner of such property.

In order to be eligible for the deduction, the rental building's energy savings must be demonstrated by performance-based compliance and be certified according to regulations established by the Secretary that follow various rules and procedures, including the use of computer software based on the 2005 California Residential Alternative Calculation Method Approval Manual. The determination of compliance may be provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider. All providers shall be accredited, or otherwise authorized to use approved energy performance measurement methods, by the Residential Energy Services Network (RESNET).

For energy-efficient residential rental building property owned by a Federal, State, or local government or political subdivision thereof, the Secretary shall promulgate regulations that allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

No deduction for energy efficient residential rental property is allowed for any property for which a deduction is allowable under Code section 179D (as added by the bill), relating to the deduction for energy efficient commercial building property.

If a deduction is allowed under this provision with respect to any property, the basis of such property is reduced by the amount of the deduction so allowed.

Effective date.—The credit applies to property placed in service after the date of enactment and prior to January 1, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

15. Energy efficient new homes (sec. 1522 of the Senate amendment, sec. 1332 of the conference agreement, and new sec. 45L of the Code)

PRESENT LAW

There is no present-law credit for the construction of new energy-efficient homes.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a credit to an eligible contractor for the construction of a qualified new energy-efficient home. To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States, (2) substantially completed after the date of enactment, and (3) certified in accordance with guidance prescribed by the Secretary to have a projected level of annual heating and cooling energy consumption that meets the standards for either a 30–percent or 50–percent reduction in energy usage, compared to a comparable dwelling constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code as in effect (including supplements) on the date of enactment, and any applicable Federal minimum efficiency standards for equipment. With respect to homes that meet the 30–percent standard, one-third of such 30 percent savings must come from the building envelope, and with respect to homes that meet the 50–percent standard, one-fifth of such 50 percent savings must come from the building envelope.

The credit equals $1,000 in the case of a new home that meets the 30 percent standard

and $2,000 in the case of a new home that meets the 50 percent standard.

The eligible contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home. The Committee intends that the building envelope component means insulation materials or system specifically and primarily designed to reduce heat loss or gain, exterior windows (including skylights), doors, and any duct sealing and infiltration reduction measures.

Manufactured homes that conform to federal manufactured home construction and safety standards are eligible for the credit provided all the criteria for the credit are met. Manufactured homes certified by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program are eligible for the $1,000 credit provided criteria (1) and (2), above, are met.

The credit is part of the general business credit. No credits attributable to energy efficient homes can be carried back to any taxable year ending on or before the effective date of the credit.

Effective date.—The credit applies to homes whose construction is substantially completed after the date of enactment, and which are purchased during the period beginning on the date of enactment and ending on December 31, 2009 (December 31, 2007 in the case of the $1,000 credit).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that the credit related to homes meeting the 30-percent efficiency standard applies only to manufactured homes. The conference agreement also modifies the effective date.

Effective date.—The credit applies to homes whose construction is substantially completed after December 31, 2005, and which are purchased after December 31, 2005 and prior to January 1, 2008.

16. Energy credit for combined heat and power system property (sec. 1525 of the Senate amendment)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power (''CHP'') property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a 10-percent credit for the purchase of CHP property.

CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 15 megawatts or a mechanical energy capacity of no more than 2000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

Additionally, the provision provides that systems whose fuel source is at least 90 percent bagasse and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

Effective date.—The credit applies to periods after the date of enactment in taxable years ending after the date of enactment, for property placed in service before January 1, 2008, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

17. Energy efficient appliances (sec. 1526 of the Senate amendment, sec. 1334 of the conference agreement, and new sec. 45M of the Code)

PRESENT LAW

There is no present-law credit for the manufacture of energy-efficient appliances.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a credit for the eligible production of certain energy-efficient dishwashers, clothes washers and refrigerators.

The credit for dishwashers applies to dishwashers produced in 2006 and 2007 that meet the Energy Star standards for 2007. The credit amount equals $3 multiplied by the percentage by which the efficiency of the 2007 standards (not yet known) exceeds that of the 2005 standards. The credit may not exceed $100 per dishwasher.

The credit for clothes washers equals (1) $50 for clothes washers manufactured in 2005 that have a modified energy factor (MEF) of at least 1.42, (2) $100 for clothes washers manufactured in 2005–2007 that meet the requirements of the Energy Star program which are in effect for clothes washers in 2007, or (3) the minimum of (i) $200 or (ii) $10 multiplied by the average of the energy and water savings percentages of the 2010 Energy Star standards relative to the 2007 Energy Star standards, for clothes washers manufactured in 2008–2010 that meet the requirements of the Energy Star program which are in effect for clothes washers in 2010.

The credit for refrigerators is based on energy savings and year of manufacture. The energy savings are determined relative to the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. Refrigerators that achieve a 15 to 20 percent energy saving and that are manufactured in 2005 or 2006 receive a $75 credit. Refrigerators that achieve a 20 to 25 percent energy saving receive a (i) $125 credit if manufactured in 2005–2007, or (ii) $100 credit if manufactured in 2008. Refrigerators that achieve at least a 25 percent energy saving receive a (i) $175 credit if manufactured in 2005–2007, or (ii) $150 credit if manufactured in 2008–2010.

Appliances eligible for the credit include only those that exceed the average amount of production from the 3 prior calendar years for each category of appliance. In the case of refrigerators, eligible production is production that exceeds 110 percent of the average amount of production from the 3 prior calendar years. Proration rules apply in the case of credits for 2005 production.

A dishwasher is any a residential dishwasher subject to the energy conservation standards established by the Department of Energy. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin operated washer, that satisfies the relevant efficiency standard.

The taxpayer may not claim credits in excess of $75 million for all taxable years, and may not claim credits in excess of $20 million with respect to clothes washers eligible for the $50 credit and refrigerators eligible for the $75 credit. A taxpayer may elect to increase the $20 million limitation described above to $25 million provided that the aggregate amount of credits with respect to such appliances, plus refrigerators eligible for the $100 and $125 credits, is limited to $50 million for all taxable years.

Additionally, the credit allowed in a taxable year for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit is part of the general business credit.

Effective date.—The credit applies to appliances produced after the date of enactment and prior to January 1, 2011 (January 1, 2008, in the case of dishwashers).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, but only with respect to the provisions that cover production after December 31, 2005 and prior to January 1, 2008.

Effective date.—The credit applies to appliances produced after December 31, 2005 and prior to January 1, 2008.

C. ALTERNATIVE MINIMUM TAX RELIEF PROVISIONS

1. Allow nonbusiness energy credits against the alternative minimum tax (sec. 1321 of the House bill)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, for taxable years beginning after December 31, 2005, nonrefundable personal credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

HOUSE BILL

The provision allows the personal energy credits added by the House bill to offset both the regular tax and the alternative minimum tax.

Effective date.—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not contain the House bill provision.

2. Allow certain business energy credits against the alternative minimum tax (sec. 1322 of the House bill and sec. 1548(c) of the Senate amendment)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals and corporations in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, the general business credit may not exceed the excess of the regular tax liability over the tentative minimum tax (or, if greater, 25 percent of so much of the regular tax liability as exceeds $25,000). Amounts in excess of this limitation generally may be carried back one year and forward 20 years. In applying the tax limitation to certain business energy credits, the tentative minimum tax is treated as being zero. These credits include the alcohol fuels credit and the section 45 credit for electricity produced from a facility (placed in service after October 22, 2004) during the first four years of production beginning on the date the facility is placed in service.

HOUSE BILL

The House bill expands the list of business energy credits for which the tentative minimum tax is treated as being zero to include (i) the low sulfur diesel fuel production credit, (ii) the marginal oil and gas well production credit, (iii) the portion of the investment credit attributable to qualified fuel cells, and (iv) for taxable years beginning after December 31, 2005, and before January 1, 2008, the enhanced oil recovery credit.

Effective date.—The provision generally applies to credits determined for taxable years beginning after December 31, 2005. In the case of the credit for qualified fuel cells, the provision applies for taxable years ending after April 11, 2005.

SENATE AMENDMENT

The Senate amendment expands the list of business energy credits for which the tentative minimum tax is treated as being zero to include the credit for production of coal owned by Indian tribes.

Effective date.—The provision is effective as if included in the provision allowing the credit.

CONFERENCE AGREEMENT

The conference agreement does not expand the list of business energy credits for which the tentative minimum tax is treated as being zero.

D. ADDITIONAL ENERGY TAX INCENTIVES

1. Ten-year recovery period for underground natural gas storage facilities and cushion gas (sec. 1541 of the Senate amendment)

PRESENT LAW

Under present law, depreciation allowances for property used in a trade or business generally are determined under the Modified Accelerated Cost Recovery System (''MACRS''). Under MACRS, natural gas storage facilities and related equipment have a class life of 22 years and a recovery period of 15 years.

Cushion gas is the minimum volume of natural gas necessary to provide the pressure to facilitate the flow of gas from a storage reservoir to a pipeline. Recoverable cushion gas will be available for sale or other use upon abandonment of the storage reservoir, while nonrecoverable cushion gas will become obsolete with that abandonment. Under present law, the tax treatment of cushion gas depends on whether such gas is recoverable. The quantity of cushion gas that is recoverable is not subject to depreciation because it is not subject to exhaustion, wear, tear, or obsolescence. Conversely, nonrecoverable cushion gas is subject to obsolescence and is therefore subject to tax depreciation. The depreciable life of non-recoverable cushion gas is also 15 years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reclassifies underground natural gas storage facilities and nonrecoverable cushion gas as 10-year MACRS property. The present law treatment of recoverable cushion gas remains unchanged.

Effective date.—The Senate amendment provision applies to property placed in service after the date of enactment, the original use of which commences with the taxpayer.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Modify research credit for research relating to energy (sec. 1542 of the Senate amendment, sec. 1351 of the conference agreement, and sec. 41 of the Code)

PRESENT LAW

General rule

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. The research tax credit is scheduled to expire and generally will not apply to amounts paid or incurred after December 31, 2005.

A 20-percent research tax credit also applies to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the university basic research credit (see sec. 41(e)).

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 2.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent (i.e., the base amount equals one percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent. An election to be subject to this alternative incremental credit regime may be made for any taxable year beginning after June 30, 1996, and such an election applies to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

Eligible expenses

Qualified research expenses eligible for the research tax credit consist of: (1) in-house expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid or incurred by the taxpayer to certain other persons for qualified research conducted on the taxpayer's behalf (so-called contract research expenses). In the case of amounts paid to a research consortium, 75 percent of amounts paid for qualified research is treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer.

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 for the deduction for research expenses, but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which must constitute elements of a process of experimentation for functional aspects, performance, reliability, or quality of a business component.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the present-law research credit as it applies to qualified energy research. In particular, the provision provides that the taxpayer may claim a credit equal to 20 percent of the taxpayer's expenditures on qualified energy research undertaken by an energy research consortium. The amount of credit claimed is determined only by regard to such expenditures by the taxpayer within the taxable year. Unlike the general rule for the research credit, the 20-percent credit for research by an energy research consortium applies to all such expenditures, not only those in excess of a base amount however determined. An energy research consortium is a qualified research consortium as under present law that also is organized and operated primarily to conduct energy research and development in the public interest and to which at least five unrelated persons paid, or incurred amounts, to such organization within the calendar year. In addition, to be a qualified energy research consortium no single person shall pay or

incur more than 50 percent of the total amounts received by the research consortium during the calendar year.

The provision also provides that 100 percent of amounts paid or incurred by the taxpayer to eligible small businesses, universities, and Federal for qualified energy research would constitute qualified research expenses as contract research expenses, rather than 65 percent of qualified research expenditures allowed under present law. An eligible small business for this purpose is a business in which the taxpayer does not own a 50 percent or greater interest and the business has employed, on average, 500 or fewer employees in the two preceding calendar years.

Qualified energy research expenditures are expenditures that would otherwise qualify for the research credit under present law and relate to the production, supply, and conservation of energy, including otherwise qualifying research expenditures related to alternative energy sources or the use of alternative energy sources. For example, research relating to hydrogen fuel cell vehicles would qualify under this provision, if the research expenditures otherwise satisfy the criteria of present-law sec. 41. Likewise, otherwise qualifying research undertaken to improve the energy-efficiency of lighting would qualify under this provision.

Effective date.—The provision is effective for amounts paid or incurred after the date of enactment in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Small agri-biodiesel producer credit (sec. 1543 of the Senate amendment, sec. 1345 of the conference agreement, and sec. 40A of the Code)

PRESENT LAW

Biodiesel income tax credit

The Code provides an income tax credit for biodiesel and qualified biodiesel mixtures, the biodiesel fuels credit. The biodiesel fuels credit is the sum of the biodiesel mixture credit plus the biodiesel credit and is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions created by the Act. The credit may not be carried back to a taxable year ending before or on December 31, 2004. The provision does not apply to fuel sold or used after December 31, 2006.

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act and (2) the requirements of the American Society of Testing and Materials D6751. Agri-biodiesel is biodiesel derived solely from virgin oils including oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of the biodiesel and agri-biodiesel in the product.

The biodiesel income tax credit does not contain any incentives for small producers.

Small ethanol producer credit

Present law provides several tax benefits for ethanol and methanol produced from renewable sources that are used as a motor fuel or that are blended with other fuels (e.g., gasoline) for such a use. In the case of ethanol, a separate 10-cents-per-gallon credit for up to 15 million gallons per year for small producers, defined generally as persons whose production does not exceed 15 million gallons per year and whose production capacity does not exceed 30 million gallons per year. The ethanol must (1) be sold by such producer to another person (a) for use by such other person in the production of al qualified alcohol fuel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c). A cooperative may pass through the small ethanol producer credit to its patrons. The alcohol fuels tax credits are includible in income. This credit may be used to offset alternative minimum tax liability. The credit is a treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The alcohol fuels tax credit is scheduled to expire after December 31, 2010.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds to the biodiesel fuels credit a small agri-biodiesel producer credit. The credit is a 10-cents-per-gallon credit for up to 15 million gallons of agri-biodiesel produced by small producers, defined generally as persons whose agri-biodiesel production capacity does not exceed 60 million gallons per year. The agri-biodiesel must (1) be sold by such producer to another person (a) for use by such other person in the production of a qualified biodiesel mixture in such person's trade or business (other than casual off-farm production), (b) for use by such other person as a fuel in a trade or business, or, (c) who sells such agri-biodiesel at retail to another person and places such ethanol in the fuel tank of such other person; or (2) used by the producer for any purpose described in (a), (b), or (c).

Like the small ethanol producer credit, cooperatives may elect to pass through any portion of the small agri-biodiesel producer credits to its patrons. The credit is apportioned pro rata among patrons of the cooperative on the basis of the quantity or value of the business done with or for such patrons for the taxable year. An election to pass through the credit is made on a timely filed return for the taxable year and is irrevocable for such taxable year.

The amount of the credit not apportioned to patrons is included in the organization's credit for the taxable year of the organization. The amount of the credit apportioned to patrons is to be included in the patron's credit for the first taxable year of each patron ending on or after the last day of the payment period for the taxable year of the organization, or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

If the amount of the cooperative's credit for a taxable year is less than the amount of the credit shown on the organization's tax return for such taxable year, an amount equal to the excess of the reduction in the credit over the amount not apportioned to patrons for the taxable year is treated as an increase in the cooperative's tax. The increase is not treated as tax imposed for purposes of determining the amount of any tax credit or for purposes of the alternative minimum tax.

The credit sunsets after December 31, 2010, along with the other biodiesel incentives as extended under the Senate amendment.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except the credit sunsets after December 31, 2008.

4. Modifications to small ethanol producer credit (sec. 1544 of the Senate amendment, sec. 1347 of the conference agreement, and sec. 40 of the Code)

PRESENT LAW

Present law provides several tax benefits for ethanol and methanol that are used as a fuel or that are blended with other fuels (e.g., gasoline) for such a use. For example, the Code provides an income tax credit for alcohol and alcohol-blended fuels. In the case of ethanol, the Code provides an additional 10-cents-per-gallon credit for small producers, defined generally as persons whose production capacity does not exceed 30 million gallons per year.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the limit on production capacity for small ethanol producers from 30 million gallons to 60 million gallons per year.

The Senate amendment also provides that an election to pass the small ethanol producer credit through to cooperative patrons is not valid unless the cooperative provides patrons timely written notice of the apportionment of the credit. Under the Senate amendment, notice is timely if mailed to patrons during the payment period described in section 1382(d) of the Code.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Credit for equipment for processing or sorting materials gathered through recycling (sec. 1545 of the Senate amendment and sec. 1353 of the conference agreement)

PRESENT LAW

There is no present law credit for equipment for processing or sorting materials gathered through recycling.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a 15-percent business tax credit for the cost of qualified recycling equipment placed in service or leased by the taxpayer. Qualified recycling equipment is equipment, including connecting piping, (1) that is employed in sorting or processing residential and commercial qualified recyclable materials (any packaging or printed material which is glass, paper, plastic, steel, or aluminum generated by an individual or business) for the purpose of converting such materials for use in manufacturing tangible consumer products, including packaging, or (2) whose primary purpose is the shredding and processing of any electronic waste, including any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than four inches measured diagonally, or a central processing unit.

Qualified recycling equipment does not include rolling stock or other equipment used to transport recyclable materials. Materials

that are not packaging or printed material, such as tires or scrap metal from junked automobiles, are not qualified recyclable materials, and thus equipment used to process such materials are not qualified recycling equipment.

For the purposes of (1), qualified recycling equipment includes equipment that is utilized at commercial or public venues, including recycling collection centers, where the equipment is utilized to sort or process qualified recyclable materials for such purpose. For the purpose of (2), only the cost of each piece of equipment as exceeds $400,000 is eligible for the credit.

Effective date.—The credit applies to amounts paid or incurred during the taxable year for qualified recycling equipment placed in service or leased in taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision. The conference agreement directs the Secretary of the Treasury, in consultation with the Secretary of Energy, to conduct a study to determine and quantify the energy savings achieved through the recycling of glass, paper, plastic, steel, aluminum, and electronic devices, and to identify tax incentives that would encourage recycling of such material. The study is to be submitted to Congress within one year of the date of enactment.

Effective date.—The provision is effective on the date of enactment.

6. Five-year carryback of net operating losses for certain electric utility companies (sec. 1546 of the Senate amendment, sec. 1311 of the conference agreement, and sec. 172 of the Code)

PRESENT LAW

A net operating loss (''NOL'') is, generally, the amount by which a taxpayer's allowable deductions exceed the taxpayer's gross income. A carryback of an NOL generally results in the refund of Federal income tax for the carryback year. A carryover of an NOL reduces Federal income tax for the carryover year.

In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years. Under present-law ordering rules, NOLs generally are first applied to the earliest of the taxable years to which the loss may be carried.

Different rules apply with respect to NOLs arising in certain circumstances. For example, a three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback period applies to NOLs from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area). Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10-year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction).

Section 202 of the Job Creation and Worker Assistance Act of 2002 (''JCWAA'') provided a temporary extension of the general NOL carryback period to five years (from two years) for NOLs arising in taxable years ending in 2001 and 2002. In addition, the five-year carryback period applies to NOLs from these years that qualify under present law for a three- year carryback period (i.e., NOLs arising from casualty or theft losses of individuals or attributable to certain Presidentially declared disaster areas).

A taxpayer can elect to forgo the five-year carryback period. The election to forgo the five-year carryback period is made in the manner prescribed by the Secretary of the Treasury and must be made by the due date of the return (including extensions) for the year of the loss. The election is irrevocable. If a taxpayer elects to forgo the five-year carryback period, then the losses are subject to the rules that otherwise would apply under section 172 absent the provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a temporary extension of the NOL carryback period to five years for NOLs of certain electric utility companies arising in taxable years ending in 2003, 2004, and 2005 (''eligible NOLs''). Regardless of the taxable year in which an eligible NOL arose, refund claims resulting from the extended carryback period can be made during any taxable year ending after December 31, 2005, and before January 1, 2009. However, the amount of the refund claimed during any one taxable year may not exceed the amount of the electric utility company's investment in electric transmission property and pollution control facilities (''qualifying investment'') in the preceding taxable year. The present-law NOL carryover ordering rules apply. Taxpayers may elect to forgo the five-year carryback period provided under the provision if an election is filed before January 1, 2009.

Effective date.—The Senate amendment provision is effective for refund claims resulting from net operating losses generated in taxable years ending in 2003, 2004, and 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modifications. The conference agreement provides an election for certain electric utility companies to extend the carryback period to five years for a portion of NOLs arising in 2003, 2004, and 2005 (''loss years''). The election may be made during any taxable year ending after December 31, 2005, and before January 1, 2009 (''election years''). An electing taxpayer must specify to which loss year the election applies.

The portion of the loss year NOL to which the election may apply is limited to 20 percent of the amount of the taxpayer's qualifying investment in the taxable year prior to the year in which the election is made (the ''qualifying investment limitation''). Rules similar to those applicable to specified liability losses apply, and any remaining portion of the loss year NOL remains subject to the present law NOL carryover rules. Only one election may be made in any election year, and elections may not be made for more than one election year beginning in the same calendar year. Thus, for example, a taxpayer with two short taxable years beginning in calendar year 2006 is eligible to make an election under this provision in only one of those two short taxable years. Once an election has been made with respect to a loss year, no subsequent election is available with respect to that loss year.

For purposes of calculating interest on overpayments, any overpayment resulting from a five-year NOL carryback elected under this provision is deemed not to have been made prior to the filing date for the taxable year in which the election is made. The statute of limitations for refund claims, and that for assessment of deficiencies, are also extended.

An election under this provision is made in such manner as the Secretary may prescribe. However, the conferees expect that the filing of a refund claim will be considered sufficient for making the election, provided that the taxpayer attaches to the refund claim a statement specifying the election year, the loss year, and the amount of qualifying investment in electric transmission property and pollution control facilities in the preceding taxable year.

Under the conference agreement, an investment in electric transmission property qualifies if it is a capital expenditure made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale.

An investment in pollution control equipment qualifies if it is a capital expenditure, made by an electric utility company (as defined in the Public Utility Holding Company Act as in effect on the day before the date of enactment of the provision), which is attributable to a facility which will qualify as a certified pollution control facility, generally as defined under section 169(d)(1) but without regard to the requirements therein that the facility be new or that it be used in connection with a plant or other property in operation before January 1, 1976.

The conferees recognize that a significant amount of time may be required between the date of a capital expenditure for electric transmission property or pollution control equipment and the date the property is placed in service. Accordingly, there is no requirement that the transmission property or pollution control facilities be placed in service in the year in which the capital expenditures are incurred. However, it is intended that qualifying investment under the provision includes only capital expenditures to which the taxpayer is committed and with respect to property which the taxpayer intends to ultimately place in service in the taxpayer's trade or business. Under the conference agreement, capital expenditures which, at the taxpayer's option, are refundable or subject to material modification in a manner which would not meet the requirements of the provision, may not be taken into account. For example, if a taxpayer makes a cash deposit with respect to a contract for the purchase of electric transmission property, and the contract contains an option (or there is otherwise an understanding) under which the taxpayer may subsequently apply the deposit to the purchase of equipment other than electric transmission property, the deposit is not included in the taxpayer's qualifying investment. This rule is intended as an anti-abuse rule and should be interpreted to prevent a taxpayer from taking into account capital expenditures to which the taxpayer is not permanently committed.

Effective date.—The conference agreement provision is effective for elections made in taxable years ending after December 31, 2005, and before January 1, 2009, with respect to net operating losses arising in taxable years ending in 2003, 2004, and 2005.

7. Qualifying pollution control equipment credit (sec. 1547 of the Senate amendment)

PRESENT LAW

There is no tax credit for investment in pollution control equipment. An investment credit is available for investment in certain energy property.

SENATE AMENDMENT

The Senate amendment provides an investment credit for qualifying pollution control equipment. The credit is an amount equal to 15 percent of the basis of qualifying pollution control equipment placed in service at a qualifying facility during the taxable year. Qualifying pollution control equipment means any technology that is installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the

Clean Air Act, including thermal oxidizers, scrubber systems, vapor recovery systems, low nitric oxide burners, flair systems, bag houses, cyclones, and continuous emission monitoring systems. A qualifying facility is a facility that produces not less than 1,000,000 gallons of ethanol during the taxable year. For depreciation purposes, the basis of qualifying pollution control equipment is reduced by 50 percent of the amount of the credit.

In the case of property constructed over a period of two or more years, a taxpayer may elect to claim the credit on the basis of qualified progress expenditures made during the period of construction before the property is completed and placed in service.

Effective date.—The credit applies to periods after the date of enactment in accordance with the transitional rules set forth in 48(m) (as in effect before its repeal).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Credit for production of coal owned by Indian tribes (sec. 1548 of the Senate amendment)

PRESENT LAW

Present law provides two income tax incentives for businesses operating within Indian reservations: (1) accelerated depreciation with respect to certain non-gaming property used in a trade or business within an Indian reservation (sec. 168(j)); and (2) a nonrefundable income tax credit to employers on the first $20,000 of qualified wages and health care costs paid to certain members of Indian tribes (or their spouses) who work on or near an Indian reservation and who earn less than $30,000 per year (adjusted for inflation beginning in 1993) (sec. 45A). Both credits expire after December 31, 2005.

Present law does not provide a credit for the production of coal from coal reserves owned by an Indian tribe.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision establishes a credit for ''Indian coal'' sold to an unrelated person. Indian coal is defined as coal produced from coal reserves that on June 14, 2005, were owned by a Federally recognized tribe of Indians or are held in trust by the United States for a tribe or its members.

The amount of the credit equals $1.50 per ton for coal sold in 2006 through 2009 and $2.00 per ton for coal sold after 2009. The credit is indexed for inflation after 2006, is part of the general business credit (sec. 38), and is allowed against the alternative minimum tax.

Effective date.—The provision applies to Indian coal sold after December 31, 2005, and before January 1, 2013.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with some modifications. Under the conference agreement, the credit for Indian coal is added by modifying Code section 45, rather than by amending Code section 38 and creating new Code section 45N. As a result, some technical aspects of the credit are changed. These technical aspects are described in section A.9. of this report along with descriptions of other modifications to Code section 45.

9. Replacement stoves meeting environmental standards in non-attainment areas (sec. 1549 of the Senate amendment)

PRESENT LAW

There is no present law tax credit relating to stoves.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a $500 credit for the replacement of a non-compliant wood stove with a solid fuel burning stove that complies with the Environmental Protection Agency's (''EPA'') emission performance standards. In general, a non-compliant wood stove is any wood stove purchased prior to June 30, 1992. Stoves produced after June 30, 1992 must comply with EPA's Standards of Performance for Residential Wood Heaters. The credit is only available for replacements that occur in areas designated by the EPA as non-attainment areas for particulate matter less than 2.5 micrometers in diameter or non-attainment areas for particulate matter less than 10 micrometers in diameter.

Effective date.—The credit applies to solid fuel burning stoves purchased after the date of enactment and before January 1, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Exemption for bulk beds from excise tax on retail sale of heavy trucks and trailers (sec. 1550 of the Senate amendment)

PRESENT LAW

The Code imposes a 12-percent excise tax on the first retail sale of heavy trucks and trailers (chassis and bodies). Under present law, the tax on the first retail sale of automobile truck bodies does not apply to any body primarily designed: (1) to process or prepare seed, feed, or fertilizer for use on farms; (2) to haul feed, seed, or fertilizer to and on farms; (3) to spread feed, seed, or fertilizer on farms; (4) to load or unload feed, seed, or fertilizer on farms; or (5) for any combination of the foregoing.

The IRS has issued various rulings in this area. In Revenue Ruling 69–579, the IRS found that a truck body used primarily for hauling animal and poultry feed to and unloading it on farms qualified for exemption because the built-in equipment was elaborate and expensive. Thus, the IRS concluded that the nature of the unloading systems made it impractical to purchase the bodies for use other than in hauling feed, seed, or fertilizer to and unloading it on farms.

In 1975, the IRS ruled as not exempt a dump truck designed for and used primarily in hauling grain and sugar beets from the field to points on or off the farm but which may also be used to haul feed or fertilizer from a distribution point over the highway to the farm. The ruling concluded that bodies that are used for the general hauling of feed, seed, or fertilizer over the highway are subject to the tax unless they have specific features that indicate they are primarily designed to haul feed, seed, or fertilizer to and on farms. In this case, although feed and fertilizer were among the commodities that the dump truck could be used for, it did not have specific features to indicate that it was primarily designed to haul feed, seed, or fertilizer to and on farms.

In 1990, the IRS issued a technical advice memorandum (''the 1990 TAM'') that concluded that a type of truck bought by farmers to haul seed potatoes, sugar beets, grain, and other farm products qualified for exemption. Each model had a full-length, powered conveyor belt that was designed to support and unload the cargo; a powered rear discharge door to control the discharge rate of the cargo; and a standard universal motor mount to which an electric drive could be mounted. In that ruling, the IRS noted the special unloading equipment was elaborate and expensive, added substantially to the cost and weight of each body, and limited its load-carrying capabilities.

In 1999, the IRS revoked the 1990 TAM prospectively, noting that the exemption was not intended to cover truck bodies designed for general use, even if capable of hauling feed, seed, or fertilizer to and on farms. The IRS noted that the sales literature indicated that the body was designed to be versatile for hauling potatoes, beets, and small grains. The IRS also observed that unlike the bodies described in Rev. Rul. 69–579, which would not be purchased for use other than in hauling feed, seed, or fertilizer, the bodies at issue are designed for general hauling of farm cargo. Further, the IRS found that the presence of a conveyor belt was equally useful for unloading a crop at market as it is for unloading feed, etc. on a farm. Thus, the IRS concluded that the truck body was not primarily designed for an exempt purpose.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts bulk beds used for transporting farm crops to and on farms from the excise tax on the retail sale of heavy trucks and trailers if sold to a person who certifies to the seller that such person is actively engaged in the trade or business of farming and the primary use of the bulk bed is to haul to and on farms farm crops grown in connection with such trade or business. The Senate amendment provides for the recapture of the tax from the purchaser upon resale of within two years of the first retail sale, or if such purchaser makes substantial nonexempt use of the article.

Effective date.—The provision is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. National Academy of Sciences study (sec. 1551 of the Senate amendment and sec. 1352 of the conference agreement)

PRESENT LAW

Present law does not provide for a study of the health, environmental, security, and infrastructure external costs that may be associated with the use and production of energy.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires the Secretary of Treasury to enter into an agreement, within 60 days, with the National Academy of Sciences to conduct a study to define and evaluate the health, environmental, security, and infrastructure external costs and benefits associated with production and consumption of energy that are not or may not be fully incorporated into the price of such activities, or into the Federal tax or fee or other applicable revenue measure related to such activities. The results of the study are to be submitted to Congress within two years of the agreement.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Income tax exclusion for certain fuel costs of rural carpoolers (sec. 1552 of the Senate amendment)

PRESENT LAW

Under present law, qualified transportation benefits are excludable from gross income and wages for employment tax purposes. Qualified transportation benefits are: (1) transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment (''van pooling''); (2) transit passes; and (3) qualified

parking. For purposes of the exclusion for van pooling benefits, a commuter highway vehicle is any highway vehicle: (1) the seating capacity of which is at least six adults (excluding the driver); and (2) at least 80 percent of the mileage use of which can reasonably be expected to be (a) for purposes of transporting employees in connection with travel between their residences and their place of employment and (b) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver).

The maximum amount of qualified parking that is excludable from income and wages is $200 per month (for 2005). The maximum amount of transit passes and van pooling benefits that are excludable from income and wages per month is $105 (for 2005). These dollar amounts are indexed for inflation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a new qualified transportation fringe benefit. Employer reimbursement for certain fuel costs (up to $50 per month) of employees who meet rural carpool requirements are excluded from a taxpayer's gross income (but not wages) as a qualified transportation fringe benefit. To be eligible for the benefit, the employee must: (1) reside in a rural area; (2) not be eligible for transit or vanpooling benefits provided by the employer; (3) use the employee's vehicle when traveling between the employee's residence and place of employment; and (4) for at least 75 percent of the total mileage of such travel, be accompanied by one or more employees of the same employer. In addition, the premises of the employer must be located in an area that is not accessible by a transit system designed primarily to provide daily work trips within a local commuting area.

Effective date.—The Senate amendment is effective for expenses incurred on or after the date of enactment and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

13. Three-year applicable recovery period for depreciation of qualified energy management devices (sec. 1553 of the Senate amendment)

PRESENT LAW

No special recovery period is provided for depreciation of energy management devices.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a three-year recovery period for qualified new energy management devices placed in service by any taxpayer who is a supplier of electric energy or is a provider of electric energy services. A qualified energy management device is any meter or metering device which is used by the taxpayer (1) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and (2) to provide such data on at least a monthly basis to both consumers and the taxpayer. Additionally, the original use of the energy management device must commence with the taxpayer, and the purchase must be subject to a binding contract entered into after June 23, 2005, and only if there was no written binding contract entered into on or before such date.

Effective date.—The provision applies to taxable years ending after December 31, 2005, for property placed in service after the December 31, 2005 and prior to January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

14. Exception from volume cap for certain cooling facilities (sec. 1554 of the Senate amendment)

PRESENT LAW

Tax-exempt bonds

In general

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units. Interest on State or local bonds to finance activities of private persons (''private activity bonds'') is taxable unless a specific exception is contained in the Code (or in a non-Code provision of a revenue Act). The term ''private person'' generally includes the Federal Government and all other individuals and entities other than States or local governments.

Qualified private activity bonds

Private activity bonds are eligible for tax-exemption if issued for certain purposes permitted by the Code (''qualified private activity bonds''). The definition of a qualified private activity bond includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond. The definition of exempt facility bond includes bonds issued to finance local district heating and cooling facilities.

The issuance of most qualified private activity bonds is subject (in whole or in part) to annual State volume limitations (''State volume cap''). For calendar year 2005, the State volume cap is the greater of $80 per resident or $239 million. Exceptions are provided for bonds issued to finance certain governmentally owned facilities (airports, ports, high-speed intercity rail, and solid waste disposal) and bonds which are subject to separate local, State, or national volume limits (public/private educational facilities, enterprise zone facility bonds, and qualified green building/sustainable design projects).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an exception from the State volume cap for certain qualified private activity bonds issued to finance certain local district heating or cooling facilities. Specifically, State volume cap does not apply to bonds issued to finance local district heating or cooling facilities that are designed to access deep water cooling sources for building air conditionings if the aggregate face amount of bonds issued with respect to such a facility is not more than $75 million.

Effective date.—The provision applies to projects placed in service after the date of enactment and before July 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. REVENUE RAISING PROVISIONS

1. Treatment of kerosene for use in aviation (sec. 1561 of the Senate amendment)

PRESENT LAW

In general, aviation-grade kerosene is taxed at a rate of 21.8 cents per gallon upon removal of such fuel from a refinery or terminal (or entry into the United States) and on the sale of such fuel to any unregistered person unless there was a prior taxable removal or entry of such fuel. Aviation-grade kerosene may be removed at a reduced rate, either 4.3 or zero cents per gallon, if the aviation fuel is removed directly into the fuel tank of an aircraft for use in commercial aviation or for a use that is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax), or is removed or entered as part of an exempt bulk transfer. These taxes are credited to the Airport and Airway Trust Fund. If taxed aviation-grade kerosene is used for a nontaxable use, a claim for credit or refund may be made. Such claims are paid from the Airport and Airway Trust Fund to the general fund of the Treasury. All other removals and entries of kerosene used for surface transportation are taxed at the diesel tax rate of 24.3 cents per gallon, and these taxes are credited to the Highway Trust Fund. If aviation-grade kerosene is taxed upon removal or entry but fraudulently diverted for surface transportation, the taxes remain in the Airport and Airway Trust Fund, and the Highway Trust Fund is not credited for the taxes on such fuel.

A special rule of present law addresses whether a removal from a refueler truck, tanker, or tank wagon may be treated as a removal from a terminal for purposes of determining whether aviation-grade kerosene is removed directly into the wing of an aircraft for use in commercial aviation, and so eligible for the 4.3 cents per gallon rate. For the special rule to apply, a qualifying truck, tanker, or tank wagon must be loaded with aviation-grade kerosene from a terminal: (1) that is located within a secured area of an airport, and (2) from which no vehicle licensed for highway use is loaded with aviation fuel, except in exigent circumstances identified by the Secretary in regulations. In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) be loaded with fuel for delivery only into aircraft at the airport where the terminal is located; (2) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (3) not be registered for highway use; and (4) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment imposes the kerosene tax rate of 24.3 cents per gallon upon the entry or removal of aviation-grade kerosene and on the sale of such fuel to any unregistered person unless there was a prior taxable removal or entry of the fuel. In general, the present law reduced rates for removals of aviation-grade kerosene directly into the fuel tank of an aircraft apply. In addition, under the provision, the rate of tax is 21.8 cents per gallon if kerosene is removed (1) directly into the fuel tank of an aircraft for use in aviation other than commercial aviation and (2) from refueler trucks, tankers, and tank wagons that are loaded with fuel from a terminal that is located in an airport, without regard to whether the terminal is located in a secured area of the airport, as long as all the other requirements of the present law special rule related to such trucks, tankers, and wagons are met. The provision clarifies that the rate of tax upon removal of kerosene is zero if the removal is from a refueler truck, tanker, or tank wagon that meets all of the requirements of present law, including the security requirement, the kerosene is delivered directly into the fuel tank of an aircraft, and the kerosene is exempt from the tax imposed by section 4041(c) (other than by prior imposition of tax).

The Senate amendment provides that amounts may be claimed as credits or refunds for kerosene that is taxed at the 24.3 cents per gallon rate and used for aviation purposes. If kerosene is used for noncommercial aviation, the amount is 2.5 cents; if kerosene is used for commercial aviation, the amount is 20 cents; if kerosene is used for a use that is exempt from tax (as determined under present law), the amount is 24.3 cents. Present law rules with respect to claims apply, except for claims with respect to kerosene used in noncommercial aviation, which are payable to the ultimate vendor only. To be eligible to receive a payment, a vendor must be registered and must show either that the price of the fuel did not include the tax and the tax was not collected from the purchaser, the amount of tax was repaid to the ultimate purchaser, or the written consent of the purchaser to the making of the claim was filed with the Secretary.

Under the Senate amendment, all taxes collected at the 24.3 cents per gallon rate (under section 4081) initially are credited to the Highway Trust Fund. The provision requires the Secretary to transfer at least monthly from the Highway Trust Fund into the Airport and Airway Trust Fund amounts equivalent to 21.8 cents per gallon for claims made with respect to kerosene used for noncommercial aviation purposes and 4.3 cents per gallon for claims made with respect to kerosene used for commercial aviation purposes. The provision requires that transfers be made on the basis of estimates by the Secretary, with proper adjustments to be made subsequently to the extent prior estimates were in excess of or less than the amounts required to be transferred. Transfers are required to be made with respect to taxes received on or after October 1, 2005, and before October 1, 2011. The provision provides that the Airport and Airway Trust Fund does not make payments with respect to kerosene that is taxed at the 24.3 cents per gallon rate and used for aviation purposes.

Effective date.—The Senate amendment is effective for fuels or liquids removed, entered, or sold after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Repeal of ultimate vendor refund claims with respect to farming (sec. 1562 of the Senate amendment)

PRESENT LAW

In general—ultimate purchaser refunds for nontaxable uses

In general, the Code provides that if diesel fuel or kerosene on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) to the ultimate purchaser the amount of tax imposed. The refund is made to the ultimate purchaser of the taxed fuel by either income tax credit or refund payment. Not more than one claim may be filed by any person with respect to fuel used during its taxable year. However, there are exceptions to this rule.

An ultimate purchaser may make a claim for a refund payment for any quarter of a taxable year for which the purchaser can claim at least $750. If the purchaser cannot claim at least $750 at the end of quarter, the amount can be carried over to the next quarter to determine if the purchaser can claim at least $750. If the purchaser cannot claim at least $750 at the end of the taxable year, the purchaser must claim a credit on the person's income tax return.

As discussed below, these ultimate purchaser refund rules do not apply to diesel fuel or kerosene used on a farm. The Code precludes the ultimate purchaser from claiming a refund for such use. Instead, the refund claims are made by registered vendors as described below.

Special vendor rule for use on a farm for farming purposes

In the case of diesel fuel or kerosene used on a farm for farming purposes, refund payments are paid to the ultimate, registered vendors (''registered ultimate vendor'') of such fuels. Thus a registered ultimate vendor that sells undyed diesel fuel or undyed kerosene to any of the following may make a claim for refund: (1) the owner, tenant, operator of a farm for use by that person on a farm for farming purposes; and (2) a person other than the owner, tenant, or operator of a farm for use by that person on a farm in connection with cultivating, raising or harvesting. The registered ultimate vendor is the only person who may make the claim with respect to diesel fuel or kerosene used on a farm for farming purposes. The purchaser of the fuel cannot make the claim for refund.

Registered ultimate vendors may make weekly claims if the claim is at least $200 ($100 or more in the case of kerosene). If not paid within 45 days (20 days for an electronic claim), the Secretary is to pay interest on the claim.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals ultimate vendor refund claims in the case of diesel fuel or kerosene used on a farm for farming purposes. Thus, refunds for taxed diesel fuel or kerosene used on a farm for farming purposes would be paid to the ultimate purchaser under the rules applicable to nontaxable uses of diesel fuel or kerosene.

Effective date.—The provision is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Refunds of excise taxes on exempt sales of taxable fuel by credit card (sec. 1563 of the Senate amendment)

PRESENT LAW

Under the rules in effect prior to 2005, in the case of gasoline on which tax had been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, the wholesale distributor that sold such gasoline was treated as the only person who paid the tax and thereby was the proper claimant for a credit or refund of the tax paid. A ''wholesale distributor'' included any person, other than an importer or producer, who sold gasoline to producers, retailers, or to users who purchased in bulk quantities and accepted delivery into bulk storage tanks. A wholesale distributor also included any person who made retail sales of gasoline at 10 or more retail motor fuel outlets.

Under a special administrative exception to these rules, a sale of gasoline charged on an oil company credit card issued to an exempt person described above is not considered a direct sale by the person actually selling the gasoline to the ultimate purchaser if the seller receives a reimbursement of the tax from the oil company (or indirectly through an intermediate vendor). Thus, the person that actually paid the tax, in most cases the oil company, is treated as the only person eligible to make the refund claim.

The American Jobs Creation Act of 2004 (''AJCA'') modified the pre-existing statutory rules with respect to certain sales. Under AJCA, if a registered ultimate vendor purchases any gasoline on which tax has been paid and sells such gasoline to a State or local government or to a nonprofit educational organization, for its exclusive use, such ultimate vendor is treated as the only person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. However, AJCA did not change the special administrative oil company credit card rule described above.

In addition, under AJCA, refund claims made by such an ultimate vendor may be filed for any period of at least one week for which $200 or more is payable. Any such claim must be filed on or before the last day of the first quarter following the earliest quarter included in the claim. The Secretary must pay interest on refunds unpaid after 45 days. If the refund claim was filed by electronic means, and the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified for highway exempt use as a State or local government or a nonprofit educational organization, refunds unpaid after 20 days must be paid with interest.

In the case of diesel fuel or kerosene used in a nontaxable use, the ultimate purchaser is generally the only person entitled to claim a refund of excise tax. However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, aviation-grade kerosene, and certain nonaviation-grade kerosene, an ultimate vendor may claim the refund if the ultimate vendor is registered and bears the tax (or receives the written consent of the ultimate purchaser to claim the refund).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment replaces the oil company credit card rule with a new set of rules applicable to certain credit card sales. The new rules apply to all taxable fuels. Under the Senate amendment, if a purchase of taxable fuel is made by means of a credit card issued to an ultimate purchaser that is either a State or local government or, in the case of gasoline, a nonprofit educational organization, for its exclusive use, a credit card issuer who is registered and who extends such credit to the ultimate purchaser with respect to such purchase shall be the only person entitled to apply for a credit or refund if the following two conditions are met: (1) such registered person has not collected the amount of the tax from the purchaser, or has obtained the written consent of the ultimate purchaser to the allowance of the credit or refund; and (2) such registered person has either repaid or agreed to repay the amount of the tax to the ultimate vendor, has obtained the written consent of the ultimate vendor to the allowance of the credit or refund, or has otherwise made arrangements that directly or indirectly provide the ultimate vendor with reimbursement of such tax. It is anticipated that such indirect arrangements may consist of the contractual undertaking of the relevant oil company to the credit card issuer that it will pay the amount of the tax to the ultimate vendor, and the corresponding contractual undertaking of the oil company to the ultimate vendor.

If a credit card issuer is not registered, or if either condition (1) or (2) described above is not met (or if the ultimate purchaser is not exempt), then the credit card issuer is required to collect an amount equal to the tax from the ultimate purchaser and only an (exempt) ultimate purchaser may claim a credit or payment from the IRS. Thus, tax-paid fuel shall not be sold tax free to an exempt entity by means of a credit card unless the credit card issuer is registered. An unregistered credit card issuer that does not

collect an amount equal to the tax from the exempt entity is liable for present-law penalties for failure to register.

A credit card issuer entitled to claim a refund under the provision is responsible for collecting and supplying all the appropriate documentation currently required from ultimate vendors. The present-law refund amount and timing rules applicable to ultimate vendors, including the special rules for electronic claims, apply to refunds to credit card issuers under the provision.

The Senate amendment also conforms present-law penalty provisions to the new rules.

The Senate amendment does not change the present-law rules applicable to non-credit card purchases.

Effective date.—The provision is effective for sales after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Recertification of exempt status (sec. 1564 of the Senate amendment)

PRESENT LAW

If gasoline is sold to any person for an exempt use, an ultimate purchaser that has borne the tax is entitled to claim a refund. However, a registered ultimate vendor is the appropriate person to claim a refund of Federal excise taxes on gasoline sold to a State or local government or to a nonprofit educational organization.

In general, in order to claim a refund of Federal excise taxes on gasoline (and on other articles subject to manufacturers excise taxes under Chapter 32 of the Code) sold to a State or local government or to a nonprofit educational organization, for its exclusive use, a claimant must submit a statement indicating that it possesses evidence of the exempt use giving rise to the overpayment of tax. Such evidence consists of a certificate executed and signed by the ultimate purchaser, and must identify the article, show the name and address of the ultimate purchaser, and state the exempt use made or to be made of the article. In the case where the certificate sets forth the use to be made of the article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

However, if the article to which the claim relates has passed through a chain of sales from the claimant to the ultimate purchaser, a certificate executed and signed by the ultimate vendor is sufficient to document the exempt use. The ultimate vendor certificate must contain the exempt sales information, and a statement that it possesses the ultimate purchaser certificates and will forward them to the claimant within three years from the date of the statement. An ultimate vendor statement may be made covering no more than 12 consecutive calendar quarters.

In general, an ultimate purchaser is the proper party to claim a refund of Federal excise tax on diesel fuel or kerosene used by any person in a nontaxable use. However, in the case of diesel or kerosene used by a State or local government, the ultimate vendor is the proper person if such vendor is registered and has borne the tax (or receives the written consent of the ultimate purchaser to claim the refund). A registered ultimate vendor claiming a refund under this provision must provide a statement that it has in its possession an unexpired exemption certificate of the purchaser and that the claimant has no reason to believe any information in the certificate is false.

A State or local government includes any political subdivision of a State, or the District of Columbia. A nonprofit educational organization means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and which either is exempt from income tax under section 501(a) or is a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a).

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, additional documentation requirements are imposed with respect to purchases of taxable fuel and certain other articles on a nontaxable basis by State or local governments and nonprofit educational organizations and with respect to refunds or credits by any person with respect to such purchases. The Senate amendment covers Federal excise taxes on sales of liquids for use as a fuel (including taxable fuels), compressed natural gas (except if sold for use on school buses or intracity buses), heavy trucks and trailers, recreational equipment (bows and arrows, sport fishing equipment and firearms), and tires (except for tires sold for use on qualified buses). The Senate amendment does not cover Federal excise taxes on sales of coal and vaccines.

In addition to present-law documentation requirements, in order for a State or local governmental entity to claim exemption from tax on sales of such covered articles, or for any person to claim a credit or refund based upon the State or local governmental status of the purchaser of such articles, the State must certify that the article is sold to a State or local government for the exclusive use of a State or local government. In the case of articles sold to a qualified volunteer fire department, as defined in section 150(e)(2), the State must so certify, and the article must be sold for the exclusive use of the qualified volunteer fire department.

In order for a nonprofit educational organization to claim exemption from tax on such articles, or for any person to claim a credit or refund of tax on such articles based upon the nonprofit educational status of an organization, the State in which such organization is providing educational services must certify that such organization is in good standing.

For purposes of this provision, an Indian tribal government is treated as a State. Consequently, it is intended that the applicable Indian tribal government will provide the certifications under this provision.

It is intended that the certifications required under this provision will be provided by exempt purchasers to the refund claimants (in addition to documentation required under present law), and that the IRS may require that such certifications be submitted as part of the claims. The Secretary may prescribe forms for such certifications.

Effective date.—The provision is effective for all sales after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Reregistration in event of change in ownership (sec. 1565 of the Senate amendment)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081. An assessable penalty for failure to register is $10,000 for each initial failure, plus $1,000 per day that the failure continues. A non-assessable penalty for failure to register is $10,000. A criminal penalty of $10,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application. Treasury regulations require that a registrant notify the Secretary of any change (such as a change in ownership) in the information a registrant submitted in connection with its application for registration within 10 days of the change. The Secretary has the discretion to revoke the registration of a noncompliant registrant.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires that upon a change in ownership of a registrant, the registrant must reregister with the Secretary, as provided by the Secretary. A change in ownership means that after a transaction (or series of related transactions), more than 50 percent of the ownership interests in, or assets of, a registrant are held by persons other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions). The provision does not apply to a company, the stock of which is regularly traded on an established securities market. The penalties for failure to reregister are the same as the present law penalties for failure to register. The provision applies to changes in ownership occurring prior to, on, or after the date of enactment.

Effective date.—The Senate amendment is effective for actions or failures to act after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Registration of operators of deep-draft vessels (sec. 1566 of the Senate amendment)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081. Treasury regulations define a vessel operator as any person that operates a vessel within the bulk transfer/terminal system, excluding deep-draft ocean-going vessels. Accordingly, operators of deep-draft ocean-going vessels are not required to register. A deep-draft ocean-going vessel is a vessel that is designed primarily for use on the high seas that has a draft of more than 12 feet.

An assessable penalty for failure to register is $10,000 for each initial failure, plus $1,000 per day that the failure continues. A non-assessable penalty for failure to register is $10,000. A criminal penalty of $10,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.

In general, gasoline, diesel fuel, and kerosene (''taxable fuel'') are taxed upon removal from a refinery or a terminal. Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a ''bulk transfer'') by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery

are registered with the Secretary as required by section 4101. Transfer to an unregistered party subjects the transfer to tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, an operator of deep-draft ocean-going vessel is required to register with the Secretary unless such operator uses such vessel exclusively for purposes of the entry of taxable fuel. If a deep-draft ocean-going vessel is used as part of a bulk transfer, the operator of such vessel must be registered in order for the bulk transfer exemption to apply, except with respect to the entry of taxable fuel, in which case, registration is not required.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Reconciliation of on-loaded cargo to entered cargo (sec. 1567 of the Senate amendment)

PRESENT LAW

The Trade Act of 2002 directed the Secretary to promulgate regulations pertaining to the electronic transmission to the Bureau of Customs and Border Patrol (''Customs'') of information pertaining to cargo destined for importation into the United States or exportation from the United States, prior to such importation or exportation. The Department of the Treasury issued final regulations on October 31, 2002. The regulations require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and encourage the presentation of this information electronically. Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form 1302) or the electronic equivalent within 24 hours before such cargo is laden aboard the vessel at the foreign port.

Certain carriers of bulk cargo, however, are exempt from these filing requirements. Such bulk cargo includes that composed of free flowing articles such as oil, grain, coal, ore and the like, which can be pumped or run through a chute or handled by dumping. Thus, taxable fuels are not required to file the Cargo Declaration within 24 hours before such cargo is laden aboard the vessel at the foreign port. Instead the Cargo Declaration must be filed within 24 hours prior arrival in the United States.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that not later than one year after the date of enactment of this paragraph, the Secretary of Homeland Security, together with the Secretary of the Treasury, is to establish an electronic data interchange system through which Customs shall transmit to the Internal Revenue Service information pertaining to cargoes of taxable fuels (as defined in section 4083) that Customs has obtained electronically under its regulations adopted to carry out the Trade Act of 2002 requirement. For this purpose, not later than one year after the date of enactment, all filers of required cargo information for such taxable fuels, as defined, must provide such information to Customs through its approved electronic data interchange system.

Effective date.—The provision is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Gasoline blend stocks and kerosene (sec. 1568 of the Senate amendment)

PRESENT LAW

In general

A ''taxable fuel'' is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene. An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry. The tax does not apply to any removal or entry of taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.

Gasoline blend stocks

Definition

Under the regulations, ''gasoline'' includes all products commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, and that have an octane rating of 75 or more. Gasoline also includes, to the extent provided in regulations, gasoline blend stocks and products commonly used as additives in gasoline. By regulation, the Treasury has identified certain products as gasoline blend stocks, however, the term ''gasoline blend stocks'' does not include any product that cannot be blended into gasoline without further processing or fractionation (''off-spec gasoline'').

Gasoline blend stock exemptions

If certain conditions are met, the removal, entry, or sale of gasoline blend stocks is not taxable. Generally, the exemption from tax applies if a gasoline blend stock (1) is not used to produce finished gasoline (2) is received at an approved terminal or refinery, or (3) in bulk transfer to an industrial user.

Gasoline blend stocks not used to produce finished gasoline.—Pursuant to Treasury regulation, no tax is imposed on nonbulk removals from a terminal or refinery, or nonbulk entries into the United States of any gasoline blend stocks if (1) the person liable for the tax is a taxable fuel registrant, and (2) such person does not use the gasoline blend stocks to produce finished gasoline. In connection with a sale, no tax is imposed on the nonbulk removal or entry if (1) the person liable for the tax is a gasoline registrant and (2) at the time of sale such party has an unexpired certificate from the buyer, and has no reason to believe any information in the certificate is false.

Any sale (or resale) of a gasoline blend stock that was not subject to tax on nonbulk removal or entry is taxable unless the seller has an unexpired certificate from the buyer and has no reason to believe that any information in the certificate is false.

The certificate to be provided by a buyer of gasoline blend stocks contains a statement that the gasoline blend stocks covered by the certificate will not be used to produce finished gasoline, identifies the type (or types of blend stocks) covered by the certificate and provides that the buyer will not claim a credit or refund for any gasoline covered by the certificate. The certificate is signed under penalties of perjury by a person with authority to bind the buyer. The certificate expires on the earliest of one year from the effective date of the certificate, the date a new certificate is provided to the seller or the date the seller is notified by the IRS or the buyer that the buyer's right to provide a certificate has been withdrawn.

Gasoline blend stocks received at an approved terminal or refinery.—Treasury regulations provide that tax is not imposed on the removal or entry of gasoline blend stocks that are received at a terminal or refinery if the person liable for tax is a taxable fuel registrant, has an unexpired notification certificate from the operator of the terminal or refinery where the gasoline blend stocks are received; and has no reason to believe that any information in the certificate is false. A notification certificate is used to notify another person of the taxable fuel registrant's registration status.

Bulk transfer to an industrial user.—Tax is not imposed if upon removal of the gasoline blend stocks from a pipeline or vessel, the gasoline blend stocks are received by a taxable fuel registrant that is an industrial user. An industrial user means any person that receives gasoline blend stocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Refunds or credits for tax imposed on gasoline blend stocks not used for producing gasoline

If any gasoline blend stock or additive is not used by a person to produce gasoline and that person establishes that the ultimate use of the gasoline blend stock or additive is not used to produce gasoline, then the Secretary is to pay (without interest) to such person, an amount equal to the aggregate amount of tax imposed on such person with respect to such gasoline or blend stock.

If gasoline is used in an off-highway business use, the ultimate purchaser of the gasoline is entitled to a credit or refund for the excise taxes imposed on the fuel. ''Off-highway business use'' means any use by a person in a trade or business of such person otherwise than as a fuel in a highway vehicle that meets certain requirements. Gasoline for this purpose includes gasoline blend stocks.

The Code also provides for a refund of tax for tax-paid fuel sold to a subsequent manufacturer or producer if the subsequent manufacturer or producer uses the fuel, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

Kerosene

Definition of kerosene

By regulation, kerosene is defined as the kerosene described in ASTM Specification D 3699 (No. 1–K and No. 2–K), ASTM Specification D 1655 (kerosene-type jet fuel), and military specifications MIL–DTL–5624T (Grade JP–5) and MIL–DTL–83133E (Grade JP–8). Kerosene does not include any liquid that is an excluded liquid.

An ''excluded liquid'' is (1) any liquid that contains less than four percent normal paraffins, or (2) any liquid that has a distillation range of 125 degrees Fahrenheit or less, sulfur content of 10 ppm or less, and minimum color of +27 Saybolt. These liquids are commonly known as ''mineral spirits'' and are obtained by distillation of crude oil. Mineral spirits are used for a wide variety of purposes, such as in dry-cleaning fluids, paint thinners, varnishes, photocopy toners, inks, adhesives, and as general purpose cleaners and degreasers.

Exemptions

Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Kerosene received by pipeline or vessel to satisfy a feedstock purpose is exempt from the dyeing requirement. Pursuant to Treasury regulations, nonbulk removals of kerosene for a feedstock purpose by a registered feedstock user also are exempt. The person receiving the kerosene must be registered with the IRS and provide a certificate noting that the kerosene will be used for a feedstock purpose

in order for the exemption to apply. Pursuant to the Treasury regulations, tax also does not apply upon the removal or entry of kerosene if the person otherwise liable for tax is a taxable fuel registrant and such person uses the kerosene for a feedstock purpose.

''Feedstock purpose'' means the use of kerosene for nonfuel purposes in the manufacture or production of any substance (other than gasoline, diesel fuel or special fuels subject to tax). Thus, for example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint and is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced.

Refunds and payments for nontaxable uses of kerosene

If tax-paid kerosene is used by any person in a nontaxable use, the Secretary is required to pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel. For this purpose, a nontaxable use is any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of prior imposition of tax. Claims relating to kerosene used on a farm for farming purposes and by a State are made by registered ultimate vendors. Claims relating to undyed kerosene sold from a blocked pump or sold for blending with heating oil to be used during periods of extreme or unseasonable cold are also made by registered ultimate vendors. Special rules apply with respect to aviation-grade kerosene.

The Code also provides for a refund of tax for tax-paid fuel sold to a subsequent manufacturer or producer if the subsequent manufacturer or producer uses the fuel, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

HOUSE BILL

No provision.

SENATE AMENDMENT

Gasoline blend stocks

The Senate amendment partially repeals exemptions provided in Treas. Reg. sec. 48.4081–4, which, under certain conditions, exempts from tax gasoline blend stocks that are not used to produce finished gasoline or that are received at an approved terminal or refinery. Under the Senate amendment, tax is imposed on all nonbulk entries and removals of gasoline blend stocks, regardless of whether they will be used to produce finished gasoline or received at an approved terminal or refinery. The Senate amendment does not change the exemption for bulk transfers to registered industrial users.

Kerosene and mineral spirits

The Senate amendment requires that with respect to fuel entered or removed after September 30, 2005, the Secretary shall not exclude mineral spirits from the definition of kerosene. Thus, for entries and removals after September 30, 2005, mineral spirits are taxed and exempt from tax in the same manner as kerosene.

Effective date.—The provision is effective for fuel removed or entered after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States (sec. 1569 of the Senate amendment)

PRESENT LAW

A ''taxable fuel'' is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene. An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry. The tax does not apply to any removal or entry of taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.

Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation. Section 6421(c) provides ''If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4), or (5) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081.'' Section 4221 provides, in pertinent part, ''Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter . . . on the sale by the manufacturer. . . of an article . . . for export, or for resale by the purchaser to a second purchaser for export. . . but only if such exportation or use is to occur before any other use . . .''

It is the IRS administrative position that the exemption from manufacturers excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or shipped, directly out of the United States.

A duty-free sales facility that meets certain conditions may sell and deliver for export from the customs territory of the United States duty-free merchandise. Duty-free merchandise is merchandise sold by a duty-free sales facility on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory of the United States. The statutes covering duty-free facilities do not contain any limitation on what goods may qualify for duty-free treatment.

The issue of whether fuel sold from a duty-free facility and placed into the tank of an automobile that is then driven out of the country is exported fuel has been litigated in the courts. The cases involved the same operator of a duty-free facility seeking a refund of excise tax. The facility is near the Canadian border and is configured in such a way that anyone leaving the facility must depart the United States and enter into Canada. Both the Federal Circuit and the Sixth Circuit Court of Appeals are in accord with the IRS position and ruled that the operator of the duty-free facility did not have standing to pursue a claim for refund.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reaffirms the longstanding IRS position taken in Rev. Rul. 69–150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. It also imposes a tax on the sale of taxable fuel at a duty-free sales enterprise unless there was a prior taxable removal, or entry of such fuel.

Effective date.—The provision applies to sales or deliveries made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Impose assessable penalty on dealers of adulterated fuel (sec. 1570 of the Senate amendment)

PRESENT LAW

Diesel fuel, gasoline, and kerosene are taxable fuels. Diesel fuel is defined as (1) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel powered train, (2) transmix, and (3) diesel fuel blend stocks identified by the Secretary. As a defense to Federal and State excise tax liability, some taxpayers have contended that certain diesel fuel mixtures or additives do not meet the requirements of (1) above because they are not approved as additives or mixtures by the EPA. In addition, under present law, untaxed fuel additives, including certain contaminants, may displace taxed diesel fuel in a mixture.

The Code provides that any person who, in connection with a sale or lease (or offer for sale or lease) of an article, knowingly makes any false statement ascribing a particular part of the price of the article to a tax imposed by the United States, or intended to lead any person to believe that any part of the price consists of such a tax, is guilty of a misdemeanor. Another Code provision provides that any person who has in his custody or possession any article on which taxes are imposed by law, for the purpose of selling the article in fraud of the internal revenue laws or with design to avoid payment of the taxes thereon, is liable for ''a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded.''

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds a new assessable penalty. Any person other than a retailer who knowingly transfers for resale, sells for resale, or holds out for resale for use in a diesel-powered highway vehicle (or train) any liquid that does not meet applicable EPA regulations (as defined in section 45H(c)(3)) is subject to a penalty of $10,000 for each such transfer, sale or holding out for resale, in addition to the tax on such liquid, if any. Any retailer who knowingly holds out for sale (other than for resale) any such liquid, is subject to a $10,000 penalty for each such holding out for sale, in addition to the tax on such liquid, if any.

The penalty is dedicated to the Highway Trust Fund.

Effective date.—The provision is effective for any transfer, sale, or holding out for sale or resale occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Oil Spill Liability Trust Fund (sec. 1571 of the Senate amendment, sec. 1361 of the conference agreement, and sec. 4611 of the Code)

PRESENT LAW

Between December 31, 1989, and January 1, 1995, a five-cent-per-barrel tax was imposed on crude oil received at a United States refinery and imported petroleum products received for consumption, use, or warehousing, and any domestically produced crude oil that is exported from the United States if, before exportation, no taxes were imposed on the crude oil. The tax was effective only if the unobligated balance in the Fund was less than $1 billion. Taxes received were credited to the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund is used for several purposes, including the payment of costs for responding to and removing oil spills.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reinstates the Oil Spill Liability Trust Fund tax. The tax applies on April 1, 2006, or if later, the last day of any calendar quarter for which the Secretary estimates that, as of the close of that quarter, the unobligated balance in the Oil Spill Liability Trust Fund is less than $2 billion.

The tax will be suspended during a calendar quarter if the Secretary estimates that, as of the close of the preceding calendar quarter, the unobligated balance in the Oil Spill Liability Trust Fund exceeds $3 billion. The tax terminates after December 31, 2014.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification. The tax will be suspended during a calendar quarter if the Secretary estimates that, as of the close of the preceding calendar quarter, the unobligated balance in the Oil Spill Liability Trust Fund exceeds $2.7 billion.

12. Leaking Underground Storage Tank Trust Fund (sec. 1562 of the Senate amendment, sec. 1362 of the conference agreement, secs. 4041, 4081(d), 4082, 9508, and new sec. 6430 of the Code)

PRESENT LAW

The Code imposes an excise tax, generally at a rate of 0.1 cents per gallon, on gasoline, diesel, kerosene, and special motor fuels (other than liquefied petroleum gas and liquefied natural gas). The taxes are deposited in the Leaking Underground Storage Tank (''LUST'') Trust Fund. The tax expires on October 1, 2005.

Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose.

The Code requires the LUST Trust Fund to reimburse the General Fund for certain refund and credit claims related to the nontaxable use of fuel (only to the extent attributable to the LUST Trust fund financing rate).

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the LUST Trust Fund tax is extended at the current rate through September 30, 2011. Further, all fuel, including dyed fuel, is subject to the LUST tax and no refund or claim for payment in the case of otherwise nontaxable use (other than exports) is permitted for such fuel. Under the provision, the LUST Trust Fund is no longer required to reimburse the General Fund for claims and credits related to the nontaxable use of fuel.

Effective date.—The provision is generally effective for fuel entered, removed or sold after September 30, 2005. The extension of the trust fund tax is effective October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

13. Clarification of tire excise tax (sec. 1573 of the Senate amendment, sec. 1364 of the conference agreement, and sec. 4072(e) of the Code)

PRESENT LAW

The Code imposes an excise tax on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 9.45 cents per 10 pounds of excess. Biasply tires and super single tires are taxed at a rate of 4.725 cents for each 10 pounds of rated load capacity exceeding 3,500 pounds. A super single tire is a single tire greater than 13 inches in cross section width designed to replace two tires in a dual fitment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment subjects super single tires to a tax of 8 cents per 10 pounds of excess rated load capacity over 3,500 pounds. It redefines super single tire to be a single tire greater than 17.5 inches in cross section width designed to replace two tires in a dual fitment.

Effective date.—The provision is effective for sales after September 30, 2005.

CONFERENCE AGREEMENT

The conference agreement clarifies that the definition of super single tire does not include tires designed to serve as steering tires. It is understood that steering axles are not equipped with a dual fitment. Therefore, tires classified as steering tires are not ''designed to replace two tires in a dual fitment.'' To the extent there is any perceived ambiguity in the present law definition, the conferees wish to clarify that steering tires are not included within the definition of super single tire eligible for the special rate of tax. Under the conference agreement, a ''super single tire'' is a single tire greater than 13 inches in cross section width designed to replace two tires in a dual fitment, but such term does not include any tire designed for steering.

With respect to the one-year period beginning on January 1, 2006, the IRS is required to report to the Congress on the amount of tax collected during such period for each class of taxable tire (e.g. biasply, super single, or other) and the number of tires in each such class on which tax is imposed during such period. The report must be submitted no later than July 1, 2007. The IRS is directed to revise the Form 720, Quarterly Federal Excise Tax Return, to collect the information necessary to prepare the report. The report is also to include total tire tax collections for an equivalent one-year period preceding the date of enactment of the American Jobs Creation Act of 2004.

Effective date.—The provision regarding the definition of a super single tire is effective as if included in section 869 of the American Jobs Creation Act of 2004. The study requirement is effective on the date of enactment.

14. Modify recapture of section 197 amortization (sec. 1363 of the conference agreement and sec. 1245 of the Code)

PRESENT LAW

Taxpayers are entitled to recover the cost of amortizable section 197 intangibles using the straight-line method of amortization over a uniform life of fifteen years. With certain exceptions, amortizable section 197 intangibles generally are purchased intangibles held by a taxpayer in the conduct of a business.

Gain on the sale of depreciable property must be recaptured as ordinary income to the extent of depreciation deductions previously claimed, and the recapture amount is computed separately for each item of property. Section 197 intangibles, because they are treated as property of a character subject to the allowance for depreciation, are subject to these recapture rules.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Under the conference agreement, if multiple section 197 intangibles are sold (or otherwise disposed of) in a single transaction or series of transactions, the seller must calculate recapture as if all of the section 197 intangibles were a single asset. Thus, any gain on the sale (or other disposition) of the intangibles is recaptured as ordinary income to the extent of ordinary depreciation deductions previously claimed on any of the section 197 intangibles.

The following example illustrates present law and the conference agreement:

Example.—In year 1, a taxpayer acquires two section 197 intangible assets for a total of $45. Asset A is assigned a cost basis of $15 and asset B is assigned a cost basis of $30. The allocation is irrelevant for amortization purposes, as the taxpayer will be entitled to a total of $3 per year ($45 divided by 15 years).

In year 6, the basis of A is $10 and the basis of B is $20. Taxpayer sells the assets for an aggregate sale price of $45, resulting in gain of $15. The character of this gain depends on the recapture amount, which depends in turn on the relative sales prices of the individual assets. Taxpayer has claimed $5 of amortization, and therefore has $5 of recapture potential, with respect to A. Taxpayer has claimed $10 of amortization, and therefore has $10 of recapture potential, with respect to B.

Under present law, if the sale proceeds are allocated $15 to A and $30 to B, the gain on assets A and B will be $5 and $10, respectively. These amounts match the recapture potential for each asset, so the full amount of the gain will be recaptured as ordinary income. However, if the sale proceeds instead are allocated $25 to A and $20 to B, the full $15 gain will be recognized with respect to A, and only $5 (full recapture potential with respect to A) will be recaptured as ordinary income. The remaining $10 of gain attributable to A will be treated as capital gain. No gain (and thus no recapture) will be recognized with respect to Asset B, and only $5 of the $15 recapture potential is recognized.

Under the conference agreement, the taxpayer calculates recapture as if assets A and B were a single asset. For purposes of the calculation, the proceeds are $45 and the gain is $15. Because a total of $15 of amortization has been claimed with respect to assets A and B, the full $15 gain is recaptured as ordinary income.

Effective date.—The conference agreement is effective for dispositions of property after the date of enactment.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the ''IRS Reform Act'') requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the ''Code'') and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have ''widespread applicability'' to individuals or small businesses.

HONORING OUR ARMED FORCES

STAFF SERGEANT JASON MONTEFERING

Mr. JOHNSON. Mr. President, I rise today to pay tribute to Army SSG Jason Montefering, who died on July

24, 2005, while serving in Operation Iraqi Freedom. He was a member of the 3rd Armored Cavalry Division, and was killed when an improvised explosive device, IED, detonated near his military vehicle in Baghdad.

A graduate of Parkston High School, Staff Sergeant Montefering was serving his second tour of duty in Iraq. He will be remembered as a hard worker who was always ready to get his hands dirty, according to his former employer. While in high school, Jason worked part time at Murtha Repair in Parkston. Owner John Murtha remarked that Jason ''would sweep up and then help the mechanics. All of the guys liked working with him. He was a real good kid.''

Staff Sergeant Montefering is the 11th servicemember from South Dakota killed during hostilities in Iraq. He served our country with honor and died a hero defending it. My thoughts and prayers are with his family during this difficult time, as well as all those who have loved ones serving overseas.

I commend Staff Sergeant Montefering's commitment to his family, his Nation, and his community. Without question, his dedication to helping others will serve as his greatest legacy, and our Nation is a far better place because of Staff Sergeant Montefering's contributions.

I join all South Dakotans in expressing my sympathies to the friends and family of Staff Sergeant Montefering. I know he will be deeply missed, but his service to our Nation will never be forgotten.

SERGEANT JASON T. PALMERTON

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of SGT Jason T. Palmerton of Auburn, NE, a Green Beret in the U.S. Army. Sergeant Palmerton was killed by small arms fire while on foot patrol on July 23 in Qal'eh-Yegaz, Afghanistan. He was 25 years old.

Sergeant Palmerton was born in Hamburg, IA, and grew up in Nebraska. He graduated from Auburn High School in 1998 and enlisted in the Army in 2002. Sergeant Palmerton was assigned to the 1st Battalion, 3rd Special Forces Group based in Fort Bragg, NC, and had been in Afghanistan for 6 weeks. He had learned Arabic and was working as a communications specialist. Sergeant Palmerton will be remembered as a loyal soldier who had a strong sense of duty, honor, and love of country. Thousands of brave Americans like Sergeant Palmerton are currently serving in Afghanistan.

Sergeant Palmerton is survived by his mother Denise Brown, of Auburn; father Steve Palmerton of Norman, OK; sisters, Elizabeth Schlange of Auburn, Amanda Palmerton of Omaha and Chelsea Palmerton of Norman; grandparents, Herman and Alice Moenning of Lincoln, and Thomas Palmerton of Brownville; and fiance Shelley Austin of North Carolina. Our thoughts and prayers are with them at this difficult time. America is proud of Sergeant Palmerton's heroic service and mourns his loss.

I ask my colleagues to join me and all Americans in honoring SGT Jason T. Palmerton.

STRIKING THE PRESIDENTIAL WAIVER AUTHORITY IN AMENDMENT NO. 1556

Mr. MCCAIN. Mr. President, on Monday I offered an amendment that would prohibit cruel, inhuman, or degrading treatment or punishment of persons under the custody or control of the U.S. Government. I was pleased that Senators WARNER, GRAHAM, and COLLINS joined as original cosponsors, and Senators CHAFEE and ALEXANDER have also joined as cosponsors.

After I offered the amendment, I agreed to modify it at the manager's request to include a Presidential waiver—section (b) of the pending amendment. It is now clear, however, that this would be inconsistent with the overall intent of my amendment, which is to ensure that there is full compliance with our treaty obligations, including with the prohibition against cruel, inhuman, and degrading treatment included in the Convention Against Torture, which was signed by President Reagan and ratified by the Senate.

For this reason, I have filed a second-degree amendment to amendment No. 1556 that would strike the waiver. When the Senate resumes consideration of the Defense authorization bill, I will either modify the pending amendment, seek action on the second-degree amendment, or simply file a new amendment without the waiver. In short, I will offer for consideration—and seek passage of—a statutory prohibition against cruel, inhuman, or degrading treatment or punishment, without a Presidential waiver.

SETTING THE RECORD STRAIGHT ON PAWS

Mr. SANTORUM. Mr. President, on May 26, 2005, I introduced with my colleague Senator DURBIN the Pet Animal Welfare Statute of 2005, or PAWS. PAWS amends the Animal Welfare Act to strengthen the Secretary of Agriculture's authority to deal with the problems of substandard animal dealers.

I want to make clear to our colleagues and the public that we believe the vast majority of animal dealers are conscientious persons who make every effort to treat their animals humanely and to comply with the law. But, unfortunately, there are some animal dealers who do not care properly for their animals and who seek to profit at the expense of the animals and the public. They exploit the weaknesses and loopholes in the current law to evade or ignore basic standards for the care and condition of animals. These substandard dealers give the entire pet industry a black eye, all the while preying upon the public. It is these unscrupulous animal dealers at which PAWS is targeted.

PAWS strengthens the Secretary of Agriculture's authority to deal with substandard animal dealers by making four important improvements to the Animal Welfare Act. First, it will bring under coverage of the Animal Welfare Act high volume dealers who are in every respect like those dealers currently regulated, but are evading regulation because they sell animals exclusively at retail. PAWS will continue to exempt real retail pet stores, and will add a new exemption for small dealers and hobby and show breeders. Second, PAWS will help the Secretary of Agriculture identify persons not complying with the law by requiring those who acquire animals for resale to keep records of the source from whom the animals are acquired and make these records available to the Secretary upon request. Third, PAWS will create an incentive for dealers to quickly correct serious problems by giving the Secretary authority to temporarily suspend dealers' licenses for up to 60 days if a violation is placing the health of an animal in imminent danger. Finally, PAWS will strengthen the authority of the Secretary to obtain injunctions to shut down dealers who fail to comply with the law.

The marketplace for animals has changed dramatically since the 1970s when the current animal dealer provisions of the act were written. At that time only retail pet stores and small hobby and show breeders sold pet animals, so regulating wholesale sellers and exempting persons who sold animals at retail and were regulated by the market made some sense. With the advent of the internet, mass national marketing channels, and mass importation of puppies for resale, there are a large number of unregulated dealers who are in every respect identical to the dealers regulated by the act, except that they evade regulation by selling exclusively at retail. By regulating these high volume retail sellers, we will assure that they meet the same standards for the humane care and treatment of animals that breeders and brokers selling at wholesale have been meeting for 30 years.

PAWS defines the term ''retail pet store'' so that only real retail pet stores are exempt, where customers can see the animals and the conditions where they are kept. PAWS also adds a specific exemption for small dealers and hobby and show breeders. Only persons who sell more than 25 dogs per year would be regulated. In addition, breeders who sell dogs and cats from fewer than 7 litters a year bred or raised on their own premises, or fewer than 25 dogs and cats per year bred or raised on their own premises, which ever is greater, would be exempt. For example, if an irish setter breeder has 6 litters that average 6 puppies each for a total of 36 puppies, they can sell them without being regulated. If a toy

breeder has 10 litters that average only 2 puppies each for a total of 20 puppies, they can sell them without being regulated. These breeders could also sell 25 or fewer other dogs a year not bred or raised on their own premises such as stud puppies or puppies from coownerships, without being regulated. I firmly believe that the sport and hobby of breeding and raising dogs and cats should not be a federally regulated activity. PAWS will, for the first time, put an explicit exemption into the Animal Welfare Act to protect small hobby and show breeders from regulation.

Some persons who sell dogs for hunting purposes have expressed a concern that PAWS will bring them under regulation. The current Animal Welfare Act already covers persons who sell hunting dogs, and has for almost 30 years. They are regulated on the same basis as those who sell dogs for pets. PAWS will continue to regulate sellers of hunting dogs on the same basis as those who sell dogs as pets. Only high volume sellers who exceed the exemptions set forth in PAWS will be subject to regulation.

Some rescue and shelter organizations have expressed concern that because they often charge an adoption fee to those who adopt the dogs they place, these organizations will fall within the definition of ''dealers'' in PAWS and be regulated. True rescue and shelter organizations who do not sell dogs or cats in commerce, for profit, will not be brought under regulation by PAWS, whether or not they are formally incorporated as not for profit organizations.

Some high volume dealers in cats and dogs who will be brought under coverage of the Animal Welfare Act by PAWS, but who are still small enough that they breed and raise dogs or cats in essentially a residential environment, have expressed concern that they will be forced to build kennels and catteries and will no longer be able to raise animals in a residential environment. There is nothing in PAWS, or in the current Animal Welfare Act, that precludes persons from breeding and raising animals in a residential setting, provided the animals are properly housed and cared for. In implementing PAWS, the Secretary of Agriculture will have to assure that the animal care regulations take into account breeders and dealers who conduct their operations in a residential setting.

I want to make clear that PAWS is a very different piece of legislation than the bills that Senator DURBIN and I have introduced in previous Congresses. PAWS does not require or justify creating any new animal care standards, like our previous legislation did. It focuses only on bringing under regulation high volume commercial dealers currently evading regulation and on strengthening the Secretary of Agriculture's ability to identify and bring into compliance high volume dealers who are not in compliance with existing law or, as a last resort, shut them down.

Senator DURBIN and I in the Senate, along with our colleagues Representatives GERLACH and FARR who have introduced PAWS in the House of Representatives, consulted with a broad array of animal interest and animal welfare groups in creating PAWS. We believe that the enactment of PAWS will be a major milestone in the history of animal protection in the United States. We are delighted that it has brought together animal interest groups and animal welfare groups that in the past have often been on opposite sides of animal legislation, including our own past bills. Having said that, no legislation is perfect when introduced. As chairman of the Senate Agriculture Committee's Subcommittee on Research, Nutrition and General Legislation, which has jurisdiction over PAWS, I intend to convene a hearing and mark-up of PAWS shortly after the August recess to make technical corrections, and to clarify some of the bill's language to better reflect our intentions as set forth in this statement.

PAWS is not intended to restrict breeding or impose a hardship on rescue and shelter organizations. PAWS specifically recognizes the importance of protecting small breeders and the noncommercial purebred dog and cat fancy from Federal regulation. My family and I purchased our beloved German shepherd dog Schatzie from a small breeder. We and Schatzie raised a litter of puppies in our own home last year, and fully understand the hard work and commitment that it requires. I also know that most commercial breeders are dedicated to their profession and to their animals. I believe that PAWS will protect small hobby and show breeders and the vast majority of compliant commercial breeders as well as the public from those breeders and brokers who evade or fail to comply with the law. And, most importantly, it will protect the animals themselves. I urge my colleagues and all those in the animal welfare community to join us in this effort.

DEPARTMENT OF VETERANS AFFAIRS 75TH ANNIVERSARY

Mr. AKAKA. Mr. President, I rise today with great joy to congratulate the Department of Veterans Affairs, VA, on its 75th anniversary. Through its tireless work on behalf of this Nation's veterans, VA has certainly lived up to the words of the great President Abraham Lincoln, ''To care for him who shall have borne the battle and his widow, and his orphan.'' During its first 75 years, VA has done much to benefit not only veterans and their families but also the nation as a whole.

On June 22, 1944, President Franklin Delano Roosevelt signed the Montgomery GI bill into public law. Since then, the GI bill has been updated and modernized several times. This far-reaching legislation has helped improve the lives of over 20 million veterans through educational programs, home loan guarantees, unemployment compensation, and other benefits. It is estimated that over the lifetime of the average veteran, the U.S. Treasury receives two to eight times the income tax from the average veteran than was spent on the veteran's GI bill benefits. The GI bill is undoubtedly one of the most important pieces of legislation in this Nation's great history.

VA has also established a legacy of first rate health care for our veterans. A recent study by the RAND Corporation found that VA outpaces private health care systems in delivering care to patients. RAND observed that VA patients were more likely to receive recommended health services than patients using a private provider. The study also concluded that VA patients consistently receive better care across the board, including screening, diagnosis, treatment and follow-up.

Additionally, VA's Medical and Prosthetics Research Program has led to substantial advances in prosthetics, traumatic injury, post traumatic stress disorder, as well as many other areas that have helped our veterans over the years. This research has also led to discoveries in medicine that effect both veterans and the general population, such as cancer, aging, mental illness, and heart disease. In fact, past VA research projects have resulted in the first successful kidney transplant performed in the U.S., as well as the development of the cardiac pacemaker, a vaccine for hepatitis, and the CAT and MRI scans.

Another function of VA is overseeing our National Cemetery System. VA has helped create and manage a network of Federal and State cemeteries that provides deceased veterans with a respectful and peaceful final resting place.

The far-reaching accomplishments that I briefly highlighted are just a few cornerstones of the Department's legacy. With the current military operations in Iraq and Afghanistan, we appreciate even more the quality work that VA does for our veterans. And the current operations should also be a reminder to VA and Congress of the burdens our veterans face because of their sacrifices to protect our freedoms and liberties.

I am extremely proud of the work VA has done, and I hope that through greater cooperation between Congress and the administration, we can expand upon VA's legacy and address the current needs of our veterans. I must also highlight the dedication of the staff that has worked at VA over the years. An agency as massive as VA would cease to function without quality leadership and staff. Many of VA's staff have a deep and passionate commitment to providing quality health care and benefits for our veterans.

Our Nation's veterans and servicemembers deserve nothing less than top quality health care and benefits. I am sure that Congress and VA can work together to fulfill this obligation. Once again, I congratulate VA on 75 years of service to our veterans.

HONORING THE LIFE OF ELVIN OREN CRAIG

Mr. CRAPO. Mr. President, I would like to honor the life of a special Idahoan who is also the father of my colleague from Idaho, Senator LARRY CRAIG. Elvin Oren Craig, who passed away last week, left many legacies and will be missed by many people. In Idaho, he served as a lifelong advocate for Idaho agriculture, and a leader in Washington County, Midvale and Weiser. He also was very active in his local VFW Post in Midvale, ID. At 87 years old, he had remained active despite a diagnosis of prostate cancer. In fact, he worked until only about 6 months ago when he decided it might be time to let up a little bit. Elvin Craig's legacy also lives on in my colleague and in Senator CRAIG's consistent and honorable service to Idahoans over his years in public office. I know that Elvin was proud of his son's service to Idaho and the country—first in the Idaho State Senate, then in the U.S. House of Representatives, and now in the U.S. Senate.

Elvin's family and friends know of his community service and his persistent commitment over many years to Idaho's farmers and ranchers and his own family. He worked hard while maintaining his sense of humor. His full life was an outstanding example of what it means to be an Idahoan. I am pleased to pay tribute to a remarkable man, Elvin Oren Craig, and to share my condolences to my friend, LARRY CRAIG, and his family upon the passing of a great man.

SECOND AMENDMENT PROTECTION ACT OF 2005

Mr. VITTER. Mr. President, I rise today to introduce a bill that would withhold United States contributions to the United Nations if the U.N. interferes with the second amendment rights guaranteed by our Constitution.

The U.N. has no business interfering with the second amendment rights guaranteed by our Constitution. That is why I am introducing legislation to safeguard our citizens against any potential infringement of their second amendment rights.

In July, 2001, the U.N. convened a conference, known as the ''Conference on the Illicit Trade of Small Arms and Light Weapons in All Its Aspects in July 2001.'' One outcome of the conference was a resolution entitled, ''The United Nations Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.'' This resolution calls for actions that could abridge the second amendment rights of individuals in the United States, including: (1) national registries and tracking lists of legal firearms; (2) the establishment of an international tracking certificate, which could be used to ensure U.N. monitoring of the export, import, transit, stocking, and storage of legal small arms and light weapons; and (3) worldwide record keeping for an indefinite amount of time on the manufacture, holding, and transfer of small arms and light weapons.

The U.N. also wishes to establish a system for tracking small arms and light weapons. How would they do this? It would be done by forcing legal, licensed gun manufacturer's to create identifiable marks for each nation. The gun manufacturer's lists would then be provided to international authorities on behalf of the U.N.

Who would maintain these intrusive lists? Would it be the World Customs Organization, which the U.N. has suggested as a possible vehicle? That organization counts Iran, Syria, China, and Cuba among its membership. Would all World Customs Organization members have access to such lists? In the event that those with access to such information abuse or misuse it, what would be the remedy? How would we prevent unauthorized persons, perhaps criminals and terrorists, from acquiring such information from rogue nations who have declared the United States an enemy?

Some at the U.N. have suggested that tracing certain financial transactions of a legal and law abiding gun industry could be a useful tool in tracking firearms. What would such tracing entail? Does the U.N. expect to receive private U.S. banking records of a legal and law abiding industry?

Furthermore, the U.N. has encouraged member States to integrate measures to control ammunition with regard to small arms, and some members have expressed a desire to tax international arms sales. The U.N. has no legal right or authority to collect a tax from American citizens to further any agenda, especially gun control measures.

The U.S. Constitution has guaranteed our citizens the right to keep and bear arms. I intend to help protect that right with this legislation. I urge my colleagues to support the Second Amendment Protection Act of 2005.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last year, an African-American transgender woman was brutally beaten, raped, and strangled in a San Francisco hotel. The murder is under investigation and anti-transgender bias has been looked into as a motive.

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

CONGRESSMAN JOHN LEWIS AND THE VOTING RIGHTS ACT

Mr. LEAHY. Mr. President, last month, the debate over the nomination of Judge William Pryor to the Fourth Circuit Court of Appeals included a discussion of Judge Pryor's call to repeal section 5 of the Voting Rights Act—the centerpiece of that landmark statute—because, as he asserted in congressional testimony, it ''is an affront to federalism and an expensive burden that has far outlived its usefulness.'' His testimony demonstrated that Judge Pryor is more concerned with preventing an ''affront'' to the States' dignity than with guaranteeing all citizens the right to cast an equal vote.

In the Republican defense of Judge Pryor, it was suggested that Congressman JOHN LEWIS, a stalwart leader of the civil rights movement, somehow agreed with Judge Pryor's opposition to section 5 of the Voting Rights Act because of a statement Congressman LEWIS had made about a specific redistricting plan.

Congressman LEWIS has made clear many times, most recently in a July 14 letter to me, his disagreement with the views of Judge Pryor and his strong support for the Voting Rights Act—and particularly section 5. Congressman LEWIS wrote:

> Section 5 of the Voting Rights Act must be renewed. There is a continued, proven need for the pre-clearance provisions of the Voting Rights Act, which ensure that local and state jurisdiction do not develop laws that intentionally or unintentionally discriminate against groups who may have little or no voice in the establishment of those laws.

His statements of support for one particular redistricting plan in no way diminish his commitment to the Voting Rights Act.

Congressman LEWIS believes, as do I, that the Voting Rights Act is our most important protection guaranteeing that no individuals or groups are without a voice in this democracy. As he so eloquently noted:

> The history of the right to vote in America is a history of conflict, of struggling for the right to vote. Many people died trying to protect that right. I was beaten and jailed because I stood up for it. For millions like me, the struggle for the right to vote is not mere history; it is experience. The experience of the last two presidential elections tells us that the struggle is not over and that the special provisions of the Voting Rights Act are still necessary.

I ask unanimous consent that Congressman LEWIS's letter be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. LEAHY. In contrast, Judge Pryor's statements about section 5 reflect a long-discredited view of the Voting Rights Act. Since the enactment of the statute in 1965, every Supreme Court case to address the question has rejected the claim that section 5 is an ''affront'' to our system of federalism. Whether under Earl Warren, Warren Burger, or William Rehnquist, the U.S. Supreme Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy—no a ''burden'' that has ''outlived its usefulness.''

Indeed, Congressman LEWIS sponsored a resolution, which is being considered on the floor of the House today, commemorating the passage of the Voting Rights Act 40 years ago this summer. The resolution recalls the struggle for the act's landmark protections—from the brutal suppression of marchers on the Edmund Pettus Bridge in Selma, AL, on ''Bloody Sunday'' in March 1965, to the passage of the bill by a bipartisan Congress months later—and reaffirms its importance. Forty years after President Johnson signed the Voting Rights Act into law, Congressman LEWIS and I remain committed to this essential piece of legislation.

EXHIBIT 1

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 14, 2005.

Senator PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: During the Senate debate on the nomination of Judge William Pryor to the 11th Circuit Court of Appeals, Senator Saxby Chambliss quoted a few words of my testimony in the case of the State of Georgia v. John Ashcroft, and implied that I agree with Judge Pryor's assessment of Section 5 of the Voting Rights Act. I take issue with Senator Chambliss's remarks and want to make clear that his reference to my remarks were taken out of context.

I regret that my colleague, the senior Senator from Georgia, would use my support of a Georgia redistricting plan to justify the confirmation of Justice William Pryor to the 11th Circuit Court of Appeals. I strongly disagree with the views of Judge Pryor and do not think he is fit to serve.

I further regret that Senator Chambliss would use my very general statements to suggest that I am not in favor of renewing Section 5 of the Voting Rights Act. Section 5 of the Voting Rights Act must be renewed. There is a continued, proven need for the pre-clearance provisions of the Voting Rights Act, which ensure that local and state jurisdictions do not develop laws that intentionally or unintentionally discriminate against groups who may have little or no voice in the establishment of those laws.

We have come a long way in the last two decades, and certainly have come a long way since the 1960's, however, voting obstacles and disparities still exist for far too many minorities. In Florida in 2000, voters were confused by their ballots, polling equipment broke down, and polls did not open as scheduled. In Ohio in 2004, many people stood in what appeared to be unmovable lines for eight and nine hours trying to exercise their right to vote. There were an inadequate number of voting machines and in some instances, bogus officials were sent to polling stations and were found disseminating misinformation and questioning the choices of voters.

As a result of these problems, many Americans were denied the right to vote. These truths continue to demonstrate the importance of the Voting Rights Act to prevent discrimination and to ensure that people are not denied the right to vote. The vote is the most powerful, nonviolent tool that our citizens have in a democratic society, and nothing but nothing should discourage, hamper or interfere with the right of every citizen to cast a vote for the person of their choice.

The history of the right to vote in America is a history of conflict, of struggling for the right to vote. Many people died trying to protect that right. I was beaten, and jailed because I stood up for it. For millions like me, the struggle for the right to vote is not mere history; it is experience. The experience of the last two presidential elections tells us that the struggle is not over and that the special provisions of the Voting Rights Act are still necessary. We should not take a step backward, when there is still much to be done to ensure every vote and every voter counts.

As we work toward reauthorizing the Voting Rights Act, we must move in a deliberative manner, conduct open and adequate hearings, and ensure that we create the appropriate legislative history and factual findings. I look forward to working with you to protect the voting rights of all Americans, by reauthorizing and strengthening the provisions of the Voting Rights Act.

Sincerely,

JOHN LEWIS,
Member of Congress.

AIR FORCE ACADEMY'S 50TH ANNIVERSARY AND NASA'S RETURN TO FLIGHT.

Mr. SALAZAR. Mr. President, I today observe two momentous occasions: the Space Shuttle's Return to Flight and the 50th anniversary of the U.S. Air Force Academy.

Yesterday, at 10:39 a.m. eastern daylight time, the Space Shuttle *Discovery* safely lifted off from its launch pad at Cape Canaveral, FL. It blasted into orbit carrying seven of our Nation's finest, on a mission to resupply the International Space Station, test the Shuttle, and resume America's manned exploration of the cosmos.

I want to thank NASA's Administrator, Michael Griffin, and the thousands of men and women who have worked tirelessly in the wake of the *Columbia* tragedy to upgrade the safety of our space mission. Their commitment and courage have helped turn our Nation's dreams to the heavens and stars once again.

Also this month, we celebrate the 50th anniversary of the entrance of the first class of cadets to the Air Force Academy.

It is fitting that NASA's return to flight occurs at a moment when we are reflecting on the Air Force Academy's first half century of service, because the Academy and NASA are two institutions that attract the best men and women in our country. Due to their shared focus on flight, the two institutions are forever linked. In fact, two of the astronauts guiding the *Discovery* in orbit overhead right now come from the Air Force Academy.

LTC Eileen Collins, a former professor in the Air Force Academy's Mathematics Department, is currently soaring 122 miles above us as the commander of the Shuttle's return to flight. Raised in public housing in upstate New York, Eileen Collins broke through every barrier laid before her to become the first woman to pilot a Shuttle. When she came to the Air Force Academy in 1986 she helped usher in a new era at the Academy, an era where women were allowed to compete and succeed on an equal playing field. We in Colorado are very proud that Lieutenant Colonel Collins' journey to space brought her to the Air Force Academy.

Sitting next to Lieutenant Colonel Collins today in the Space Shuttle is *Discovery's* pilot, James Kelly, Air Force Academy class of 1986.

James Kelly grew up in the small town of Burlington, IA, where the sounds of passing airplanes inspired dreams of spaceflight. The Air Force Academy gave James Kelly the tools, training, and opportunity to take to the skies. It gave him, and the thousands of other young men and women who have passed through its gates, a mission to serve our country and the greater good.

Astronauts Collins and Kelly represent the best of the Academy they represent the best of its students and the best of its faculty. They remind us that the Academy's proud mission continues to be of immeasurable value to our nation.

Yesterday's successful Space Shuttle launch reminds us that despite the challenges that still face the Academy, the institution has, for half a century, produced some of our finest leaders.

The 360 civilians who took the oath on July 12, 1955, to become the first Air Force Academy cadets built a legacy of leadership that is at the foundation of the institution's mission. Three generations of young people have passed through the Academy and have learned to lead our nation in times of war and peace.

They live by the Academy's core values, ''integrity first, service beyond self, and excellence in all we do.'' They inspire us all.

They inspire us because they are American pioneers like Eileen Collins, first in her field.

They inspire us because they are represented by the cadet who told me he chose the Academy because, quote, ''the country needs me—our freedoms need my protection.''

And the Academy's cadets inspire us because they are leading our Return to Flight, lifting our thoughts from tragedy to the triumphant possibilities of space exploration.

I congratulate the Air Force Academy, its cadets, staff, and graduates for 50 years of excellence.

And along with millions of Americans, I also wish our astronauts a safe voyage and a speedy return.

Our prayers are with you.

THE HOWRIGAN FAMILY OF FAIRFIELD, VERMONT

Mr. LEAHY. Mr. President, I rise today to acknowledge the Howrigan family of Fairfield, VT, who recently celebrated their annual family reunion.

The Howrigan family is a bedrock of Franklin County and Vermont agriculture, and has done much to carry on our State's agricultural stewardship tradition.

I have known many members of the Howrigan family for years and have come to appreciate the sound counsel on dairy issues and other aspects of farm policy.

Mr. President, I thank the Howrigan family for their service to Vermont agriculture and their communities, for they represent the finest tradition of our rural State.

I ask unanimous consent that a July 24, 2005, Burlington Free Press article featuring and honoring this wonderful Vermont family be printed in the RECORD.

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

[From the Burlington Free Press, July 24, 2005]

HOWRIGANS: A DYNASTY OF DAIRYING

(By Candace Page)

FAIRFIELD.—When Harold Howrigan's four grandsons crammed into the back seat of their aunt's pickup truck for a road trip last week, Tim Howrigan, 12, couldn't wait to tell the others what he'd heard about a breakthrough in mastitis research.

''The cows that get the new treatment, their calves produce more enzymes'' to prevent the udder infection in dairy cows, he told them. He explained to his 10- and 11-year-old cousins how it's better to keep cows healthy than to have to cure them after they've become sick.

In the Howrigan clan, you are never too young to learn the family business.

''It's in the blood,'' says W. Robert Howrigan, 86.

Howrigans have been milking cows in Fairfield since their arrival from Ireland's County Tipperary in 1849. One Howrigan, William, and his wife, Margaret, reared 10 children on a 35-cow hill farm in the Depression days. Today, 32 of their children, grandchildren and great-grandchildren work farms in Franklin County—a dairy dynasty unique in Vermont.

The descendants of William and Margaret milk more than 3,000 cows and produce maple syrup from nearly 40,000 taps; their fields, pastures and woods cover 10,000 acres in Fairfield and neighboring towns.

More farms—38 of them—ship milk from Fairfield than from any other Vermont town, in part because of the community's high Howrigan count. The family has provided two of Vermont's most influential voices in state and national dairy policy: William's sons, the late state Sen. Francis Howrigan and Harold, 81, a longtime leader of the St. Albans Co-operative Creamery.

Howrigans have graduated from Harvard; become nurses, doctors, teachers and lawyers; left Fairfield or Vermont for good. But an extraordinary number of the men, and some of the women, have chosen a farm life like their parents'.

They constitute a one-clan countertrend to Vermont's annual loss of family farms in the face of low milk prices, the flight of young people and the attraction of less back-breaking work.

''Saddam Hussein couldn't drive these people off their farms,'' Vermont Agriculture Secretary Steve Kerr says, ''They love farming. You can see that in their faces. And it's not just that they love what they do; they are making money at it.''

The sprawling but tight-knit family network has proven fertile ground for growing both success and love of the farming life. Dozens of pairs of Howrigan hands will materialize to help build an uncle's barn, move a cousin's herd or teach the finer points of farming to a sister's child.

Kerr could not think of another Vermont farm clan as big and long-lasting as the Howrigans. ''I don't see why what they've got isn't sustainable forever and ever,'' he said.

Twelve-year-old Tim Howrigan, for one, knows just what he'll do when he grows up: ''I'll be a cow farmer,'' he said.

A FARM EDUCATION

Margaret McCarthy Howrigan bore a child every 18 to 24 months between 1915 and 1933. She made sure 10 children were fed, clothed and washed in a house not reached by electric lines until 1939.

A teacher before her marriage to William, she put as high a value on education as her husband put on improving his farmland and tiny herd. Margaret's children would go to high school. Her girls, all five of them, would go to college if they wanted and every one of them did.

William's boys were a different case. Yes, they were needed as workers on the farm, but in the Howigran family, farming meant more than the endless repetition of milking cows and cutting hay. A farm was for problem-solving today and improving for tomorrow.

As children, the Howrigans helped their father transplant lines of maples along Howrigan Road, build drainage on the roads in their sugarbush to prevent erosion, and turn the piles of stone hauled from their fields into the foundation of an all-weather road.

Decades later, Francis, the oldest boy, would put this lesson into words his children still repeat: ''Live as though you're going to die tomorrow, farm as though you're going to live forever.''

He and his brothers found challenges for the brain and plenty of stimulation for their entrepreneurial instincts right on the farm. They grew up in a narrow, hill-edged valley but didn't see the farm as confining or constraining.

At 17 or 18, Harold built what he thinks was the first mechanical gutter cleaner in Vermont, on assemblage of chains and pulleys and a 5-horsepower motor to haul manure out of the barn.

''I just got tired of shoveling,'' he said last week.

In his teens, Francis acquired a drag saw to cut firewood for neighbors. He bought a truck and began hauling milk and hay for other farmers. In his 20s, he rented a nearby place ''on halves'' from a neighboring farmer, paying half the expenses and taxes, keeping half the income. By 32, he owned his first farm. Ultimately, he would accumulate 10 farms and more than 4,000 acres.

When Robert, Francis' younger brother, couldn't persuade his father to buy the farm next-door, he borrowed the money to buy it himself. He, too, would acquire additional farms—five in all—to pass on to his sons.

Even Tom, who did go to college in his 30s and became a surgeon, continues to live in the house where he was born. At 84, he still spends many of his days cutting brush and improving the family woodlot. ''I consider myself a longtime surgeon but a lifetime farmer,'' he said.

Some Howrigan sons still prefer to get their education on the farm. The family tells the story of Michael Howrigan, Francis' grandson, who enrolled in college after high school.

''He called home every night. He wasn't homesick. He just couldn't stand not knowing what was happening on the farm,'' said his father, also named Michael. The younger Michael soon quit school and went into partnership with his father in the family business.

There's no farming without family among the Howrigans. William's children started at 5 or 6, hauling wood for the stove, feeding calves, scraping the barn, picking bugs off potato plants that yielded 300 bushels a year in the cold valley.

A big family also means constant companions—siblings to share chores, play baseball in the pasture or climb the maples on the hill. Most Howrigans grow up sociable, and the pleasures of sociability help make farming attractive.

''It's pretty magical. I have cousins and siblings that are my best friends,'' said Kate Howrigan Baldwin of Burlington, one of 12 children of Francis Howrigan. ''There's an allegiance that is unspoken. You know you are going to help one another and be there for one another. It's not a mandate—it's what you want to do.''

Family is the first thing Brendan Schreindorfer mentions when he is explaining how a village boy ended up buying his own milking herd at the age of 24. His mother is a Howrigan—William was his great-grandfather—but his parents did not farm.

Instead, Brendan spent his youth tagging along behind his grandfather, Robert, and his uncles and cousins on their big farm north of Fairfield Center.

He was determined to become a dairy farmer since he was a child, he said.

''I think it was the fact that everyone was always working together to get something done. People pull together and it pulls you along. It's a family thing, and it never leaves your system once it's there,'' he said.

Five years ago, his parents co-signed a note to help him buy his herd. This winter, he borrowed money on his own to purchase a 625-acre farm in Sheldon. (He'd built up equity, but the Howrigan pedigree might have helped him get the loan, he said.)

His new place was run down—his cousins helped him with repairs through the winter. He needed to move his herd this spring—a small squadron of Howrigans showed up with trucks and trailers to help.

Howrigans help one another bring in hay, harvest corn, fix equipment and build barns. Patrick Howrigan, 54, of Sheldon, raised the rafters of his 200-stall barn in a day, thanks to volunteers led by his brothers and cousins.

''A lot of neighbors helped, but family was the driving force,'' he said.

LOVE OF THE LAND

Harold Howrigan's air-conditioned pickup truck bounced down a dirt track through one of his fields last week, between rows of corn taller than the cab. He nodded toward a nearby woods. The landowner, he said, had subdivided the land and put in five or six houses.

There was the slightest hint of disappointment or disapproval in his tone. Since he bought his first farm in 1968, he has acquired more than 1,000 acres, a rolling green landscape of maple woods and productive fields with million-dollar views.

''I've never sold an inch of land. I just don't want to do that,'' he said.

If the Howrigan clan has a leader and role model, Harold, at 81, fills the bill. His square face is topped by a puff of white hair, his ruddy complexion crinkled by the weather. It's a face that would look equally at home in a Tipperary pub, a testament to his purely Irish ancestry.

Like many of the Howrigan men, he seems gruff and a bit standoffish at first meeting. Howrigans have the ''quiet gene,'' says his niece Kate Baldwin.

Over the kitchen table in the farmhouse he shares with his wife, Anne, or on a tour of the land they farm with their three sons, he expands. The gruffness melts into stories of childhood on the farm. He shows a visitor field after hillside field, not saying much, apparently for the pure pleasure of looking at the land and the results of a lifetime's work.

Land was ''a treasure,'' he said, to the Irish farmers who immigrated to Fairfield from a country where land ownership was all but impossible for them. That fierce allegiance to one's own acres also runs in the Howrigan line.

Even in the hardscrabble days of the Depression, his father treated the land well—planting trees, combing stones from the rocky fields, preventing erosion. ''He never cut a live maple,'' he said.

Harold and his sons use the latest technology in their sugarhouse, but they collect sap the way Harold's father did, with hanging buckets and sled-top tanks pulled by five teams of horses.

Horses don't require new roads to be cut and are easier on the land. ''There's no substitute for horses gathering sap. They're nicer to work with, they come to you and stop. A tractor won't do that,'' he said.

With the other farmers of Fairfield, the Howrigans have created a town perhaps more pastoral than any other in Vermont. From many of Howrigan's hillsides, the view of corn and hayfields and grazing heifers seems to have changed not at all in a hundred years.

But does he value his land for its worth in bushels of corn alone? Or does he find it beautiful, as well?

''I think it is beautiful, and I work to keep it that way,'' he said, looking back toward the home farm. ''I treasure it for its value as working land and for its beauty, too.''

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. H. WESLEY TOWERS, JR.

• Mr. CARPER. Mr. President, today I wish to recognize Dr. H. Wesley Towers Jr. upon his retirement as State Veterinarian after 37 years of dedicated service. He is a man with a kind heart, diverse interests and great abilities. Wesley embodies the best of Delaware.

''Doc,'' as he was fondly known, was born on August 15, 1942 in Wilmington, DE. He spent much of his youth with his grandfather, the farm manager on E.E. du Pont's Greenville, DE, estate, ''Dogwood.'' He loved the country, the farm work, and the animals. When the local veterinarian came to tend the livestock, Doc knew what he wanted to be.

Doc graduated high school in 1960 from P.S. Dupont, and went on to study animal and poultry science at the University of Delaware, graduating with honors and distinction in 1964. He spent the next four years at the University of Pennsylvania veterinary school, graduating in 1968, and went on to become Delaware's vet almost by chance.

After veterinary school, Doc took a job in Kent County as an apprentice to the State veterinarian. At the same time, Harrington and Georgetown racetracks offered him a temporary night job overseeing racehorses. Several weeks later, the track vet had a stroke, leaving him unable to resume race work. The temporary job became a full-time, second job for Doc. The following year in 1969, the State vet retired and Doc was appointed in his place.

Doc has the Nation's fourth largest poultry industry to protect, a rabies epidemic to police, and race courses to regulate. Containing and excluding contagious and infectious animal and poultry diseases is his priority, with public enemy No. 1 being avian flu, a virulent respiratory ailment that devastates poultry. Doc and his team work hard at their jobs to ensure that any outbreaks of avian flu are contained.

During his time as State vet, Doc has received the Department of Agriculture's Employee of the Year award, the University of Delaware's Worrilow Award for service to agriculture and Delaware's coveted Award for Excellence and Commitment to State Service. At the University of Delaware, Doc is a part of the Agricultural Alumni Association, the Alumni Association board, the Career Planning and Placement advisory committee, the phone-athons, and the ''Alumni in the Classroom'' program.

Doc spends much of his free time championing causes in which he believes. He testifies in SPCA cases, including revelations over local ''puppy mills.'' He is involved with the racing commissions, the State Fair Board and the Tri-State Bird Rescue group. In addition, Doc enjoys gardening, traveling, hunting, cooking and taking trips to the beach.

Doc is married to his college sweetheart, Sarah. The two met in a chemistry laboratory at the University of Delaware, and were married on June 25, 1966. They have two children, Laura and David, and four grandchildren, Mark, Annie, Matthew and Davey. Sarah describes her husband over almost forty years as a patient, kind and loving man who loves to be around people. He is fortunate to wake up every morning and go to a job that he loves.

After retirement, Doc plans to spend his time pursuing his hobbies, volunteering, and most importantly, continuing to raise his beloved Delaware blue hens. I rise today to honor Doc and to thank him for the friendship that we share. Through his tireless efforts, Doc has made a profound difference in the lives of thousands and enhanced the quality of life for an entire State. Upon his retirement, he will leave behind a legacy of commitment to public service for both his children and grandchildren and for the generations that will follow. I congratulate him on a truly remarkable and distinguished career. I wish him and his family only the very best in all that lies ahead for each of them.•

THE VALUE OF RURAL HEALTH CARE

• Mr. DORGAN. Mr. President, I will take a few minutes to pay tribute to a group of people whose tireless, dedicated service to those in need too often goes unnoticed—North Dakota's and our Nation's health care providers. As I travel around North Dakota, I frequently stop in to visit hospitals, clinics, and nursing homes. I am continually impressed by the quality, compassionate care that I see being provided by doctors, nurses, allied health professionals, and other medical staff, as well as by the administrative and support staff.

Rural America depends on its small town hospitals, its tertiary hospitals, on physicians and nurses, nursing homes, those who provide emergency ambulance services, and many others to provide a seamless system of care. There are a range of challenges facing rural health systems, from difficulty recruiting and retaining staff and inadequate reimbursement to rising costs and reams of paperwork to fill out. Despite these challenges, our health care providers do an admirable job remaining focused on providing quality care.

Our hospitals, nursing homes, and clinics are also important engines driving North Dakota's economy. Health services account for 8 percent of North Dakota's gross State product. And health care providers are often among the largest employers in a rural community, representing about 15 percent of direct and secondary employment.

In short, a strong health care system is an important part of our rural infrastructure, and the people who make up that system have my deep respect and thanks. Over the years, we have determined that rural electric service, rural telephone service, an interstate highway system through rural areas, and rural mail delivery, to name a few services, make us a better, more unified nation. The same is true of rural health care, and I will continue fighting for policies that reflect rural health care as a strong national priority.•

COMMENDING HOME DEPOT

• Mr. ISAKSON. Mr. President, today I pay tribute to the Home Depot for the support, employment, and assistance it provides to the men and women of our active duty Armed Forces, Reserves and National Guard and their families.

Beginning with its founding by Bernie Marcus and Arthur Blank and continuing under CEO and President Bob Nardelli, the Home Depot has always been a great corporate citizen. Nothing

exemplifies the company's commitment more than its support of our veterans and their families.

In the years 2003 and 2004 combined the Home Depot hired 25,000 veterans, and was recognized by G. I. Jobs magazine as America's No. 1 military-friendly employer. In 2004, the company launched Operation Career Front with the departments of Defense, Labor, and Veterans Affairs to provide career opportunities to military personnel and their spouses.

Since the tragic terrorist attacks of September 11, 2001, our Nation has depended on our military Reserves and National Guard in waging the war on terror, and no American company has been a bigger supporter of the Reserves and Guard than the Home Depot. In March of 2003 the company enhanced its military leave policy to provide active duty associates with full pay and an extension of their health benefits.

In April 2003 the Home Depot launched Project Homefront, donating more than 1 million hours of volunteer service and $1 million to help repair the homes of deployed military families. In September of 2004 the National Committee for Employer Support of the Guard and Reserves presented the Home Depot with its Freedom Award.

In June of this year the company established a program for returning veterans to provide associates with the critical resources needed for a smooth transition back to work.

For all these reasons and so many more, Home Depot was recognized this year by the Marine Corps Law Enforcement Foundation and the Partnership for Public Service with awards for leadership and distinguished service to America's veterans.

I am very proud to recognize CEO Bob Nardelli and the men and women of Home Depot for their leadership in employing and assisting America's active duty and veteran military personnel and their families.●

TRIBUTE TO JOHN WALTON

● Mrs. LINCOLN. Mr. President, today I wish to pay tribute to Mr. John Walton, 58, an Arkansas native and Wal-Mart heir who on June 28, was killed when his aircraft crashed on landing outside of Jackson, WY.

John lived a varied and interesting life. John was born on October 8, 1946, the second oldest son of Sam and Helen Walton of Bentonville, AR. He attended high school in Bentonville and began his undergraduate studies at the College of Wooster in Wooster, OH.

As a young college student during the Vietnam era, John enlisted in the Army and volunteered for combat as a medic with the Green Berets. During his time in Vietnam, he was often in firefights with the enemy and performed heroically as a part of his special operations unit. He was awarded the Silver Star for saving the lives of several members of his unit while under enemy fire.

After returning from Vietnam, John pursued a variety of interests, including working as a crop duster in the 1970s and building boats in the 1980s. He had a passion for all things mechanical and was an avid motorcyclist and pilot.

More recently, John took a great interest in education. He took $67 million of Walton Foundation money and founded the Children's Scholarship Fund. Scholarships from the fund have benefitted 67,000 children. He, along with his family, also made the largest contribution to a public college when they gave a $300 million gift to the University of Arkansas.

Our condolences and prayers go out to John's wife Christy of Jackson Hole, WY; to his son, Luke, and to his mother Helen; as well as to his siblings Rob, Jim, and Alice.

John's life exhibited his commitment to his country in so many ways. He defended his country on the battlefields of Vietnam and he invested in his country by funding a better education for thousands of children. I am sure the entire Senate will join with me to honor the life of John Walton.●

HONORING THE RETIREMENT OF GARY L. NEALE

● Mr. LUGAR. Mr. President, today I call to the attention of my colleagues the retirement of a pillar of the energy industry for many years in my home State of Indiana, Mr. Gary L. Neale. On June 30, 2005, Mr. Neale stepped down from his post of chief executive officer of NiSource Inc.

Prior to bringing his talents and dedicated work ethic to Northwest Indiana, Mr. Neale earned both his B.A. and M.B.A. from the University of Washington. In addition to this impressive education, he also took time to broaden his experiences by serving his country as an officer in the U.S. Navy. Mr. Neale remains not only an astute student but also a valued teacher contributing articles to Business Week, Harvard Business Review, and Public Utilities Fortnightly.

Supplementing his impressive academic and military careers, Mr. Neale became a consistent force in the energy industry in Indiana and nationally. Before joining NiSource in 1989, Mr. Neale was chairman, president and executive officer of Planmetrics Inc., an energy industry management consulting firm, for 17 years. Additionally, he held management positions at Wells Fargo Bank and Kaiser Industries.

Mr. Neale has displayed tremendous leadership in multiple capacities. He has served as chairman of both the American Gas Association and the North American Electric Reliability Council. He was appointed to the U.S. Department of Energy's National Petroleum Council and also the Department's Electricity Advisory Board. Mr. Neale graciously accepted the appointment of the Governor of Indiana to serve on our State's Economic Development Council, Energy Policy Forum and Clean Air Advisory Committee. He headed the Northwest Indiana Americans with Disabilities Act Advisory Board and the Lake Area United Way Campaign. Mr. Neale also sits on the boards of directors of Associated Electric & Gas Insurance Services Limited, AEGIS, Modine Manufacturing Company, Chicago Bridge and Iron Company, and Valparaiso University.

As he begins this new chapter in his life, I simply wanted to highlight a few of Mr. Neale's extensive accomplishments. I am pleased to have this opportunity to join his wife Sandy, two children, five grandchildren, and many friends and colleagues in congratulating him on a fine career.●

TRIBUTE TO JACKSON T. STEPHENS

● Mr. PRYOR. Mr. President, today I wish to pay tribute to a legendary Arkansan. Jackson ''Jack'' Stephens was a businessman, financier, and philanthropist whose work has touched the lives of countless individuals in and outside of Arkansas, and his contributions to the state will live on for generations to come.

Described by Scott Ford, CEO of Alltel Corporation, as ''the most brilliant businessperson that the state has ever produced,'' Jack Stephens has many accomplishments and accolades to his credit. Jack grew up on a farm in Grant County, AR. He attended the U.S. Naval Academy, and soon thereafter he joined his brother Witt's investment firm, which became the financial vehicle for his success over the years. Jack's good business instincts and fabled work ethic led Stephens, Inc. to the forefront of Arkansas business. The financial clout that the Stephens brothers were able to amass allowed Jack to play an essential role in the development of some of Arkansas' most successful businesses, including Wal-Mart, Tyson Foods, and Alltel Corporation. The Stephens name is virtually inseparable from economic development in Arkansas over the last half century, and rightfully so.

Jack Stephens was also a philanthropist who truly believed in the values of charity and community service. His love for the people of Arkansas led him to invest not only in for-profit ventures to contribute to our State's economic well-being but also in many nonprofit causes for the benefit of the people of Arkansas. He helped build the distinguished Jackson T. Stephens Spine and Neurosciences Institute at the University of Arkansas for Medical Sciences. Jack's support of the arts, health and education also made a notable difference in lives of so many Arkansans.

Perhaps one of the best known causes that Jack promoted was related to one of his lifetime passions: golf. In 1991 Jack was chosen to be chairman of the Augusta National Golf Club, home of the Masters tournament, where he served until 1997. It is here that Jack

developed the idea of extending his favorite pastime to underprivileged youths. Thanks to his generous support, the First Tee program, with locations in Little Rock and Fort Smith, promotes, character development and life-enhancing values through the game of golf.

Jack Stephens' giving spirit will live on in the many institutions he has supported over the years, and his legacy will continue to influence the State of Arkansas for a long time to come. I join all Arkansans in giving thanks for the life of a pioneer businessman and an eternal friend of his fellowman.●

THE 90TH ANNIVERSARY OF THE LINCOLN HIGHWAY

● Mr. SARBANES. Mr. President, I am pleased to commemorate the 90th anniversary of the Lincoln Highway, which was officially routed through Washington, DC, on July 27, 1915, making it a true national highway. The construction of the highway was not only an important milestone in our Nation's history, but it has also served as a significant link in the development of Maryland's highway system.

The highway was first conceived in 1912, when most roads were little more than deeply rutted wagon trails. But with the rise of the automobile, the need for a transcontinental road had become increasingly apparent and ambitious plans were laid for this enormous undertaking.

The original proposed route for the highway ran from New York to California, but did not pass through Maryland or the Nation's Capital. COL Robert Harper, who at the time was President of the DC Chamber of Commerce and chairman of the Lincoln Highway Feeder Committee, lead a campaign to have the route altered to pass by the Lincoln Memorial. He approached Maryland Senator Blair Lee, whose seat I am proud to occupy, asking for help in the rerouting of the thoroughfare. Senator Lee wrote to President Woodrow Wilson and arranged a meeting between the President and Colonel Harper. That meeting led President Wilson to lobby on behalf of the proposed change in the route.

Through the efforts of President Wilson, Senator Lee, and Colonel Harper, the President of the Lincoln Highway Association was convinced to change the course of the highway so that it could pass through the Nation's Capital. This change brought additional visitors to both the State of Maryland and Washington, DC. In addition, the change preserved the spirit of President Abraham Lincoln and united the west and east coasts of the United States of America.

I am pleased to commemorate the 90th anniversary of the Lincoln Highway a ''Road of Character'' and a ''Perpetual Memorial'' to President Lincoln which both commemorated a great leader and paved the way for the future of transportation in America.●

TRIBUTE IN HONOR OF MR. DARYL E. HARMS

● Mr. SHELBY. Mr. President, today I wish to pay tribute to a great entrepreneur, Mr. Daryl E. Harms. Daryl, who passed away on July 9, 2005, led a life of great purpose, from his childhood days in Illinois to his time as a businessman in Birmingham, AL. As the son of a farmer, Daryl learned the values of hard work, dedication and commitment, and he utilized these qualities throughout his life to dream big, conquer challenging tasks, and carry out innovative ideas.

He began his distinguished career, along with his business partner Terry W. Johnson, as an industry pioneer in cable television, cellular communication and home security in the 1980s and 1990s. At the time of his death, he was the chief executive officer of Birmingham-based Masada Resource Group. This most recent business venture developed, patented and applied new technologies to convert solid wastes to renewable biofuels.

Daryl was featured as the Door-to-Door Billionaire in Fortune Small Business magazine for his keen business sense and ability to transform a risky venture into success. His fearlessness in business was recognized by all who knew him.

While Daryl was focused on his business ventures, he was deeply committed to his community as well. He served at various times on the boards of the Alabama Republican Party, the American Cancer Society, Magic Moments, and Prescott House. He had a generous spirit and was determined to help others not only in his community but throughout the State of Alabama.

I should also say that Daryl distinguished himself in yet another way. He was a devoted family man who cherished his wife and children. He is survived by his wife Clarissa Busby Harms of Birmingham; his daughters Hannah Katherine Harms and Emily Elizabeth Harms of Birmingham; his father Walter Edward Harms of Quincy, IL; and his brothers, Don Harms of Ursa, IL and Ken Harms of Sutter, IL. He was preceded in death by his mother Pauline Eshom Harms of Quincy, IL.

I ask my colleagues to join me in paying special tribute to Mr. Daryl E. Harms. Daryl's entrepreneurial spirit and innovative mind distinguishes him as one of American's great businessmen. He will be greatly missed by all who knew him.●

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

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

MESSAGES FROM THE HOUSE

At 3:17 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 22. An act to reform the postal laws of the United States.

H.R. 525. An act to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

H.R. 2894. An act to designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''.

H.R. 2977. An act to designate the facility of the United States Postal Service located at 306 2nd Avenue in Brockway, Montana, as the ''Paul Kasten Post Office Building''.

H.R. 3200. An act to amend title 38, United States Code, to enhance the Servicemembers' Group Life Insurance program, and for other purposes.

H.R. 3339. An act to designate the facility of the United States Postal Service located at 2061 South Park Avenue in Buffalo, New York, as the ''James T. Molloy Post Office Building''.

H.R. 3423. An act to amend the Federal Food, Drug, and Cosmetic Act with respect to medical device user fees.

The message also announced that the House has passed the following bills, without amendment:

S. 45. An act to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes.

S. 544. An act to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety.

S. 1395. An act to amend the Controlled Substances Import and Export Act to provide authority for the Attorney General to authorize the export of controlled substances from the United States to another country for subsequent export from that country to a second country, if certain conditions and safeguards are satisfied.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

H.R. 38. An act to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System.

H.R. 481. An act to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

H.R. 541. An act to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries.

H.R. 794. An act to correct the south boundary of the Colorado River Indian Reservation in Arizona, and for other purposes.

H.R. 1046. An act to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.

At 6:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 544. An act to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 525. An act to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

H.R. 2894. An act to designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2977. An act to designate the facility of the United States Postal Service located at 306 2nd Avenue in Brockway, Montana, as the ''Paul Kasten Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3200. An act to amend title 38, United States Code, to enhance the Servicemembers' Group Life Insurance program, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 3339. An act to designate the facility of the United States Postal Service located at 2061 South Park Avenue in Buffalo, New York, as the ''James T. Molloy Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 1797. An act to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 22. An act to reform the postal laws of the United States.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3221. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2,4–D; Pesticide Tolerance'' (FRL No. 7726–8) received July 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3222. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Lignosulfonates; Exemptions from the Requirement of a Tolerance'' (FRL No. 7720–3) received July 25 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3223. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pinoxaden; Pesticide Tolerance'' (FRL No. 7725–5) received July 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3224. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Propiconazole; Pesticide Tolerances for Emergency Exemptions'' (FRL No. 7727–1) received July 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3225. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pymetrozine; Pesticide Tolerance'' (FRL No. 7724–5) received July 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3226. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Spiromesifen; Pesticide Tolerance; Technical Correction'' (FRL No. 7727–7) received July 25, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3227. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Indiana'' (FRL No. 7930–9) received July 25, 2005; to the Committee on Environment and Public Works.

EC–3228. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report (9 subjects on 1 disc beginning with ''COBRA Runs for Oceana-Cannon-Moody-Seymour Johnson'') relative to the Defense Base Closure and Realignment Act of 1990, as amended; to the Committee on Armed Services.

EC–3229. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report (4 subjects on 1 disc beginning with ''Inquiry Response Regarding C–130 Squadron Size'') relative to the Defense Base Closure and Realignment Act of 1990, as amended; to the Committee on Armed Services.

EC–3230. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report (4 subjects on 1 disc beginning with ''Inquiry Response Regarding NAS Brunswick'') relative to the Defense Base Closure and Realignment Act of 1990, as amended; to the Committee on Armed Services.

EC–3231. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the Semiannual Report of the Inspector General of NASA for the period ending March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–3232. A communication from the Deputy Director for Government Relations and Special Projects, Office of Government Ethics, transmitting, a proposal ''To amend the Ethics in Government Act of 1978 to reauthorize the Office of Government Ethics'' received on July 25, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–3233. A communication from the Secretary of Labor and the Secretary of Housing and Urban Development, transmitting, the report of a draft bill entitled ''Youthbuild Transfer Act of 2005'' received on July 25, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–3234. A communication from the Assistant Secretary, Division of Investment Management, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Rulemaking for EDGAR System'' (RIN3235–AH79) received on July 25, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–3235. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the Interim Final Regulation for Mental Health Parity'' (RIN0938–AN22) received on July 25, 2005; to the Committee on Finance.

EC–3236. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 457(b) Plans and Federal Credit Unions'' (Notice 2005–58) received on July 25, 2005; to the Committee on Finance.

EC–3237. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX'' (RIN1625–AA87) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3238. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Anchorage Grounds and Safety Zone; Delaware River'' (RIN1625–AA00) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3239. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone; Cleveland Harbor, Cleveland, Ohio, Change of Location'' (RIN1625–AA87) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3240. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area; Chicago Sanitary and Ship Canal, Romeoville, IL'' (RIN1625–AA11) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3241. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special

Local Regulations (including 3 regulations)'' (RIN1625–AA08) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3242. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones (including 3 regulations)'' ((RIN1625–AA00)(RIN1625–AA87)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3243. A communication from the Trial Attorney, Federal Railroad Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Locomotive Event Recorders'' (RIN2130–AB34) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3244. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Area Navigation Routes; AK'' ((RIN2120–AA66)(2005–0150)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3245. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Area Navigation Routes; AK'' ((RIN2120–AA66)(2005–0151)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3246. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Area Navigation Routes; AK'' ((RIN2120–AA66)(2005–0152)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3247. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E2 Airspace; Bar Harbor, ME'' ((RIN2120–AA66)(2005–0148)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3248. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Valentine, NE'' ((RIN2120–AA66)(2005–0163)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3249. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Surface Area Airspace, South Lake Tahoe CA'' ((RIN2120–AA66)(2005–0137)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3250. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Federal Airways V–2, V–257, and, V–343; MT'' ((RIN2120–AA66)(2005–0138)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3251. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Jet Route 94'' ((RIN2120–AA66)(2005–0154)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3252. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (67)'' ((RIN2120–AA65)(2005–0019)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3253. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification and Revocation of Federal Airways; AK'' ((RIN2120–AA66)(2005–0161)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3254. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Parsons, KS'' ((RIN2120–AA66)(2005–0162)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3255. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Columbus, NE'' ((RIN2120–AA66)(2005–0141)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3256. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Muskegon, MI'' ((RIN2120–AA66)(2005–0139)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3257. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; McCook, NE'' ((RIN2120–AA66)(2005–0140)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3258. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mountain Grove, MO'' ((RIN2120–AA66)(2005–0159)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3259. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Neosho, MO'' ((RIN2120–AA66)(2005–0156)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3260. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Macon, MO'' ((RIN2120–AA66)(2005–0158)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3261. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Emmonak, AK'' ((RIN2120–AA66)(2005–0145)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3262. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Shishmaref, AK'' ((RIN2120–AA66)(2005–0147)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3263. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Kalskag, AK'' ((RIN2120–AA66)(2005–0155)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3264. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; St. Michael, AK'' ((RIN2120–AA66)(2005–0157)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3265. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Mifflintown, PA; CORRECTION'' ((RIN2120–AA66)(2005–0136)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3266. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Bob Baker Memorial Airport, Kiana, AK'' ((RIN2120–AA66)(2005–0142)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

EC–3267. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Chalkyitsik, AK'' ((RIN2120–AA66)(2005–0143)) received on July 25, 2005; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 172. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of all contact lenses as medical devices, and for other purposes (Rept. No. 109–110).

S. 1418. A bill to enhance the adoption of a nationwide interoperable health information technology system and to improve the quality and reduce the costs of health care in the United States (Rept. No. 109–111).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FRIST (for himself, Mr. MCCONNELL, Mr. GREGG, Mr. ENZI, Ms. MURKOWSKI, Mr. DEMINT, Mr. COBURN, and Mr. CORNYN):

S. 4. A bill to reduce healthcare costs, expand access to affordable healthcare coverage, and improve healthcare and strengthen the healthcare safety net, and for other purposes; to the Committee on Finance.

By Mr. ENSIGN (for himself and Mr. MCCAIN):

S. 1504. A bill to establish a market driven telecommunications marketplace, to eliminate government managed competition of

existing communication service, and to provide parity between functionally equivalent services; to the Committee on Commerce, Science, and Transportation.

By Mr. COBURN (for himself and Mr. INHOFE):

S. 1505. A bill to amend the Shawnee Tribe Status Act of 2000 to the Committee on Indian Affairs.

By Mrs. CLINTON (for herself and Mr. SCHUMER):

S. 1506. A bill to amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to include certain former nuclear weapons program workers in the Special Exposure Cohort under the energy employees occupational illness compensation program; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. LINCOLN (for herself, Mr. CARPER, Mr. PRYOR, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. SALAZAR, Ms. STABENOW, Mr. BAYH, and Mr. CONRAD):

S. 1507. A bill to protect children from Internet pornography and support law enforcement and other efforts to combat Internet and pornography-related crimes against children; to the Committee on Finance.

By Mr. FEINGOLD (for himself, Mr. MCCAIN, and Mr. COCHRAN):

S. 1508. A bill to require Senate candidates to file designations, statements, and reports in electronic form; to the Committee on Rules and Administration.

By Mr. JEFFORDS (for himself, Mr. CHAFEE, Mr. LIEBERMAN, and Mr. LAUTENBERG):

S. 1509. A bill to amend the Lacey Act Amendments of 1981 to add non-human primates to the definition of prohibited wildlife species; to the Committee on Environment and Public Works.

By Mr. SALAZAR:

S. 1510. A bill to designate as wilderness certain lands within the Rocky Mountain National Park in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mr. SALAZAR:

S. 1511. A bill to provide for a study of options for protecting the open space characteristics of certain land in and adjacent to the Arapaho and Roosevelt National Forests in the State of Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. BIDEN, Mrs. CLINTON, Ms. MURKOWSKI, Mrs. MURRAY, Mr. WYDEN, Mr. LAUTENBERG, Mr. SCHUMER, and Mr. DURBIN):

S. 1512. A bill to grant a Federal charter to Korean War Veterans Association, Incorporated; to the Committee on the Judiciary.

By Ms. MIKULSKI (for herself, Mr. BOND, Mr. REED, and Mr. SARBANES):

S. 1513. A bill to reauthorize the HOPE VI program for revitalization of severely distressed public housing, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DEMINT (for himself, Mr. NELSON of Florida, Mr. ISAKSON, Mr. DAYTON, Ms. MURKOWSKI, and Mr. ENZI):

S. 1514. A bill to amend the Internal Revenue Code of 1986 to repeal the medicine and drugs limitation on the deduction for medical care; to the Committee on Finance.

By Mr. INOUYE:

S. 1515. A bill to amend title XIX of the Social Security Act to improve access to advanced practice nurses and physician assistants under the Medicaid Program; to the Committee on Finance

By Mr. LOTT (for himself, Mr. LAUTENBERG, Mr. STEVENS, Mr. INOUYE, and Mrs. HUTCHISON):

S. 1516. A bill to reauthorize Amtrak, and for other purposes to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. KERRY, Mr. DOMENICI, Mr. COLEMAN, and Mr. PRYOR):

S. 1517. A bill to permit Women's Business Centers to re-compete for sustainability grants; considered and passed.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 1518. A bill to amend the Indian Gaming Regulatory Act to modify a provision relating to the locations in which class III gaming is lawful; to the Committee on Indian Affairs.

By Ms. SNOWE (for herself, Mr. LIEBERMAN, and Mr. THUNE):

S. 1519. A bill to provide for an economic analysis of the impact in small business concerns and small governmental jurisdictions of agency and other decisions that result in a net loss of at least 1,000 jobs, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. KENNEDY, Mr. SPECTER, Mr. HARKIN, Ms. SNOWE, Mrs. BOXER, Ms. COLLINS, Mrs. CLINTON, Mr. CHAFEE, Mr. LAUTENBERG, Mr. STEVENS, Mr. DURBIN, Mr. LIEBERMAN, Mr. KERRY, Mrs. MURRAY, Mr. SALAZAR, Ms. STABENOW, Ms. MIKULSKI, Mr. JEFFORDS, Mr. INOUYE, and Ms. CANTWELL):

S. 1520. A bill to prohibit human cloning; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SMITH (for himself, Mr. WYDEN, Mrs. MURRAY, Mrs. FEINSTEIN, and Mrs. BOXER):

S. Res. 215. A resolution designating December 2005 as ''National Pear Month''; to the Committee on the Judiciary.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. Res. 216. A resolution expressing gratitude and appreciation to the men and women of the United States Armed Forces who served in World War II, commending the acts of heroism displayed by those servicemembers, and recognizing the ''Greatest Generation Homecoming Weekend'' to be held in Pittsburgh, Pennsylvania; considered and agreed to.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. Res. 217. A resolution designating August 13, 2005, as ''National Marina Day''; considered and agreed to.

By Mr. DURBIN (for himself and Mr. CORNYN):

S. Con. Res. 48. A concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued to promote public awareness of Down syndrome; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

S. 147

At the request of Mr. AKAKA, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 392

At the request of Mr. LEVIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 392, a bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

S. 397

At the request of Mr. CONRAD, his name was added as a cosponsor of S. 397, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

S. 619

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 619, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 705

At the request of Mr. SARBANES, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Delaware (Mr. CARPER) were added as cosponsors of S. 705, a bill to establish the Interagency Council on Meeting the Housing and Service Needs of Seniors, and for other purposes.

S. 709

At the request of Mr. DEWINE, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 709, a bill to amend the Public Health Service Act to establish a grant program to provide supportive services in permanent supportive housing for chronically homeless individuals, and for other purposes.

S. 781

At the request of Mr. CRAPO, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 781, a bill to preserve the use and access of pack and saddle stock animals on land administered by the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, or the Forest Service on which there is a historical tradition of the use of pack and saddle stock animals, and for other purposes.

S. 811

At the request of Mr. DURBIN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 811, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the birth of Abraham Lincoln.

S. 895

At the request of Mr. DOMENICI, the name of the Senator from Arizona (Mr.

KYL) was added as a cosponsor of S. 895, a bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe affordable, and reliable water supply to rural residents.

S. 935

At the request of Mrs. FEINSTEIN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 935, a bill to regulate .50 caliber sniper weapons designed for the taking of human life and the destruction of materiel, including armored vehicles and components of the Nation's critical infrastructure.

S. 963

At the request of Mr. THUNE, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 963, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans' health care, to direct the Secretary of Veterans Affairs to conduct a pilot program to improve access to health care for rural veterans, and for other purposes.

S. 1002

At the request of Mr. BAUCUS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1002, a bill to amend title XVIII of the Social Security Act to make improvements in payments to hospitals under the medicare program, and for other purposes.

S. 1013

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 1013, a bill to improve the allocation of grants through the Department of Homeland Security, and for other purposes.

S. 1047

At the request of Mr. SUNUNU, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 1047, a bill to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes.

S. 1076

At the request of Mrs. LINCOLN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1076, a bill to amend the Internal Revenue Code of 1986 to extend the excise tax and income tax credits for the production of biodiesel.

S. 1081

At the request of Mr. KYL, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1081, a bill to amend title XVIII of the Social Security Act to provide for a minimum update for physicians' services for 2006 and 2007.

S. 1112

At the request of Mr. GRASSLEY, the names of the Senator from Ohio (Mr. VOINOVICH), the Senator from Nevada (Mr. ENSIGN) and the Senator from South Carolina (Mr. DEMINT) were added as cosponsors of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1129

At the request of Mr. LUGAR, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1129, a bill to provide authorizations of appropriations for certain development banks, and for other purposes.

S. 1139

At the request of Mr. SANTORUM, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1172

At the request of Mr. SPECTER, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

S. 1197

At the request of Mr. BIDEN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1197, a bill to reauthorize the Violence Against Women Act of 1994.

S. 1249

At the request of Mr. CORZINE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1249, a bill to require the Secretary of Education to rebate the amount of Federal Pell Grant aid lost as a result of the update to the tables for State and other taxes used in the Federal student aid need analysis for award year 2005–2006.

S. 1260

At the request of Mr. VITTER, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 1260, a bill to make technical corrections to the Indian Gaming Regulatory Act, and for other purposes.

S. 1265

At the request of Mr. VOINOVICH, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1265, a bill to make grants and loans available to States and other organizations to strengthen the economy, public health, and environment of the United States by reducing emissions from diesel engines.

S. 1304

At the request of Mr. HARKIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1304, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

S. 1325

At the request of Mr. FRIST, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1325, a bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity and eating disorder prevention, and for other purposes.

S. 1356

At the request of Mr. BAUCUS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1356, a bill to amend title XVIII of the Social Security Act to provide incentives for the provision of high quality care under the medicare program.

S. 1417

At the request of Mr. CRAIG, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1417, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 1429

At the request of Mrs. MURRAY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1429, a bill to amend the Higher Education Act of 1965 to assist homeless students in obtaining postsecondary education, and for other purposes.

S. 1490

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1490, a bill to amend the Federal Water Pollution Control Act to require environmental accountability and reporting and to reauthorize the Chesapeake Bay Program.

S. 1491

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1491, a bill to amend the Federal Water Pollution Control Act to provide assistance for nutrient removal technologies to States in the Chesapeake Bay watershed.

S. 1492

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1492, a bill to amend the Elementary and Secondary Education Act of 1965 to establish a pilot program to make grants to eligible institutions to develop, demonstrate, or disseminate information on practices, methods, or techniques relating to environmental education and training in the Chesapeake Bay Watershed.

S. 1493

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1493, a bill to require the Secretary of Agriculture to establish a program to expand and strengthen cooperative

efforts to restore and protect forests in the Chesapeake Bay watershed, and for other purposes.

S. 1494

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1494, a bill to amend the National Oceanic and Atmospheric Administration Authorization Act of 1992 to establish programs to enhance protection of the Chesapeake Bay, and for other purposes.

S.J. RES. 21

At the request of Mr. SPECTER, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S.J. Res. 21, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. RES. 158

At the request of Mr. GRAHAM, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. Res. 158, a resolution expressing the sense of the Senate that the President should designate the week beginning September 11, 2005, as ''National Historically Black Colleges and Universities Week''.

At the request of Mr. MARTINEZ, his name was added as a cosponsor of S. Res. 158, supra.

S. RES. 204

At the request of Mr. DURBIN, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Washington (Ms. CANTWELL), the Senator from Indiana (Mr. BAYH) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 204, a resolution recognizing the 75th anniversary of the American Academy of Pediatrics and supporting the mission and goals of the organization.

AMENDMENT NO. 1337

At the request of Mr. REID, the names of the Senator from Colorado (Mr. SALAZAR) and the Senator from Florida (Mr. NELSON) were added as cosponsors of amendment No. 1337 intended to be proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1363

At the request of Mr. GRAHAM, the names of the Senator from South Dakota (Mr. THUNE) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of amendment No. 1363 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1505

At the request of Mr. GRAHAM, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of amendment No. 1505 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1548

At the request of Mr. CONRAD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of amendment No. 1548 intended to be proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1553

At the request of Mr. CONRAD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of amendment No. 1553 intended to be proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1554

At the request of Mr. CONRAD, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Florida (Mr. NELSON) were added as cosponsors of amendment No. 1554 intended to be proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1556

At the request of Mr. MCCAIN, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of amendment No. 1556 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 1557

At the request of Mr. MCCAIN, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of amendment No. 1557 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST (for himself, Mr. MCCONNELL, Mr. GREGG, Mr. ENZI, Ms. MURKOWSKI, Mr. DEMINT, Mr. COBURN, and Mr. CORNYN):

S. 4. A bill to reduce healthcare costs, expand access to affordable healthcare coverage, and improve healthcare and strengthen the healthcare safety net, and for other purposes; to the Committee on Finance.

Mr. FRIST. 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. 4

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Healthy America Act of 2005''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—MAKING HEALTH CARE MORE AFFORDABLE

Subtitle A—Medical Liability Reform

Sec. 101. Short title.
Sec. 102. Findings and purpose.
Sec. 103. Encouraging speedy resolution of claims.
Sec. 104. Compensating patient injury.
Sec. 105. Maximizing patient recovery.
Sec. 106. Additional health benefits.
Sec. 107. Punitive damages.
Sec. 108. Authorization of payment of future damages to claimants in health care lawsuits.
Sec. 109. Definitions.
Sec. 110. Effect on other laws.
Sec. 111. State flexibility and protection of States' rights.
Sec. 112. Applicability; effective date.

Subtitle B—Health Information Technology

CHAPTER 1—GENERAL PROVISIONS

Sec. 121. Improving health care, quality, safety, and efficiency.
Sec. 122. HIPAA report.
Sec. 123. Study of reimbursement incentives.
Sec. 124. Reauthorization of incentive grants regarding telemedicine.
Sec. 125. Sense of the Senate on physician payment.
Sec. 126. Establishment of quality measurement systems for medicare value-based purchasing programs.
Sec. 127. Exception to Federal anti-kickback and physician self referral laws for the provision of permitted support.

CHAPTER 2—VALUE BASED PURCHASING
Sec. 131. Value based purchasing programs.
Subtitle C—Patient Safety and Quality Improvement
Sec. 141. Short title.
Sec. 142. Findings and purposes.
Sec. 143. Amendments to Public Health Service Act.
Sec. 144. Studies and reports.
Subtitle D—Fraud and Abuse
Sec. 151. National expansion of the medicare-medicaid data match pilot program.
Subtitle E—Miscellaneous Provisions
Sec. 161. Sense of the Senate on establishing a mandated benefits commission.
Sec. 162. Enforcement of reimbursement provisions by fiduciaries.
TITLE II—EXPANDING ACCESS TO AFFORDABLE HEALTH COVERAGE THROUGH TAX INCENTIVES AND OTHER INITIATIVES
Subtitle A—Refundable Health Insurance Credit
Sec. 201. Refundable health insurance costs credit.
Sec. 202. Advance payment of credit to issuers of qualified health insurance.
Subtitle B—High Deductible Health Plans and Health Savings Accounts
Sec. 211. Deduction of premiums for high deductible health plans.
Sec. 212. Refundable credit for contributions to health savings accounts of small business employees.
Subtitle C—Improvement of the Health Coverage Tax Credit
Sec. 221. Change in State-based coverage rules related to preexisting conditions.
Sec. 222. Eligibility of spouse of certain individuals entitled to medicare.
Sec. 223. Eligible PBGC pension recipient.
Sec. 224. Application of option to offer State-based coverage to Puerto Rico, Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.
Sec. 225. Clarification of disclosure rules.
Sec. 226. Clarification that State-based COBRA continuation coverage is subject to same rules as Federal COBRA.
Sec. 227. Application of rules for other specified coverage to eligible alternative TAA recipients consistent with rules for other eligible individuals.
Subtitle D—Long-Term Care Insurance
Sec. 231. Sense of the Senate concerning long-term care.
Subtitle E—Other Provisions
Sec. 241. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.
Sec. 242. Microentrepreneurs.
Sec. 243. Study on access to affordable health insurance for full-time college and university students.
Sec. 244. Extension of funding for operation of State high risk health insurance pools.
Sec. 245. Sense of the senate on affordable health coverage for small employers.
Subtitle F—Covering Kids
Sec. 251. Short title.
Sec. 252. Grants to promote innovative outreach and enrollment under medicaid and SCHIP.
Sec. 253. State option to provide for simplified determinations of a child's financial eligibility for medical assistance under medicaid or child health assistance under SCHIP.
TITLE III—IMPROVING CARE AND STRENGTHENING THE SAFETY NET
Subtitle A—High Needs Areas
Sec. 301. Purpose.
Sec. 302. High need community health centers.
Sec. 303. Grant application process.
Subtitle B—Qualified Integrated Health Care systems
Sec. 321. Grants to qualified integrated health care systems.
Subtitle C—Miscellaneous Provisions
Sec. 331. Community health center collaborative access expansion.
Sec. 332. Improvements to section 340B program.
Sec. 333. Forbearance for student loans for physicians providing services in free clinics.
Sec. 334. Amendments to the Public Health Service Act relating to liability.
Sec. 335. Sense of the Senate concerning health disparities.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Health care costs are growing rapidly, putting health insurance and needed care out of reach for too many Americans.

(2) Rapidly growing health care costs pose a threat to the United States economy, as they make American businesses less competitive and make it more difficult to create new jobs.

(3) Growing health care costs are compromising the stability of health care safety net and entitlement programs.

(4) There are a series of steps Congress can and should take to slow the growth of health care costs, expand access to health coverage, and improve access to quality health care for millions of Americans.

TITLE I—MAKING HEALTH CARE MORE AFFORDABLE

Subtitle A—Medical Liability Reform

SEC. 101. SHORT TITLE.

This subtitle may be cited as the ''Patients First Act of 2005''.

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the current health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals;

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 103. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of a health care lawsuit exceed 3 years after the date of manifestation of injury unless tolled for any of the following:

(1) Upon proof of fraud;

(2) Intentional concealment; or

(3) The presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

Actions by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that actions by a minor under the full age of 6 years shall be commenced within 3 years of manifestation of injury or prior to the minor's 8th birthday, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care organization have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

SEC. 104. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, the full amount of a claimant's economic loss may be fully recovered without limitation.

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages recovered may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit, an award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment

of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 105. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first $50,000 recovered by the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(3) 25 percent of the next $500,000 recovered by the claimant(s).

(4) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution. In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. 106. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 107. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages. At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(1) whether punitive damages are to be awarded and the amount of such award; and

(2) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages, if awarded, in a health care lawsuit, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages, if awarded, in a health care lawsuit may be as much as $250,000 or as much as two times the amount of economic damages awarded, whichever is greater. The jury shall not be informed of this limitation.

(c) NO PENALTIES FOR PROVIDERS IN COMPLIANCE WITH FDA STANDARDS.—A health care provider who prescribes a medical product approved or cleared by the Food and Drug Administration shall not be named as a party to a product liability lawsuit involving such product and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or seller of such product.

SEC. 108. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.

SEC. 109. DEFINITIONS.

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. The term ''compensatory damages'' includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(8) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(9) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, including, but not limited to, third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services or medical products, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(10) HEALTH CARE ORGANIZATION.—The term ''health care organization'' means any person or entity which is obligated to provide or pay for health benefits under any health plan, including any person or entity acting under a contract or arrangement with a health care organization to provide or administer any health benefit.

(11) HEALTH CARE PROVIDER.—The term ''health care provider'' means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(12) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care organization, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans, and the terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 110. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) PROTECTION OF STATES' RIGHTS.—Any issue that is not governed by any provision of law established by or under this subtitle (including State standards of negligence) shall be governed by otherwise applicable State or Federal law. This subtitle does not preempt or supersede any law that imposes greater protections (such as a shorter statute of limitations) for health care providers and health care organizations from liability, loss, or damages than those provided by this subtitle.

(c) STATE FLEXIBILITY.—No provision of this subtitle shall be construed to preempt—

(1) any State law (whether effective before, on, or after the date of the enactment of this subtitle) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 104(a); or

(2) any defense available to a party in a health care lawsuit under any other provision of State or Federal law.

SEC. 112. APPLICABILITY; EFFECTIVE DATE.

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of the enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

Subtitle B—Health Information Technology

CHAPTER 1—GENERAL PROVISIONS

SEC. 121. IMPROVING HEALTH CARE, QUALITY, SAFETY, AND EFFICIENCY.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXIX—HEALTH INFORMATION TECHNOLOGY

"SEC. 2901. DEFINITIONS.

''In this title:

''(1) HEALTH CARE PROVIDER.—The term 'health care provider' means a hospital, skilled nursing facility, home health entity, health care clinic, federally qualified health center, group practice (as defined in section 1877(h)(4) of the Social Security Act), a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1861(r) of the Social Security Act), a health facility operated by or pursuant to a contract with the Indian Health Service, a rural health clinic, and any other category of facility or clinician determined appropriate by the Secretary.

''(2) HEALTH INFORMATION.—The term 'health information' has the meaning given such term in section 1171(4) of the Social Security Act.

''(3) HEALTH INSURANCE PLAN.—The term 'health insurance plan' means—

''(A) a health insurance issuer (as defined in section 2791(b)(2));

''(B) a group health plan (as defined in section 2791(a)(1)); and

''(C) a health maintenance organization (as defined in section 2791(b)(3)).

''(4) LABORATORY.—The term 'laboratory' has the meaning given that term in section 353.

''(5) PHARMACIST.—The term 'pharmacist' has the meaning given that term in section 804 of the Federal Food, Drug, and Cosmetic Act.

''(6) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"SEC. 2902. OFFICE OF THE NATIONAL COORDINATOR OF HEALTH INFORMATION TECHNOLOGY.

''(a) OFFICE OF NATIONAL HEALTH INFORMATION TECHNOLOGY.—There is established within the Office of the Secretary an Office of the National Coordinator of Health Information Technology (referred to in this section as the 'Office'). The Office shall be headed by a National Coordinator who shall be appointed by the Secretary, in consultation with the President, and shall report directly to the Secretary.

''(b) Purpose.—It shall be the purpose of the Office to coordinate with relevant Federal agencies and oversee programs and activities to develop a nationwide interoperable health information technology infrastructure that—

''(1) ensures that patients' individually identifiable health information is secure and protected;

''(2) improves health care quality, reduces medical errors, and advances the delivery of patient-centered medical care;

''(3) reduces health care costs resulting from inefficiency, medical errors, inappropriate care, and incomplete information;

''(4) ensures that appropriate information to help guide medical decisions is available at the time and place of care;

''(5) promotes a more effective marketplace, greater competition, and increased choice through the wider availability of accurate information on health care costs, quality, and outcomes; and

''(6) improves the coordination of care and information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.

''(c) DUTIES OF THE NATIONAL COORDINATOR.—The National Coordinator shall—

''(1) provide support to the public-private American Health Information Collaborative established under section 2903;

''(2) serve as the principal advisor to the Secretary concerning the development, application, and use of health information technology, and coordinate and oversee the health information technology programs of the Department;

''(3) facilitate the adoption of a nationwide, interoperable system for the electronic exchange of health information;

''(4) ensure the adoption and implementation of standards for the electronic exchange of health information to reduce cost and improve health care quality;

''(5) ensure that health information technology policy and programs of the Department are coordinated with those of relevant executive branch agencies (including Federal commissions) with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes health information technology activities primarily within the areas of its greatest expertise and technical capability;

''(6) to the extent permitted by law, coordinate outreach and consultation by the relevant executive branch agencies (including Federal commissions) with public and private parties of interest, including consumers, payers, employers, hospitals and other health care providers, physicians, community health centers, laboratories, vendors and other stakeholders;

''(7) advise the President regarding specific Federal health information technology programs; and

''(8) submit the reports described under section 2903(i) (excluding paragraph (4) of such section).

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the duplication of Federal efforts with respect to the establishment of the Office, regardless of whether such efforts were carried out prior to or after the enactment of this title.

"SEC. 2903. AMERICAN HEALTH INFORMATION COLLABORATIVE.

''(a) PURPOSE.—The Secretary shall establish the public-private American Health Information Collaborative (referred to in this section as the 'Collaborative') to—

''(1) advise the Secretary and recommend specific actions to achieve a nationwide interoperable health information technology infrastructure;

''(2) serve as a forum for the participation of a broad range of stakeholders to provide input on achieving the interoperability of health information technology; and

''(3) recommend standards (including content, communication, and security standards) for the electronic exchange of health information for adoption by the Federal Government and voluntary adoption by private entities.

''(b) COMPOSITION.—

''(1) IN GENERAL.—The Collaborative shall be composed of—

''(A) the Secretary, who shall serve as the chairperson of the Collaborative;

''(B) the Secretary of Defense, or his or her designee;

''(C) the Secretary of Veterans Affairs, or his or her designee;

''(D) the Secretary of Commerce, or his or her designee;

''(E) representatives of other relevant Federal agencies, as determined appropriate by the Secretary; and

''(F) representatives from among the following categories to be appointed by the Secretary from nominations submitted by the public—

''(i) consumer and patient organizations;

''(ii) experts in health information privacy and security;

''(iii) health care providers;

''(iv) health insurance plans or other third party payors;

''(v) standards development organizations;

''(vi) information technology vendors;

''(vii) purchasers or employers; and

''(viii) State or local government agencies or Indian tribe or tribal organizations.

''(2) CONSIDERATIONS.—In appointing members under paragraph (1)(F), the Secretary shall select individuals with expertise in—

''(A) health information privacy;

''(B) health information security;

''(C) health care quality and patient safety, including those individuals with experience in utilizing health information technology to improve health care quality and patient safety;

''(D) data exchange; and

''(E) developing health information technology standards and new health information technology.

''(3) TERMS.—Members appointed under paragraph (1)(G) shall serve for 2 year terms, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve for not to exceed 180 days after the expiration of such member's term or until a successor has been appointed.

''(c) RECOMMENDATIONS AND POLICIES.—The Collaborative shall make recommendations to identify uniform national policies for adoption by the Federal Government and voluntary adoption by private entities to support the widespread adoption of health information technology, including—

''(1) protection of individually identifiable health information through privacy and security practices;

''(2) measures to prevent unauthorized access to health information;

''(3) methods to facilitate secure patient access to health information;

''(4) the ongoing harmonization of industry-wide health information technology standards;

''(5) recommendations for a nationwide interoperable health information technology infrastructure;

''(6) the identification and prioritization of specific use cases for which health information technology is valuable, beneficial, and feasible;

''(7) recommendations for the establishment of an entity to ensure the continuation of the functions of the Collaborative; and

''(8) other policies determined to be necessary by the Collaborative.

''(d) STANDARDS.—

''(1) EXISTING STANDARDS.—The standards adopted by the Consolidated Health Informatics Initiative shall be deemed to have been recommended by the Collaborative under this section.

''(2) FIRST YEAR REVIEW.—Not later than 1 year after the date of enactment of this title, the Collaborative shall—

''(A) review existing standards (including content, communication, and security standards) for the electronic exchange of health information, including such standards adopted by the Secretary under paragraph (2)(A);

''(B) identify deficiencies and omissions in such existing standards; and

''(C) identify duplication and overlap in such existing standards;

and recommend modifications to such standards as necessary.

''(3) ONGOING REVIEW.—Beginning 1 year after the date of enactment of this title, and annually thereafter, the Collaborative shall—

''(A) review existing standards (including content, communication, and security standards) for the electronic exchange of health information, including such standards adopted by the Secretary under paragraph (2)(A);

''(B) identify deficiencies and omissions in such existing standards; and

''(C) identify duplication and overlap in such existing standards;

and recommend modifications to such standards as necessary.

''(4) LIMITATION.—The standards described in this section shall be consistent with any standards developed pursuant to the Health Insurance Portability and Accountability Act of 1996.

''(e) FEDERAL ACTION.—Not later than 60 days after the issuance of a recommendation from the Collaborative under subsection (d)(2), the Secretary of Health and Human Services, in consultation with the Secretary of Veterans Affairs, the Secretary of Defense, and representatives of other relevant Federal agencies, as determined appropriate by the Secretary, shall review such recommendations. The Secretary shall provide for the adoption by the Federal Government of any standard or standards contained in such recommendation.

''(f) COORDINATION OF FEDERAL SPENDING.—Not later than 1 year after the adoption by the Federal Government of a recommendation as provided for in subsection (e), and in compliance with chapter 113 of title 40, United States Code, no Federal agency shall expend Federal funds for the purchase of any form of health information technology or health information technology system for clinical care or for the electronic retrieval, storage, or exchange of health information that is not consistent with applicable standards adopted by the Federal Government under subsection (e).

''(g) COORDINATION OF FEDERAL DATA COLLECTION.—Not later than 3 years after the adoption by the Federal Government of a recommendation as provided for in subsection (e), all Federal agencies collecting health data for the purposes of surveillance, epidemiology, adverse event reporting, research, or for other purposes determined appropriate by the Secretary shall comply with standards adopted under subsection (e).

''(h) VOLUNTARY ADOPTION.—

''(1) IN GENERAL.—Any standards adopted by the Federal Government under subsection (e) shall be voluntary with respect to private entities.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require that a private entity that enters into a contract with the Federal Government adopt the standards adopted by the Federal Government under section 2903 with respect to activities not related to the contract.

''(3) LIMITATION.—Private entities that enter into a contract with the Federal Government shall adopt the standards adopted under section 2903 for the purpose of activities under such Federal contract.

''(i) EFFECT ON OTHER PROVISIONS.—Nothing in this title shall be construed to effect the scope or substance of—

''(1) section 264 of the Health Insurance Portability and Accountability Act of 1996;

''(2) sections 1171 through 1179 of the Social Security Act; and

''(3) any regulation issued pursuant to any such section;

and such sections shall remain in effect and shall apply to the implementation of standards, programs and activities under this title.

''(j) REPORTS.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, on an annual basis, a report that—

''(1) describes the specific actions that have been taken by the Federal Government and private entities to facilitate the adoption of an interoperable nationwide system for the electronic exchange of health information;

''(2) describes barriers to the adoption of such a nationwide system;

''(3) contains recommendations to achieve full implementation of such a nationwide system; and

''(4) contains a plan and progress toward the establishment of an entity to ensure the continuation of the functions of the Collaborative.

''(k) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Collaborative, except that the term provided for under section 14(a)(2) shall be 5 years.

''(l) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the duplication of Federal efforts with respect to the establishment of the Collaborative, regardless of whether such efforts were carried out prior to or after the enactment of this title.

''SEC. 2904. IMPLEMENTATION AND CERTIFICATION OF HEALTH INFORMATION STANDARDS.

''(a) IMPLEMENTATION.—

''(1) IN GENERAL.—The Secretary, based upon the recommendations of the Collaborative, shall develop criteria to ensure uniform and consistent implementation of any standards for the electronic exchange of health information voluntarily adopted by private entities in technical conformance with such standards adopted under this title.

''(2) IMPLEMENTATION ASSISTANCE.—The Secretary may recognize a private entity or entities to assist private entities in the implementation of the standards adopted under this title using the criteria developed by the Secretary under this section.

''(b) CERTIFICATION.—

''(1) IN GENERAL.—The Secretary, based upon the recommendations of the Collaborative, shall develop criteria to ensure and certify that hardware, software, and support services that claim to be in compliance with any standard for the electronic exchange of health information adopted under this title have established and maintained such compliance in technical conformance with such standards.

''(2) CERTIFICATION ASSISTANCE.—The Secretary may recognize a private entity or entities to assist in the certification described under paragraph (1) using the criteria developed by the Secretary under this section.

''(c) DELEGATION AUTHORITY.—The Secretary, through consultation with the Collaborative, may delegate the development of the criteria under subsections (a) and (b) to a private entity.

''SEC. 2905. STUDY OF STATE HEALTH INFORMATION LAWS AND PRACTICES.

''(a) IN GENERAL.—The Secretary shall carry out, or contract with a private entity to carry out, a study that examines—

''(1) the variation among State laws and practices that relate to the privacy, confidentiality, and security of health information;

''(2) how such variation among State laws and practices may impact the electronic exchange of health information—

''(A) among the States;

''(B) between the States and the Federal Government; and

''(C) among private entities; and

''(3) how such laws and practices may be harmonized to permit the secure electronic exchange of health information.

''(b) REPORT AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary shall submit to Congress a report that—

''(1) describes the results of the study carried out under subsection (a); and

''(2) makes recommendations based on the results of such study.

''SEC. 2906. SECURE EXCHANGE OF HEALTH INFORMATION; INCENTIVE GRANTS.

''(a) IN GENERAL.—The Secretary may make grants to States to carry out programs under which such States cooperate with other States to develop and implement State policies that will facilitate the secure electronic exchange of health information utilizing the standards adopted under section 2903—

''(1) among the States;

''(2) between the States and the Federal Government; and

''(3) among private entities.

''(b) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to States that provide assurance that any funding awarded under such a grant shall be used to harmonize privacy laws and practices between the States, the States and the Federal Government, and among private entities related to the privacy, confidentiality, and security of health information.

''(c) DISSEMINATION OF INFORMATION.—The Secretary shall disseminate information regarding the efficacy of efforts of a recipient of a grant under this section.

''(d) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to recipients of a grant under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2006 through 2010.

''SEC. 2907. LICENSURE AND THE ELECTRONIC EXCHANGE OF HEALTH INFORMATION.

''(a) IN GENERAL.—The Secretary shall carry out, or contract with a private entity to carry out, a study that examines—

''(1) the variation among State laws that relate to the licensure, registration, and certification of medical professionals; and

''(2) how such variation among State laws impacts the secure electronic exchange of health information—

''(A) among the States; and

''(B) between the States and the Federal Government.

''(b) REPORT AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary shall publish a report that—

''(1) describes the results of the study carried out under subsection (a); and

''(2) makes recommendations to States regarding the harmonization of State laws based on the results of such study.

''SEC. 2908. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—For the purpose of carrying out this title, there is authorized to be appropriated $125,000,000 for fiscal year 2006, and such sums as may be necessary for each of fiscal years 2007 through 2010.

''(b) AVAILABILITY.—Amounts appropriated under subsection (a) shall remain available through fiscal year 2010.''.

SEC. 122. HIPAA REPORT.

(a) STUDY.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines the integration of the standards adopted under the amendments made by this subtitle with the standards adopted under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(b) PLAN; REPORT.—

(1) PLAN.—Not later than 3 years after the date of enactment of this Act, the Secretary of Health and Human Services shall, based on the results of the study carried out under subsection (a), develop a plan for the integration of the standards described under such

subsection and submit a report to Congress describing such plan.

(2) PERIODIC REPORTS.—The Secretary shall submit periodic reports to Congress that describe the progress of the integration described under paragraph (1).

SEC. 123. STUDY OF REIMBURSEMENT INCENTIVES.

The Secretary of Health and Human Services shall carry out, or contract with a private entity to carry out, a study that examines methods to create efficient reimbursement incentives for improving health care quality in Federally qualified health centers, rural health clinics, and free clinics.

SEC. 124. REAUTHORIZATION OF INCENTIVE GRANTS REGARDING TELEMEDICINE.

Section 330L(b) of the Public Health Service Act (42 U.S.C. 254c–18(b)) is amended by striking ''2002 through 2006'' and inserting ''2006 through 2010''.

SEC. 125. SENSE OF THE SENATE ON PHYSICIAN PAYMENT.

It is the sense of the Senate that modifications to the medicare fee schedule for physicians' services under section 1848 of the Social Security Act (42 U.S.C. 1394w–4) should include provisions based on the reporting of quality measures pursuant to those adopted in section 2909 of the Public Health Service Act (as added by section 121) and the overall improvement of healthcare quality through the use of the electronic exchange of health information pursuant to the standards adopted under section 2903 of such Act (as added by section 121).

SEC. 126. ESTABLISHMENT OF QUALITY MEASUREMENT SYSTEMS FOR MEDICARE VALUE-BASED PURCHASING PROGRAMS.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following new part:

''PART E—VALUE-BASED PURCHASING

''QUALITY MEASUREMENT SYSTEMS FOR VALUE-BASED PURCHASING PROGRAMS

''SEC. 1860E–1. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary shall develop quality measurement systems for purposes of providing value-based payments to—

''(A) hospitals pursuant to section 1860E–2;

''(B) physicians and practitioners pursuant to section 1860E–3;

''(C) plans pursuant to section 1860E–4;

''(D) end stage renal disease providers and facilities pursuant to section 1860E–5; and

''(E) home health agencies pursuant to section 1860E–6.

''(2) QUALITY.—The systems developed under paragraph (1) shall measure the quality of the care furnished by the provider involved.

''(3) HIGH QUALITY HEALTH CARE DEFINED.—In this part, the term 'high quality health care' means health care that is safe, effective, patient-centered, timely, equitable, efficient, necessary, and appropriate.

''(b) REQUIREMENTS FOR SYSTEMS.—Under each quality measurement system described in subsection (a)(1), the Secretary shall do the following:

''(1) MEASURES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall select measures of quality to be used by the Secretary under each system.

''(B) REQUIREMENTS.—In selecting the measures to be used under each system pursuant to subparagraph (A), the Secretary shall, to the extent feasible, ensure that—

''(i) such measures are evidence-based, reliable and valid, and feasible to collect and report;

''(ii) measures of process, structure, outcomes, beneficiary experience, efficiency, and equity are included;

''(iii) measures of overuse and underuse of health care items and services are included;

''(iv)(I) at least 1 measure of health information technology infrastructure that enables the provision of high quality health care and facilitates the exchange of health information, such as the use of one or more elements of a qualified health information system (as defined in subparagraph (E)), is included during the first year each system is implemented; and

''(II) additional measures of health information technology infrastructure are included in subsequent years;

''(v) in the case of the system that is used to provide value-based payments to hospitals under section 1860E–2, by not later than January 1, 2008, at least 5 measures that take into account the unique characteristics of small hospitals located in rural areas and frontier areas are included; and

''(vi) measures that assess the quality of care furnished to frail individuals over the age of 75 and to individuals with multiple complex chronic conditions are included.

''(C) REQUIREMENT FOR COLLECTION OF DATA ON A MEASURE FOR 1 YEAR PRIOR TO USE UNDER THE SYSTEMS.—Data on any measure selected by the Secretary under subparagraph (A) must be collected by the Secretary for at least a 12-month period before such measure may be used to determine whether a provider receives a value-based payment under a program described in subsection (a)(1).

''(D) AUTHORITY TO VARY MEASURES.—

''(i) UNDER SYSTEM APPLICABLE TO HOSPITALS.—In the case of the system applicable to hospitals under section 1860E–2, the Secretary may vary the measures selected under subparagraph (A) by hospital depending on the size of, and the scope of services provided by, the hospital.

''(ii) UNDER SYSTEM APPLICABLE TO PHYSICIANS AND PRACTITIONERS.—In the case of the system applicable to physicians and practitioners under section 1860E–3, the Secretary may vary the measures selected under subparagraph (A) by physician or practitioner depending on the specialty of the physician, the type of practitioner, or the volume of services furnished to beneficiaries by the physician or practitioner.

''(iii) UNDER SYSTEM APPLICABLE TO ESRD PROVIDERS AND FACILITIES.—In the case of the system applicable to providers of services and renal dialysis facilities under section 1860E–5, the Secretary may vary the measures selected under subparagraph (A) by provider or facility depending on the type of, the size of, and the scope of services provided by, the provider or facility.

''(iv) UNDER SYSTEM APPLICABLE TO HOME HEALTH AGENCIES.—In the case of the system applicable to home health agencies under section 1860E–6, the Secretary may vary the measures selected under subparagraph (A) by agency depending on the size of, and the scope of services provided by, the agency.

''(E) QUALIFIED HEALTH INFORMATION SYSTEM DEFINED.—For purposes of subparagraph (B)(iv)(I), the term 'qualified health information system' means a computerized system (including hardware, software, and training) that—

''(i) protects the privacy and security of health information and properly encrypts such health information;

''(ii) maintains and provides access to patients' health records in an electronic format;

''(iii) incorporates decision support software to reduce medical errors and enhance health care quality;

''(iv) is consistent with data standards and certification processes recommended by the Secretary;

''(v) allows for the reporting of quality measures; and

''(vi) includes other features determined appropriate by the Secretary.

''(2) WEIGHTS OF MEASURES.—

''(A) IN GENERAL.—The Secretary shall assign weights to the measures used by the Secretary under each system.

''(B) CONSIDERATION.—If the Secretary determines appropriate, in assigning the weights under subparagraph (A)—

''(i) measures of clinical effectiveness shall be weighted more heavily than measures of beneficiary experience; and

''(ii) measures of risk adjusted outcomes shall be weighted more heavily than measures of process; and

''(3) RISK ADJUSTMENT.—The Secretary shall establish procedures, as appropriate, to control for differences in beneficiary health status and beneficiary characteristics. To the extent feasible, such procedures may be based on existing models for controlling for such differences.

''(4) MAINTENANCE.—

''(A) IN GENERAL.—The Secretary shall, as determined appropriate, but not more often than once each 12-month period, update each system, including through—

''(i) the addition of more accurate and precise measures under the systems and the retirement of existing outdated measures under the system;

''(ii) the refinement of the weights assigned to measures under the system; and

''(iii) the refinement of the risk adjustment procedures established pursuant to paragraph (3) under the system.

''(B) UPDATE SHALL ALLOW FOR COMPARISON OF DATA.—Each update under subparagraph (A) of a quality measurement system shall allow for the comparison of data from one year to the next for purposes of providing value-based payments under the programs described in subsection (a)(1).

''(5) USE OF MOST RECENT QUALITY DATA.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall use the most recent quality data with respect to the provider involved that is available to the Secretary.

''(B) INSUFFICIENT DATA DUE TO LOW VOLUME.—If the Secretary determines that there is insufficient data with respect to a measure or measures because of a low number of services provided, the Secretary may aggregate data across more than 1 fiscal or calendar year, as the case may be.

''(c) REQUIREMENTS FOR DEVELOPING AND UPDATING THE SYSTEMS.—In developing and updating each quality measurement system under this section, the Secretary shall—

''(1) take into account the quality measures developed by nationally recognized quality measurement organizations, researchers, health care provider organizations, and other appropriate groups;

''(2) consult with, and take into account the recommendations of, the entity that the Secretary has an arrangement with under subsection (e);

''(3) consult with provider-based groups and clinical specialty societies;

''(4) take into account existing quality measurement systems that have been developed through a rigorous process of validation and with the involvement of entities and persons described in subsection (e)(2)(B); and

''(5) take into account—

''(A) each of the reports by the Medicare Payment Advisory Commission that are required under the Medicare Value Purchasing Act of 2005;

''(B) the results of—

''(i) the demonstrations required under such Act;

''(ii) the demonstration program under section 1866A;

''(iii) the demonstration program under section 1866C; and

''(iv) any other demonstration or pilot program conducted by the Secretary relating to measuring and rewarding quality and efficiency of care; and

''(C) the report by the Institute of Medicine of the National Academy of Sciences under section 238(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173).

''(d) REQUIREMENTS FOR IMPLEMENTING THE SYSTEMS.—In implementing each quality measurement system under this section, the Secretary shall consult with entities—

''(1) that have joined together to develop strategies for quality measurement and reporting, including the feasibility of collecting and reporting meaningful data on quality measures; and

''(2) that involve representatives of health care providers, health plans, consumers, employers, purchasers, quality experts, government agencies, and other individuals and groups that are interested in quality of care.

''(e) ARRANGEMENT WITH AN ENTITY TO PROVIDE ADVICE AND RECOMMENDATIONS.—

''(1) ARRANGEMENT.—On and after July 1, 2006, the Secretary shall have in place an arrangement with an entity that meets the requirements described in paragraph (2) under which such entity provides the Secretary with advice on, and recommendations with respect to, the development and updating of the quality measurement systems under this section, including the assigning of weights to the measures under subsection (b)(2).

''(2) REQUIREMENTS DESCRIBED.—The requirements described in this paragraph are the following:

''(A) The entity is a private nonprofit entity governed by an executive director and a board.

''(B) The members of the entity include representatives of—

''(i)(I) health plans and providers receiving reimbursement under this title for the provision of items and services, including health plans and providers with experience in the care of the frail elderly and individuals with multiple complex chronic conditions; or

''(II) groups representing such health plans and providers;

''(ii) groups representing individuals receiving benefits under this title;

''(iii) purchasers and employers or groups representing purchasers or employers;

''(iv) organizations that focus on quality improvement as well as the measurement and reporting of quality measures;

''(v) State government health programs;

''(vi) persons skilled in the conduct and interpretation of biomedical, health services, and health economics research and with expertise in outcomes and effectiveness research and technology assessment; and

''(vii) persons or entities involved in the development and establishment of standards and certification for health information technology systems and clinical data.

''(C) The membership of the entity is representative of individuals with experience with—

''(i) urban health care issues;

''(ii) safety net health care issues; and

''(iii) rural and frontier health care issues.

''(D) The entity does not charge a fee for membership for participation in the work of the entity related to the arrangement with the Secretary under paragraph (1). If the entity does require a fee for membership for participation in other functions of the entity, there shall be no linkage between such fee and participation in the work of the entity related to such arrangement with the Secretary.

''(E) The entity—

''(i) permits any member described in subparagraph (B) to vote on matters of the entity related to the arrangement with the Secretary under paragraph (1); and

''(ii) ensures that such members have an equal vote on such matters.

''(F) With respect to matters related to the arrangement with the Secretary under paragraph (1), the entity conducts its business in an open and transparent manner and provides the opportunity for public comment.

''(G) The entity operates as a voluntary consensus standards setting organization as defined for purposes of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) and Office of Management and Budget Revised Circular A–119 (published in the Federal Register on February 10, 1998).''.

(b) CONFORMING REFERENCES TO PREVIOUS PART E.—Any reference in law (in effect before the date of the enactment of this Act) to part E of title XVIII of the Social Security Act is deemed a reference to part F of such title (as in effect after such date).

SEC. 127. EXCEPTION TO FEDERAL ANTI-KICKBACK AND PHYSICIAN SELF REFERRAL LAWS FOR THE PROVISION OF PERMITTED SUPPORT.

(a) ANTI-KICKBACK.—Section 1128B(b) (42 U.S.C. 1320a–7b(b)(3)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) in subparagraph (H), as added by section 237(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2213)—

(i) by moving such subparagraph 2 ems to the left; and

(ii) by striking the period at the end and inserting a semicolon;

(C) by redesignating subparagraph (H), as added by section 431(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2287), as subparagraph (I);

(D) in subparagraph (I), as so redesignated—

(i) by moving such subparagraph 2 ems to the left; and

(ii) by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following new:

''(J) during the 5-year period beginning on the date the Secretary issues the interim final rule under section 801(c)(1) of the Medicare Value Purchasing Act of 2005, the provision, with or without charge, of any permitted support (as defined in paragraph (4)).''; and

(2) by adding at the end the following new paragraph:

''(4) PERMITTED SUPPORT.—

''(A) DEFINITION OF PERMITTED SUPPORT.—Subject to subparagraph (B), in this section, the term 'permitted support' means the provision of any equipment, item, information, right, license, intellectual property, software, training, or service used for developing, implementing, operating, or facilitating the use of systems designed to improve the quality of health care and to promote the electronic exchange of health information.

''(B) EXCEPTION.—The term 'permitted support' shall not include the provision of—

''(i) any support that is determined in a manner that is related to the volume or value of any referrals or other business generated between the parties for which payment may be made in whole or in part under a Federal health care program;

''(ii) any support that has more than incidental utility or value to the recipient beyond the exchange of health care information; or

''(iii) any health information technology system, product, or service that is not capable of exchanging health care information in compliance with data standards consistent with interoperability.

''(C) DETERMINATION.—In establishing regulations with respect to the requirement under subparagraph (B)(iii), the Secretary shall take in account—

''(I) whether the health information technology system, product, or service is widely accepted within the industry and whether there is sufficient industry experience to ensure successful implementation of the system, product, or service; and

''(II) whether the health information technology system, product, or service improves quality of care, enhances patient safety, or provides greater administrative efficiencies.''.

(b) PHYSICIAN SELF-REFERRAL.—Section 1877(e) (42 U.S.C. 1395nn(e)) is amended by adding at the end the following new paragraph:

''(9) PERMITTED SUPPORT.—During the 5-year period beginning on the date the Secretary issues the interim final rule under section 801(c)(1) of the Medicare Value Purchasing Act of 2005, the provision, with or without charge, of any permitted support (as defined in section 1128B(b)(4)).''.

(c) REGULATIONS.—In order to carry out the amendments made by this section—

(1) the Secretary shall issue an interim final rule with comment period by not later than the date that is 180 days after the date of enactment of this Act;

(2) the Secretary shall issue a final rule by not later than the date that is 180 days after the date that the interim final rule under paragraph (1) is issued.

CHAPTER 2—VALUE BASED PURCHASING

SEC. 131. VALUE BASED PURCHASING PROGRAMS; SENSE OF THE SENATE.

(a) MEDICARE VALUE BASED PURCHASING PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall establish under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) a value based purchasing pilot program based on the reporting of quality measures pursuant to those adopted in section 1860E-1 of the Social Security Act (as added by section 126). Such pilot program should be based on experience gained through previous demonstration projects conducted by the Secretary, including demonstration projects conducted under sections 1866A and 1866C of the Social Security Act (42 U.S.C. 1395cc–1; 1395cc–3), section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2322), and other relevant work conducted by private entities.

(2) EXPANSION.—Not later than 2 years after conducting the pilot program under paragraph (1), the Secretary shall transition and implement such program on a national basis.

(3) INFORMATION TECHNOLOGY.—Providers reporting quality measurement data electronically under this section shall report such data pursuant to the standards adopted under title XXIX of the Public Health Service Act (as added by section 121).

(4) FUNDING.—The Secretary shall ensure that the total amount of expenditures under this Act in a year does not exceed the total amount of expenditures that would have been expended in such year under this Act if this subsection had not been enacted.

(b) MEDICAID VALUE BASED PURCHASING PROGRAMS.—

(1) IN GENERAL.—The Secretary shall authorize waivers under section 1115 of the Social Security Act (42 U.S.C. 1315) for States to establish value based purchasing programs for State medicaid programs established under title XIX of such Act (42 U.S.C. 1396 et seq.). Such programs shall be based on the reporting of quality measures pursuant to those adopted in section 1860E-1 of the Social Security Act (as added by section 126).

(2) INFORMATION TECHNOLOGY.—Providers reporting quality measurement data electronically under this section shall report such data pursuant to the standards adopted under title XXIX of the Public Health Service Act (as added by section 121).

(3) WAIVER.—In authorizing such waivers, the Secretary shall waive any provisions of title XI or XIX of the Social Security Act that would otherwise prevent a State from establishing a value based purchasing program in accordance with paragraph (1).

Subtitle C—Patient Safety and Quality Improvement

SEC. 141. SHORT TITLE.

This subtitle may be cited as the ''Patient Safety and Quality Improvement Act of 2005''.

SEC. 142. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) In 1999, the Institute of Medicine released a report entitled To Err is Human that described medical errors as the eighth leading cause of death in the United States, with as many as 98,000 people dying as a result of medical errors each year.

(2) To address these deaths and injuries due to medical errors, the health care system must identify and learn from such errors so that systems of care can be improved.

(3) In their report, the Institute of Medicine called on Congress to provide legal protections with respect to information reported for the purposes of quality improvement and patient safety.

(4) The Health, Education, Labor, and Pensions Committee of the Senate held 4 hearings in the 106th Congress and 1 hearing in the 107th Congress on patient safety where experts in the field supported the recommendation of the Institute of Medicine for congressional action.

(5) Myriad public and private patient safety initiatives have begun. The Quality Interagency Coordination Taskforce has recommended steps to improve patient safety that may be taken by each Federal agency involved in health care and activities relating to these steps are ongoing.

(6) The research on patient safety unequivocally calls for a learning environment, rather than a punitive environment, in order to improve patient safety.

(7) Voluntary data gathering systems are more supportive than mandatory systems in creating the learning environment referred to in paragraph (6) as stated in the Institute of Medicine's report.

(8) Promising patient safety reporting systems have been established throughout the United States and the best ways to structure and use these systems are currently being determined, largely through projects funded by the Agency for Healthcare Research and Quality.

(9) Many organizations currently collecting patient safety data have expressed a need for legal protections that will allow them to review protected information and collaborate in the development and implementation of patient safety improvement strategies. Currently, the State peer review protections are inadequate to allow the sharing of information to promote patient safety.

(b) PURPOSES.—It is the purpose of this subtitle to—

(1) encourage a culture of safety and quality in the United States health care system by providing for legal protection of information reported voluntarily for the purposes of quality improvement and patient safety; and

(2) ensure accountability by raising standards and expectations for continuous quality improvements in patient safety.

SEC. 143. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended—

(1) in section 912(c), by inserting '', in accordance with part C,'' after ''The Director shall'';

(2) by redesignating part C as part D;

(3) by redesignating sections 921 through 928, as sections 931 through 938, respectively;

(4) in 934(d) (as so redesignated), by striking the second sentence and inserting the following: ''Penalties provided for under this section shall be imposed and collected by the Secretary using the administrative and procedural processes used to impose and collect civil money penalties under section 1128A of the Social Security Act (other than subsections (a) and (b), the second sentence of subsection (f), and subsections (i), (m), and (n)), unless the Secretary determines that a modification of procedures would be more suitable or reasonable to carry out this subsection and provides for such modification by regulation.'';

(5) in section 938(1) (as so redesignated), by striking ''921'' and inserting ''931''; and

(6) by inserting after part B the following:

''PART C—PATIENT SAFETY IMPROVEMENT

''SEC. 921. DEFINITIONS.

''In this part:

''(1) NON-IDENTIFIABLE INFORMATION.—

''(A) IN GENERAL.—The term 'non-identifiable information' means, with respect to information, that the information is presented in a form and manner that prevents the identification of a provider, a patient, or a reporter of patient safety data.

''(B) IDENTIFIABILITY OF PATIENT.—For purposes of subparagraph (A), the term 'presented in a form and manner that prevents the identification of a patient' means, with respect to information that has been subject to rules promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), that the information has been de-identified so that it is no longer individually identifiable health information as defined in such rules.

''(2) PATIENT SAFETY DATA.—

''(A) IN GENERAL.—The term 'patient safety data' means—

''(i) any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements that are—

''(I) collected or developed by a provider for reporting to a patient safety organization, provided that they are reported to the patient safety organization within 60 days;

''(II) requested by a patient safety organization (including the contents of such request), if they are reported to the patient safety organization within 60 days;

''(III) reported to a provider by a patient safety organization; or

''(IV) collected by a patient safety organization from another patient safety organization, or developed by a patient safety organization;

that could result in improved patient safety, health care quality, or health care outcomes; or

''(ii) any deliberative work or process with respect to any patient safety data described in clause (i).

''(B) LIMITATION.—

''(i) COLLECTION.—If the original material from which any data, reports, records, memoranda, analyses (such as root case analyses), or written or oral statements referred to in subclause (I) or (IV) of subparagraph (A)(i) are collected and is not patient safety data, the act of such collection shall not make such original material patient safety data for purposes of this part.

''(ii) SEPARATE DATA.—The term 'patient safety data' shall not include information (including a patient's medical record, billing and discharge information or any other patient or provider record) that is collected or developed separately from and that exists separately from patient safety data. Such separate information or a copy thereof submitted to a patient safety organization shall not itself be considered as patient safety data. Nothing in this part, except for section 922(f)(1), shall be construed to limit—

''(I) the discovery of or admissibility of information described in this subparagraph in a criminal, civil, or administrative proceeding;

''(II) the reporting of information described in this subparagraph to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes; or

''(III) a provider's recordkeeping obligation with respect to information described in this subparagraph under Federal, State, or local law.

''(3) PATIENT SAFETY ORGANIZATION.—The term 'patient safety organization' means a private or public entity or component thereof that is currently listed by the Secretary pursuant to section 924(c).

''(4) PATIENT SAFETY ORGANIZATION ACTIVITIES.—The term 'patient safety organization activities' means the following activities, which are deemed to be necessary for the proper management and administration of a patient safety organization:

''(A) The conduct, as its primary activity, of efforts to improve patient safety and the quality of health care delivery.

''(B) The collection and analysis of patient safety data that are submitted by more than one provider.

''(C) The development and dissemination of information to providers with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices.

''(D) The utilization of patient safety data for the purposes of encouraging a culture of safety and of providing direct feedback and assistance to providers to effectively minimize patient risk.

''(E) The maintenance of procedures to preserve confidentiality with respect to patient safety data.

''(F) The provision of appropriate security measures with respect to patient safety data.

''(G) The utilization of qualified staff.

''(5) PERSON.—The term 'person' includes Federal, State, and local government agencies.

''(6) PROVIDER.—The term 'provider' means—

''(A) a person licensed or otherwise authorized under State law to provide health care services, including—

''(i) a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, or health center; or

''(ii) a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified

social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner; or

''(B) any other person specified in regulations promulgated by the Secretary.

''SEC. 922. PRIVILEGE AND CONFIDENTIALITY PROTECTIONS.

''(a) PRIVILEGE.—Notwithstanding any other provision of Federal, State, or local law, patient safety data shall be privileged and, subject to the provisions of subsection (c)(1), shall not be—

''(1) subject to a Federal, State, or local civil, criminal, or administrative subpoena;

''(2) subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding;

''(3) disclosed pursuant to section 552 of title 5, United States Code (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law;

''(4) admitted as evidence or otherwise disclosed in any Federal, State, or local civil, criminal, or administrative proceeding; or

''(5) utilized in a disciplinary proceeding against a provider.

''(b) CONFIDENTIALITY.—Notwithstanding any other provision of Federal, State, or local law, and subject to the provisions of subsections (c) and (d), patient safety data shall be confidential and shall not be disclosed.

''(c) EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY.—Nothing in this section shall be construed to prohibit one or more of the following uses or disclosures:

''(1) Disclosure by a provider or patient safety organization of relevant patient safety data for use in a criminal proceeding only after a court makes an in camera determination that such patient safety data contains evidence of a wanton and criminal act to directly harm the patient.

''(2) Voluntary disclosure of non-identifiable patient safety data by a provider or a patient safety organization.

''(d) PROTECTED DISCLOSURE AND USE OF INFORMATION.—Nothing in this section shall be construed to prohibit one or more of the following uses or disclosures:

''(1) Disclosure of patient safety data by a person that is a provider, a patient safety organization, or a contractor of a provider or patient safety organization, to another such person, to carry out patient safety organization activities.

''(2) Disclosure of patient safety data by a provider or patient safety organization to grantees or contractors carrying out patient safety research, evaluation, or demonstration projects authorized by the Director.

''(3) Disclosure of patient safety data by a provider to an accrediting body that accredits that provider.

''(4) Voluntary disclosure of patient safety data by a patient safety organization to the Secretary for public health surveillance if the consent of each provider identified in, or providing, such data is obtained prior to such disclosure. Nothing in the preceding sentence shall be construed to prevent the release of patient safety data that is provided by, or that relates solely to, a provider from which the consent described in such sentence is obtained because one or more other providers do not provide such consent with respect to the disclosure of patient safety date that relates to such nonconsenting providers. Consent for the future release of patient safety data for such purposes may be requested by the patient safety organization at the time the data is submitted.

''(5) Voluntary disclosure of patient safety data by a patient safety organization to State of local government agencies for public health surveillance if the consent of each provider identified in, or providing, such data is obtained prior to such disclosure. Nothing in the preceding sentence shall be construed to prevent the release of patient safety data that is provided by, or that relates solely to, a provider from which the consent described in such sentence is obtained because one or more other providers do not provide such consent with respect to the disclosure of patient safety date that relates to such nonconsenting providers. Consent for the future release of patient safety data for such purposes may be requested by the patient safety organization at the time the data is submitted.

''(e) CONTINUED PROTECTION OF INFORMATION AFTER DISCLOSURE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), patient safety data that is used or disclosed shall continue to be privileged and confidential as provided for in subsections (a) and (b), and the provisions of such subsections shall apply to such data in the possession or control of—

''(A) a provider or patient safety organization that possessed such data before the use or disclosure; or

''(B) a person to whom such data was disclosed.

''(2) EXCEPTION.—Notwithstanding paragraph (1), and subject to paragraph (3)—

''(A) if patient safety data is used or disclosed as provided for in subsection (c)(1), and such use or disclosure is in open court, the confidentiality protections provided for in subsection (b) shall no longer apply to such data; and

''(B) if patient safety data is used or disclosed as provided for in subsection (c)(2), the privilege and confidentiality protections provided for in subsections (a) and (b) shall no longer apply to such data.

''(3) CONSTRUCTION.—Paragraph (2) shall not be construed as terminating or limiting the privilege or confidentiality protections provided for in subsection (a) or (b) with respect to data other than the specific data used or disclosed as provided for in subsection (c).

''(f) LIMITATION ON ACTIONS.—

''(1) PATIENT SAFETY ORGANIZATIONS.—Except to enforce disclosures pursuant to subsection (c)(1), no action may be brought or process served against a patient safety organization to compel disclosure of information collected or developed under this part whether or not such information is patient safety data unless such information is specifically identified, is not patient safety data, and cannot otherwise be obtained.

''(2) PROVIDERS.—An accrediting body shall not take an accrediting action against a provider based on the good faith participation of the provider in the collection, development, reporting, or maintenance of patient safety data in accordance with this part. An accrediting body may not require a provider to reveal its communications with any patient safety organization established in accordance with this part.

''(g) REPORTER PROTECTION.—

''(1) IN GENERAL.—A provider may not take an adverse employment action, as described in paragraph (2), against an individual based upon the fact that the individual in good faith reported information—

''(A) to the provider with the intention of having the information reported to a patient safety organization; or

''(B) directly to a patient safety organization.

''(2) ADVERSE EMPLOYMENT ACTION.—For purposes of this subsection, an 'adverse employment action' includes—

''(A) loss of employment, the failure to promote an individual, or the failure to provide any other employment-related benefit for which the individual would otherwise be eligible; or

''(B) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual.

''(h) ENFORCEMENT.—

''(1) PROHIBITION.—Except as provided in subsections (c) and (d) and as otherwise provided for in this section, it shall be unlawful for any person to negligently or intentionally disclose any patient safety data, and any such person shall, upon adjudication, be assessed in accordance with section 934(d).

''(2) RELATION TO HIPAA.—The penalty provided for under paragraph (1) shall not apply if the defendant would otherwise be subject to a penalty under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) or under section 1176 of the Social Security Act (42 U.S.C. 1320d–5) for the same disclosure.

''(3) EQUITABLE RELIEF.—

''(A) IN GENERAL.—Without limiting remedies available to other parties, a civil action may be brought by any aggrieved individual to enjoin any act or practice that violates subsection (g) and to obtain other appropriate equitable relief (including reinstatement, back pay, and restoration of benefits) to redress such violation.

''(B) AGAINST STATE EMPLOYEES.—An entity that is a State or an agency of a State government may not assert the privilege described in subsection (a) unless before the time of the assertion, the entity or, in the case of and with respect to an agency, the State has consented to be subject to an action as described by this paragraph, and that consent has remained in effect.

''(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) limit other privileges that are available under Federal, State, or local laws that provide greater confidentiality protections or privileges than the privilege and confidentiality protections provided for in this section;

''(2) limit, alter, or affect the requirements of Federal, State, or local law pertaining to information that is not privileged or confidential under this section;

''(3) alter or affect the implementation of any provision of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033), section 1176 of the Social Security Act (42 U.S.C. 1320d–5), or any regulation promulgated under such sections;

''(4) limit the authority of any provider, patient safety organization, or other person to enter into a contract requiring greater confidentiality or delegating authority to make a disclosure or use in accordance with subsection (c) or (d); and

''(5) prohibit a provider from reporting a crime to law enforcement authorities, regardless of whether knowledge of the existence of, or the description of, the crime is based on patient safety data, so long as the provider does not disclose patient safety data in making such report.

''SEC. 923. PATIENT SAFETY NETWORK OF DATABASES.

''(a) IN GENERAL.—The Secretary shall maintain a patient safety network of databases that provides an interactive evidence-based management resource for providers, patient safety organizations, and other persons. The network of databases shall have the capacity to accept, aggregate, and analyze nonidentifiable patient safety data voluntarily reported by patient safety organizations, providers, or other persons.

''(b) NETWORK OF DATABASE STANDARDS.—The Secretary may determine common formats for the reporting to the patient safety

network of databases maintained under subsection (a) of nonidentifiable patient safety data, including necessary data elements, common and consistent definitions, and a standardized computer interface for the processing of such data. To the extent practicable, such standards shall be consistent with the administrative simplification provisions of Part C of title XI of the Social Security Act.

"SEC. 924. PATIENT SAFETY ORGANIZATION CERTIFICATION AND LISTING.

''(a) CERTIFICATION.—

''(1) INITIAL CERTIFICATION.—Except as provided in paragraph (2), an entity that seeks to be a patient safety organization shall submit an initial certification to the Secretary that the entity intends to perform the patient safety organization activities.

''(2) DELAYED CERTIFICATION OF COLLECTION FROM MORE THAN ONE PROVIDER.—An entity that seeks to be a patient safety organization may—

''(A) submit an initial certification that it intends to perform patient safety organization activities other than the activities described in subparagraph (B) of section 921(4); and

''(B) within 2 years of submitting the initial certification under subparagraph (A), submit a supplemental certification that it performs the patient safety organization activities described in subparagraphs (A) through (F) of section 921(4).

''(3) EXPIRATION AND RENEWAL.—

''(A) EXPIRATION.—An initial certification under paragraph (1) or (2)(A) shall expire on the date that is 3 years after it is submitted.

''(B) RENEWAL.—

''(i) IN GENERAL.—An entity that seeks to remain a patient safety organization after the expiration of an initial certification under paragraph (1) or (2)(A) shall, within the 3-year period described in subparagraph (A), submit a renewal certification to the Secretary that the entity performs the patient safety organization activities described in section 921(4).

''(ii) TERM OF RENEWAL.—A renewal certification under clause (i) shall expire on the date that is 3 years after the date on which it is submitted, and may be renewed in the same manner as an initial certification.

''(b) ACCEPTANCE OF CERTIFICATION.—Upon the submission by an organization of an initial certification pursuant to subsection (a)(1) or (a)(2)(A), a supplemental certification pursuant to subsection (a)(2)(B), or a renewal certification pursuant to subsection (a)(3)(B), the Secretary shall review such certification and—

''(1) if such certification meets the requirements of subsection (a)(1), (a)(2)(A), (a)(2)(B), or (a)(3)(B), as applicable, the Secretary shall notify the organization that such certification is accepted; or

''(2) if such certification does not meet such requirements, as applicable, the Secretary shall notify the organization that such certification is not accepted and the reasons therefor.

''(c) LISTING.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall compile and maintain a current listing of patient safety organizations with respect to which the Secretary has accepted a certification pursuant to subsection (b).

''(2) REMOVAL FROM LISTING.—The Secretary shall remove from the listing under paragraph (1)—

''(A) an entity with respect to which the Secretary has accepted an initial certification pursuant to subsection (a)(2)(A) and which does not submit a supplemental certification pursuant to subsection (a)(2)(B) that is accepted by the Secretary;

''(B) an entity whose certification expires and which does not submit a renewal application that is accepted by the Secretary; and

''(C) an entity with respect to which the Secretary revokes the Secretary's acceptance of the entity's certification, pursuant to subsection (d).

''(d) REVOCATION OF ACCEPTANCE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), if the Secretary determines (through a review of patient safety organization activities) that a patient safety organization does not perform one of the patient safety organization activities described in subparagraph (A) through (F) of section 921(4), the Secretary may, after notice and an opportunity for a hearing, revoke the Secretary's acceptance of the certification of such organization.

''(2) DELAYED CERTIFICATION OF COLLECTION FROM MORE THAN ONE PROVIDER.—A revocation under paragraph (1) may not be based on a determination that the organization does not perform the activity described in section 921(4)(B) if—

''(A) the listing of the organization is based on its submittal of an initial certification under subsection (a)(2)(A);

''(B) the organization has not submitted a supplemental certification under subsection (a)(2)(B); and

''(C) the 2-year period described in subsection (a)(2)(B) has not expired.

''(e) NOTIFICATION OF REVOCATION OR REMOVAL FROM LISTING.—

''(1) SUPPLYING CONFIRMATION OF NOTIFICATION TO PROVIDERS.—Within 15 days of a revocation under subsection (d)(1), a patient safety organization shall submit to the Secretary a confirmation that the organization has taken all reasonable actions to notify each provider whose patient safety data is collected or analyzed by the organization of such revocation.

''(2) PUBLICATION.—Upon the revocation of an acceptance of an organization's certification under subsection (d)(1), or upon the removal of an organization from the listing under subsection (c)(2), the Secretary shall publish notice of the revocation or removal in the Federal Register.

''(f) STATUS OF DATA AFTER REMOVAL FROM LISTING.—

''(1) NEW DATA.—With respect to the privilege and confidentiality protections described in section 922, data submitted to an organization within 30 days after the organization is removed from the listing under subsection (c)(2) shall have the same status as data submitted while the organization was still listed.

''(2) PROTECTION TO CONTINUE TO APPLY.—If the privilege and confidentiality protections described in section 922 applied to data while an organization was listed, or during the 30-day period described in paragraph (1), such protections shall continue to apply to such data after the organization is removed from the listing under subsection (c)(2).

''(g) DISPOSITION OF DATA.—If the Secretary removes an organization from the listing as provided for in subsection (c)(2), with respect to the patient safety data that the organization received from providers, the organization shall—

''(1) with the approval of the provider and another patient safety organization, transfer such data to such other organization;

''(2) return such data to the person that submitted the data; or

''(3) if returning such data to such person is not practicable, destroy such data.

"SEC. 925. TECHNICAL ASSISTANCE.

''The Secretary, acting through the Director, may provide technical assistance to patient safety organizations, including convening annual meetings for patient safety organizations to discuss methodology, communication, data collection, or privacy concerns.

"SEC. 926. PROMOTING THE INTEROPERABILITY OF HEALTH CARE INFORMATION TECHNOLOGY SYSTEMS.

''(a) DEVELOPMENT.—Not later than 36 months after the date of enactment of the Patient Safety and Quality Improvement Act of 2005, the Secretary shall develop or adopt voluntary standards that promote the electronic exchange of health care information.

''(b) UPDATES.—The Secretary shall provide for the ongoing review and periodic updating of the standards developed under subsection (a).

''(c) DISSEMINATION.—The Secretary shall provide for the dissemination of the standards developed and updated under this section.

"SEC. 927. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated such sums as may be necessary to carry out this part.''.

SEC. 144. STUDIES AND REPORTS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract (based upon a competitive contracting process) with an appropriate research organization for the conduct of a study to assess the impact of medical technologies and therapies on patient safety, patient benefit, health care quality, and the costs of care as well as productivity growth. Such study shall examine—

(1) the extent to which factors, such as the use of labor and technological advances, have contributed to increases in the share of the gross domestic product that is devoted to health care and the impact of medical technologies and therapies on such increases;

(2) the extent to which early and appropriate introduction and integration of innovative medical technologies and therapies may affect the overall productivity and quality of the health care delivery systems of the United States; and

(3) the relationship of such medical technologies and therapies to patient safety, patient benefit, health care quality, and cost of care.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report containing the results of the study conducted under subsection (a).

Subtitle D—Fraud and Abuse

SEC. 151. NATIONAL EXPANSION OF THE MEDICARE-MEDICAID DATA MATCH PILOT PROGRAM.

(a) REQUIREMENT OF THE MEDICARE INTEGRITY PROGRAM.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—

(1) in subsection (b), by adding at the end the following:

''(6) The Medicare-Medicaid data match program in accordance with subsection (g).''; and

(2) by adding at the end the following:

''(g) MEDICARE-MEDICAID DATA MATCH PROGRAM.—

''(1) EXPANSION OF PROGRAM.—

''(A) IN GENERAL.—The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid data match program (commonly referred to as the 'Medi-Medi Program') is conducted with respect to the program established under this title and the applicable number of State Medicaid programs under title XIX for the purpose of—

''(i) identifying vulnerabilities in both such programs;

''(ii) assisting States, as appropriate, to take action to protect the Federal share of

expenditures under the Medicaid program; and

''(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

''(B) APPLICABLE NUMBER.—For purposes of subparagraph (A), the term 'applicable number' means—

''(i) in the case of fiscal year 2006, 10 State Medicaid programs;

''(ii) in the case of fiscal year 2007, 12 State Medicaid programs; and

''(iii) in the case of fiscal year 2008, 15 State Medicaid programs.

''(2) LIMITED WAIVER AUTHORITY.—The Secretary shall waive only such requirements of this section and of titles XI and XIX as are necessary to carry out paragraph (1).''.

(b) FUNDING.—Section 1817(k)(4) of the Social Security Act (42 U.S.C. 1395i(k)(4)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''; and

(2) by adding at the end the following:

''(C) EXPANSION OF THE MEDICARE-MEDICAID DATA MATCH PROGRAM.—Of the amount appropriated under subparagraph (A) for a fiscal year, the following amounts shall be used to carry out section 1893(b)(6) for that year:

''(i) $10,000,000 of the amount appropriated for fiscal year 2006.

''(ii) $12,200,000 of the amount appropriated for fiscal year 2007.

''(iii) $15,800,000 of the amount appropriated for fiscal year 2008.''.

Subtitle E—Miscellaneous Provisions

SEC. 161. SENSE OF THE SENATE ON ESTABLISHING A MANDATED BENEFITS COMMISSION.

It is the Sense of the Senate that—

(1) there should be established an independent Federal entity to study and provide advice to Congress on existing and proposed federally mandated health insurance benefits offered by employer-sponsored health plans and insurance issuers; and

(2) advice provided under paragraph (1) should be evidence- and actuarially-based, and take into consideration the population costs and benefits, including the health, financial, and social impact on affected populations, safety and medical efficacy, the impact on costs and access to insurance generally, and to different types of insurance products, the impact on labor costs and jobs, and any other relevant factors.

SEC. 162. ENFORCEMENT OF REIMBURSEMENT PROVISIONS BY FIDUCIARIES.

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(3)) is amended by inserting before the semicolon the following: ''(which may include the recovery of amounts on behalf of the plan by a fiduciary enforcing the terms of the plan that provide a right of recovery by reimbursement or subrogation with respect to benefits provided to a participant or beneficiary)''.

TITLE II—EXPANDING ACCESS TO AFFORDABLE HEALTH COVERAGE THROUGH TAX INCENTIVES AND OTHER INITIATIVES

Subtitle A—Refundable Health Insurance Credit

SEC. 201. REFUNDABLE HEALTH INSURANCE COSTS CREDIT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. HEALTH INSURANCE COSTS FOR UNINSURED INDIVIDUALS.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the amount paid by the taxpayer during such taxable year for qualified health insurance for the taxpayer and the taxpayer's spouse and dependents.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount allowed as a credit under subsection (a) to the taxpayer for the taxable year shall not exceed the lesser of—

''(A) 90 percent of the sum of the amounts paid by the taxpayer for qualified health insurance for each individual referred to in subsection (a) for coverage months of the individual during the taxable year, or

''(B) $3,000.

''(2) MONTHLY LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (1), amounts paid by the taxpayer for qualified health insurance for an individual for any coverage month of such individual during the taxable year shall not be taken into account to the extent such amounts exceed the amount equal to 1/12 of—

''(i) $1,111 if such individual is the taxpayer,

''(ii) $1,111 if—

''(I) such individual is the spouse of the taxpayer,

''(II) the taxpayer and such spouse are married as of the first day of such month, and

''(III) the taxpayer files a joint return for the taxable year,

''(iii) $1,111 if such individual has attained the age of 24 as of the close of the taxable year and is a dependent of the taxpayer for such taxable year, and

''(iv) one-half of the amount described in clause (i) if such individual has not attained the age of 24 as of the close of the taxable year and is a dependent of the taxpayer for such taxable year.

''(B) LIMITATION TO 2 YOUNG DEPENDENTS.—If there are more than 2 individuals described in subparagraph (A)(iv) with respect to the taxpayer for any coverage month, the aggregate amounts paid by the taxpayer for qualified health insurance for such individuals which may be taken into account under paragraph (1) shall not exceed 1/12 of the dollar amount in effect under subparagraph (A)(i) for the coverage month.

''(C) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of a taxpayer—

''(i) who is married (within the meaning of section 7703) as of the close of the taxable year but does not file a joint return for such year, and

''(ii) who does not live apart from such taxpayer's spouse at all times during the taxable year,

any dollar limitation imposed under this paragraph on amounts paid for qualified health insurance for individuals described in subparagraph (A)(iv) shall be divided equally between the taxpayer and the taxpayer's spouse unless they agree on a different division.

''(3) INCOME PHASEOUT OF CREDIT PERCENTAGE FOR ONE-PERSON COVERAGE.—

''(A) PHASEOUT FOR UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—In the case of an individual (other than a surviving spouse, the head of a household, or a married individual) with one-person coverage, if such individual has modified adjusted gross income—

''(i) in excess of $15,000 for a taxable year but not in excess of $20,000, the 90 percent under paragraph (1)(B) shall be reduced by the number of percentage points which bears the same ratio to 40 percentage points as—

''(I) the excess of modified adjusted gross income in excess of $15,000, bears to

''(II) $5,000, or

''(ii) in excess of $20,000 for a taxable year, the 90 percent under paragraph (1)(B) shall be reduced by the sum of 40 percentage points plus the number of percentage points which bears the same ratio to 50 percentage points as—

''(I) the excess of modified adjusted gross income in excess of $20,000, bears to

''(II) $10,000.

''(B) PHASEOUT FOR OTHER INDIVIDUALS.—In the case of a taxpayer (other than an individual described in subparagraph (A) or (C)) with one-person coverage, if the taxpayer has modified adjusted gross income in excess of $25,000 for a taxable year, the 90 percent under paragraph (1)(B) shall be reduced by the number of percentage points which bears the same ratio to 90 percentage points as—

''(i) the excess of modified adjusted gross income in excess of $25,000, bears to

''(ii) $15,000.

''(C) MARRIED FILING SEPARATE RETURN.—In the case of a taxpayer who is married filing a separate return for the taxable year and who has one-person coverage, if the taxpayer has modified adjusted gross income in excess of $12,500 for the taxable year, the 90 percent under paragraph (1)(B) shall be reduced by the number of percentage points which bears the same ratio to 90 percentage points as—

''(i) the excess of modified adjusted gross income in excess of $12,500, bears to

''(ii) $7,500.

''(4) INCOME PHASEOUT OF CREDIT PERCENTAGE FOR COVERAGE OF MORE THAN ONE PERSON.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of a taxpayer with coverage of more than one person, if the taxpayer has modified adjusted gross income in excess of $25,000 for a taxable year, the 90 percent under paragraph (1)(B) shall be reduced by the number of percentage points which bears the same ratio to 90 percentage points as—

''(i) the excess of modified adjusted gross income in excess of $25,000, bears to

''(ii) $35,000.

''(B) MARRIED FILING SEPARATE RETURN.—In the case of a taxpayer who is married filing a separate return for the taxable year and who has coverage of more than one person, if the taxpayer has modified adjusted gross income in excess of $12,500 for the taxable year, the 90 percent under paragraph (1)(B) shall be reduced by the number of percentage points which bears the same ratio to 90 percentage points as—

''(i) the excess of modified adjusted gross income in excess of $12,500, bears to

''(ii) $17,500.

''(5) ROUNDING.—Any percentage resulting from a reduction under paragraphs (3) and (4) shall be rounded to the nearest one-tenth of a percent.

''(6) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

''(A) without regard to this section and sections 911, 931, and 933, and

''(B) after application of sections 86, 135, 137, 219, 221, and 469.

''(c) COVERAGE MONTH.—For purposes of this section—

''(1) IN GENERAL.—The term 'coverage month' means, with respect to an individual, any month if—

''(A) as of the first day of such month such individual is covered by qualified health insurance, and

''(B) the premium for coverage under such insurance for such month is paid by the taxpayer.

''(2) GROUP HEALTH PLAN COVERAGE.—

''(A) IN GENERAL.—The term 'coverage month' shall not include any month for which if, as of the first day of the month, the individual participates in any group health plan (within the meaning of section 5000 without regard to section 5000(d)).

''(B) EXCEPTION FOR CERTAIN PERMITTED COVERAGE.—Subparagraph (A) shall not apply to an individual if the individual's only coverage for a month is coverage described in clause (i) or (ii) of section 223(c)(1)(B).

''(3) EMPLOYER-PROVIDED COVERAGE.—The term 'coverage month' shall not include any month during a taxable year if any amount is not includible in the gross income of the taxpayer for such year under section 106 (other than coverage described in clause (i) or (ii) of section 223(c)(1)(B)).

''(4) MEDICARE, MEDICAID, AND SCHIP.—The term 'coverage month' shall not include any month with respect to an individual if, as of the first day of such month, such individual—

''(A) is entitled to any benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

''(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

''(5) CERTAIN OTHER COVERAGE.—The term 'coverage month' shall not include any month during a taxable year with respect to an individual if, as of the first day of such month at any time during such month, such individual is enrolled in a program under—

''(A) chapter 89 of title 5, United States Code, or

''(B) chapter 55 of title 10, United States Code.

''(6) PRISONERS.—The term 'coverage month' shall not include any month with respect to an individual if, as of the first day of such month, such individual is imprisoned under Federal, State, or local authority.

''(7) INSUFFICIENT PRESENCE IN UNITED STATES.—The term 'coverage month' shall not include any month during a taxable year with respect to an individual if such individual is present in the United States on fewer than 183 days during such year (determined in accordance with section 7701(b)(7)).

''(d) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means health insurance coverage (as defined in section 9832(b)(1)) which—

''(A) is coverage described in paragraph (2), and

''(B) meets the requirements of paragraph (3).

''(2) ELIGIBLE COVERAGE.—Coverage described in this paragraph is the following:

''(A) Coverage under individual health insurance.

''(B) Coverage through a private sector health care coverage purchasing pool.

''(C) Coverage through a State care coverage purchasing pool.

''(D) Coverage under a State high-risk pool described in subparagraph (C) of section 35(e)(1).

''(E) Coverage after December 31, 2006, under an eligible State buy in program.

''(3) REQUIREMENTS.—The requirements of this paragraph are as follows:

''(A) COST LIMITS.—The coverage meets the requirements of section 223(c)(2)(A)(ii).

''(B) MAXIMUM BENEFITS.—Under the coverage, the annual and lifetime maximum benefits are not less than $700,000.

''(C) BROAD COVERAGE.—The coverage includes inpatient and outpatient care, emergency benefits, and physician care.

''(D) GUARANTEED RENEWABILITY.—Such coverage is guaranteed renewable by the provider.

''(4) ELIGIBLE STATE BUY IN PROGRAM.—For purposes of paragraph (2)(E)—

''(A) IN GENERAL.—The term 'eligible State buy in program' means a State program under which an individual who—

''(i) is not eligible for assistance under the State medicaid program under title XIX of the Social Security Act,

''(ii) is not eligible for assistance under the State children's health insurance program under title XXI of such Act, or

''(iii) is not a State employee,

is able to buy health insurance coverage through a purchasing arrangement entered into between the State and a private sector health care purchasing group or health plan.

''(B) REQUIREMENTS.—Subparagraph (A) shall only apply to a State program if—

''(i) the program uses private sector health care purchasing groups or health plans, and

''(ii) the State maintains separate risk pools for participants under the State buy in program and other participants.

''(C) SUBSIDIES.—

''(i) IN GENERAL.—A State program shall not fail to be treated as an eligible State buy in program merely because the State subsidizes the costs of an individual in buying health insurance coverage under the program.

''(ii) EXCEPTION.—Clause (i) shall not apply if the State subsidy under the program for any adult for any consecutive 12-month period exceeds the applicable dollar amount.

''(iii) APPLICABLE DOLLAR AMOUNT.—

''(I) IN GENERAL.—For purposes of clause (ii), the applicable dollar amount is $2,000.

''(II) REDUCTION.—In the case of a family with annual income in excess of 133 percent of the applicable poverty line (as determined in accordance with criteria established by the Director of the Office of Management and Budget) but not in excess of 200 percent of such line, the dollar amount under clause (i) shall be ratably reduced (but not below zero) for each dollar of such excess. In the case of a family with annual income in excess of 200 percent of such line, the applicable dollar amount shall be zero.

''(e) ARRANGEMENTS UNDER WHICH INSURERS CONTRIBUTE TO HSA.—

''(1) IN GENERAL.—For purposes of this section, health insurance shall not be treated as qualified health insurance if the insurer makes contributions to a health savings account of the taxpayer unless such insurance is provided under an arrangement described in paragraph (2).

''(2) ARRANGEMENTS DESCRIBED.—

''(A) AMOUNTS PAID FOR COVERAGE EXCEED MONTHLY LIMITATION.—In the case of amounts paid under an arrangement for health insurance for a coverage month in excess of the amount in effect under subsection (b)(2)(A) for such month, an arrangement is described in this subparagraph if under the arrangement—

''(i) the aggregate amount contributed by the insurer to any health savings account of the taxpayer does not exceed 90 percent of the excess of—

''(I) the amount paid by the taxpayer for qualified health insurance under such arrangement for such month, over

''(II) the amount in effect under subsection (b)(2)(A) for such month, and

''(ii) the amount contributed by the insurer to a qualified health savings account of the taxpayer, reduced by the amount of the excess under clause (i), does not exceed 27 percent of the amount in effect under subsection (b)(2)(A) for such month.

''(B) AMOUNTS PAID FOR COVERAGE LESS THAN MONTHLY LIMITATION.—In the case of an arrangement under which the amount paid for qualified health insurance for a coverage month does not exceed the amount in effect under subsection (b)(2)(A) for such month, an arrangement is described in this subparagraph if—

''(i) under the arrangement the value of the insured benefits (excluding overhead) exceeds 65 percent of the amount paid for qualified health insurance for such month, and

''(ii) the amount contributed by the insurer to a qualified health savings account of the taxpayer does not exceed 27 percent of the amount in effect under subsection (b)(2)(A) for such month.

''(3) QUALIFIED HEALTH SAVINGS ACCOUNT.—

''(A) IN GENERAL.—The term 'qualified health savings account' means a health savings account (as defined in section 223(d))—

''(i) which is designated (in such form as the Secretary may prescribe) as a qualified account for purposes of this section,

''(ii) which may not include any amount other than contributions described in this subsection and earnings on such contributions, and

''(iii) with respect to which section 223(f)(4)(A) is applied by substituting '100 percent' for '10 percent'.

''(B) SUBACCOUNTS AND SEPARATE ACCOUNTING.—The Secretary may prescribe rules under which a subaccount within a health savings account, or separate accounting with respect to contributions and earnings described in subparagraph (A)(ii), may be treated in the same manner as a qualified health savings account.

''(C) ROLLOVERS.—A contribution of a distribution from a qualified health savings account to another health savings account shall be treated as a rollover contribution for purposes of section 223(f)(5) only if the other account is a qualified health savings account.

''(f) DEPENDENTS.—For purposes of this section—

''(1) DEPENDENT DEFINED.—The term 'dependent' has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

''(2) SPECIAL RULE FOR DEPENDENT CHILD OF DIVORCED PARENTS.—An individual who is a child to whom section 152(e) applies shall be treated as a dependent of the custodial parent for a coverage month unless the custodial and noncustodial parent provide otherwise.

''(3) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151(c) is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

''(g) INFLATION ADJUSTMENTS.—

''(1) CREDIT AND HEALTH INSURANCE AMOUNTS.—In the case of any taxable year beginning after 2006, each dollar amount referred to in subsections (b)(1)(B), (b)(2)(A), (d)(3)(B), and (d)(4)(C)(iii)(I) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting '2005' for '1996' in subclause (II) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

''(2) INCOME PHASEOUT AMOUNTS.—In the case of any taxable year beginning after 2006, each dollar amount referred to in paragraph (3) and (4) of subsection (b) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2005' for 'calendar year 1992' in subparagraph (B) thereof.

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

''(h) ARCHER MSA CONTRIBUTIONS; HSA CONTRIBUTIONS.—If a deduction would be allowed under section 220 to the taxpayer for a payment for the taxable year to the Archer MSA of an individual or under section 223 to the taxpayer for a payment for the taxable year to the Health Savings Account of such individual, subsection (a) shall not apply to the taxpayer for any month during such taxable year for which the taxpayer, spouse, or dependent is an eligible individual for purposes of either such section.

''(i) OTHER RULES.—For purposes of this section—

''(1) COORDINATION WITH MEDICAL EXPENSE AND PREMIUM DEDUCTIONS FOR HIGH DEDUCTIBLE HEALTH PLANS.—The amount which would (but for this paragraph) be taken into account by the taxpayer under section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

''(2) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—No credit shall be allowable under this section for a taxable year if a deduction is allowed under section 162(l) for the taxable year.

''(3) COORDINATION WITH ADVANCE PAYMENT.—Rules similar to the rules of section 35(g)(1) shall apply to any credit to which this section applies.

''(4) COORDINATION WITH SECTION 35.—If a taxpayer is eligible for the credit allowed under this section and section 35 for any taxable year, the taxpayer shall elect which credit is to be allowed.

''(j) EXPENSES MUST BE SUBSTANTIATED.—A payment for insurance to which subsection (a) applies may be taken into account under this section only if the taxpayer substantiates such payment in such form as the Secretary may prescribe.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following:

''SEC. 6050U. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.

''(a) IN GENERAL.—Any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of such individual or any other individual under creditable health insurance, shall make the return described in subsection (b) (at such time as the Secretary may by regulations prescribe) with respect to each individual from whom such payments were received.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of the individual from whom payments described in subsection (a) were received,

''(B) the name, address, and TIN of each individual who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage,

''(C) the aggregate amount of payments described in subsection (a), and

''(D) such other information as the Secretary may reasonably prescribe.

''(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term 'creditable health insurance' means qualified health insurance (as defined in section 36(d)).

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

''(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

''(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix), respectively, and by inserting after clause (xii) the following:

''(xiii) section 6050U (relating to returns relating to payments for qualified health insurance),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of subparagraph (AA), by striking the period at the end of the subparagraph (BB) and inserting '', or'', and by adding at the end the following:

''(CC) section 6050U(d) (relating to returns relating to payments for qualified health insurance).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050T the following:

''Sec. 6050U. Returns relating to payments for qualified health insurance.''.

(c) CRIMINAL PENALTY FOR FRAUD.—Subchapter B of chapter 75 of the Internal Revenue Code of 1986 (relating to other offenses) is amended by adding at the end the following:

''SEC. 7276. PENALTIES FOR OFFENSES RELATING TO HEALTH INSURANCE TAX CREDIT.

''Any person who knowingly misuses Department of the Treasury names, symbols, titles, or initials to convey the false impression of association with, or approval or endorsement by, the Department of the Treasury of any insurance products or group health coverage in connection with the credit for health insurance costs under section 36 shall on conviction thereof be fined not more than $10,000, or imprisoned not more than 1 year, or both.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 162(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) ELECTION TO HAVE SUBSECTION APPLY.—No deduction shall be allowed under paragraph (1) for a taxable year unless the taxpayer elects to have this subsection apply for such year.''.

(2) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(3) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking ''35'' and inserting ''36'' and by inserting after the item relating to section 35 the following:

''Sec. 36. Health insurance costs for uninsured individuals.''.

(4) The table of sections for subchapter B of chapter 75 of such Code is amended by adding at the end the following:

''Sec. 7276. Penalties for offenses relating to health insurance tax credit.''.

(e) 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, 2005.

(2) PENALTIES.—The amendments made by subsections (c) and (d)(4) shall take effect on the date of the enactment of this Act.

SEC. 202. ADVANCE PAYMENT OF CREDIT TO ISSUERS OF QUALIFIED HEALTH INSURANCE.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following:

''SEC. 7529. ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

''Not later than July 1, 2007, the Secretary shall establish a program for making payments to providers of qualified health insurance (as defined in section 36(d)) on behalf of individuals eligible for the credit under section 36. Such payments shall be made on the basis of modified adjusted gross income of eligible individuals for the preceding taxable year.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 7529. Advance payment of health insurance credit for purchasers of qualified health insurance.''.

Subtitle B—High Deductible Health Plans and Health Savings Accounts

SEC. 211. DEDUCTION OF PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

''SEC. 224. PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS.

''(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction for the taxable year the aggregate amount paid by or on behalf of such individual as premiums under a high deductible health plan with respect to months during such year for which such individual is an eligible individual with respect to such health plan.

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

''(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' has the meaning given such term by section 223(c)(1).

''(2) HIGH DEDUCTIBLE HEALTH PLAN.—The term 'high deductible health plan' has the meaning given such term by section 223(c)(2).

''(c) SPECIAL RULES.—

''(1) DEDUCTION ALLOWABLE FOR ONLY 1 PLAN.—For purposes of this section, in the case of an individual covered by more than 1 high deductible health plan for any month, the individual may only take into account amounts paid for 1 of such plans for such month.

''(2) GROUP HEALTH PLAN COVERAGE.—

''(A) IN GENERAL.—No deduction shall be allowed to an individual under subsection (a) for any amount paid for coverage under a high deductible health plan for a month if, as of the first day of that month, that individual participates in any coverage under a group health plan (within the meaning of section 5000 without regard to section 5000(d)).

''(B) EXCEPTION FOR CERTAIN PERMITTED COVERAGE.—Subparagraph (A) shall not apply to an individual if the individual's only coverage under a group health plan for a month is coverage described in clause (i) or (ii) of section 223(c)(1)(B).

''(3) MEDICARE ELIGIBLE INDIVIDUALS.—No deduction shall be allowed under subsection (a) with respect to any individual for any month if the individual is entitled to benefits under title XVIII of the Social Security Act for the month.

''(4) HEALTH SAVINGS ACCOUNT REQUIRED.—A deduction shall not be allowed under subsection (a) for a taxable year with respect to an individual unless the individual is an account beneficiary of a health savings account during a portion of the taxable year.

''(5) MEDICAL AND HEALTH SAVINGS ACCOUNTS.—Subsection (a) shall not apply with respect to any amount which is paid or distributed out of an Archer MSA or a health savings account which is not included in gross income under section 220(f) or 223(f), as the case may be.

''(6) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE OF SELF-EMPLOYED INDIVIDUALS.—The amount taken into account by the taxpayer in computing the deduction under section 162(l) shall not be taken into account under this section.

''(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amount taken into account by the taxpayer in computing the deduction under this section shall not be taken into account under section 213.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by inserting before the last sentence at the end the following new paragraph:

''(21) PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS.—The deduction allowed by section 224.''.

(c) COORDINATION WITH HEALTH INSURANCE COSTS CREDIT.—Section 35(g)(2) of the Internal Revenue Code of 1986 is amended by striking ''or 213'' and inserting '',213, or 224''.

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 224 as section 225 and by inserting before such item the following new item:

''Sec. 224. Premiums for high deductible health plans.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 212. REFUNDABLE CREDIT FOR CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS OF SMALL BUSINESS EMPLOYEES.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by subtitle A, is amended by inserting after section 36 the following new section:

''SEC. 36A. SMALL EMPLOYER CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.

''(a) GENERAL RULE.—In the case of an eligible employer, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the lesser of—

''(1) the amount contributed by such employer to any qualified health savings account of any employee who is an eligible individual (as defined in section 223(c)(1)) during the taxable year, or

''(2) an amount equal to the product of—

''(A) $200 ($500 if coverage for all months described in subparagraph (B)(i) is family coverage), and

''(B) a fraction—

''(i) the numerator of which is the number of months that the employee was covered under a high deductible health plan maintained by the employer, and

''(ii) the denominator of which is the number of months in the taxable year.

''(b) ELIGIBLE EMPLOYER.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible employer' means, with respect to any taxable year, an employer which—

''(A) is a small employer, and

''(B) maintains a high deductible health plan under which all employees of the employer reasonably expected to receive at least $5,000 of compensation during the taxable year are eligible to participate.

An employer may exclude from consideration under subparagraph (B) employees who are covered by an agreement described in section 410(b)(3)(A) if there is evidence that health benefits were the subject of good faith bargaining.

''(2) EXCEPTION FOR GOVERNMENTAL AND TAX-EXEMPT EMPLOYERS.—The term 'eligible employer' shall not include the Federal Government or any employer described in section 457(e)(1).

''(3) SMALL EMPLOYER.—

''(A) IN GENERAL.—The term 'small employer' means, with respect to any calendar year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

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

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

''(1) HIGH DEDUCTIBLE HEALTH PLAN.—The term 'high deductible health plan' has the meaning given such term by section 223(c)(2).

''(2) QUALIFIED HEALTH SAVINGS ACCOUNT.—

''(A) IN GENERAL.—The term 'qualified health savings account' means a health savings account (as defined in section 223(d))—

''(i) which is designated (in such form as the Secretary may prescribe) as a qualified account for purposes of this section,

''(ii) which may not include any amount other than contributions described in subsection (a) and earnings on such contributions, and

''(iii) with respect to which section 223(f)(4)(A) is applied by substituting '100 percent' for '10 percent'.

''(B) SUBACCOUNTS AND SEPARATE ACCOUNTING.—The Secretary may prescribe rules under which a subaccount within a health savings account, or separate accounting with respect to contributions and earnings described in subparagraph (A)(ii), may be treated in the same manner as a qualified health savings account.

''(C) ROLLOVERS.—A contribution of a distribution from a qualified health savings account to another health savings account shall be treated as a rollover contribution for purposes of section 223(f)(5) only if the other account is a qualified health savings account.

''(d) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person.

''(2) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed for that portion of contributions to any health savings accounts for the taxable year which is equal to the credit determined under subsection (a).

''(3) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36A of such Code''.

(2) The table of sections for subpart C of part IV of chapter 1 of the Internal Revenue Code of 1986, as amended by subtitle A, is amended by inserting after the item relating to section 36 the following new item:

''Sec. 36A. Small employer contributions to health savings accounts.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2005.

Subtitle C—Improvement of the Health Coverage Tax Credit

SEC. 221. CHANGE IN STATE-BASED COVERAGE RULES RELATED TO PREEXISTING CONDITIONS.

(a) IN GENERAL.—Section 35(e)(2) of the Internal Revenue Code of 1986 (relating to requirements for State-based coverage) is amended by adding at the end the following:

''(C) LIMITATION ON PREEXISTING CONDITION EXCLUSION PERIOD.—The term 'qualified health insurance' does not include any coverage described in subparagraphs (C) through (H) of paragraph (1) that imposes a pre-existing condition exclusion with respect to any individual unless—

''(i) such exclusion relates to a physical or mental condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the date the individual seeks to enroll in the coverage,

''(ii) such exclusion extends for a period of not more than 12 months after the individual seeks to enroll in the coverage,

''(iii) the period of any such preexisting condition exclusion is reduced by the length of the aggregate of the periods of creditable coverage (as defined in section 9801(c)) applicable to the individual as of the enrollment date, and

''(iv) such exclusion is not an exclusion described in section 9801(d).''.

(b) CONFORMING AMENDMENTS.—

(1) INTERNAL REVENUE CODE OF 1986.—Subparagraph (A) of section 35(e)(2) of such Code is amended—

(A) by striking clause (ii); and

(B) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(2) WORKFORCE INVESTMENT ACT OF 1998 AMENDMENTS.—Section 173(f)(2)(B) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(B)) is amended—

(A) in clause (i)—

(i) by striking subclause (II); and

(ii) by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively; and

(B) by adding at the end the following:

''(iii) LIMITATION ON PREEXISTING CONDITION EXCLUSION PERIOD.—The term 'qualified health insurance' does not include any coverage described in clauses (iii) through (ix) of subparagraph (A) that imposes a pre-existing condition exclusion with respect to any individual unless—

''(I) such exclusion relates to a physical or mental condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the date the individual seeks to enroll in the coverage;

''(II) such exclusion extends for a period of not more than 12 months after the individual seeks to enroll in the coverage;

''(III) the period of any such preexisting condition exclusion is reduced by the length of the aggregate of the periods of creditable coverage (as defined in section 9801(c) of the Internal Revenue Code of 1986) applicable to the individual as of the enrollment date; and

''(IV) such exclusion is not an exclusion described in section 9801(d) of such Code.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2005.

SEC. 222. ELIGIBILITY OF SPOUSE OF CERTAIN INDIVIDUALS ENTITLED TO MEDICARE.

(a) IN GENERAL.—Subsection (b) of section 35 of such Code (defining eligible coverage month) is amended by adding at the end the following:

''(3) SPECIAL RULE FOR SPOUSE OF INDIVIDUAL ENTITLED TO MEDICARE.—Any month which would be an eligible coverage month with respect to a taxpayer (determined without regard to subsection (f)(2)(A)) shall be an eligible coverage month for any spouse of such taxpayer, provided the spouse has attained age 55 and meets the requirements of clauses (ii), (iii), and (iv) of paragraph (1)(A).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to taxable years beginning after December 31, 2005.

SEC. 223. ELIGIBLE PBGC PENSION RECIPIENT.

(a) IN GENERAL.—Subparagraph (B) of section 35(c)(4) of such Code (relating to eligible PBGC pension recipients) is amended by inserting before the period the following '', or, after August 6, 2002, received from such Corporation a one-time single-sum pension payment in lieu of an annuity''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 201 of the Trade Act of 2002 (Public Law 107–210, 116 Stat. 954).

SEC. 224. APPLICATION OF OPTION TO OFFER STATE-BASED COVERAGE TO PUERTO RICO, NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, GUAM, AND THE UNITED STATES VIRGIN ISLANDS.

(a) IN GENERAL.—Section 35(e) of such Code (relating to requirements for qualified health insurance) is amended by adding at the end the following:

''(4) APPLICATION TO PUERTO RICO, NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, GUAM, AND THE UNITED STATES VIRGIN ISLANDS.—For purposes of this section, Puerto Rico, Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands shall be considered States.''.

(b) CONFORMING AMENDMENT.—Section 173(f)(2) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)) is amended by adding at the end the following:

''(D) APPLICATION TO NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, GUAM, AND THE UNITED STATES VIRGIN ISLANDS.—For purposes of subsection (a)(4)(A) and this subsection, the term 'State' shall include the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2005.

SEC. 225. CLARIFICATION OF DISCLOSURE RULES.

(a) IN GENERAL.—Subsection (k) of section 6103 of such Code (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following:

''(10) DISCLOSURE OF CERTAIN RETURN INFORMATION FOR PURPOSES OF CARRYING OUT A PROGRAM FOR ADVANCE PAYMENT OF CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.—The Secretary may disclose to providers of health insurance, administrators of health plans, or contractors of such providers or administrators, for any certified individual (as defined in section 7527(c)) the taxpayer identity and health insurance member and group numbers of the certified individual (and any qualifying family member as defined in section 35(d), if applicable) and the amount and period of the payment, to the extent the Secretary deems necessary for the administration of the program established by section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6103 of such Code (relating to confidentiality and disclosure of returns and return information) is amended—

(A) in subsection (a)(3), by inserting ''(k)(10),'' after ''(e)(1)(D)(iii),'';

(B) in subsection (l), by striking paragraph (18); and

(C) in subsection (p)—

(i) in paragraph (3)(A)—

(I) by striking ''or (9)'' and inserting ''(9), or (10)''; and

(II) by striking ''(17), or (18)'' and inserting ''or (17)''; and

(ii) in paragraph (4), by striking ''(18)'' after ''(l)(16)'' each place it appears.

(2) Section 7213(a)(2) of such Code (relating to unauthorized disclosure of information) is amended by inserting ''(k)(10)'' before ''(l)(6)''.

(3) Section 7213A(a)(1)(B) of such Code (relating to unauthorized inspection of returns or return information) is amended by striking ''subsection (l)(18) or (n) of section 6103'' and inserting ''section 6103(n)''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2005.

SEC. 226. CLARIFICATION THAT STATE-BASED COBRA CONTINUATION COVERAGE IS SUBJECT TO SAME RULES AS FEDERAL COBRA.

(a) IN GENERAL.—Section 35(e)(2) of such Code (relating to state-based coverage requirements) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking ''(B)'' and inserting ''(C)''; and

(2) in subparagraph(B)(i), by striking ''(B)'' and inserting ''(C)''.

(b) CONFORMING AMENDMENTS.—Section 173(f)(2)(B) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(B)) is amended—

(1) in clause (i), in the matter preceding subclause (I), by striking ''(ii)'' and inserting ''(iii)''; and

(2) in clause (ii)(I), by striking ''(ii)'' and inserting ''(iii)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of sections 201 and 203, respectively, of the Trade Act of 2002 (Public Law 107–210, 116 Stat. 954).

SEC. 227. APPLICATION OF RULES FOR OTHER SPECIFIED COVERAGE TO ELIGIBLE ALTERNATIVE TAA RECIPIENTS CONSISTENT WITH RULES FOR OTHER ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 35(f)(1) of such Code (relating to subsidized coverage) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS.—Section 173(f)(7)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(7)(A)) is amended by striking clause (ii) and redesignating clause (iii) as clause (ii).

Subtitle D—Long-Term Care Insurance

SEC. 231. SENSE OF THE SENATE CONCERNING LONG-TERM CARE.

It is the sense of the Senate that Congress should take steps to make long-term care more affordable by providing tax incentives for the purchase of long-term care insurance, support for family caregivers, and making necessary public program reforms.

Subtitle E—Other Provisions

SEC. 241. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(c), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(B) FLEXIBLE SPENDING ARRANGEMENT.—A flexible spending arrangement is a benefit program which provides employees with coverage under which—

''(i) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

''(ii) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

SEC. 242. MICROENTREPRENEURS.

(Section 404(8) of the Assets for Independence Act (42 U.S.C. 604 note) is amended by adding at the end the following:

''(F) HIGH DEDUCTIBLE HEALTH INSURANCE.—

''(i) IN GENERAL.—The eligible individual's contribution (as an employer or employee) for coverage under a high deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986).

''(ii) DEFINITION OF EMPLOYEE.—For purposes of clause (i), the term 'employee' includes an individual described in section 401(c)(1) of the Internal Revenue Code of 1986.''.

SEC. 243. STUDY ON ACCESS TO AFFORDABLE HEALTH INSURANCE FOR FULL-TIME COLLEGE AND UNIVERSITY STUDENTS.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that, because a considerable number of the United States' uninsured population are young adults who are enrolled full-time at an institution of higher education, Congress should determine whether health care coverage proposals targeting this population would be effective.

(b) STUDY REQUIRED.—The Government Accountability Office shall provide for the conduct of a study to evaluate existing and potential sources of affordable health insurance coverage for graduate and undergraduate students enrolled at an institution of higher education (as defined in section 1201 of the Higher Education Act of 1965 (20 U.S.C. 1141)).

(c) REQUIRED ELEMENTS OF STUDY.—In conducting the study under subsection (b), the Government Accountability Office shall, at a minimum, examine the following:

(1) STUDENT DEMOGRAPHICS.—

(A) IN GENERAL.—The size and characteristics of the insured and uninsured population of undergraduate and graduate students enrolled at institutions of higher education. Such data shall be differentiated as provided for in subparagraphs (B) and (C).

(B) STATISTICAL BREAKDOWN.—The data concerning the uninsured student population collected under subparagraph (A) shall be differentiated by—

(i) the full-time, full-time equivalent, and part-time enrollment status of the students involved;

(ii) the type of institution involved (such as a public, private, non-profit, or community institution);

(iii) the length and type of educational program involved (such as a certificate or diploma program, a 2-year or 4-year degree program, a masters degree program, or a doctoral degree program); and

(iv) the undergraduate and graduate student populations involved.

(C) COVERAGE.—The data concerning the insured student population collected under subparagraph (A) shall be differentiated by the sources of coverage for such students, including the number and percentage of such insured students who lose parental (or other) coverage during the course of their enrollment at such institutions and the age at which such coverage is lost.

(2) IMPACT ANALYSIS.—The financial and other impact of uninsured students at such institutions, as compared to insured students, on—

(A) the health of students;

(B) the student's family;

(C) the student's educational progress; and

(D) education and health care institutions and facilities.

(3) ASSESSMENT OF EXISTING PROGRAMS.—The effect of mandatory and voluntary programs on the access of students to health insurance coverage, including—

(A) the level and type of coverage provided through mandatory and voluntary State and institutionally-sponsored health care programs currently providing health care insurance coverage to students;

(B) the average premium paid with respect to students covered under such plans;

(C) the extent to which any State or institutional health insurance plan may serve as a model for the expansion of access to health insurance for all full-time undergraduate and graduate students attending an institution of higher education; and

(D) whether such programs targeted to the student population would be more effective in reducing the overall rate of uninsured relative to proposals targeted to broader populations.

(4) INCENTIVES AND DISINCENTIVES.—The existence of incentives and disincentives offered to institutions of higher education to expand access to health care coverage for students, including—

(A) an assessment of the types of incentives and disincentives that may be used to encourage or require an institution of higher education to include health care coverage for all of its students on a mandatory basis, including financial, regulatory, administrative, and other incentives or disincentives;

(B) a list of burdensome regulatory or administrative reporting and other requirements (from the Department of Education or other governmental agencies) that could be waived without compromising program integrity as a means of encouraging institutions of higher education to provide uninsured students with access to health care coverage;

(C) other incentives or disincentives that would increase the level of institutional participation in health care coverage programs; and

(D) an analysis of the costs and effectiveness (to reduce the number of uninsured students) of including the cost of health insurance as an allowable cost of attendance under the Higher Education Act of 1965, and the impact of such inclusion on the student's financial aid package.

(e) CONSULTATION WITH CONGRESS.—In carrying out the study under subsection (b), the Government Accountability Office shall consult on a regular basis with the Secretary of Education, the Secretary of Health and Human Services, the Committee on the Budget of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, the Government Accountability Office shall prepare and submit to the Committee on the Budget and the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives, a report concerning the results of the study conducted under this section.

SEC. 244. EXTENSION OF FUNDING FOR OPERATION OF STATE HIGH RISK HEALTH INSURANCE POOLS.

Section 2745 of the Public Health Service Act (42 U.S.C. 300gg–45) is amended to read as follows:

''SEC. 2745. PROMOTION OF QUALIFIED HIGH RISK POOLS.

''(a) EXTENSION OF SEED GRANTS TO STATES.—The Secretary shall provide from the funds appropriated under subsection (d)(1)(A) a grant of up to $1,000,000 to each State that has not created a qualified high risk pool as of the date of enactment of this section for the State's costs of creation and initial operation of such a pool.

''(b) GRANTS FOR OPERATIONAL LOSSES.—

''(1) IN GENERAL.—In the case of a State that has established a qualified high risk pool that—

''(A) restricts premiums charged under the pool to no more than 150 percent of the premium for applicable standard risk rates;

''(B) offers a choice of two or more coverage options through the pool; and

''(C) has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004 in connection with operation of the pool;

the Secretary shall provide, from the funds appropriated under subsection (d)(1)(B)(i) and allotted to the State under paragraph (2), a grant for the losses incurred by the State in connection with the operation of the pool.

''(2) ALLOTMENT.—The amounts appropriated under subsection (d)(1)(B)(i) for a fiscal year shall be made available to the States (or the entities that operate the high risk pool under applicable State law) as follows:

''(A) An amount equal to 50 percent of the appropriated amount for the fiscal year shall be allocated in equal amounts among each eligible State that applies for assistance under this subsection.

''(B) An amount equal to 25 percent of the appropriated amount for the fiscal year shall be allocated among the States so that the amount provided to a State bears the same ratio to such available amount as the number of uninsured individuals in the State bears to the total number of uninsured individuals in all States (as determined by the Secretary).

''(C) An amount equal to 25 percent of the appropriated amount for the fiscal year shall be allocated among the States so that the amount provided to a State bears the same ratio to such available amount as the number of individuals enrolled in health care coverage through the qualified high risk pool of the State bears to the total number of individuals so enrolled through qualified high risk pools in all States (as determined by the Secretary).

''(c) BONUS GRANTS FOR SUPPLEMENTAL CONSUMER BENEFITS.—

''(1) IN GENERAL.—In the case of a State that has established a qualified high risk pool, the Secretary shall provide, from the funds appropriated under subsection (d)(1)(B)(ii) and allotted to the State under paragraph (3), a grant to be used to provide supplemental consumer benefits to enrollees or potential enrollees (or defined subsets of such enrollees or potential enrollees) in qualified high risk pools.

''(2) BENEFITS.—A State shall use amounts received under a grant under this subsection to provide one or more of the following benefits:

''(A) Low-income premium subsidies.

''(B) A reduction in premium trends, actual premiums, or other cost-sharing requirements.

''(C) An expansion or broadening of the pool of individuals eligible for coverage, including eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules.

''(D) Less stringent rules, or additional waiver authority, with respect to coverage of pre-existing conditions.

''(E) Increased benefits.

''(F) The establishment of disease management programs.

''(3) LIMITATION.—In allotting amounts under this subsection, the Secretary shall ensure that no State receives an amount that exceeds 10 percent of the amount appropriated for the fiscal year involved under subsection (d)(1)(B)(ii).

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit States that, on the date of enactment of the State High Risk Pool Funding Extension Act of 2005, are in the process of implementing programs to provide benefits of the type described in paragraph (2), from being eligible for a grant under this subsection.

''(d) FUNDING.—

''(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are authorized and appropriated—

''(A) $15,000,000 for the period of fiscal years 2005 and 2006 to carry out subsection (a); and

''(B) $75,000,000 for each of fiscal years 2005 through 2009, of which—

''(i) two-thirds of the amount appropriated for a fiscal year shall be made available for allotments under subsection (b)(2); and

''(ii) one-third of the amount appropriated for a fiscal year shall be made available for allotments under subsection (c)(2).

''(2) AVAILABILITY.—Funds appropriated under this subsection for a fiscal year shall remain available for obligation through the end of the following fiscal year.

''(3) REALLOTMENT.—If, on June 30 of each fiscal year, the Secretary determines that all amounts appropriated under paragraph (1)(B)(ii) for the fiscal year are not allotted, such remaining amounts shall be allotted among States receiving grants under subsection (b) for the fiscal year in amounts determined appropriate by the Secretary.

''(4) NO ENTITLEMENT.—Nothing in this section shall be construed as providing a State with an entitlement to a grant under this section.

''(e) APPLICATIONS.—To be eligible for a grant under this section, a State shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(f) DEFINITIONS.—In this section:

''(1) QUALIFIED HIGH RISK POOL.—

''(A) IN GENERAL.—The term 'qualified high risk pool' has the meaning given such term in section 2744(c)(2), except that with respect to subparagraph (A) of such section a State may elect to provide for the enrollment of eligible individuals through—

''(i) a combination of a qualified high risk pool and an acceptable alternative mechanism; or

''(ii) other health insurance coverage described in subparagraph (B).

''(B) HEALTH INSURANCE COVERAGE.—Health insurance coverage described in this subparagraph is individual health insurance coverage—

''(i) that meets the requirements of section 2741;

''(ii) that is subject to limits on the rates charged to individuals;

''(iii) that is available to all individuals eligible for health insurance coverage under this title who are not able to participate in a qualified high risk pool; and

''(iv) the defined rate limit of which does not exceed the limit allowed for a qualified risk pool that is otherwise eligible to receive assistance under a grant under this section.

''(C) OTHER COVERAGE.—In addition to coverage described in subparagraph (B), a State may provide for the offering of health insurance coverage that provides first dollar coverage, limits on cost-sharing, and comprehensive medical, hospital and surgical coverage, if the limits on rates for such coverage do not exceed 125 percent of the limit described in subparagraph (B)(iv).

''(2) STANDARD RISK RATE.—The term 'standard risk rate' means a rate—

''(A) determined under the State high risk pool by considering the premium rates charged by other health insurers offering health insurance coverage to individuals in the insurance market served;

''(B) that is established using reasonable actuarial techniques; and

''(C) that reflects anticipated claims experience and expenses for the coverage involved.

''(3) STATE.—The term 'State' means any of the 50 States and the District of Columbia.''.

SEC. 245. SENSE OF THE SENATE ON AFFORDABLE HEALTH COVERAGE FOR SMALL EMPLOYERS.

It is the sense of the Senate that Congress should pass legislation to support expanded, affordable health coverage options for individuals, particularly those who work for small businesses, by streamlining and reducing regulations and expanding the role of associations and other group purchasing arrangements.

Subtitle F—Covering Kids

SEC. 251. SHORT TITLE.

This subtitle may be cited as the ''Covering Kids Act of 2005''.

SEC. 252. GRANTS TO PROMOTE INNOVATIVE OUTREACH AND ENROLLMENT UNDER MEDICAID AND SCHIP.

(a) GRANTS FOR EXPANDED OUTREACH ACTIVITIES.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

''SEC. 2111. EXPANDED OUTREACH ACTIVITIES.

''(a) GRANTS TO CONDUCT INNOVATIVE OUTREACH AND ENROLLMENT EFFORTS.—

''(1) IN GENERAL.—The Secretary shall award grants to eligible entities to—

''(A) conduct innovative outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this title and title XIX; and

''(B) promote understanding of the importance of health insurance coverage for prenatal care and children.

''(2) PERFORMANCE BONUSES.—The Secretary may reserve a portion of the funds appropriated under subsection (g) for a fiscal year for the purpose of awarding performance bonuses during the succeeding fiscal year to eligible entities that meet enrollment goals or other criteria established by the Secretary.

''(b) PRIORITY FOR AWARD OF GRANTS.—

''(1) IN GENERAL.—In making grants under subsection (a)(1), the Secretary shall give priority to—

''(A) eligible entities that propose to target geographic areas with high rates of—

''(i) eligible but unenrolled children, including such children who reside in rural areas; or

''(ii) racial and ethnic minorities and health disparity populations, including those proposals that address cultural and linguistic barriers to enrollment; and

''(B) eligible entities that plan to engage in outreach efforts with respect to individuals described in subparagraph (A) and that are—

''(i) Federal health safety net organizations; or

''(ii) faith-based organizations or consortia.

''(2) 10 PERCENT SET ASIDE FOR OUTREACH TO INDIAN CHILDREN.—An amount equal to 10 percent of the funds appropriated under subsection (g) for a fiscal year shall be used by the Secretary to award grants to Indian Health Service providers and urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.) for outreach to, and enrollment of, children who are Indians.

''(c) APPLICATION.—An eligible entity that desires to receive a grant under subsection (a)(1) shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include—

''(1) quality and outcomes performance measures to evaluate the effectiveness of activities funded by a grant awarded under this section to ensure that the activities are meeting their goals; and

''(2) an assurance that the entity shall—

''(A) conduct an assessment of the effectiveness of such activities against such performance measures; and

''(B) cooperate with the collection and reporting of enrollment data and other information determined as a result of conducting such assessments to the Secretary, in such form and manner as the Secretary shall require.

''(d) DISSEMINATION OF ENROLLMENT DATA AND INFORMATION DETERMINED FROM EFFECTIVENESS ASSESSMENTS; ANNUAL REPORT.—The Secretary shall—

''(1) disseminate to eligible entities and make publicly available the enrollment data and information collected and reported in accordance with subsection (c)(2)(B); and

''(2) submit an annual report to Congress on the outreach activities funded by grants awarded under this section.

''(e) SUPPLEMENT, NOT SUPPLANT.—Federal funds awarded under this section shall be used to supplement, not supplant, non-Federal funds that are otherwise available for activities funded under this section.

''(f) DEFINITIONS.—In this section:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means any of the following:

''(A) A State or local government.

''(B) A Federal health safety net organization.

''(C) A national, local, or community-based public or nonprofit private organization.

''(D) A faith-based organization or consortia, to the extent that a grant awarded to such an entity is consistent with the requirements of section 1955 of the Public Health Service Act (42 U.S.C. 300x–65) relating to a grant award to non-governmental entities.

''(E) An elementary or secondary school.

''(2) FEDERAL HEALTH SAFETY NET ORGANIZATION.—The term 'Federal health safety net organization' means—

''(A) an Indian tribe, tribal organization, or an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.), or an Indian Health Service provider;

''(B) a Federally-qualified health center (as defined in section 1905(l)(2)(B));

''(C) a hospital defined as a disproportionate share hospital for purposes of section 1923;

''(D) a covered entity described in section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)); and

''(E) any other entity or a consortium that serves children under a federally-funded program, including the special supplemental nutrition program for women, infants, and children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the head start and early head start programs under the Head Start Act (42 U.S.C.

9801 et seq.), the school lunch program established under the Richard B. Russell National School Lunch Act, and an elementary or secondary school.

''(3) INDIANS; INDIAN TRIBE; TRIBAL ORGANIZATION; URBAN INDIAN ORGANIZATION.—The terms 'Indian', 'Indian tribe', 'tribal organization', and 'urban Indian organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(g) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, $50,000,000 for each of fiscal years 2006 and 2007 for the purpose of awarding grants under this section. Amounts appropriated and paid under the authority of this section shall be in addition to amounts appropriated under section 2104 and paid to States in accordance with section 2105, including with respect to expenditures for outreach activities in accordance with subsection (a)(1)(D)(iii) of that section.''.

(b) EXTENDING USE OF OUTSTATIONED WORKERS TO ACCEPT TITLE XXI APPLICATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended by striking ''or (a)(10)(A)(ii)(IX)'' and inserting ''(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XIV), and applications for child health assistance under title XXI''.

SEC. 253. STATE OPTION TO PROVIDE FOR SIMPLIFIED DETERMINATIONS OF A CHILD'S FINANCIAL ELIGIBILITY FOR MEDICAL ASSISTANCE UNDER MEDICAID OR CHILD HEALTH ASSISTANCE UNDER SCHIP.

(a) MEDICAID.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

''(13)(A) At the option of the State, the plan may provide that financial eligibility requirements for medical assistance are met for a child who is under an age specified by the State (not to exceed 21 years of age) by using a determination made within a reasonable period (as determined by the State) before its use for this purpose, of the child's family or household income, or if applicable for purposes of determining eligibility under this title or title XXI, assets or resources, by a Federal or State agency, or a public or private entity making such determination on behalf of such agency, specified by the plan, including (but not limited to) an agency administering the State program funded under part A of title IV, the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, or the Child Nutrition Act of 1966, notwithstanding any differences in budget unit, disregard, deeming, or other methodology, but only if—

''(i) the agency has fiscal liabilities or responsibilities affected or potentially affected by such determination; and

''(ii) any information furnished by the agency pursuant to this subparagraph is used solely for purposes of determining financial eligibility for medical assistance under this title or for child health assistance under title XXI.

''(B) Nothing in subparagraph (A) shall be construed—

''(i) to authorize the denial of medical assistance under this title or of child health assistance under title XXI to a child who, without the application of this paragraph, would qualify for such assistance;

''(ii) to relieve a State of the obligation under subsection (a)(8) to furnish medical assistance with reasonable promptness after the submission of an initial application that is evaluated or for which evaluation is requested pursuant to this paragraph;

''(iii) to relieve a State of the obligation to determine eligibility for medical assistance under this title or for child health assistance under title XXI on a basis other than family or household income (or, if applicable, assets or resources) if a child is determined ineligible for such assistance on the basis of information furnished pursuant to this paragraph; or

''(iv) as affecting the applicability of any non-financial requirements for eligibility for medical assistance under this title or child health assistance under title XXI.''.

(b) SCHIP.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following:

''(E) Section 1902(e)(13) (relating to the State option to base a determination of child's financial eligibility for assistance on financial determinations made by a program providing nutrition or other public assistance).''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2005.

TITLE III—IMPROVING CARE AND STRENGTHENING THE SAFETY NET

Subtitle A—High Needs Areas

SEC. 301. PURPOSE.

It is the purpose of this subtitle to enhance the quality of life of residents of high need areas by increasing their access to the preventive and primary healthcare services provided by community health centers and rural health centers.

SEC. 302. HIGH NEED COMMUNITY HEALTH CENTERS.

Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) by redesignating subsections (k) through (r) as subsections (l) through (s), respectively;

(2) by inserting after subsection (j), the following:

''(k) PRIORITY FOR RESIDENTS OF HIGH NEED AREAS.—

''(1) IN GENERAL.—In awarding grants under this section, the Secretary shall give priority to eligible health centers in high need areas.

''(2) ELIGIBLE HEALTH CENTERS.—A health center is described in this paragraph if such health center—

''(A) is a health center as defined under subsection (a) or a rural health clinic that receives funds under section 330A;

''(B) agrees to use grant funds to provide preventive and primary healthcare services to residents of high need areas;

''(C) specifically requests such priority in the grant application;

''(D) describes how the community to be served meets the definition of high need area; and

''(E) otherwise meets all other grant requirements.

''(3) HIGH NEED AREA.—

''(A) IN GENERAL.—In this subsection, the term 'high need area' means a county or a regional area identified by the Secretary pursuant to the regulations promulgated under subparagraph (B).

''(B) REGULATIONS.—The Secretary shall promulgate regulations that define the term 'high need area' for purposes of this subsection. Such regulations shall specify procedures that the Department shall follow in determining estimates on a periodic basis in the United States of the number of medically uninsured persons and the national percentage of medically uninsured persons served by health centers (referred to in this subsection as the 'ENP') and for the designation of an area as a 'high need area' if the estimated percentage of medically uninsured individuals in the area is higher than the national average and the estimated percentage of medically uninsured individuals in the area served by health centers in the area is below the ENP.

''(C) MEDICALLY UNDERSERVED AREA.—The Secretary shall designate residents of high need areas as medically underserved for purposes of this section.

''(4) FUNDING PREFERENCE.—The Secretary may limit the amount of grants awarded to applicants from high need areas as provided for in this subsection to not less than 25 percent of the total amount of grants awarded under this subsection for each grant category for each grant period.'';

(3) in subsection (e)(1)(B), by striking ''subsection (k)(3)'' and inserting ''subsection (l)(3)'';

(4) in subsection (l)(3)(H)(iii) (as so redesignated), by striking ''or (p)'' and inserting ''or (q)'';

(5) in subsection (m) (as so redesignated), by striking ''subsection (k)(3)'' and inserting ''subsection (l)(3)'';

(6) in subsection (q) (as so redesignated), by striking ''subsection (k)(3)(G)'' and inserting ''subsection (l)(3)(G)''; and

(7) in subsection (s)(2)(A) (as so redesignated), by striking ''subsection (k)'' each place that such appears and inserting ''subsection (l)''.

SEC. 303. GRANT APPLICATION PROCESS.

Section 330(k) of the Public Health Service Act (42 U.S.C. 254b(k)) is amended by adding at the end the following:

''(5) ECONOMIC VIABILITY OF APPLICANTS.—

''(A) IN GENERAL.—In considering applications under this section, the Secretary shall ensure that an application that demonstrates economic viability, consistent with funding guidelines established by the Secretary for purposes of this section, is not disadvantaged in the evaluation process on the basis that it relies solely on Federal funding.

''(B) QUALIFICATION OF INDIVIDUALS REVIEWING APPLICATIONS.—The Secretary shall require verification that all individuals who are evaluating community health center grant applications have completed within the 3-year period ending on the date on which the application is being evaluated a training course on the community health center program which addresses the purposes served by community health centers, the critical role of community health centers in the safety net, expectations for the evaluation of applications, and the criteria for awarding grant funding.

''(C) MEDICALLY UNDERSERVED DESIGNATIONS.—Not later than 6 months after the date of enactment of this paragraph, the Administrator of the Health Resources and Services Administration shall submit to the appropriate committees of Congress a report concerning the process for designating an area or population as medically underserved. Such report shall contain recommendations for ensuring that such designations are current within the last 3 years. The report shall also detail plans for ensuring subsequent review to maintain an accurate reflection of community needs in areas and populations designated as medically underserved. Not later than 1 year after such date of enactment, the Secretary shall promulgate regulations based on the recommendations contained in the report.''.

Subtitle B—Qualified Integrated Health Care systems

SEC. 321. GRANTS TO QUALIFIED INTEGRATED HEALTH CARE SYSTEMS.

(a) ELIGIBILITY FOR GRANTS UNDER PHSA.—Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following new subpart:

"Subpart XI—Promotion of Integrated Health Care Systems Serving Medically Underserved Populations

"SEC. 340H. GRANTS TO QUALIFIED INTEGRATED HEALTH CARE SYSTEMS.

''(a) DEFINITIONS.—For purposes of this section:

''(1) QUALIFIED INTEGRATED HEALTH CARE SYSTEM.—The term 'qualified integrated health care system' means an integrated health care system that—

''(A) has a demonstrated capacity and commitment to provide a full range of primary, specialty, and hospital care to a medically underserved population in both inpatient and outpatient settings, as appropriate;

''(B) is organized to provide such care in a coordinated fashion;

''(C) operates one or more integrated health centers meeting the requirements of section 340I;

''(D) meets the requirements of subsection (c)(3); and

''(E) agrees to use any funds received under this section to supplement and not to supplant amounts received from other sources for the provision of such care.

''(2) MEDICALLY UNDERSERVED POPULATION.—The term 'medically underserved population' has the meaning given such term in section 330(b)(3).

''(b) OPERATING GRANTS.—

''(1) AUTHORITY.—The Secretary may make grants to private nonprofit entities for the costs of the operation of qualified integrated health care systems that provide primary, specialty, and hospital care to medically underserved populations.

''(2) AMOUNT.—

''(A) IN GENERAL.—The amount of any grant made in any fiscal year under paragraph (1) to an integrated health care system shall be determined by the Secretary (taking into account the full range of care, including specialty services, provided by the system), but may not exceed the amount by which the costs of operation of the system in such fiscal year exceed the total of—

''(i) State, local, and other operational funding provided to the system; and

''(ii) the fees, premiums, and third-party reimbursements which the system may reasonably be expected to receive for its operations in such fiscal year.

''(B) PAYMENTS.—Payments under grants under paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments.

''(C) USE OF NONGRANT FUNDS.—Nongrant funds described in clauses (i) and (ii) of subparagraph (A), including any such funds in excess of those originally expected, shall be used as permitted under this section, and may be used for such other purposes as are not specifically prohibited under this section if such use furthers the objectives of the project.

''(c) APPLICATIONS.—

''(1) SUBMISSION.—No grant may be made under this section unless an application therefore is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe.

''(2) DESCRIPTION OF NEED.—

''(A) IN GENERAL.—An application for a grant under subsection (b)(1) for an integrated health care system shall include—

''(i) a description of the need for health care services in the area served by the integrated health care system;

''(ii) a demonstration by the applicant that the area or the population group to be served by the applicant has a shortage of personal health services; and

''(iii) a demonstration that the health care system will be located so that it will provide services to the greatest number of individuals residing in such area or included in such population group.

''(B) DEMONSTRATIONS.—A demonstration shall be made under clauses (ii) or (iii) of subparagraph (A) on the basis of the criteria prescribed by the Secretary under section 330(b)(3) or on the basis of any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services.

''(C) CONDITION OF APPROVAL.—In considering an application for a grant under subsection (b)(1), the Secretary may require as a condition to the approval of such application an assurance that any integrated health center operated by the applicant will provide any required primary health services and any additional health services (as defined in section 340I) that the Secretary finds are needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided to the applicant.

''(3) REQUIREMENTS.—The Secretary shall approve an application for a grant under subsection (b)(1) if the Secretary determines that the entity for which the application is submitted is an integrated health care system (within the meaning of subsection (a)) and that—

''(A) the primary, specialty, and hospital care provided by the system will be available and accessible in the service area of the system promptly, as appropriate, and in a manner which assures continuity;

''(B) the system is participating (or will participate) in a community consortium of safety net providers serving such area (unless other such safety net providers do not exist in a community, decline or refuse to participate, or place unreasonable conditions on their participation);

''(C) all of the centers operated by the system are accredited by a national accreditation body recognized by the Secretary;

''(D) the system will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

''(E) the system provides or will provide services to individuals who are eligible for medical assistance under title XIX of the Social Security Act and to individuals who are eligible for assistance under title XXI of such Act;

''(F) the system—

''(i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, and which discounts are adjusted on the basis of the patient's ability to pay;

''(ii)(I) will assure that no patient will be denied health care services due to an individual's inability to pay for such services; and

''(II) will assure that any fees or payments required by the system for such services will be reduced or waived to enable the system to fulfill the assurance described in subclause (I); and

''(iii) has submitted to the Secretary such reports as the Secretary may require to determine compliance with this subparagraph;

''(G) the system has established a governing board that selects the services to be provided by the center, approves the center's annual budget, approves the selection of a director for the center, and establishes general policies for the center;

''(H) the system has developed—

''(i) an overall plan and budget that meets the requirements of the Secretary; and

''(ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to—

''(I) the costs of its operations;

''(II) the patterns of use of its services;

''(III) the availability, accessibility, and acceptability of its services; and

''(IV) such other matters relating to operations of the applicant as the Secretary may require;

''(I) the system will review periodically its service area to—

''(i) ensure that the size of such area is such that the services to be provided through the system (including any satellite) are available and accessible to the residents of the area promptly and as appropriate;

''(ii) ensure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs; and

''(iii) ensure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the system, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social grouping, and available transportation;

''(J) in the case of a system which serves a substantial proportion of individuals of limited English-speaking ability, the system has—

''(i) developed a plan and made arrangements for providing services, to the extent practicable, in the predominant language or languages of such individuals and in the cultural context most appropriate to such individuals; and

''(ii) identified one or more individuals on its staff who are fluent in such predominant language or languages and in English and whose responsibilities shall include providing guidance to such individuals and to other appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences;

''(K) the system maintains appropriate referral relationships between its hospitals, its physicians with hospital privileges, and any integrated health center operated by the system so that primary, specialty care, and hospital care is provided in a continuous and coordinated way; and

''(L) the system encourages persons receiving or seeking health services from the system to participate in any public or private (including employer-offered) health programs or plans for which the persons are eligible, so long as the center, in complying with this paragraph, does not violate the requirements of subparagraph (F)(ii)(I).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2010.

''(2) FUNDING REPORT.—The Secretary shall annually prepare and submit to the appropriate committees of Congress a report concerning the distribution of funds under this section that are provided to meet the health care needs of medically underserved populations, and the appropriateness of the delivery systems involved in responding to the needs of the particular populations. Such report shall include an assessment of the relative health care access needs of the targeted populations and the rationale for any substantial changes in the distribution of funds.

''(e) RECORDS.—

''(1) IN GENERAL.—Each entity which receives a grant under subsection (b)(1) shall

establish and maintain such records as the Secretary shall require.

''(2) AVAILABILITY.—Each entity which is required to establish and maintain records under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

''(f) AUDITS.—

''(1) IN GENERAL.—Each entity which receives a grant under this section shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

''(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting;

''(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary; and

''(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

''(2) RECORDS.—Each entity which receives a grant under this section shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

''(3) AVAILABILITY OF RECORDS.—Each entity which is required to establish and maintain records or to provide for an audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

''(4) WAIVER.—The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection with respect to an entity.

''SEC. 340I. INTEGRATED HEALTH CENTER.

''(a) INTEGRATED HEALTH CENTER .—The term 'integrated health center' means an health center that is operated by an integrated health care system and that serves a medically underserved population (as defined for purposes of section 330(b)(3)) by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements—

''(1) required primary health services (as defined in subsection (b)(1)); and

''(2) as may be appropriate for particular centers additional health services (as defined in subsection (b)(2)) necessary for the adequate support of the primary health services required under paragraph (1);

for all residents of the area served by the center.

''(b) DEFINITIONS.—For purposes of this section:

''(1) REQUIRED PRIMARY HEALTH SERVICES.—The term 'required primary health services' means—

''(A) basic health services which, for purposes of this section, shall consist of—

''(i) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

''(ii) diagnostic laboratory and radiologic services;

''(iii) preventive health services, including—

''(I) prenatal and perinatal services;

''(II) appropriate cancer screening;

''(III) well-child services;

''(IV) immunizations against vaccine-preventable diseases;

''(V) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

''(VI) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

''(VII) voluntary family planning services; and

''(VIII) preventive dental services;

''(iv) emergency medical services; and

''(v) pharmaceutical services and medication therapy management services as may be appropriate for particular centers;

''(B) referrals to providers of medical services (including specialty and hospital care referrals when medically indicated) and other health-related services (including substance abuse and mental health services);

''(C) patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

''(D) services that enable individuals to use the services of the center (including outreach and transportation services and, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the languages spoken by a predominant number of such individuals); and

''(E) education of patients and the general population served by the center regarding the availability and proper use of health services.

''(2) ADDITIONAL HEALTH SERVICES.—The term 'additional health services' means services that are not included as required primary health services and that are appropriate to meet the health needs of the population served by the center involved. Such term may include—

''(A) behavioral and mental health and substance abuse services;

''(B) recuperative care services; and

''(C) environmental health services.

(b) COVERAGE UNDER THE MEDICARE PROGRAM.—

(1) PART B BENEFIT.—Section 1861(s)(2)(E) of the Social Security Act (42 U.S.C. 1395x(s)(2)(E)) is amended—

(A) by striking ''services and'' and inserting ''services,''; and

(B) by striking ''services'' the second place it appears and inserting ''services, and integrated health center services''.

(2) DEFINITIONS.—Section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)) is amended—

(A) in the heading—

(i) by striking ''SERVICES AND'' and inserting ''SERVICES,''; and

(ii) by striking ''SERVICES'' the second place it appears and inserting ''SERVICES, AND INTEGRATED HEALTH CENTER SERVICES'';

(B) in paragraph (1)(B), by striking ''paragraph (5))'' and inserting ''paragraph (7));

(C) by redesignating paragraphs (5), (6), and (7) as paragraphs (7), (8), and (9), respectively; and

(D) by inserting after paragraph (4) the following new paragraph:

''(5) The term 'integrated health center services' means—

''(A) services of the type described in subparagraphs (A) through (C) of paragraph (1); and

''(B) preventive primary health services that a center is required to provide under section 340I of the Public Health Service Act,

when furnished to an individual as an outpatient of an integrated health center, and for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to an integrated health center or a physician at the center, respectively.

''(6) The term 'integrated health center' means a center that is operated by a qualified integrated health care system (as defined in section 340H(a)(1) of the Public Health Service Act that—

''(A) is receiving a grant under section 340H of such Act; or

''(B) is determined by the Secretary to meet the requirements for receiving such a grant.''.

(3) PAYMENT.—

(A) IN GENERAL.—Section 1832(a)(2)(D) of the Social Security Act (42 U.S.C. 1395k(a)(2)(D)) is amended—

(i) by striking ''and (ii)'' and inserting '', (ii)''; and

(ii) by striking ''services'' the second place it appears and inserting ''services, and (iii) integrated health center services.''.

(B) PART B DEDUCTIBLE DOES NOT APPLY.—Section 1833(b)(4) of the Social Security Act (42 U.S.C. 13951(b)(4)) is amended by inserting ''or integrated health center services'' after ''Federally qualified health center services''.

(C) EXCLUSION FROM PAYMENT REMOVED.—The second sentence of section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended by inserting ''or integrated health center services described in section 1861 (aa)(5)(B)'' after ''section 1861(aa)(3)(B)''.

(D) WAIVER OF ANTI-KICKBACK RESTRICTION.—Section 1128B(b)(3)(D) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(D)) is amended by inserting ''or by an integrated health center'' after ''Federally qualified health center''.

(4) CONFORMING AMENDMENTS.—(A) Clauses (ii) and (iv) of section 1834(a)(1)(E) of the Social Security Act (42 U.S.C. 1395m(a)(1)(E)) are each amended by striking ''section 1861(aa)(5)'' and inserting ''section 1861(aa)(7)''.

(B) Section 1842(b)(18)(C)(i) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)(i)) is amended by striking ''section 1861(aa)(5)'' and inserting ''section 1861(aa)(7)''.

(C) Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(i) in subparagraph (H)(i), by striking ''subsection (aa)(5)'' and inserting ''subsection (aa)(7)''; and

(ii) in subparagraph (K)—

(I) by striking ''subsection (aa)(5)'' each place it appears and inserting ''subsection (aa)(7)''; and

(II) by striking ''subsection (aa)(6)'' and inserting ''subsection (aa)(8)''.

(D) Section 1861(dd)(3)(B) of the Social Security Act (42 U.S.C. 1395x(dd)(3)(B)) is amended by striking ''subsection (aa)(5)'' and inserting ''subsection (aa)(7)''.

(c) RECOGNITION UNDER MEDICAID.—

(1) COVERAGE.—Section 1905(a)(2) of the Social Security Act (42 U.S.C. 1396d(a)(2)) is amended—

(A) by striking ''and (C)'' and inserting '', (C)''; and

(B) by inserting '', and

''(D) integrated health center services (as defined in subsection (1)(3)(A)) and any other ambulatory services offered by the integrated health center and which are otherwise included in the plan.'' after ''included in the plan'' the second place it appears.

(2) DEFINITIONS.—Section 1905(l) of such Act (42 U.S.C. 1396d(l)) is amended by adding at the end the following:

''(3)(A) The term 'integrated health center services' means services of the type described in subparagraphs (A) through (C) of section 1861(aa) when furnished to an individual as a patient of an integrated health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1861(aa)(2)(B) is deemed a reference to an integrated health center or a physician at the center, respectively.

''(B) The term 'integrated health center' means a center that is operated by a qualified integrated health care system that—

''(i) is receiving a grant under section 340H of the Public Health Service Act; or

''(ii) is determined by the Secretary, based on the recommendations of the Administrator of the Centers for Medicare & Medicaid Services, to meet the requirements for receiving such a grant.''.

(3) PAYMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (15), by inserting ''and for services described in clause (D) of section 1905(a)(2) in accordance with the provisions of subsection (cc)'' after ''subsection (bb)''; and

(B) by adding at the end the following:

''(cc) PAYMENT FOR SERVICES PROVIDED BY INTEGRATED HEALTH CENTERS.—

''(1) IN GENERAL.—Beginning with fiscal year 2006 with respect to services furnished on or after January 1, 2006, and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1905(a)(2)(D) furnished by an integrated health center in accordance with the provisions of this subsection.

''(2) FISCAL YEAR 2006.—Subject to paragraph (4), for services furnished on and after January 1, 2006, during fiscal year 2006, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center of furnishing such services during fiscal years 2004 and 2005 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1833(a)(3), or, in the case of services to which such regulations do not apply, the same methodology used under section 1833(a)(3), adjusted to take into account any increase or decrease in the scope of such services furnished by the center during fiscal years 2004 and 2005.

''(3) FISCAL YEAR 2007 AND SUCCEEDING FISCAL YEARS.—Subject to paragraph (4), for services furnished during fiscal year 2007 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

''(A) increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) for that fiscal year; and

''(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center during that fiscal year.

''(4) ESTABLISHMENT OF INITIAL YEAR PAYMENT AMOUNT FOR NEW CENTERS.—In any case in which an entity first qualifies as an integrated health center after fiscal year 2006, the State plan shall provide for payment for services described in section 1905(a)(2)(D) furnished by the center in the first fiscal year in which the center so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers located in the same or adjacent area with a similar case load or, in the absence of such a center, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as an integrated health center, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

''(5) ADMINISTRATION IN THE CASE OF MANAGED CARE.—

''(A) IN GENERAL.—In the case of services furnished by an integrated health center pursuant to a contract between the center and a managed care entity (as defined in section 1932(a)(1)(B)), the State plan shall provide for payment to the center by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) exceeds the amount of the payments provided under the contract.

''(B) PAYMENT SCHEDULE.—The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the integrated health center, but in no case less frequently than every 4 months.

''(6) ALTERNATIVE PAYMENT METHODOLOGIES.—Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to an integrated health center for services described in section 1905(a)(2)(D) in an amount which is determined under an alternative payment methodology that—

''(A) is agreed to by the State and the center; and

''(B) results in payment to the center of an amount which is at least equal to the amount otherwise required to be paid to the center under this section.''.

(4) WAIVER PROHIBITED.—Section 1915(b) of the Social Security Act (42 U.S.C.1396n(b)) is amended in the matter preceding paragraph (1), by inserting ''1902(cc),'' after ''1902(bb),''.

(d) PROTECTION AGAINST LIABILITY.—Section 224(g) of the Public Health Service Act (42 U.S.C. 233(g)) is amended—

(1) In paragraph (4), by striking ''An entity'' and inserting ''Subject to paragraph (6), an entity''; and

(2) by adding at the end the following:

''(6) For purposes of this section—

''(A) a qualified integrated health care system receiving a grant under section 340H and any integrated health center operated by such system shall be considered to be an entity described in paragraph (4); and

''(B) the provisions of this section shall apply to such system and centers in the same manner as such provisions apply to an entity described in such paragraph (4), except that—

''(i) notwithstanding paragraph (1)(B), the deeming of any system or center, or of an officer, governing board member, employee, or contractor of such system or center, to be an employee of the Public Health Service for purposes of this section shall apply only with respect to items and services that are furnished to a member of the underserved population served by the entity;

''(ii) notwithstanding paragraph (3), this paragraph shall apply only with respect to causes of action arising from acts or omissions that occur on or after January 1, 2006; and

''(iii) the Secretary shall make separate estimates under subsection (k)(1) with respect to such systems and centers and entities described in paragraph (4) (other than such systems and centers), establish separate funds under subsection (k)(2) with respect to such groups of entities, and any appropriations under this subsection for such systems and centers shall be separate from the amounts authorized by subsection (k)(2).''.

(e) EFFECTIVE DATE.—The amendments made subsections (b) and (c) shall apply to items and services furnished on or after October 1, 2005.

Subtitle C—Miscellaneous Provisions

SEC. 331. COMMUNITY HEALTH CENTER COLLABORATIVE ACCESS EXPANSION.

Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended by adding at the end the following:

''(s) MISCELLANEOUS PROVISIONS.—

''(1) RULE OF CONSTRUCTION WITH RESPECT TO RURAL HEALTH CLINICS.—

''(A) IN GENERAL.—Nothing in this section shall be construed to prevent a community health center from contracting with a federally certified rural health clinic (as defined by section 1861(aa)(2) of the Social Security Act) for the delivery of primary health care services that are available at the rural health clinic to individuals who would otherwise be eligible for free or reduced cost care if that individual were able to obtain that care at the community health center. Such services may be limited in scope to those primary health care services available in that rural health clinic.

''(B) ASSURANCES.—In order for a rural health clinic to receive funds under this section through a contract with a community health center under paragraph (1), such rural health clinic shall establish policies to ensure—

''(i) nondiscrimination based upon the ability of a patient to pay; and

''(ii) the establishment of a sliding fee scale for low-income patients.''.

SEC. 332. IMPROVEMENTS TO SECTION 340B PROGRAM.

(a) ELIMINATION OF GROUP PURCHASING PROHIBITION FOR CERTAIN HOSPITALS.—Section 340B(a)(4)(L) of the Public Health Service Act (42 U.S.C. 256b(a)(4)(L)) is amended—

(1) in clause (i), by adding ''and'' at the end;

(2) in clause (ii), by striking ''; and'' and inserting a period; and

(3) by striking clause (iii).

(b) PERMITTING USE OF MULTIPLE CONTRACT PHARMACIES.—Section 340B f the Public Health Service Act (42 U.S.C. 256b) is amended by adding at the end the following:

''(e) PERMITTING USE OF MULTIPLE CONTRACT PHARMACIES.—Nothing in this section shall be construed as prohibiting a covered entity from entering into contracts with more than one pharmacy for the provision of covered drugs, including a contract that—

''(1) supplements the use of an in-house pharmacy arrangement; or

''(2) requires the approval of the Secretary.''.

(c) IMPROVEMENTS IN PROGRAM ADMINISTRATION.—Section 340B of the Public Health Service Act (42 U.S.C. 256b), as amended by subsection (b), is further amended by adding at the end the following:

''(f) IMPROVEMENTS IN PROGRAM ADMINISTRATION.—

''(1) IN GENERAL.—The Secretary shall provide, from funds appropriated under paragraph (2), for improvements in the integrity and administration of the program under this section in order to prevent abuse and misuse of discounted prices made available under this section. Such improvements shall include the following:

''(A) The development of a system to verify the accuracy of information regarding covered entities that is listed on the Internet website of the Department of Health and Human Services relating to this section.

''(B) The establishment of a third-party auditing system by which covered entities and manufacturers are regularly audited to ensure compliance with the requirements of this section.

''(C) The conduct of such audits under subsection (a)(5)(C) that supplement the audits conducted under subparagraph (B) as the Secretary determines appropriate and the implementation of dispute resolution guidelines and other compliance programs.

''(D) The development of more detailed guidance regarding the definition of section 340B patients and describing options for billing under the medicaid program under title XIX of the Social Security Act in order to avoid duplicative discounts.

''(E) The issuance of advisory opinions within defined time periods in response to questions from manufacturers or covered entities regarding the application of the requirements of this section in specific factual circumstances.

''(F) Insofar as the Secretary determines feasible, providing access through the Internet website of the Department of Health and Human Services on the prices for covered drugs made available under this section, but only in a manner (such as through the use of password protection) that limits such access to covered entities.

''(G) The improved dissemination of educational materials regarding the program under this section to covered entities that are not currently participating in such programs including regional educational sessions.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for fiscal year 2006 and each succeeding fiscal year.''.

SEC. 333. FORBEARANCE FOR STUDENT LOANS FOR PHYSICIANS PROVIDING SERVICES IN FREE CLINICS.

(a) IN GENERAL.—Section 428(c)(3)(A) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)(3)(A)) is amended—

(1) in clause (i)—

(A) in subclause (III), by striking ''or'' at the end;

(B) in subclause (V), by adding ''or'' at the end; and

(C) by adding at the end the following:

''(V) is volunteering without pay for at least 80 hours per month at a free clinic as defined under section 224 of the Public Health Service Act;''; and

(2) in clause (ii)(III), by inserting ''or (i)(V)'' after ''clause (i)(III)''.

(b) PERKINS PROGRAM.—Section 464(e) of the Higher Education Act of 1965 (20 U.S.C. 1087dd(e)) is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(3) the borrower is volunteering without pay for at least 80 hours per month at a free clinic as defined under section 224 of the Public Health Service Act.''.

SEC. 334. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT RELATING TO LIABILITY.

Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended—

(1) in subsection (g)(1)—

(A) in subparagraph (A)—

(i) in the first sentence, by striking ''or employee'' and inserting ''employee, or (subject to subsection (k)(4)) volunteer practitioner''; and

(ii) in the second sentence, by inserting ''and subsection (k)(4)'' after ''subject to paragraph (5)''; and

(B) by adding at the end the following:

''(I) For purposes of this subsection, the term 'employee' shall include a health professional who volunteers to provide health-related services for an entity described in paragraph (4).'';

(2) in subsection (k), by adding at the end the following:

''(4)(A) Subsections (g) through (m) apply with respect to volunteer practitioners beginning with the first fiscal year for which an appropriations Act provides that amounts in the fund under paragraph (2) are available with respect to such practitioners.

''(B) For purposes of subsections (g) through (m), the term 'volunteer practitioner' means a practitioner who, with respect to an entity described in subsection (g)(4), meets the following conditions:

''(i) The practitioner is a licensed physician or a licensed clinical psychologist.

''(ii) At the request of such entity, the practitioner provides services to patients of the entity, at a site at which the entity operates or at a site designated by the entity. The weekly number of hours of services provided to the patients by the practitioner is not a factor with respect to meeting conditions under this subparagraph.

''(iii) The practitioner does not for the provision of such services receive any compensation from such patients, from the entity, or from third-party payors (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).'';

(3) in subsection (o)(2)—

(A) in subparagraph (D), by striking clause (i) and inserting the following:

''(i) The health care practitioner may provide the services involved as an employee of the free clinic, or may receive repayment from the free clinic only for reasonable expenses incurred by the health care practitioner in the provision of the services to the individual.''; and

(B) by adding at the end the following:

''(G) The health care practitioner is providing the services involved as a paid employee of the free clinic.''; and

(4) in each of subsections (g), (i), (j), (k), (l), and (m), by striking ''employee, or contractor'' each place such term appears and inserting ''employee, volunteer practitioner, or contractor'';

SEC. 335. SENSE OF THE SENATE CONCERNING HEALTH DISPARITIES.

It is the sense of the Senate that additional measures are needed to reduce or eliminate disparities in health care related to race, ethnicity, socioeconomic status, and geography that affect access to quality health care.

By Mr. FEINGOLD (for himself, Mr. MCCAIN, and Mr. COCHRAN):

S. 1508. A bill to require Senate candidates to file designations, statements, and reports in electronic form; to the Committee on Rules and Administration.

Mr. FEINGOLD. Mr. President, today I will once again introduce with the Senator from Arizona, Mr. MCCAIN, a bill to bring Senate campaigns into the 21st century by requiring that Senate candidates file their campaign finance disclosure reports electronically and that those reports be promptly made available to the public. We are very pleased to be joined in our effort in this Congress by the distinguished senior Senator from Mississippi, Mr. COCHRAN. This step is long overdue, and I hope the Senate will act quickly on this legislation.

A series of reports by the Campaign Finance Institute have highlighted the anomaly in the election laws that makes it nearly impossible for the public to get access to Senate campaign finance reports while most other reports are available on the Internet within 24 hours of their filing with the Federal Election Commission (FEC). The Campaign Finance Institute asks a rhetorical question: ''What makes the Senate so special that it exempts itself from a key requirement of campaign finance disclosure that applies to everyone else, including candidates for the House of Representatives and Political Action Committees?''

The answer, of course, is nothing. The United States Senate is special in many ways. I am proud to serve here. But there is no justification for not making our campaign finance information as readily accessible to the public as the information filed by House candidates or others.

My bill amends the section of the election laws dealing with electronic filing to require reports filed with the Secretary of the Senate to be filed electronically and forwarded to the FEC within 24 hours. The FEC is required to make available on the Internet within 24 hours any filing it receives electronically. So if this bill is enacted, electronic versions of Senate reports should be available to the public within 48 hours of their filing. That will be a vast improvement over the current situation, which, according to CFI, requires journalists and interested members of the public to review computer images of paper-filed copies of reports, and involves a completely wasteful expenditure of hundreds of thousands of dollars to re-enter information into databases that almost every campaign has available in electronic format.

The current filing system also means that the detailed coding that the FEC does, which allows for more sophisticated searches and analysis, is completed over a week later for Senate reports than for House reports. This means that the final disclosure reports covering the first two weeks of October are often not susceptible to detailed scrutiny before the election.

It is time for the Senate to relinquish its backward attitude toward campaign finance disclosure. I urge the enactment of this simple bill that will make

our reports subject to the same prompt, public scrutiny as those filed by PACs and candidates for the other body.

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

Mr. DURBIN. Mr. President, today I am pleased to submit a resolution expressing the sense of the Congress that a commemorative United States postage stamp should be issued to promote public awareness of Down syndrome and the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued. I am honored to be joined by Senator CORNYN in this effort.

Down syndrome is a genetic condition usually caused by an error in cell division called non-disjunction. Regardless of the type of Down syndrome a person may have, all people with Down syndrome have an extra, critical portion of the number 21 chromosome present in all, or some, of their cells. This additional genetic material alters the course of development and causes the characteristics associated with the syndrome.

Down syndrome affects people of all races and economic levels. It is the most frequently occurring chromosomal abnormality, occurring once out of every 800 to 1,000 births. In the United States, more than 350,000 people have Down syndrome. Nearly 5,000 children with Down syndrome are born each year. Because the mortality rate connected with Down syndrome is decreasing, the number of individuals with Down syndrome in our society is increasing. Some experts predict that the prevalence of individuals with Down syndrome will double in the next 10 years, further increasing the need for public acceptance and education about this genetic condition.

I encourage my colleagues to cosponsor this meaningful resolution and assist our efforts to convince the Citizens' Stamp Advisory Committee to recommend the issuance of a postage stamp promoting public awareness of Down syndrome.

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

S. 1508

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 ''Senate Campaign Disclosure Parity Act''.

SEC. 2. SENATE CANDIDATES REQUIRED TO FILE ELECTION REPORTS IN ELECTRONIC FORM.

(a) IN GENERAL.—Section 304(a)(11)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(D)) is amended to read as follows:

''(D) As used in this paragraph, the terms 'designation', 'statement', or 'report' mean a designation, statement or report, respectively, which—

''(i) is required by this Act to be filed with the Commission, or

''(ii) is required under section 302(g) to be filed with the Secretary of the Senate and forwarded by the Secretary to the Commission.''

(b) CONFORMING AMENDMENTS.—

(1) Section 302(g)(2) of such Act (2 U.S.C. 432(g)(2)) is amended by inserting ''or 1 working day in the case of a designation, statement, or report filed electronically'' after ''2 working days''.

(2) Section 304(a)(11)(B) of such Act (2 U.S.C. 434(a)(11)(B)) is amended by inserting ''or filed with the Secretary of the Senate under section 302(g)(1) and forwarded to the Commission'' after ''Act''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any designation, statement, or report required to be filed after the date of enactment of this Act.

Mr. MCCAIN. Mr. President, once again, I am proud to join my friend Senator FEINGOLD as a co-sponsor of legislation that will require Senate candidates to file campaign finance reports in electronic form. This bill will finally remove the exemption the Senate has given itself from an important requirement of campaign finance disclosure laws that apply to everyone else, including candidates for the U.S. House of Representatives and Political Action Committees (PACs).

Political committees active in Federal elections must submit their quarterly financial reports for disclosure by the Federal Election Commission (FEC). Anyone interested can nearly instantaneously download the reports from the FEC website and conduct computer searches to learn about the contributions and expenditures of individual candidates for the House, non-Senate national party committees and PACs. The current problem is that they cannot do the same for Senate candidates and parties because of the Senate's insistence on paper rather than electronic filing. The FEC must do more processing of Senate paper reports than of House electronic ones. This involves printing or copying the Senate reports, up to 10,000 pages a day at times, hand-coding transactions that cannot be automatically processed, the keypunching the data into the electronic database. House electronic reports do not need the same treatment. The end result is that in contrast to the House, information from the Senate paper reports are often not available until well after the election has occurred.

Because of this problem, it is impossible for voters to be well-informed about the campaign finance information of their Senators and Senate candidates. If a voter wants to consider the nature of the campaign finance support received by a Senate candidate and compare that support to Senate legislative votes as a factor in deciding for whom they will cast a vote, they simply cannot do so due to the antiquated nature of the reporting system.

To address this problem, our legislation requires Senate candidates to file their campaign finance reports electronically with the Secretary of the Senate. Within 24 hours of receipt of those reports, the Secretary is required to forward those reports to the FEC. The FEC, in turn is required to make those reports available on the Internet within 24 hours as they do other reports. Therefore, electronic versions of Senate reports will be available to the public within 48 hours of their filing.

Electronic reports are not only transmitted instantly but are more accurate than paper submissions because software can easily correct mistakes. On the other hand, hand entering of data is always prone to error. Furthermore, the data in electronic reports can be rapidly searched via the Internet for answers to specific questions. Voters will no longer have to go through the time consuming process of reading pages and pages filed by Senate candidates or Senate party committees to figure out the major donors and their employers, and the major recipients of campaign spending. Instead, they can downlown a filed report from the FEC website onto their personal computers and quickly locate the information they need. This creates effective public disclosure.

The Senate's current failure to provide its constituents with electronically disclosed, timely information is unconscionable. Senate filings should follow the same criteria as other campaign finance reports. There must not be a separate standard for the Senate. Ironically, while they do not currently file electronically, Senators and Senate candidates already use electronic software in compiling their paper reports. If Senators and Senate candidates can use technology to run their offices and websites, why can't they use it to better inform their own constituents about how their campaigns are funded? Our constituents have a right to that information.

By Mr. JEFFORDS (for himself, Mr. CHAFEE, Mr. LIEBERMAN, and Mr. LAUTENBERG):

S. 1509. A bill to amend the Lacey Act Amendments of 1981 to add non-human primates to the definition of prohibited wildlife species; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, I rise today to introduce the ''Captive Primate Safety Act of 2005''. I am joined by Senators CHAFEE, LIEBERMAN and LAUTENBURG.

Non-human primates in homes and communities pose serious risks to public health and safety. An attack in March of this year on a California man by chimpanzees who escaped their confinement is only one example of how dangerous these animals can be. A 13-year-old girl was attacked in West Virginia in May and on July 12th a 20-year-old man was attacked by two monkeys in Ohio.

Not only can non-human primates cause serious injury, they can spread potentially life-threatening illnesses. Since 1975, Federal regulations have forbidden the import of monkeys and other non-human primates as pets due to Centers for Disease Control (CDC) concerns about diseases such as

monkeypox, yellow fever, Marburg/Ebola disease, tuberculosis, and other diseases not yet known or recognized.

Nevertheless, there is still a vigorous trade in these animals, with as many as 15,000 primates held in private hands across America according to some estimates. State laws that seek to regulate primates as pets are undermined by the interstate commerce of these animals. Federal legislation is needed to better support safety regulations of the CDC and the states.

Infant primates may seem cute and cooperative, but they inevitably grow larger, stronger, and more aggressive. They may become many times stronger than humans and extremely difficult to handle. They can inflict serious harm by biting and scratching. Removing their teeth, as many pet owners do, is cruel and not a safeguard against injury. About 100 people reportedly have been injured by non-human primates over the past ten years, including 29 children.

This legislation amends the Lacey Act to prohibit transporting monkeys, great apes, (including chimpanzees and orangutans), marmosets, lemurs, and other non-human primates across State lines for the pet trade, much like the Captive Wildlife Safety Act, which passed unanimously in 2003, did for tigers and other big cats.

The legislation is narrowly crafted to get at the heart of the dangerous problem of keeping primates as pets. It has no impact on the trade or transportation of animals for federally licensed facilities, universities or accredited wildlife sanctuaries. It will not affect zoos or research facilities. Federal licenses or registration are required for all commercial activity, such as breeders, dealers, research institutions, exhibitors, and transporters, therefore, they are exempt. The prohibitions in the Lacey Act only apply in other situations, that is, in the pet trade.

This legislation is supported by more than 40 groups, including the Humane Society of the United States, the American Zoo and Aquarium Association, the American Veterinary Medical Association, Defenders of Wildlife and the International Fund for Animal Welfare.

I urge my colleagues to support this legislation and will work our partners in the House to enact the Captives Primate Safety Act.

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. 1509

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 ''Captive Primate Safety Act of 2005''.

SEC. 2. ADDITION OF NON-HUMAN PRIMATES TO THE DEFINITION OF PROHIBITED WILDLIFE SPECIES.

Section 2(g) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371(g)) is amended by inserting ''or any non-human primate'' before the period at the end.

By Mr. SARBANES (for himself, Ms. MIKULSKI, Mr. BIDEN, Mrs. CLINTON, Ms. MURKOWSKI, Mrs. MURRAY, Mr. WYDEN, Mr. LAUTENBERG, Mr. SCHUMER, and Mr. DURBIN):

S. 1512. A bill to grant a Federal charter to Korean War Veterans Association, Incorporated; to the Committee on the Judiciary.

Mr. SARBANES. Mr. President, today I am once again introducing legislation together with Senators MIKULSKI, BIDEN, CLINTON, MURKOWSKI, MURRAY, WYDEN, LAUTENBERG, SCHUMER, and DURBIN which would grant a Federal charter to the Korean War Veterans Association, Incorporated. This legislation, which has passed the Senate in each of the past three Congresses, recognizes the 5.7 million Americans who fought and served during the Korean War and honors their sacrifices on behalf of freedom and the principles and ideals of our Nation.

Today marks the 52nd Anniversary of the signing of the Military Armistice Agreement which officially ended armed hostilities on the Korean Peninsula. By the time the fighting ended, 8,177 Americans were listed as missing or prisoners of war some of whom are still missing and more than 36,000 Americans had died. One hundred and thirty-one Korean War Veterans were awarded the Nation's highest commendation for combat bravery, the Medal of Honor. Ninety-four of these soldiers gave their lives in the process.

When the North Korea People's Army swept across the 38th Parallel to occupy Seoul, South Korea in June of 1950, members of our Armed Forces including many from the State of Maryland immediately answered the call of the U.N. to repel this forceful invasion. Without hesitation, these soldiers traveled to an unfamiliar corner of the world to join an unprecedented multinational force comprised of 22 countries, and risked their lives to protect freedom. The Americans who led this international effort were true patriots who fought with remarkable courage. In battles such as Pork Chop Hill, the Inchon Landing, and the frozen Chosin Reservoir, which was fought in temperatures as low as fifty-seven degrees below zero, they faced some of the most brutal combat in history.

The sacrifices made by these brave individuals are well described by an engraving on the Korean War Veterans Memorial, which reads: ''Freedom is not Free.'' Yet, as a Nation, we have done little more than establish this memorial to publicly acknowledge the bravery of those who fought in the Korean War. The Korean War has been termed by many as the ''Forgotten War.'' Freedom is not free. We owe our Korean War Veterans a debt of gratitude. Granting this Federal charter—at no cost to the government—is a small expression of appreciation that we as a Nation can offer to these men and women, one which will enable them to work as a unified front to ensure that the ''Forgotten War'' is forgotten no more.

The Korean War Veterans Association was originally incorporated on June 25, 1985. Since its first annual reunion and memorial service in Arlington, VA, where its members decided to develop a national focus and strong commitment to service, the association has grown substantially to a membership of over 17,000. A Federal charter would allow the Association to continue to grow its mission and further its charitable and benevolent causes. Specifically, it will afford the Korean War Veterans' Association the same status as other major veterans' organizations and allow it to participate as part of select committees with other congressionally chartered veterans and military groups. A Federal charter will also accelerate the Association's ''accreditation'' with the Department of Veterans Affairs which will enable its members to assist in processing veterans' claims.

The Korean War Veterans have asked for very little in return for their service and sacrifice. I urge my colleagues to join me in supporting this legislation and ask that the text of the measure be printed in the RECORD.

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

S. 1512

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

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

"CHAPTER 1201—[RESERVED]";

and

(2) by inserting after chapter 1103 the following new chapter:

"CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

''Sec.
''120101. Organization.
''120102. Purposes.
''120103. Membership.
''120104. Governing body.
''120105. Powers.
''120106. Restrictions.
''120107. Tax-exempt status required as condition of charter.
''120108. Records and inspection.
''120109. Service of process.
''120110. Liability for acts of officers and agents.
''120111. Annual report.
''120112. Definition.

"§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), a nonprofit organization that meets the requirements for a veterans service organization under section 501(c)(19) of the Internal Revenue Code of 1986 and that is organized under the laws of the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions

of this chapter, the charter granted by subsection (a) expires.

"§ 120102. Purposes

"The purposes of the corporation are those provided in its articles of incorporation and shall include the following:

"(1) Organize as a veterans service organization in order to maintain a continuing interest in the welfare of veterans of the Korean War, and rehabilitation of the disabled veterans of the Korean War to include all that served during active hostilities and subsequently in defense of the Republic of Korea, and their families.

"(2) To establish facilities for the assistance of all veterans and to represent them in their claims before the Department of Veterans Affairs and other organizations without charge.

"(3) To perpetuate and preserve the comradeship and friendships born on the field of battle and nurtured by the common experience of service to our nation during the time of war and peace.

"(4) To honor the memory of those men and women who gave their lives that a free America and a free world might live by the creation of living memorial, monuments, and other forms of additional educational, cultural, and recreational facilities.

"(5) To preserve for ourselves and our posterity the great and basic truths and enduring principles upon which this nation was founded.

"§ 120103. Membership

"Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

"§ 120104. Governing body

"(a) BOARD OF DIRECTORS.—The composition of the board of directors of the corporation, and the responsibilities of the board, are as provided in the articles of incorporation of the corporation.

"(b) OFFICERS.—The positions of officers of the corporation, and the election of the officers, are as provided in the articles of incorporation.

"§ 120105. Powers

"The corporation has only those powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

"§ 120106. Restrictions

"(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

"(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

"(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

"(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

"(e) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

"§ 120107. Tax-exempt status required as condition of charter

"If the corporation fails to maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986, the charter granted under this chapter shall terminate.

"§ 120108. Records and inspection

"(a) RECORDS.—The corporation shall keep—

"(1) correct and complete records of account;

"(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

"(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

"(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

"§ 120109. Service of process

"The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

"§ 120110. Liability for acts of officers and agents

"The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

"§ 120111. Annual report

"The corporation shall submit to Congress an annual report on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101(b) of this title. The report may not be printed as a public document.

"§ 120112. Definition

"For purposes of this chapter, the term 'State' includes the District of Columbia and the territories and possessions of the United States.".

(b) CLERICAL AMENDMENT.—The item relating to chapter 1201 in the table of chapters at the beginning of subtitle II of title 36, United States Code, is amended to read as follows:

"1201. Korean War Veterans Association, Incorporated ..... 120101".

By Mr. DEMINT (for himself, Mr. NELSON of Florida, Mr. ISAKSON, Mr. DAYTON, Ms. MURKOWSKI, and Mr. ENZI):

S. 1514. A bill to amend the Internal Revenue Code of 1986 to repeal the medicine and drugs limitation on the deduction for medical care; to the Committee on Finance.

Mr. DEMINT. I rise today to offer a bill that would amend the medical and dental expense income tax deduction so that nonprescription or over-the-counter drugs would be allowed as a deductible expense for taxpayers who itemize their deductions.

Currently, the IRS list of qualifying medical expenses does not include OTCs; this bill makes them a qualifying medical expense. The bill does this by striking the subsection that limits the deduction for drug expenses to prescription drugs and insulin. It also makes it easier for people to reach and exceed the 7.5 percent threshold.

I believe this bill will be particularly helpful for low income taxpayers and those with high healthcare expenses. Over 5 percent of tax filers currently claim the deduction for medical and dental expenses. Additionally, individual taxpayers can also claim the medical expenses of their spouses and dependent children—so pediatric cough syrup bought by parents for their children would be deductible if OTC medical expenses allowed.

This bill recognizes that over-the-counter drugs may be a big cost for some individuals and families. In addition, Americans using a Flexible Spending Account or Health Savings Account get preferred tax treatment for OTCs, but Americans without them do not. Tax treatment of prescription and non-prescription drugs should be equal in this area.

I am grateful to Senator BILL NELSON for joining me as a lead sponsor of this bill. I am also pleased that Representatives MELISSA HART and MIKE ROSS have introduced companion legislation in the House. These individuals understand that reducing the cost of medicine is a goal we should all support. I urge my Senate colleagues to support this bill.

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. 1514

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 "OTC Medicine Tax Fairness Act of 2005".

SEC. 2. REPEAL OF MEDICINE AND DRUGS LIMITATION ON DEDUCTION FOR MEDICAL CARE.

(a) IN GENERAL.—Section 213 of the Internal Revenue Code of 1986 (relating to medical, dental, etc., expenses) is amended by striking subsection (b).

(b) CONFORMING AMENDMENT.—Section 213(d) of such Code is amended by striking paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Mr. NELSON of Florida. Mr. President, I am pleased to join my colleague Senator JIM DEMINT as we introduce the OTC Medicine Tax Fairness Act of 2005.

Health care costs are continuing to climb across America and the medical expense deduction is becoming increasingly popular as Americans spend more out-of-pocket for health care. The OTC Medicine Tax Fairness Act of 2005 is designed to help make medicine more affordable by allowing consumers to include over-the-counter, OTC, drugs as a deductible expense for people who itemize their deductions.

Under the OTC Medicine Tax Fairness Act of 2005, OTC medicines would be allowed as tax deductible medical expenses. Under current law, taxpayers who itemize income tax deductions may deduct out-of-pocket expenses for medical care not reimbursed by health insurance, provided it exceeds 7.5 percent of their adjusted gross income. Eligible expenses under the tax code currently include non-reimbursed costs for doctor visits, bandages, crutches, acupuncture, chiropractic care, hearing

aids, and eyeglasses. The code also allows the costs of drugs, but only prescription drugs and insulin; OTCs are not included in the deduction currently. This legislation recognizes that OTC medicines may be a big cost for some individuals and families and that tax treatment of prescription and nonprescription drugs should be equal in this area.

The medical expense deduction is particularly helpful for low income taxpayers with high health care expenses. Taxpayers in the lower income brackets use the medical expense deduction more frequently than higher income earners. According to the IRS website, over 3 million taxpayers with incomes of $20,000 or less used the medical expense deduction in 2001. This bill would help low income people with high medical expenses by allowing them to deduct the cost of OTCs.

This legislation would also provide much needed fiscal relief for many seniors. According to U.S. Department of Labor statistics, seniors purchase more OTC drugs than any other age group. This bill would help those elderly Floridians, as well as all elderly Americans, who use OTCs and take the medical expense deduction.

American consumers are currently paying extraordinary prices for their medications. It is time for Congress to help make medicine more affordable. One thing we can do is to make sure that as more drugs become available without prescriptions that their costs can still be included in tax- deductible health care expenses. If we can do that, we will have done a great deal.

Mr. President, I request unanimous consent that my statement be included in the RECORD.

By Mr. INOUYE:

S. 1515. A bill to amend title XIX of the Social Security Act to improve access to advanced practice nurses and physician assistants under the Medicaid Program; to the committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the ''Medicaid Advanced Practice Nurse and Physician Assistants Access Act of 2005.'' This legislation would change Federal law to expand fee-for-service Medicaid to include direct payment for services provided by all nurse practitioners, clinical nurse specialists, and physician assistants. It would ensure all nurse practitioners, certified nurse midwives, and physician assistants are recognized as primary care case managers, and require Medicaid panels to include advanced practice nurses on their managed care panels.

Advanced practice nurses are registered nurses who have attained additional expertise in the clinical management of health conditions. Typically, an advanced practice nurse holds a master's degree with didactic and clinical preparation beyond that of the registered nurse. They are employed in clinics, hospitals, and private practices. While there are many titles given to these advanced practice nurses, such as pediatric nurse practitioners, family nurse practitioners, certified nurse midwives, certified registered nurse anesthetists, and clinical nurse specialists, our current Medicaid law has not kept up with the multiple specialties and titles of these advanced practitioners, nor has it recognized the critical role physician assistants play in the delivery of primary care.

I have been a long-time advocate of advanced practice nurses and their ability to extend health care services to our most rural and underserved communities. They have improved access to health care in Hawaii and throughout the United States by their willingness to practice in what some providers might see as undesirable locations—the extremely rural, frontier, or urban areas. This legislation ensures they are recognized and reimbursed for providing the necessary health care services patients need, and it gives those patients the choice of selecting advanced practice nurses and physician assistants as their primary care providers.

In 1986, the Congressional Office of Technology Assessment released a report requested by the Senate Appropriations Committee. This report, ''Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives: A Policy Analysis,'' found the quality of nurse practitioner care to be as good as or better than care provided by physicians. By passing this legislation, we honor the commitment of these frontline health care professionals by ensuring they receive the respect and reimbursement they have earned.

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

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

S. 1515

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 ''Medicaid Advanced Practice Nurses and Physician Assistants Access Act of 2005''.

SEC. 2. IMPROVED ACCESS TO SERVICES OF ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS UNDER STATE MEDICAID PROGRAMS.

(a) PRIMARY CARE CASE MANAGEMENT.—Section 1905(t)(2) of the Social Security Act (42 U.S.C. 1396d(t)(2)) is amended by striking subparagraph (B) and inserting the following:

''(B) A nurse practitioner (as defined in section 1861(aa)(5)(A)).

''(C) A certified nurse-midwife (as defined in section 1861(gg)).

''(D) A physician assistant (as defined in section 1861(aa)(5)(A)).''.

(b) FEE-FOR-SERVICE PROGRAM.—Section 1905(a)(21) of such Act (42 U.S.C. 1396d(a)(21)) is amended—

(1) by inserting ''(A)'' after ''(21)'';

(2) by striking ''services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner'' and inserting ''services furnished by a nurse practitioner (as defined in section 1861(aa)(5)(A)) or by a clinical nurse specialist (as defined in section 1861(aa)(5)(B)) which the nurse practitioner or clinical nurse specialist'';

(3) by striking ''the certified pediatric nurse practitioner or certified family nurse practitioner'' and inserting ''the nurse practitioner or clinical nurse specialist''; and

(4) by inserting before the semicolon at the end the following: ''and (B) services furnished by a physician assistant (as defined in section 1861(aa)(5)) with the supervision of a physician which the physician assistant is legally authorized to perform under State law''.

(c) INCLUDING IN MIX OF SERVICE PROVIDERS UNDER MEDICAID MANAGED CARE ORGANIZATIONS.—Section 1932(b)(5)(B) of such Act (42 U.S.C. 1396u–2(b)(5)(B)) is amended by inserting '', with such mix including nurse practitioners, clinical nurse specialists, physician assistants, certified nurse midwives, and certified registered nurse anesthetists (as defined in section 1861(bb)(2))'' after ''services''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished in calendar quarters beginning on or after 90 days after the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 1518. A bill to amend the Indian Gaming Regulatory Act to modify a provision relating to the locations in which class III gaming is lawful; to the Committee on Indian Affairs.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation with Senator DEWINE which will close a loophole in the Indian Gaming Regulatory Act (IGRA). By clarifying this statute, a State's right to prevent unwanted forms of gambling in the State will be protected.

The current laws governing Indian gambling are ambiguous when outlining which types of gambling are allowed. The provision in the Indian Gaming Regulatory Act, IGRA, that determines permitted gambling activities defines casino-style gambling as Class III, including slot machines, blackjack, craps, roulette, some lotteries and pari-mutuel racing. This class of gambling activity on Indian lands can only be, and I quote, ''located in a State that permits such gaming for any purpose by any person, organization or entity.''

It is unclear whether this means that the statutory language should be read and applied in a class-wide or categorical sense or whether it should be read and applied on an activity-by-activity basis.

District and circuit Federal courts have both considered this question. In 1991, a District Court in Wisconsin ruled that if a State permits one type of class III gaming, then all other types of class III gaming can be conducted in that State under the IGRA.

On the other hand, in 1993 and 1994, the Eighth and Ninth Circuit Courts of Appeals construed the language of the

IGRA to mean that class III gaming in a particular State is limited under the Federal law to the specific activities that are permitted under that State's laws.

In July 2005, the Tenth Circuit Court of Appeals revealed that these uncertainties continue when it ruled in favor of the Northern Arapaho tribe in their efforts to build a casino, with ''Vegas Style'' gambling in Wyoming. In this instance, the tribe argued that it is entitled to offer full Class III gambling because the State allows casino style activities for social or nonprofit purposes.

In Ohio, gambling for commercial purposes is prohibited by the State Constitution. However, pari-mutuel racing and lottery are both permitted as well as charitable gambling on a very limited and controlled basis.

The bill I am introducing today will clarify that Class III gambling under IGRA applies only on an activity-by-activity basis, rather than in a class-wide sense.

I have been a long time supporter of a ban on casino gambling and have taken steps to keep casino gambling out of Ohio. As Mayor of Cleveland and as Governor of Ohio, I worked to inform Ohioans of the negative impact casino gambling has on our families and our economy, leading to gambling's defeat at the polls. These initiatives proved to be successful and have kept legalized gambling under control in Ohio.

My introduction of this legislation comes at a time when the progress we've made is in danger of being compromised. Across the country, Indian tribes are looking to expand gambling and even looking at a State like Ohio where gambling is illegal. The distinction in my bill is necessary to help control the explosive growth of tribal casinos nationwide.

I call on my colleagues to join us in cosponsoring this bill.

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. 1518

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

SECTION 1. CLASS III GAMING ACTIVITIES.

(a) DEFINITIONS.—Section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703) is amended by adding at the end the following:

''(11) COMMERCIAL PURPOSE.—

''(A) IN GENERAL.—The term 'commercial purpose', with respect to a gaming activity under this Act, means a gaming activity operated on a for-profit basis.

''(B) EXCLUSION.—The term 'commercial purpose', with respect to a gaming activity under this Act, does not include any gaming activity operated on a charitable or nonprofit basis.''.

(b) GAMING ACTIVITIES.—Section 11(d) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)) is amended by striking paragraph (1) and inserting the following:

''(1) CLASS III GAMING ACTIVITIES.—

''(A) IN GENERAL.—A class III gaming activity shall be lawful on Indian land only if the activity is—

''(i) authorized by an ordinance or resolution that—

''(I) is adopted by the governing body of the Indian tribe that has jurisdiction over the Indian land on which the activity is proposed to be conducted;

''(II) meets the requirements of subsection (b); and

''(III) is approved by the Chairman;

''(ii) subject to subparagraph (B), located in a State that expressly permits the activity for any commercial purpose by any person, organization, or entity in the constitution of the State or any law of the State; and

''(iii) conducted in accordance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect on the date on which the ordinance or resolution relating to the activity is submitted to the Chairman under paragraph (2).

''(B) CERTAIN STATES.—A class III gaming activity conducted under subparagraph (A)(ii) shall be conducted in accordance with the applicable laws (including regulations) of the State in which the activity is located, including restrictions on the timing or frequency of the gaming activity.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 215—DESIGNATING DECEMBER 2005 AS ''NATIONAL PEAR MONTH''

Mr. SMITH (for himself, Mr. WYDEN, Mrs. MURRAY, Mrs. FEINSTEIN, and Mrs. BOXER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 215

Whereas pear trees imported to Oregon, Washington, and California by pioneers in the 1800s thrived in the unique agricultural conditions found in the Pacific States;

Whereas the Pacific States are internationally renowned for producing varieties of delicious, sweet, and juicy pears;

Whereas the Pacific States form the only geographic region in the United States with the ideal combination of climate and geography needed to produce high-quality, delicious summer and winter pear varieties;

Whereas the rich pear-growing region stretches from the Central Valley of California, through the Rogue River Valley in southern Oregon, and to the banks of the Columbia River in Oregon and Washington;

Whereas pears are a high-quality source of vitamin C, potassium, and dietary fiber, have no cholesterol, are low in calories, and complement an active lifestyle;

Whereas Oregon, Washington, and California are world-renowned for providing beautiful and delicious pears;

Whereas the United States does not have an official pear month; and

Whereas designating December 2005 as ''National Pear Month'' would be a suitable recognition of the affection the people of the United States hold for pears and the healthful benefits of pears: Now, therefore, be it

Resolved, That the Senate—

(1) designates December 2005 as ''National Pear Month''; and

(2) encourages the people of the United States to observe the month with appropriate ceremonies, activities, and consumption.

SENATE RESOLUTION 216—EXPRESSING GRATITUDE AND APPRECIATION TO THE MEN AND WOMEN OF THE UNITED STATES ARMED FORCES WHO SERVED IN WORLD WAR II, COMMENDING THE ACTS OF HEROISM DISPLAYED BY THOSE SERVICEMEMBERS, AND RECOGNIZING THE ''GREATEST GENERATION HOMECOMING WEEKEND'' TO BE HELD IN PITTSBURGH, PENNSYLVANIA

Mr. SANTORUM (for himself and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 216

Whereas World War II began on September 1, 1939, when Nazi Germany invaded Poland without a declaration of war and then moved, following the surrender of Poland, to invade and occupy Denmark, Norway, Luxembourg, the Netherlands, and Belgium;

Whereas following the premeditated invasion by Japan on the United States at Pearl Harbor, Hawaii, on December 7, 1941, the United States declared war on Japan and entered World War II on the side of freedom and democracy;

Whereas when the fate of the free world was in jeopardy as a direct result of the desire of Adolf Hitler and the Nazi regime for world conquest, the servicemembers of the United States Armed Forces known as the ''Greatest Generation'' assumed the task of freeing the world of Nazism, fascism, and tyranny;

Whereas more than 16,000,000 Americans served in the United States Armed Forces during World War II, and millions more supported the war effort at home;

Whereas more than 400,000 brave Americans made the ultimate sacrifice during World War II in the name of freedom and in defense of the ideals that the people of the United States hold dear;

Whereas units of the United States Army, such as the 1st Infantry Division known as the ''Big Red One'', the 3rd Infantry Division known as the ''Rock of the Marne'', the 10th Armored Division known as the ''Tiger Division'', and the ''Flying Tigers'' of the 14th Air Force, valiantly fought to defeat the oppression and tyranny of the Axis Powers;

Whereas the great tragedy of World War II was the defining event of the 20th century, when the brave men and women of the United States Armed Forces fought for the common defense of the United States and for the broader causes of peace and freedom from tyranny throughout the world; and

Whereas the members of the United States Armed Forces, including the ''Greatest Generation'' of World War II, made sacrifices and displayed bravery and heroism in the name of freedom and democracy throughout the world: Now, therefore, be it

Resolved, That the Senate—

(1) expresses appreciation to the members of the United States Armed Forces who served during World War II, for—

(A) the selfless service of those servicemembers to the United States;

(B) restoring freedom to the world; and

(C) defeating the elements of evil and oppression;

(2) commends the heroism and bravery displayed by the members of the United States Armed Forces who served during World War II, known as the ''Greatest Generation'', in the face of death and severe hardship, and honors those servicemembers who made the ultimate sacrifice;

(3) proudly honors the members of the ''Greatest Generation'' on the occasion of the forthcoming 60th anniversary of the end of World War II, and in conjunction with the ''Greatest Generation Homecoming Weekend'' in Pittsburgh, Pennsylvania;

(4) proudly honors all members of the United States Armed Forces, past and present, who defend the freedom of the United States in times of both war and peace; and

(5) commends the participants of the ''Greatest Generation Homecoming Weekend'' that takes place from September 2, 2005 through September 5, 2005 in Pittsburgh, Pennsylvania.

SENATE RESOLUTION 217—DESIGNATING AUGUST 13, 2005, AS ''NATIONAL MARINA DAY''

Mrs. MURRAY (for herself and Ms. CANTWELL) submitted the following resolution; which was considered and agreed to:

S. RES. 217

Whereas the people of the United States value highly recreational time and the ability to access the waterways of the United States, one of the country's greatest natural resources;

Whereas in 1928, the National Association of Engine and Boat Manufacturers first used the word ''marina'' to describe a recreational boating facility;

Whereas the United States is home to more than 12,000 marinas that contribute substantially to local communities by providing safe and reliable gateways to boating;

Whereas the marinas of the United States serve as stewards of the environment and actively seek to protect surrounding waterways for the enjoyment of this generation and generations to come;

Whereas the marinas of the United States provide communities and visitors with a place where friends and families, united by a passion for the water, can come together for recreation, rest, and relaxation; and

Whereas the Association of Marina Industries has designated August 13, 2005 as ''National Marina Day'' to increase awareness among citizens, policymakers, and elected officials about the many contributions that marinas make to communities: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 13, 2005 as ''National Marina Day'';

(2) encourages the people of the United States to observe ''National Marina Day'' with appropriate programs and activities; and

(3) urges the marinas of the United States to continue to provide environmentally friendly gateways to boating for the people of the United States.

SENATE CONCURRENT RESOLUTION 48—EXPRESSING THE SENSE OF CONGRESS THAT A COMMEMORATIVE POSTAGE STAMP SHOULD BE ISSUED TO PROMOTE PUBLIC AWARENESS OF DOWN SYNDROME

Mr. DURBIN (for himself and Mr. CORNYN) submitted the following concurrent resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. CON. RES. 48

Whereas Down syndrome affects people of all races and economic levels;

Whereas Down syndrome is the most frequently occurring chromosomal abnormality;

Whereas 1 in every 800 to 1,000 children is born with Down syndrome;

Whereas more than 350,000 people in the United States have Down syndrome;

Whereas 5,000 children with Down syndrome are born each year;

Whereas as the mortality rate associated with Down syndrome in the United States decreases, the prevalence of individuals with Down syndrome in the United States will increase;

Whereas some experts project that the number of people with Down syndrome will double by 2013;

Whereas individuals with Down syndrome are becoming increasingly integrated into society and community organizations, such as schools, health care systems, work forces, and social and recreational activities;

Whereas more and more people in the United States interact with individuals with Down syndrome, increasing the need for widespread public acceptance and education; and

Whereas a greater understanding of Down syndrome and advancements in treatment of Down syndrome-related health problems have allowed people with Down syndrome to enjoy fuller and more active lives: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the United States Postal Service should issue a commemorative postage stamp to promote public awareness of Down syndrome; and

(2) the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1605. Mr. FRIST (for Mr. CRAIG) proposed an amendment to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

SA 1606. Mr. FRIST proposed an amendment to amendment SA 1605 proposed by Mr. FRIST (for Mr. CRAIG) to the bill S. 397, supra.

SA 1607. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1608. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1609. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1610. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1611. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1612. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1613. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1614. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1615. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1616. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 397, supra; which was ordered to lie on the table.

SA 1617. Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SCHUMER, Mrs. CLINTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1618. Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SCHUMER, Mrs. CLINTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1619. Mr. CORZINE (for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1620. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1621. Mrs. FEINSTEIN (for herself, Mr. CORZINE, Mr. DURBIN, Mrs. CLINTON, Mr. JEFFORDS, Mr. LEVIN, Mrs. BOXER, Ms. MIKULSKI, and Mr. KENNEDY) submitted an amendment intended to be proposed by her to the bill S. 397, supra; which was ordered to lie on the table.

SA 1622. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 397, supra; which was ordered to lie on the table.

SA 1623. Mr. LEVIN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1624. Mr. KOHL submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1625. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1626. Mr. REED (for Mr. KOHL) proposed an amendment to the bill S. 397, supra.

SA 1627. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 1516, to reauthorize Amtrak, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation.

SA 1628. Mr. McCONNELL (for Mr. HAGEL) proposed an amendment to the resolution S. Res. 86, designating August 16, 2005, as ''National Airborne Day''.

SA 1629. Mr. McCONNELL (for Mr. FEINGOLD) proposed an amendment to the resolution S. Res. 104, expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to take the lead and coordinate with other governmental agencies and non-governmental organizations in creating an online database of international exchange programs and related opportunities.

SA 1630. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table.

SA 1631. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

SA 1632. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1605. Mr. FRIST (for Mr. CRAIG) proposed an amendment to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; as follows:

On page 10, line 5, strike ''or'' and all that follows through line 16 and insert the following:

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

SA 1606. Mr. FRIST proposed an amendment to amendment SA 1605 proposed by Mr. FRIST (for Mr. CRAIG) to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; as follows:

At the end, insert the following:

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18, United States Code, or chapter 53 of the Internal Revenue Code of 1986.

SA 1607. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 6, strike lines 10 through 19 and insert the following:

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

A qualified civil liability action may not be brought in any Federal or State court.

SA 1608. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe, that the actual buyer of the qualified product was on the ''Most Wanted Terrorists List'' or the ''Ten Most Wanted Fugitives List'' published by the Federal Bureau of Investigation.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1609. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing or having reasonable cause to believe, that the actual buyer of the qualified product was a representative of an organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1610. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 8, strike lines 2 through 12 and insert the following:

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action brought by any person against a manufacturer of a qualified product for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

SA 1611. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 8, strike lines 2 through 12 and insert the following:

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action brought by any person against a manufacturer or seller of a qualified product for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

SA 1612. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product failed to perform employee background checks or knew, or had reasonable cause to believe, that employees

were engaging in actions that are grossly negligent or that constitute willful misconduct.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1613. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product failed to report the theft or loss of a firearm from the inventory or collection of the manufacturer or seller, as required under section 923(g)(6) of title 18, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1614. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product failed to maintain theft prevention measures.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1615. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, insert the following:

SEC. 5. ARMOR PIERCING AMMUNITION.

(a) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(iii) a projectile that may be used in a handgun and that the Attorney General determines, under section 926(d), to be capable of penetrating body armor; or

''(iv) a projectile for a center-fire rifle, designed or marketed as having armor piercing capability, that the Attorney General determines, under section 926(d), to be more likely to penetrate body armor than standard ammunition of the same caliber.''.

(b) DETERMINATION OF THE CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

''(2) The standards promulgated under paragraph (1) shall take into account, among other factors, variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired and the amount and kind of powder used to propel the projectile.

''(3) As used in paragraph (1), the term 'Body Armor Exemplar' means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.''.

SA 1616. Mrs. CLINTON submitted an amendment intended to be proposed by her to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, insert the following:

SEC. 5. PROHIBITION ON SALE OF VIOLENT VIDEO GAMES TO MINORS.

(a) IN GENERAL.—No business shall sell or rent, or permit the sale or rental of any video game with a Mature, Adults-Only, or Ratings Pending rating from the Entertainment Software Ratings Board to any individual who has not attained the age of 17 years.

(b) AFFIRMATIVE DEFENSE.—It shall be a defense to any prosecution for a violation of the prohibition under subsection (a) that a business was shown an identification document, which the business reasonably believed to be valid, indicating that the individual purchasing or renting the video game had attained the age of 17 years or older.

(c) PENALTY.—The manager or agent of the manager of a business found to be in violation of the prohibition under subsection (a) shall be subject to a fine, community service, or both not to exceed—

(1) $1,000 or 100 hours of community service for the first violation; and

(2) $5,000 or 500 hours of community service for each subsequent violation.

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

(1) BUSINESS.—The term ''business'' means any lawful activity, except a farm operation, that is conducted—

(A) primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(B) primarily for the sale of services to the public.

(2) ENTERTAINMENT SOFTWARE RATINGS BOARD.—The term ''Entertainment Software Ratings Board'' means the independent rating system, or any successor ratings system—

(A) established by the Interactive Digital Software Association; and

(B) developed to provide information to consumers regarding the content of video and computer games.

(3) VIDEO GAME.—The term ''video game'' means an electronic object or device that—

(A) stores recorded data or instructions;

(B) receives data or instructions generated by the person who uses it; and

(C) by processing such data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

SA 1617. Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SCHUMER, Mrs. CLINTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, add the following:

SEC. 5. FIVE-SEVEN PISTOL.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds the following:

(A) Law enforcement is facing a new threat from handguns and accompanying ammunition, which are designed to penetrate police body armor, being marketed and sold to civilians.

(B) A Five-seveN Pistol and accompanying ammunition, manufactured by FN Herstal of Belgium as the ''5.7 x 28 mm System'', has recently been recovered by law enforcement on the streets. The Five-seveN Pistol and 5.7 x 28mm SS192 cartridges are legally available for purchase by civilians under current law.

(C) The Five-seveN Pistol and 5.7 x 28mm SS192 cartridges are capable of penetrating level IIA armor. The manufacturer advertises that ammunition fired from the Five-seveN will perforate 48 layers of Kevlar up to 200 meters and that the ammunition travels at 2100 feet per second.

(D) The Five-seveN Pistol, and similar handguns designed to use ammunition capable of penetrating body armor, pose a devastating threat to law enforcement.

(2) PURPOSE.—The purpose of this section is to protect the Nation's law enforcement officers by—

(A) testing handguns and ammunition for capability to penetrate body armor; and

(B) prohibiting the manufacture, importation, sale, or purchase by civilians of the Five-seveN Pistol, ammunition for such pistol, or any other handgun that uses ammunition found to be capable of penetrating body armor.

(b) ARMOR PIERCING AMMUNITION.—

(1) EXPANSION OF DEFINITION OF ARMOR PIERCING AMMUNITION.—Section 921(a)(17)(B) of title 18, United States Code, is amended—

(A) in clause (i), by striking ''or'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(iii) a projectile that—

''(I) may be used in a handgun; and

''(II) the Attorney General determines, pursuant to section 926(d), to be capable of penetrating body armor.''.

(2) DETERMINATION OF CAPABILITY OF PROJECTILES TO PENETRATE BODY ARMOR.—Section 926 of title 18, United States Code, is amended by adding at the end the following:

''(d)(1) Not later than 1 year after the date of enactment of this subsection, the Attorney General shall promulgate standards for the uniform testing of projectiles against Body Armor Exemplar.

''(2) The standards promulgated under paragraph (1) shall take into account, among other factors, variations in performance that are related to the type of handgun used, the length of the barrel of the handgun, the amount and kind of powder used to propel the projectile, and the design of the projectile.

''(3) As used in paragraph (1), the term 'Body Armor Exemplar' means body armor that the Attorney General determines meets minimum standards for the protection of law enforcement officers.''.

(c) ARMOR PIERCING HANDGUNS AND AMMUNITION.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding after subsection (y) the following:

''(z) FIVE-SEVEN PISTOL.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, import, market, sell, ship, deliver, possess, transfer, or receive—

''(A) the Fabrique Nationale Herstal Five-SeveN Pistol;

''(B) 5.7 x 28mm SS190 and SS192 cartridges; or

''(C) any other handgun that uses armor piercing ammunition.

''(2) EXCEPTIONS.—This subsection shall not apply to—

''(A) any firearm or armor piercing ammunition manufactured for, and sold exclusively to, military, law enforcement, or intelligence agencies of the United States; and

''(B) the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm or armor piercing ammunition by a licensed manufacturer, or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm or ammunition to determine whether paragraph (1) applies to such firearm.''.

(2) PENALTIES.—Section 924(a)(1)(B) of title 18, United States Code, is amended by striking ''or (q)'' and inserting ''(q), or (z)''.

SA 1618. Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SCHUMER, Mrs. CLINTON, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case against a manufacturer or seller for an injury caused by—

(I) a Fabrique Nationale Herstal Five-SeveN Pistol;

(II) the use of a 5.7 x 28mm SS190 or SS192 cartridge; or

(III) the use of any other handgun using armor piercing ammunition, as defined in section 921(a)(17)(B) of title 18, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1619. Mr. CORZINE (for himself, Mr. LAUTENBERG, Ms. MIKULSKI, Mr. KENNEDY, Mrs. CLINTON, and Mrs. BOXER) submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, add the following:

SEC. 5. LAW ENFORCEMENT EXCEPTION.

Nothing in this Act shall be construed as limiting the right of an officer or employee of any Federal, State, or local law enforcement agency to recover damages authorized under Federal or State law.

SA 1620. Mr. LAUTENBERG (for himself and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case against a manufacturer or seller involving an injury to or the death of a person under 17 years of age.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1621. Mrs. FEINSTEIN (for herself, Mr. CORZINE, Mr. DURBIN, Mrs. CLINTON, Mr. JEFFORDS, Mr. LEVIN, Mrs. BOXER, Ms. MIKULSKI, and Mr. KENNEDY) submitted an amendment intended to be proposed by her to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, insert the following:

SEC. 5. FIFTY-CALIBER SNIPER WEAPONS.

(a) COVERAGE OF .50 CALIBER SNIPER WEAPONS UNDER THE NATIONAL FIREARMS ACT.—

(1) IN GENERAL.—Section 5845(a) of the Internal Revenue Code of 1986 (defining firearm) is amended by striking ''(6) a machine gun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device.'' and inserting ''(6) a .50 caliber sniper weapon; (7) a machine gun; (8) any silencer (as defined in section 921 of title 18, United States Code); and (9) a destructive device.''.

(2) DEFINITIONS.—

(A) IN GENERAL.—Section 5845 the Internal Revenue Code of 1986 (defining terms relating to firearms) is amended by adding at the end the following:

''(n) FIFTY CALIBER SNIPER WEAPON.—The term '.50 caliber sniper weapon' means a rifle

capable of firing a center-fire cartridge in .50 caliber, .50 BMG caliber, any other variant of .50 caliber, or any metric equivalent of such calibers.''.

(B) MODIFICATION TO DEFINITION OF RIFLE.—Section 5845(c) of the Internal Revenue Code of 1986 (defining rifle) is amended by inserting ''or from a bipod or other support'' after ''shoulder''.

(b) EFFECTIVE DATE.—The amendments made by this section shall only apply to a .50 caliber sniper weapon made or transferred after the date of enactment of this Act.

SA 1622. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 7, line 25, after ''foreign commerce'' insert the following: '', but does not include a rifle capable of firing a center-fire cartridge in .50 caliber, .50 BMG caliber, any other variant of .50 caliber, or any metric equivalent of such calibers.''

SA 1623. Mr. LEVIN (for himself and Mr. DAYTON) submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 13, after line 4, add the following:

SEC. 5. GROSS NEGLIGENCE OR RECKLESS CONDUCT.

(a) IN GENERAL.—Nothing in this Act shall be construed to prohibit a civil liability action from being brought or continued against a person if the gross negligence or reckless conduct of that person was a proximate cause of death or injury.

(b) DEFINITIONS.—As used in this section—

(1) the term ''gross negligence'' has the meaning given that term under subsection (b)(7) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(7)); and

(2) the term ''reckless'' has the meaning given that term under section 2A1.4 of the Federal Sentencing Guidelines Manual.

SA 1624. Mr. KOHL submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 12, after line 24, add the following:

SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Lock Act of 2005''.

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

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(B) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(3) LIABILITY; EVIDENCE.—

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SA 1625. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 8, line 21, before the semicolon, insert the following: ''or an action against a seller that has an established history of qualified products being lost or stolen, under such criteria as shall be established by the Attorney General by regulation, for an injury or death caused by a qualified product that was in the possession of the seller, but subsequently lost or stolen''.

SA 1626. Mr. REED (for Mr. KOHL) proposed an amendment to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; as follows:

At the end of the bill, add the following:

SEC. 5. CHILD SAFETY LOCKS.

(a) SHORT TITLE.—This section may be cited as the ''Child Safety Lock Act of 2005''.

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

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) FIREARMS SAFETY.—

(1) MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

''(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

''(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

''(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

''(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

''(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

''(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

''(3) LIABILITY FOR USE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

''(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

''(C) DEFINED TERM.—As used in this paragraph, the term 'qualified civil liability action'—

''(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

''(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

''(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

''(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.''.

(2) CIVIL PENALTIES.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking ''or (f)'' and inserting ''(f), or (p)''; and

(B) by adding at the end the following:

''(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

''(1) IN GENERAL.—

''(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

''(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

''(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

''(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

''(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.''.

(3) LIABILITY; EVIDENCE.—

(A) LIABILITY.—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SA 1627. Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 1516, to reauthorize Amtrak, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation; as follows:

At the end of the bill, add the following:

TITLE VI—RAIL INFRASTRUCTURE BONDS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Passenger Rail Investment and Improvement Financing Act of 2005''.

SEC. 602. TAX CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding at the end the following new subpart:

''Subpart H—Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds

''Sec. 54. Credit to holders of qualified rail infrastructure bonds.

''SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

''(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

''(b) AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified rail infrastructure bond is 25 percent of the annual credit determined with respect to such bond.

''(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified rail infrastructure bond is the product of—

''(A) the applicable credit rate, multiplied by

''(B) the outstanding face amount of the bond.

''(3) APPLICABLE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate equal to an average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations (determined under regulations prescribed by the Secretary).

''(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term 'credit allowance date' means—

''(A) March 15,

''(B) June 15,

''(C) September 15, and

''(D) December 15

Such term includes the last day on which the bond is outstanding.

''(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

''(c) LIMITATION BASED ON AMOUNT OF TAX.—

''(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this part (other than this subpart and subpart C).

''(2) CARRYOVER OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

''(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

''(e) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified rail infrastructure bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on

the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

''(2) CERTAIN RULES TO APPLY.—In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified rail infrastructure bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

''(f) QUALIFIED RAIL INFRASTRUCTURE BOND.—For purposes of this part, the term 'qualified rail infrastructure bond' means any bond issued as part of an issue if—

''(1) the issuer certifies that the Secretary of Transportation has designated the bond for purposes of this section under section 26106(a) of title 49, United States Code, as in effect on the date of the enactment of this section,

''(2) 95 percent or more of the proceeds from the sale of such issue are to be used for expenditures incurred after the date of the enactment of this section for any project described in section 26106(a)(2) of title 49, United States Code,

''(3) the term of each bond which is part of such issue does not exceed 20 years,

''(4) the payment of principal with respect to such bond is the obligation solely of the issuer, and

''(5) the issue meets the requirements of subsection (f) (relating to arbitrage).

''(g) SPECIAL RULES RELATING TO ARBITRAGE.—

''(1) IN GENERAL.—Subject to paragraph (2), an issue shall be treated as meeting the requirements of this subsection if as of the date of issuance, the issuer reasonably expects—

''(A) to spend at least 95 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 3-year period beginning on such date,

''(B) to incur a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue, or to commence construction, with respect to such projects within the 6-month period beginning on such date, and

''(C) to proceed with due diligence to complete such projects and to spend the proceeds from the sale of the issue.

''(2) RULES REGARDING CONTINUING COMPLIANCE AFTER 3-YEAR DETERMINATION.—If at least 95 percent of the proceeds from the sale of the issue is not expended for 1 or more qualified projects within the 3-year period beginning on the date of issuance, but the requirements of paragraph (1) are otherwise met, an issue shall be treated as continuing to meet the requirements of this subsection if either—

''(A) the issuer uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of such 3-year period, or

''(B) the following requirements are met:

''(i) The issuer spends at least 75 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 3-year period beginning on the date of issuance.

''(ii) Either—

''(I) the issuer spends at least 95 percent of the proceeds from the sale of the issue for 1 or more qualified projects within the 4-year period beginning on the date of issuance, or

''(II) the issuer pays to the Federal Government any earnings on the proceeds from the sale of the issue that accrue after the end of the 3-year period beginning on the date of issuance and uses all unspent proceeds from the sale of the issue to redeem bonds of the issue within 90 days after the end of the 4-year period beginning on the date of issuance.

''(h) RECAPTURE OF PORTION OF CREDIT WHERE CESSATION OF COMPLIANCE.—

''(1) IN GENERAL.—If any bond which when issued purported to be a qualified rail infrastructure bond ceases to be such a qualified bond, the issuer shall pay to the United States (at the time required by the Secretary) an amount equal to the sum of—

''(A) the aggregate of the credits allowable under this section with respect to such bond (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the 2 preceding calendar years, and

''(B) interest at the underpayment rate under section 6621 on the amount determined under subparagraph (A) for each calendar year for the period beginning on the first day of such calendar year.

''(2) FAILURE TO PAY.—If the issuer fails to timely pay the amount required by paragraph (1) with respect to such bond, the tax imposed by this chapter on each holder of any such bond which is part of such issue shall be increased (for the taxable year of the holder in which such cessation occurs) by the aggregate decrease in the credits allowed under this section to such holder for taxable years beginning in such 3 calendar years which would have resulted solely from denying any credit under this section with respect to such issue for such taxable years.

''(3) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (2) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards under subsection (c) shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under paragraph (2) shall not be treated as a tax imposed by this chapter for purposes of determining—

''(i) the amount of any credit allowable under this part, or

''(ii) the amount of the tax imposed by section 55.

''(i) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BOND.—The term 'bond' includes any obligation.

''(2) QUALIFIED PROJECT.—The term 'qualified project' means any project described in section 26106(a)(2) of title 49, United States Code.

''(3) TREATMENT OF CHANGES IN USE.—For purposes of subsection (e)(2), the proceeds from the sale of an issue shall not be treated as used for a qualified project to the extent that the issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a qualified rail infrastructure bond.

''(4) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

''(5) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any qualified rail infrastructure bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

''(6) REPORTING.—Issuers of qualified rail infrastructure bonds shall submit reports similar to the reports required under section 149(e).''.

(b) AMENDMENTS TO OTHER CODE SECTIONS.—

(1) REPORTING.—Subsection (d) of section 6049 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

''(8) REPORTING OF CREDIT ON QUALIFIED RAIL INFRASTRUCTURE BONDS.—

''(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

''(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

''(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.''.

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(B) CORPORATE.—Section 6655 of such Code (relating to failure by corporation to pay estimated income tax) is amended by adding at the end of subsection (g) the following new paragraph:

''(5) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''SUBPART H. NONREFUNDABLE CREDIT FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS''.

(2) Section 6401(b)(1) is amended by striking ''and G'' and inserting ''G, and H''.

(d) ISSUANCE OF REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary of the Treasury shall issue regulations for carrying out this section and the amendments made by this section.

(e) INTERCITY RAIL FACILITIES.—Section 142(i) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) ADDITIONAL REQUIREMENTS.—A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless the requirements of paragraphs (1) through (4) of section 26106(a) of title 49, United States Code, are met.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SA 1628. Mr. MCCONNELL (for Mr. HAGEL) proposed an amendment to the

resolution S. Res. 86, designating August 16, 2005, as ''National Airborne Day''; as follows:

On page 5 strike lines 1 through 5 and insert the following:

(2) requests that the people of the United States observe ''National Airborne Day'' with other appropriate programs, ceremonies and activities.

SA 1629. Mr. MCCONNELL (for Mr. FEINGOLD) proposed an amendment to the resolution S. Res. 104, expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to take the lead and coordinate with other governmental agencies and non-governmental organizations in creating an online database of international exchange programs and related opportunities; as follows:

On page 3, line 8, to page 4, line 1, strike ''in creating an online database that provides'', and insert ''to make readily accessible''.

SA 1630. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product caused an injury by means of a qualified product that is involved in illegal interstate firearms trafficking punishable under section 924 of title 18, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1631. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product caused an injury by failing to retain for 30 days the records of a sale to an individual who is required, under regulations prescribed under section 114(h) of title 49, United States Code, to be prevented from boarding an aircraft.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

SA 1632. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 397, to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; which was ordered to lie on the table; as follows:

On page 10, strike line 3 and all that follows through page 11, line 2, and insert the following:

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) any case in which a manufacturer or seller of a qualified product caused an injury by failing to keep adequate records of the sale of a qualified product from the inventory or collection of the manufacturer or seller, as required under section 923(g) of title 18, United States Code.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term ''negligent entrustment'' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (vi)

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee On National Parks of the Committee on Energy and Natural Resources has scheduled a field hearing to gather information regarding invasive species. Specific areas of interest include challenges and needs of the National Park Service, existing legislation, legislative solutions, and use of partnerships for managing invasive species in and around National Parks.

The hearing will be held on Tuesday, August 9, 2005, at 10 a.m. in the Kilauea Visitors Center auditorium, Hawaii Volcanoes National Park, Hilo, HI.

Becaue of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom Lillie at (202) 224–5161 or Brian Carlstrom at (202) 224–6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 27, 2005, at 2:30 p.m., on 1372, the Fair Ratings Act, in SR–253.

The PRESIDING OFFICER Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, July 27, 2005, at 10 a.m., to hear testimony on ''Improving Quality in Medicare: The role of Value-Based Purchasing.''

The PRESIDING OFFICER Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 27, 2005, at 9:30 a.m. to hold a hearing on nominations.

The PRESIDING OFFICER Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, July 27, 2005, at 10 a.m., for a hearing titled, ''Chemical Facility Security: What Is the Appropriate Federal Role?, Part II.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, July 27, 2005, at 9:30 a.m., in room 216 of the Hart Senate Office Building to conduct an oversight hearing on lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.

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

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''FBI Oversight'' on Wednesday, July 27, 2005, at 9:30 a.m., in Dirksen Senate Office Building room 226.

Witness List

Panel I: Robert Mueller, Director, Federal Bureau of Investigation, Department of Justice, Washington, DC.

Panel II: Glenn Fine, Inspector General, Department of Justice, Washington, DC; Lee Hamilton, President and Director, Woodrow Wilson International Center for Scholars, Washington, DC; William H. Webster, Partner Milbank, Tweed, Hadley & McCloy LLP, Washington, DC; and John A. Russack, Program Manager, Information Sharing Environment, Director of National Intelligence, Washington, DC.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 27, 2005, at 2:30 p.m. to hold a briefing.

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

SPECIAL COMMITTEE ON AGING

Mr. CORNYN. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Wednesday, July 27, 2005, from 2:30 p.m. to 5 p.m., in Dirksen 106, for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON DISASTER PREVENTION AND PREDICTION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Disaster Prevention and Prediction be authorized to meet on Wednesday, July 27, 2005, at 10 a.m., on All Hazards Alert Systems, in SR–253.

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

SUBCOMMITTEE ON ENERGY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Energy be authorized to meet during the session of the Senate on Wednesday, July 27, 2005, at 3 p.m. The purpose of the hearing is to receive testimony on recent progress in hydrogen and fuel cell research sponsored by the Department of Energy and by private industry. Testimony will also address the remaining challenges to the development of these technologies.

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

SUBCOMMITTEE ON FORESTRY, CONSERVATION, AND RURAL REVITALIZATION

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Forestry, Conservation, and Rural Revitalization be authorized to conduct a hearing during the session of the Senate on Wednesday, July 27, 2005, at 10 a.m. in SR–328A, Russell Senate Office Building. The purpose of this subcommittee hearing will be to discuss oversight of the Conservation Reserve Program.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION AND INTERNATIONAL SECURITY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Wednesday, July 27, 2005, at 2:30 p.m., for a hearing regarding ''Who's Watching the Watchdog? Examining Financial Management at the SEC.''

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

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND TERRORISM

Mr. CORNYN. Mr. President, I ask unanimous consent that the Subcommittee on International Operations and Terrorism be authorized to meet during the session of the Senate on Wednesday, July 27, 2005, at 2:30 p.m., to hold a hearing on United Nations Peacekeeping Reform.

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

PRIVILEGE OF THE FLOOR

Mr. CRAIG. Mr. President, I ask unanimous consent that Ken Webster, a law clerk in my office, be granted privileges of the floor during the pending S. 397 or any motions related to that bill.

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

Mr. DAYTON. Mr. President, I ask unanimous consent that Laura Soltis of my office be granted floor privileges for this debate.

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that a fellow from my office, Julie Caruthers, be allowed floor privileges for the duration of the debate on this bill.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that Andrew Ginsburg, a fellow on my staff, be granted privileges of the floor during the remainder of the debate on S. 397.

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

MEDICAL DEVICE USER FEE STABILIZATION ACT OF 2005

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3423 which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3423) to amend the Federal Food, Drug, and Cosmetic Act with respect to medical device user fees.

There being no objection, the Senate proceeded to consider the bill.

Mr. ENZI. Mr. President, I rise today to voice my support for the Medical Device User Fee Stabilization Act of 2005. This legislation preserves a valuable program for the review of innovative medical technologies.

This bill, H.R. 3423, is identical to S. 1420, which was reported last week by the Committee on Health, Education, Labor, and Pensions. It represents a bipartisan, bicameral compromise that had unanimous support when it was reported out of the committee. It keeps an important Government program going, while providing more stability for the industry. We have considered the needs of small and large businesses, all while ensuring that FDA has enough resources to maintain a high level of effectiveness.

This compromise results in an 8.5 percent increase in user fees for each of the next 2 years. This is a significant reduction from the 20 percent annual increases these companies have been seeing. We have also raised the small business threshold more than threefold, from $30 million to $100 million. This means that additional companies will be able to take advantage of reduced fees for the review of new devices. This bill will result in an average increase to FDA of 6 percent in user fee revenues over the next 2 years, which means FDA will be able to continue reviewing new devices and will not be forced to lay off experienced FDA staff or wind down a program that has been successful.

Finally, this compromise clarifies a provision in the 2002 medical device law regarding the marking of reprocessed devices. I know that this provision, and any change to it, is controversial. However, we have found a fair way forward. The bill we are considering today would require reprocessors to mark the device to identify the reprocessor, if the original manufacturer has marked the device. If the original manufacturer has not marked the device, the reprocessor must still mark the device but has more flexibility in how to do so. This is workable, and it is even-handed.

My colleagues, Senators BURR, DEWINE, MIKULSKI, DODD and MURRAY, have had great interest in the medical device user fee program, and I thank them for cosponsoring the Senate bill.

I would also like to thank Senator HATCH for his attention and input into

this issue. He is a strong defender of the small, entrepreneurial companies in this industry. We worked together before committee consideration of this bill to address his concerns about the impact of user fees on the innovative companies in his home State of Utah. I welcome his support and cosponsorship of the Senate bill.

Of course, I want to thank our staff for laboring so diligently to find a workable, reasonable compromise and doing so under difficult time constraints. In particular, I want to thank Jennifer Hansen, Abby Kral, Ellen-Marie Whelan, Ben Berwick, Anne Grady, Patricia Knight, and Patricia DeLoatche. I also want to thank my committee staff Amy Muhlberg and Stephen Northrup.

Finally, I must express my deep appreciation and thanks to the ranking member, Senator KENNEDY, and his staff, David Bowen and David Dorsey, for their hard work and support during this process. We have produced a fair deal, and I urge my colleagues to lend it their strong support.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3423) was read the third time and passed.

FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH IMPROVEMENT ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 117, S. 302.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 302) to make improvements in the Foundation for the National Institutes of Health.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 302

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Foundation for the National Institutes of Health Improvement Act''.

[SEC. 2. NATIONAL INSTITUTES OF HEALTH ESTABLISHMENT AND DUTIES.

[Section 499 of the Public Health Service Act (42 U.S.C. 290b) is amended—

[(1) in subsection (d)—

[(A) in paragraph (1)—

[(i) by amending subparagraph (D)(ii) to read as follows:

[''(ii) Upon the appointment of the appointed members of the Board under clause (i)(II), the terms of service as members of the Board of the ex officio members of the Board described in clauses (i) and (ii) of subparagraph (B) shall terminate. The ex officio members of the Board described in clauses (iii) and (iv) of subparagraph (B) shall continue to serve as ex officio members of the Board.''; and

[(ii) in subparagraph (G), by inserting ''appointed'' after ''that the number of'';

[(B) by amending paragraph (3)(B) to read as follows:

[''(B) Any vacancy in the membership of the appointed members of the Board shall be filled in accordance with the bylaws of the Foundation established in accordance with paragraph (6), and shall not affect the power of the remaining appointed members to execute the duties of the Board.''; and

[(C) in paragraph (5), by inserting ''appointed'' after ''majority of the'';

[(2) in subsection (j)—

[(A) in paragraph (2), by striking ''(d)(2)(B)(i)(II)'' and inserting ''(d)(6)''; and

[(B) in paragraph (10), by striking ''of Health.'' and inserting ''of Health and the National Institutes of Health may accept transfers of funds from the Foundation.''; and

[(3) by striking subsection (l) and inserting the following:

[''(l) FUNDING.—From amounts appropriated to the National Institutes of Health, for each fiscal year, the Director of NIH shall transfer not less than $500,000 to the Foundation.''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Foundation for the National Institutes of Health Improvement Act''.

SEC. 2. NATIONAL INSTITUTES OF HEALTH ESTABLISHMENT AND DUTIES.

Section 499 of the Public Health Service Act (42 U.S.C. 290b) is amended—

(1) in subsection (d)—

(A) in paragraph (1)—

(i) by amending subparagraph (D)(ii) to read as follows:

''(ii) Upon the appointment of the appointed members of the Board under clause (i)(II), the terms of service as members of the Board of the ex officio members of the Board described in clauses (i) and (ii) of subparagraph (B) shall terminate. The ex officio members of the Board described in clauses (iii) and (iv) of subparagraph (B) shall continue to serve as ex officio members of the Board.''; and

(ii) in subparagraph (G), by inserting ''appointed'' after ''that the number of'';

(B) by amending paragraph (3)(B) to read as follows:

''(B) Any vacancy in the membership of the appointed members of the Board shall be filled in accordance with the bylaws of the Foundation established in accordance with paragraph (6), and shall not affect the power of the remaining appointed members to execute the duties of the Board.''; and

(C) in paragraph (5), by inserting ''appointed'' after ''majority of the'';

(2) in subsection (j)—

(A) in paragraph (2), by striking ''(d)(2)(B)(i)(II)'' and inserting ''(d)(6)'';

(B) in paragraph (4)—

(i) in subparagraph (A), by inserting '', including an accounting of the use of amounts transferred under subsection (l)'' before the period at the end; and

(ii) by striking subparagraph (C) and inserting the following:

''(C) The Foundation shall make copies of each report submitted under subparagraph (A) available—

''(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge that shall not exceed the cost of providing the copy; and

''(ii) to the appropriate committees of Congress.''; and

(C) in paragraph (10), by striking ''of Health.'' and inserting ''of Health and the National Institutes of Health may accept transfers of funds from the Foundation.''; and

(3) by striking subsection (l) and inserting the following:

''(l) FUNDING.—From amounts appropriated to the National Institutes of Health, for each fiscal year, the Director of NIH shall transfer not less than $500,000 and not more than $1,250,000 to the Foundation.''.

Mr. KENNEDY. Mr. President, I strongly support the Foundation for the National Institutes of Health Improvement Act.

The bill makes several improvements in the 1990 law that established the Foundation. Most significantly, it assures the Foundation at least $500,000 annually from the NIH to support its administrative and operating expenses. The annual allocation is capped at $1.25 million. These funds will enable the Foundation to use its own resources for the actual support of projects to strengthen NIH programs, rather than raise money for its own expenses. As the bill makes clear, the NIH Director and the Commissioner of Food and Drugs are ex officio members of the Foundation's board of directors.

Congress established the Foundation in 1990 to raise private funds to support the research of the NIH. The Foundation has been a remarkable success. For every dollar the Foundation received from the NIH in 2003, it raised $426 in private funds. Since its creation, it has raised $270 million, or $68 in private support for every dollar from the NIH.

The Foundation is currently managing 37 programs supported by $270 million generated from private contributions. As one important example, the Edmond J. Safra Family Lodge on the NIH campus gives families of patients receiving in-patient treatment at the NIH Clinical Center a place to stay, at no cost to them.

In addition, the Foundation has formed partnerships with the NIH to develop new cancer treatments, to identify biochemical signs of osteoarthritis and Alzheimer's Disease, and to build on the promise of genomics. Through a public-private partnership, the Foundation has helped accelerate the sequencing of the mouse genome. It is also collecting private funds to study drugs in children. In 2003, Bill Gates announced a gift to the Foundation of $200 million over the next 10 years to support research on global health priorities. Clearly, the Foundation's partnership with the NIH will grow productively in the coming years.

I urge my Senate colleagues to support this legislation, which will enable the Foundation to continue its effective support of the work and mission of the NIH.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee reported amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that

any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 302), as amended, was read the third time and passed.

PUBLIC HEALTH SERVICE ACT AMENDMENTS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 140, S. 655.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 655) to amend the Public Health Service Act with respect to the National Foundation for the Centers for Disease Control and Prevention, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment.

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 655

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

[SECTION 1. NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION; ACCEPTANCE OF VOLUNTARY SERVICES; FEDERAL FUNDING.

[(a) AUTHORITY FOR ACCEPTANCE OF VOLUNTARY SERVICES; STRIKING TWO-YEAR LIMIT PER INDIVIDUAL.—Section 399G(h)(2)(A) of the Public Health Service Act (42 U.S.C. 280e–11(h)(2)(A)) is amended by striking the second sentence and inserting the following: ''In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual until such time as the private funding for such individual ends.''.

[(b) FEDERAL FUNDING.—Section 399G(i) of the Public Health Service Act (42 U.S.C. 280e–11(i)) is amended—

[(1) in paragraph (2)—

[(A) in subparagraph (A), by striking ''$500,000'', and inserting ''$1,500,000''; and

[(B) in subparagraph (B), by striking ''not more than $500,000'' and inserting ''not less than $500,000, and not more than $1,500,000''; and

[(2) by adding at the end the following:

''[(4) SUPPORT SERVICES.—The Director of the Centers for Disease Control and Prevention may provide facilities, utilities, and support services to the Foundation if it is determined by the Director to be advantageous to the programs of such Centers.''.]

SECTION 1. NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION; ACCEPTANCE OF VOLUNTARY SERVICES; FEDERAL FUNDING.

(a) AUTHORITY FOR ACCEPTANCE OF VOLUNTARY SERVICES; STRIKING TWO-YEAR LIMIT PER INDIVIDUAL.—Section 399G(h)(2)(A) of the Public Health Service Act (42 U.S.C. 280e–11(h)(2)(A)) is amended by striking the second sentence and inserting the following: ''In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual until such time as the private funding for such individual ends.''.

(b) REPORTS.—Section 399G(h)(7) of the Public Health Service Act (42 U.S.C. 280e–11(h)(7)) is amended—

(1) in subparagraph (A), by inserting '', including an accounting of the use of amounts provided for under subsection (i)'' before the period; and

(2) by striking subparagraph (C) and inserting the following:

''(C) The Foundation shall make copies of each report submitted under subparagraph (A) available—

''(i) for public inspection, and shall upon request provide a copy of the report to any individual for a charge not to exceed the cost of providing the copy; and

''(ii) to the appropriate committees of Congress.''.

(c) FEDERAL FUNDING.—Section 399G(i) of the Public Health Service Act (42 U.S.C. 280e–11(i)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking ''$500,000'', and inserting ''$1,250,000''; and

(B) in subparagraph (B), by striking ''not more than $500,000'' and inserting ''not less than $500,000, and not more than $1,250,000''; and

(2) by adding at the end the following:

''(4) SUPPORT SERVICES.—The Director of the Centers for Disease Control and Prevention may provide facilities, utilities, and support services to the Foundation if it is determined by the Director to be advantageous to the programs of such Centers.''.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 655), as amended, was read the third time and passed.

AUTHORIZING THE CONVEYANCE OF CERTAIN FEDERAL LAND IN NEW MEXICO

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 447 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 447) to authorize the conveyance of certain Federal land in the State of New Mexico.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 447) was read the third time and passed, as follows:

S. 447

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 ''Jornada Experimental Range Transfer Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BOARD.—The term ''Board'' means the Chihuahuan Desert Nature Park Board.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 3. CONVEYANCE OF LAND TO CHIHUAHUAN DESERT NATURE PARK BOARD.

(a) CONVEYANCE.—The Secretary may convey to the Board, by quitclaim deed, for no consideration, all right, title, and interest of the United States in and to the land described in subsection (b).

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) consists of not more than 1000 acres of land selected by the Secretary—

(1) that is located in the Jornada Experimental Range in the State of New Mexico; and

(2) that is subject to an easement granted by the Agricultural Research Service to the Board.

(c) CONDITIONS.—The conveyance of land under subsection (a) shall be subject to—

(1) the condition that the Board pay—

(A) the cost of any surveys of the land; and

(B) any other costs relating to the conveyance;

(2) any rights-of-way to the land reserved by the Secretary;

(3) a covenant or restriction in the deed to the land described in subsection (b) requiring that—

(A) the land may be used only for educational purposes;

(B) if the land is no longer used for the purposes described in subparagraph (A), the land shall, at the discretion of the Secretary, revert to the United States; and

(C) if the land is determined by the Secretary to be environmentally contaminated under subsection (d)(2)(A), the Board shall remediate the contamination; and

(4) any other terms and conditions that the Secretary determines to be appropriate.

(d) REVERSION.—If the land conveyed under subsection (a) is no longer used for the purposes described in subsection (c)(3)(A)—

(1) the land shall, at the discretion of the Secretary, revert to the United States; and

(2) if the Secretary chooses to have the land revert to the United States, the Secretary shall—

(A) determine whether the land is environmentally contaminated, including contamination from hazardous wastes, hazardous substances, pollutants, contaminants, petroleum, or petroleum by-products; and

(B) if the Secretary determines that the land is environmentally contaminated, the Board or any other person responsible for the contamination shall remediate the contamination.

PERMITTING WOMEN'S BUSINESS CENTERS TO RE-COMPETE FOR SUSTAINABILITY GRANTS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1517, which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1517) to permit Women's Business Centers to re-compete for sustainability grants.

There being no objection, the Senate proceeded to consider the bill.

Ms. SNOWE. Mr. President, I rise today in support of this bill that would provide critical funding that is needed to preserve the operations of existing Women's Business Centers that currently serve women entrepreneurs in almost every State and territory.

Women-owned businesses breathe new life into our economy, grow at twice the rate of all firms, and create jobs with pace-setting results. With 10.6 million women-owned businesses across the Nation, employing more than 19 million Americans, and generating nearly $2.5 trillion in revenue—indeed, they are nothing short of an economic powerhouse!

Part of our job is to make sure that Government programs continue to help small and women-owned businesses. We can't afford to ignore, or reduce, the extraordinary contributions America's business women are making to our economy, our society, and our future.

The Small Business Administration's Women's Business Center has been a tremendous resource to women-owned businesses across the Nation. Since the program was introduced through the Small Business Ownership Act of 1988, and made permanent in 1997, Congress has agreed seven times that this program is critical for women business owners. In fact, the program's unique training and counseling helped clients generate more than $235 million in revenue and create or retain over 6,500 jobs in 2003. This program clearly has a record of success, fostering job growth and providing American small businesses with the opportunity to thrive.

If we look at the centers that are achieving the greatest impact, it is the established centers. The results of their outreach and one-on-one assistance has made it possible for the Small Business Administration to achieve its goals as it measures the success of the products and programs offered by these centers.

However, 11 of our longest standing Women's Business Centers located in California, Colorado, Maine, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Pennsylvania and Wisconsin now face the possibility of closing their doors. The Federal Government has invested 10 years helping to establish these centers which, in turn, have helped women-owned businesses start and existing businesses grow.

In accordance with outdated legislation, the SBA plans to award 92 competitive grants to regular and sustainable women's business centers in September with the fiscal year 2005 appropriations. However, our 11 longest standing centers will not be eligible to compete for these grants. This was not the intent of the Senate. Last Congress, the Senate agreed to transform the women's business center program into a 3-year competitive grant program which is reflected in my bill, S. 1375, The Small Business Administration's 50th Anniversary Reauthorization Act of 2003. While the House failed to pass their version of the bill, limited provisions of the bill were included in the fiscal year 2005 Omnibus package. However, the women's business center provisions, among others, failed to make the omnibus bill and this program now operates under outdated legislation.

This emergency legislation temporarily solves this problem and preserves our investment by simply making the women's sustainability grant funding available for these 11 existing centers only during fiscal year 2005. While we must fix the funding problem in the long-run, we also face a crisis today. With this legislation, existing centers that have been established for the longest period of time would be able to operate without disruption in funding and could continue the programs and services they currently offer. Moreover, this provision does not require any additional appropriations but only reallocates current funds.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I take great pride in the fact that my own State of Maine leads the way for women-owned businesses. Today, there are more than 63,000 women-owned firms in Maine, employing over 75,000 Mainers and generating more than $9 billion in sales. We must all be committed to multiplying that story of success in every State in America.

It is our duty to ensure that Americans have the necessary resources to start, grow and develop a business. I am committed to resolving the temporary funding crisis through this bill and I am committed to working with my colleagues to ensure the long-term viability of the program for today's women entrepreneurs and those of tomorrow.

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

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1517) was read the third time and passed, as follows:

S. 1517

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

SECTION 1. WOMEN'S BUSINESS CENTERS.

Section 29(k) of the Small Business Act (15 U.S.C. 656(k)) is amended by adding at the end the following:

''(5) PRIOR RECIPIENTS.—Notwithstanding subsection (l)(1), any recipient of a grant under subsection (l) whose 5-year project ended in fiscal year 2004, is eligible to apply to receive the funds for grants to continue Women's Business Centers in sustainability status for fiscal year 2005, made available by Public Law 108-447 (118 Stat. 2911).''.

RECOGNIZING THE GREATEST GENERATION HOMECOMING WEEKEND

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 216, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 216) expressing gratitude and appreciation to the men and women of the United States Armed Forces who served in World War II, commending the acts of heroism displayed by those servicemembers, and recognizing the ''Greatest Generation Homecoming Weekend'' to be held in Pittsburgh, Pennsylvania.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 216) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 216

Whereas World War II began on September 1, 1939, when Nazi Germany invaded Poland without a declaration of war and then moved, following the surrender of Poland, to invade and occupy Denmark, Norway, Luxembourg, the Netherlands, and Belgium;

Whereas following the premeditated invasion by Japan on the United States at Pearl Harbor, Hawaii, on December 7, 1941, the United States declared war on Japan and entered World War II on the side of freedom and democracy;

Whereas when the fate of the free world was in jeopardy as a direct result of the desire of Adolf Hitler and the Nazi regime for world conquest, the servicemembers of the United States Armed Forces known as the ''Greatest Generation'' assumed the task of freeing the world of Nazism, fascism, and tyranny;

Whereas more than 16,000,000 Americans served in the United States Armed Forces during World War II, and millions more supported the war effort at home;

Whereas more than 400,000 brave Americans made the ultimate sacrifice during World War II in the name of freedom and in defense of the ideals that the people of the United States hold dear;

Whereas units of the United States Army, such as the 1st Infantry Division known as the ''Big Red One'', the 3rd Infantry Division known as the ''Rock of the Marne'', the 10th Armored Division known as the ''Tiger Division'', and the ''Flying Tigers'' of the 14th Air Force, valiantly fought to defeat the oppression and tyranny of the Axis Powers;

Whereas the great tragedy of World War II was the defining event of the 20th century, when the brave men and women of the United States Armed Forces fought for the common defense of the United States and for the broader causes of peace and freedom from tyranny throughout the world; and

Whereas the members of the United States Armed Forces, including the ''Greatest Generation'' of World War II, made sacrifices and displayed bravery and heroism in the name of freedom and democracy throughout the world: Now, therefore, be it

Resolved, That the Senate—

(1) expresses appreciation to the members of the United States Armed Forces who served during World War II, for—

(A) the selfless service of those servicemembers to the United States;

(B) restoring freedom to the world; and

(C) defeating the elements of evil and oppression;

(2) commends the heroism and bravery displayed by the members of the United States Armed Forces who served during World War II, known as the ''Greatest Generation'', in the face of death and severe hardship, and honors those servicemembers who made the ultimate sacrifice;

(3) proudly honors the members of the ''Greatest Generation'' on the occasion of the forthcoming 60th anniversary of the end of World War II, and in conjunction with the ''Greatest Generation Homecoming Weekend'' in Pittsburgh, Pennsylvania;

(4) proudly honors all members of the United States Armed Forces, past and present, who defend the freedom of the United States in times of both war and peace; and

(5) commends the participants of the ''Greatest Generation Homecoming Weekend'' that takes place from September 2, 2005 through September 5, 2005 in Pittsburgh, Pennsylvania.

NATIONAL MARINA DAY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 217, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 217) designating August 13, 2005 as ''National Marina Day''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 217) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 217

Whereas the people of the United States value highly recreational time and the ability to access the waterways of the United States, one of the country's greatest natural resources;

Whereas in 1928, the National Association of Engine and Boat Manufacturers first used the word ''marina'' to describe a recreational boating facility;

Whereas the United States is home to more than 12,000 marinas that contribute substantially to local communities by providing safe and reliable gateways to boating;

Whereas the marinas of the United States serve as stewards of the environment and actively seek to protect surrounding waterways for the enjoyment of this generation and generations to come;

Whereas the marinas of the United States provide communities and visitors with a place where friends and families, united by a passion for the water, can come together for recreation, rest, and relaxation; and

Whereas the Association of Marina Industries has designated August 13, 2005 as ''National Marina Day'' to increase awareness among citizens, policymakers, and elected officials about the many contributions that marinas make to communities: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 13, 2005 as ''National Marina Day'';

(2) encourages the people of the United States to observe ''National Marina Day'' with appropriate programs and activities; and

(3) urges the marinas of the United States to continue to provide environmentally friendly gateways to boating for the people of the United States.

NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration and the Senate proceed to S. Res. 158.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 158) expressing the sense of the Senate that the President should designate the week beginning September 11, 2005, as ''National Historically Black Colleges and Universities Week''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 158) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 158

Whereas there are 105 historically Black colleges and universities in the United States;

Whereas historically Black colleges and universities provide the quality education essential to full participation in a complex, highly technological society;

Whereas historically Black colleges and universities have a rich heritage and have played a prominent role in the history of the United States;

Whereas historically Black colleges and universities have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of historically Black colleges and universities are deserving of national recognition: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate the week beginning September 11, 2005, as ''National Historically Black Colleges and Universities Week''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating the week beginning September 11, 2005, as ''National Historically Black Colleges and Universities Week''; and

(2) calling on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs to demonstrate support for historically Black colleges and universities in the United States.

NATIONAL AIRBORNE DAY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration and the Senate now proceed to S. Res. 86.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 86) designating August 16, 2005, as National Airborne Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the amendment at the desk be agreed to, the resolution, as amended, be agreed to, the preamble be agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 1628) was agreed to, as follows:

On page 5 strike lines 1 through 5, and insert the following:

(2) requests that the people of the United States observe ''National Airborne Day'' with appropriate programs, ceremonies and activities.

The resolution (S. Res. 86), as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

(The resolution will be printed in a future edition of the RECORD.)

PROCLAMATION RECOGNIZING 30TH ANNIVERSARY OF HELSINKI FINAL ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of S.J. Res. 19 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 19) calling upon the President to issue a proclamation recognizing the 30th anniversary of the Helsinki Final Act.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. MCCONNELL. I ask unanimous consent that the joint resolution be read a third time and passed, the motion to reconsider be laid upon the table and that any statements relating to the resolution be printed in the RECORD.

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

The joint resolution (S.J. Res. 19) was read the third time and passed, as follows:

(The resolution will be printed in a future edition of the RECORD.)

COMMEMORATING 25TH ANNIVERSARY OF 1980 WORKERS' STRIKE IN POLAND

NATIONAL ATTENTION DEFICIT DISORDER AWARENESS DAY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged en bloc from further consideration of S. Res. 198 and S. Res. 201 and that the Senate proceed en bloc to their consideration.

The PRESIDING OFFICER. Without objection, the clerk will report the resolutions by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 198) commemorating the 25th anniversary of the 1980 worker's strike in Poland and the birth of the Solidarity Trade Union, the first free and independent trade union established in the Soviet-dominated countries of Europe.

A resolution (S. Res. 201) designating September 14, 2005, as National Attention Deficit Disorder Awareness Day.

There being no objection, the Senate proceeded to consider the resolutions.

Mr. MCCONNELL. I ask unanimous consent that the resolutions and preambles be agreed to en bloc, the motions to reconsider be laid upon the table en bloc and that any statements relating thereto be printed in the RECORD, with no intervening action.

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

The resolutions (S. Res. 198 and S. Res. 201) were agreed to.

The preambles were agreed to.

The resolutions, with their preambles, read as follows:

S. RES. 198

Whereas, on May 9, 1945, Europe declared victory over the oppression of the Nazi regime;

Whereas, Poland and other countries in Central, Eastern, and Southern Europe soon fell under the oppressive control of the Soviet Union;

Whereas for decades the people of Poland struggled heroically for freedom and democracy against that oppression;

Whereas, in June 1979, Pope John Paul II, the former Cardinal Karol Wojtyla, returned to Poland, his homeland, and exhorted his countrymen to ''be not afraid'' of the Communist regime;

Whereas, in 1980, the Solidarity Trade Union (known in Poland as ''NSZZ Solidarnosc'') was formed in Poland under the leadership of Lech Walesa and during the 1980s the actions of its leadership and members sparked a great social movement committed to promoting fundamental human rights, democracy, and the independence of Poland from the Soviet Union (known as the ''Solidarity Movement'');

Whereas, in July and August of 1980, workers in Poland in the shipyards of Gdansk and Szczecin, led by Lech Walesa and other leaders of the Solidarity Trade Union, went on strike to demand greater political freedom;

Whereas that strike was carried out in a peaceful and orderly manner;

Whereas, in August 1980, the Communist Government of Poland yielded to the 21 demands of the striking workers, including the release of all political prisoners, the broadcasting of religious services on television and radio, and the right to establish independent trade unions;

Whereas the Communist Government of Poland introduced martial law in December 1981 in an attempt to block the growing influence of the Solidarity Movement;

Whereas the support of the Polish-American community was essential and crucial for the Solidarity Movement to survive and remain active during that difficult time;

Whereas the people of the United States were greatly supportive of the efforts of the people of Poland to rid themselves of an oppressive government and people in the United States lit candles in their homes on Christmas Eve 1981, to show their solidarity with the people of Poland who were suffering under martial law;

Whereas Lech Walesa was awarded the Nobel Peace Prize in 1983 for continuing his struggle for freedom in Poland;

Whereas the Solidarity Movement persisted underground during the period when martial law was imposed in Poland and emerged in April 1989 as a powerful national movement;

Whereas, in February 1989, the Communist Government of Poland agreed to conduct roundtable talks with leaders of the Solidarity Movement;

Whereas such talks led to the holding of elections for the National Assembly of Poland in June 1989 in which nearly all open seats were won by candidates supported by the Solidarity Movement, and led to the election of Poland's first Prime Minister during the post-war era who was not a member of the Communist party, Mr. Tadeusz Mazowiecki;

Whereas, the Solidarity Movement ended communism in Poland without bloodshed and inspired Hungary, Czechoslovakia, and other nations to do the same, and the activities of its leaders and members were part of the historic series of events that led to the fall of the Berlin Wall on November 9, 1989;

Whereas, on November 15, 1989, Lech Walesa's historic speech before a joint session of Congress, beginning with the words ''We the people'', stirred a standing ovation from the Members of Congress;

Whereas, on December 9, 1989, Lech Walesa was elected President of Poland; and

Whereas there is a bond of friendship between the United States and Poland, which is a close and invaluable United States ally, a contributing partner in the North Atlantic Treaty Organization (NATO), a reliable partner in the war on terrorism, and a key contributor to international efforts in Iraq and Afghanistan: Now, therefore, let it be

Resolved, That the Senate—

(1) declares August 31, 2005, to be Solidarity Day in the United States to recognize the 25th anniversary of the establishment in Poland of the Solidarity Trade Union (known in Poland as the ''NSZZ Solidarnosc''), the first free and independent trade union established in the Soviet-dominated countries of Europe;

(2) honors the people of Poland who risked their lives to restore liberty in Poland and to return Poland to the democratic community of nations; and

(3) calls on the people of the United States to remember the struggle and sacrifice of the people of Poland and that the results of that struggle contributed to the fall of communism and the ultimate end of the Cold War.

S. RES. 201

Whereas Attention Deficit/Hyperactivity Disorder (also known as AD/HD or ADD), is a chronic neurobiological disorder, affecting both children and adults, that can significantly interfere with an individual's ability to regulate activity level, inhibit behavior, and attend to tasks in developmentally appropriate ways;

Whereas AD/HD can cause devastating consequences, including failure in school and the workplace, antisocial behavior, encounters with the justice system, interpersonal difficulties, and substance abuse;

Whereas AD/HD, the most extensively studied mental disorder in children, affects an estimated 3 percent to 7 percent (2,000,000) of young school-age children and an estimated 4 percent (8,000,000) of adults across racial, ethnic, and socioeconomic lines;

Whereas scientific studies clearly indicate that AD/HD runs in families and suggest that genetic inheritance is an important risk factor, with between 10 and 35 percent of children with AD/HD having a first-degree relative with past or present AD/HD, and with approximately 50 percent of parents who had AD/HD having a child with the disorder;

Whereas despite the serious consequences that can manifest in the family and life experiences of an individual with AD/HD, studies indicate that less than 85 percent of adults with the disorder are diagnosed and less than one-half of children and adults with the disorder are receiving treatment;

Whereas poor and minority communities are particularly underserved by AD/HD resources;

Whereas the Surgeon General, the American Medical Association (AMA), the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry (AACAP), the American Psychological Association, the American Academy of Pediatrics (AAP), the Centers for Disease Control and Prevention (CDC), and the National Institute of Mental Health, among others, recognize the need for proper diagnosis, education, and treatment of AD/HD;

Whereas the lack of public knowledge and understanding of the disorder play a significant role in the overwhelming numbers of undiagnosed and untreated cases of AD/HD, and the dissemination of inaccurate, misleading information contributes to the obstacles preventing diagnosis and treatment of the disorder;

Whereas lack of knowledge, combined with the issue of stigma associated with AD/HD, has a particularly detrimental effect on the diagnosis and treatment of AD/HD;

Whereas there is a need to educate health care professionals, employers, and educators about the disorder and a need for well-trained mental health professionals capable of conducting proper diagnosis and treatment activities; and

Whereas studies by the National Institute of Mental Health and others consistently reveal that through proper and comprehensive diagnosis and treatment, the symptoms of AD/HD can be substantially decreased and quality of life for the individual can be improved: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 14, 2005, as ''National Attention Deficit Disorder Awareness Day'';

(2) recognizes Attention Deficit/Hyperactivity Disorder (AD/HD) as a major public health concern;

(3) encourages all people of the United States to find out more about AD/HD and its supporting mental health services, and to seek the appropriate treatment and support, if necessary;

(4) expresses the sense of the Senate that the Federal Government has a responsibility to–

(A) endeavor to raise public awareness about AD/HD; and

(B) continue to consider ways to improve access to, and the quality of, mental health services dedicated to the purpose of improving the quality of life for children and adults with AD/HD; and

(5) calls on Federal, State and local administrators and the people of the United States to observe the day with appropriate programs and activities.

PEOPLE-TO-PEOPLE ENGAGEMENT IN WORLD AFFAIRS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 104 and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 104) expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to take the lead and coordinate with other governmental agencies and non-governmental organizations in creating an online database of international exchange programs and related opportunities.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. I understand there is a Feingold amendment at the desk. I ask the amendment be considered and agreed to, the resolution as amended be agreed to, the preamble be agreed to, the motions to reconsider be laid on the table en bloc, and that any statements be printed in the RECORD without intervening action or debate.

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

The amendment (No. 1629) was agreed to, as follows:

AMENDMENT NO. 1629

On page 3, line 8 to page 4, line 1, strike ''in creating an online database that provides'', and insert ''to make readily accessible.''

The resolution (S. Res. 104), as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

(The resolution will be printed in a future edition of the RECORD.)

AUTHORITY TO SIGN DULY ENROLLED BILLS OR JOINT RESOLUTIONS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that during the adjournment of the Senate, the majority leader and the majority whip be authorized to sign duly enrolled bills or joint resolutions.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—HIGHWAY EXTENSION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that notwithstanding the recess or adjournment of the Senate, when the Senate receives from the House a short-term highway extension, the text of which is at the desk, the bill be considered read the third time and passed and the motion to reconsider be laid upon the table, all without any intervening action or debate.

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

MEASURE PLACED ON THE CALENDAR—H.R. 1797

Mr. MCCONNELL. Mr. President, I understand there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The leader is correct. The clerk will read the title of the bill for a second time.

The assistant legislative clerk read as follows:

A bill (H.R. 1797) to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

Mr. MCCONNELL. In order to place the bill on the calendar under the provisions of rule XIV, I object to further proceeding.

The PRESIDING OFFICER. The objection is heard. The item will be placed on the calendar under rule XIV.

ORDERS FOR THURSDAY, JUNE 28, 2005

Mr. MCCONNELL. Mr. President and colleagues in the Senate, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow, Thursday, July 28. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate begin a period of morning business for 1 hour, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee. I further ask that following morning business, the Senate resume consideration of S. 397, the gun liability bill.

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

PROGRAM

Mr. MCCONNELL. Tomorrow, the Senate will continue its consideration of the gun liability bill. Under an agreement reached this evening, we will debate and vote on the Kohl amendment on trigger locks. That vote will occur before lunch tomorrow. As a remainder, first-degree amendments must be filed by 1 p.m. tomorrow afternoon. We will have a cloture vote on the pending legislation, and we will announce the exact timing of that vote tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:40 p.m., adjourned until Thursday, July 28, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 27, 2005:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

KEITH E. GOTTFRIED, OF CALIFORNIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, VICE RICHARD A. HAUSER, RESIGNED.

DEPARTMENT OF STATE

ALFRED HOFFMAN, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PORTUGAL.

DEPARTMENT OF EDUCATION

MARK S. SCHNEIDER, OF THE DISTRICT OF COLUMBIA, TO BE COMMISSIONER OF EDUCATION STATISTICS FOR A TERM EXPIRING JUNE 21, 2009, VICE ROBERT LERNER.

EXECUTIVE OFFICE OF THE PRESIDENT

BERTHA K. MADRAS, OF MASSACHUSETTS, TO BE DEPUTY DIRECTOR FOR DEMAND REDUCTION, OFFICE OF NATIONAL DRUG CONTROL POLICY, VICE ANDREA G. BARTHWELL.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DIANE RIVERS, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2009, VICE JACK E. HIGHTOWER, TERM EXPIRED.

SANDRA FRANCES ASHWORTH, OF IDAHO, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2009. (REAPPOINTMENT)

JAN CELLUCCI, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2009, VICE JOAN CHALLINOR, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. ERROL R. SCHWARTZ, 0000