crabs; to the Committee on Environment and Public Works.

POM–276. A resolution adopted by the New Jersey Federation of Women’s Clubs, in convention, relative to the trafficking of women and girls, to the Committee on Foreign Relations.

POM–279. A resolution adopted by the Council of the City of Cincinnati, Ohio relative to the proposed "Empowerment Zone and Enterprise Communities Enhancement Act of 1999"; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources:
Special Report entitled "History, Jurisdiction, and a Summary of Activities of the Committee on Energy and Natural Resources during the 106th Congress" (Rept. No. 106–127).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute: S. 501. A bill to address resource management issues in Glacier Bay National Park, Alaska (Rept. No. 106–128).

By Mr. NGEGWANSI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute: S. 929. A bill to direct the Secretary of Agriculture to convey certain land in the State of South Dakota to the Terry Peak Ski Area (Rept. No. 106–129).

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble: S. Res. 95: A resolution designating August 16, 1999, as "National Airborne Day".

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute: S. 1255: A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes.

EXECUTIVE REPORTS OF A COMMITTEE

The following executive reports of a committee were submitted:

By Mr. HATCH, for the Committee on the Judiciary:
Richard A. Paez, of California, to be United States Circuit Judge for the Ninth Circuit.
Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit.
Maryanne Trump Barry, of New Jersey, to be United States Circuit Judge for the Third Circuit.
David N. Hurd, of New York, to be United States District Judge for the Northern District of New York.
Nathan Reice V. Hochwald, of New York, to be United States District Judge for the Southern District of New York.
M. James Lorenz, of California, to be United States District Judge for the Southern District of New York.
Victor Marrero, of New York, to be United States District Judge for the Southern District of New York.
Brian Theodore Stewart, of Utah, to be United States District Judge for the District of Utah.
Alejandro N. Mayorkas, of California, to be United States Attorney for the Central District of California.

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Mr. HUTCHINSON, Mr. COCHRAN, Mr. GALLIAGHER, Mr. SMITH of Oregon, Mr. HOLLINGS, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. CHAO, Mr. BURNS, Mr. FRIST, Mr. BREAUX, Mr. ASHcroft, Mr. COVERDERR, Mr. HELMS, and Mr. LOTT.

S. 1464. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and through mail order of certain covered products for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN (for himself and Mr. CRAIG):
S. 1457. A bill to amend the Energy Policy Act of 1992 to assess opportunities to increase carbon storage on national forests derived from the public domain and to facilitate voluntary and accurate reporting of forest projects that reduce atmospheric carbon dioxide concentrations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. REID:
S. 1458. A bill to provide for a reduction in the rate of adolescent pregnancy through the evaluation of public and private prevention programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MACK (for himself, Mrs. FEINSTEIN, Mr. HELMS, and Mr. ROBI):
S. 1499. A bill to amend title XVIII of the Social Security Act to protect the right of a Medicare beneficiary enrolled in a Medicare+Choice plan to receive services at a skilled nursing facility selected by that individual; to the Committee on Finance.

By Mr. ABRAHAM (for himself and Mr. LEVIN):
S. 1460. A bill to amend the Consolidated Farm and Rural Development Act to allow business and industry guaranteed loans to be made for farmer-owned projects that add value to or process agricultural products; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself, Mr. LEARY, Mr. ABRAHAM, Mr. TORRICELLI, Mr. DEWINE, Mr. KOHL, and Mr. SCHUMER):
S. 1461. A bill to amend the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) to protect consumers and promote electronic commerce by prohibiting the bad-faith registration, trafficking or use of Internet domain names that are identical to, confusingly similar to, or dilutive of distinctive trademarks or service marks; to the Committee on the Judiciary.

By Mr. JEFFORDS:
S. 1462. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and through mail order of certain covered products for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEWINE (for himself, Ms. SNOWE, Mr. TORRICELLI, Ms. COLLINS, Mr. DOWDING, Ms. MURAKAMI, Mr. KULSKI, Mr. SCHUMER, Mr. BINGAMAN, Mr. CHAFEE, and Mr. KENNEDY):
S. 1463. A bill to establish a program to provide grants to persons, organizations, programs or projects, which are involved in the development of microenterprise in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. HAGEL (for himself, Mrs. LINCOLN, Mr. ROBERTS, Ms. LANDRIEU,
protect our waterways. It will enhance our national forests by reducing water pollution within their watersheds. It will provide jobs in the forestry sector in areas that have been hard hit by declining timber harvests. And it will grow additional timber resources on underproductive private lands.

The bill puts all of this through an entirely voluntary, incentive-based approach. The bill makes new resources available to private landowners through state-operated revolving loan programs that provide assistance for tree planting and other forest management actions. By quantifying forests’ contribution to climate protection, the bill puts the free market to work at turning the initial Federal investment into a long-term source of non-federal funding for forestry projects. It begins the shift toward a market-based solution for reducing the impact of greenhouse gases on our climate and health. And it will ensure that any increase in greenhouse gases that are removed from the atmosphere due to their investments.

Once businesses recognize that the nation’s forests are a part of their bottom line, they will begin reducing greenhouse gas emissions. Some companies are going as far as setting goals to remove one metric ton of greenhouse gases. The implications are as simple as they are scientifically sound—if we grow more trees, bigger trees, and healthier trees, we will remove more greenhouse gases from the atmosphere and help protect the global climate. According to the Pacific Forest Trust, our forest lands in the United States remove 1 billion metric tons of carbon they can ultimately store. Just tapping a portion of this potential by expanding and increasing the productivity of the nation’s 737 million acres of forests is an important part of a win-win strategy for fighting global warming.

And here’s the good news—an ounce of investment in our forests is worth not only a pound of global warming cure, but also two jobs and three pounds of protection for our waterways and wildlife. The bill that I am introducing today will not only protect our global environment, but also will provide immediate dividends in terms of watershed and habitat protection. It will provide jobs today for tree planting when there are opportunities tomorrow in carbon accounting and monitoring to ensure that greenhouse gas reductions are real and verifiable.

I recognize that global warming is a huge problem that cannot be solved by a single action. Yet, through a portfolio of approaches, and I continue to strongly support research, development and deployment of energy efficient and renewable technologies that reduce greenhouse gas emissions. But increasing our nation’s forest lands is a key part of the solution and something we can do immediately. Forests may not be a silver bullet that will solve the entire global warming problem, but they are a silver lining to the problem that can provide jobs around the country while taking a big step to reverse the build up of greenhouse gas in the atmosphere.

It is sometimes hard to believe that seven years ago Senators from both parties put aside their policy differences to protect our forests, and help protect the global climate. When the 1992 United Nations Framework Convention on Climate Change was ratified by the Senate, Senators from both parties came to the floor to applaud this commitment to begin reducing greenhouse gas emissions. We cannot afford to let the current debates about international treaties paralyze this Congress into inaction. We must act here at home to protect our environment in ways that also provide jobs and economic growth.

Forests are a one of those opportunities. This bill will take the money that polluters pay when they are caught violating the Clean Air Act and Clean Water Act and use it to expand our forests, protect streams and rivers and help remove greenhouse gases from the air. In fiscal year 1996, $45 million of the penalty money is going to be used for reforestation activities already reaped by the industry. And the bill ensures that people aren’t paid to cut their existing trees in order to receive funding for replanting afterwards.

A critical element of the bill is that it harnesses the power of the free market to allow responsible businesses to invest in the nation’s forests. Across the nation, companies are voluntarily seeking ways to reduce greenhouse gases. Some companies are going as far as sending money overseas to protect forests in other countries. Forests in Brazil are important, but forests in Bend, Oregon, can do just as good a job at fighting off global warming. In fact, our Northwest forests are some of the best carbon “sinks” in the world. This bill provides a way for companies to invest in American forests and know that their investment is helping to remove greenhouse gases that are removed from the atmosphere due to their investments.

Once businesses recognize that the nation’s forests are an opportunity for...
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The Forest Resources for the Environment and the Economy Act—Section-by-Section Analysis

SUMMARY

The purpose of the bill is to promote sustainable forestry in the United States by increasing forest carbon sequestration, improving wildlife and fish habitats, improving water quality, providing employment and income to rural communities, and providing new sources of forest products and income using renewable biomass energy that improves the energy security of the United States. The bill achieves these purposes through four major actions:

1. State Revolving Loan Programs. The bill provides assistance to nonindustrial private forest landowners and Indian tribes to grow new forests and increase the productivity of existing forests in order to increase carbon sequestration, protect watersheds and fish habitats and improve wildlife diversity. Assistance will be provided through State-based loan programs. The Federal share of funding for these State loan programs will come from penalties that are being assessed in FY 1998 to 2000.

2. Guidelines for Accurate Carbon Accounting for Forests. The bill directs the Secretary of Agriculture to establish scientifically-based guidelines for accurate reporting and verification of carbon storage resulting from forest management actions. The bill establishes a multi-stakeholder Carbon and Forestry Advisory Council to assist USDA in developing the guidelines.

3. Report on Options to Increase Carbon Storage on Federal Lands. The bill directs the Secretary of Agriculture to report to Congress on forestry options to increase carbon storage in National Forests.

4. National Forest Watershed Restoration Cooperative Agreements. The bill allows the Secretary of Agriculture to enter into cooperative agreements with willing State and local governments, Indian tribes, private and nonprofit entities, and landowners for restoration, protection, management and health of the watershed. Assistance to landowners will be provided through State-based loan programs. The Federal share of funding for these State loan programs will come from penalties that are being assessed in FY 1998 to 2000.

This section states the purpose of the bill, which is to promote sustainable forestry in the United States by increasing forest carbon sequestration, improving forest health, enhancing wildlife and fish habitats, improving water quality, providing employment and income to rural communities, and providing new sources of forest products and income using renewable biomass energy that improves the energy security of the United States.

This section also states the findings of the bill, including:

The Federal Government should increase the forest carbon storage on public land while pursuing existing statutory objectives, but insufficient information exists on the opportunities to increase carbon storage on public land through improvements in forest land management.

Important environmental benefits to national forests can be achieved through cooperative forest projects that enhance fish and wildlife habitats, water and other resources on public or private land located in national forest watersheds.

Forest projects also provide economic benefits, including employment and income that contribute to the sustainability of rural communities and future supplies of forest products.

Monitoring and verification of forest carbon storage provides an important opportunity to create employment in rural communities and to assist the United States in meeting its international climate change commitments.

Sustainable production of biomass energy feedstocks provides a renewable source of energy that can reduce carbon dioxide emissions and improve the energy security of the United States by diversifying energy fuels.

SECTION 3. DEFINITIONS

This section defines terms used in the bill, including the following:

Forest carbon activity is defined as a forest management action that increases long-term carbon storage and has a positive impact on watersheds, fish habitats and wildlife diversity.

Forest carbon reservoir is defined as the quantity of carbon sequestered from the atmosphere and stored in forest carbon reservoirs, including forest products.

Forest land is defined as land that is, or has been, at least 10 percent stocked by forest trees of any size, including land that had such forest cover and that will be maintained naturally or artificiallyregenerating a transition zone between a forested and non-forested area that is capable of sustaining forest cover.

Forest management action is defined as the practical application of forestry principles to the regeneration, management, utilization and conservation of forests to meet specific goals and objectives, while maintaining the productivity of the forests.

Forest project is defined as an initiative that increases forest carbon sequestration, protects wildlife and fish habitats, improves water quality, provides employment and income to rural communities, and provides new sources of forest products and income using renewable biomass energy.

Reforestation is defined as the reestablishment of forest cover naturally or artificially, including planned replanting, reseeding and managed natural regeneration.

SECTION 4. CARBON MANAGEMENT ON FEDERAL LAND; CARBON MONITORING AND VERIFICATION GUIDELINES

This section directs the Secretary of Agriculture to report to Congress on carbon management on Federal land, and directs the Secretary of Agriculture to develop guidelines for the voluntary reporting, monitoring and verification of carbon storage from forest management actions. This section is accomplished through amendment of Title XVI ("Global Climate Change") of the Energy Policy Act of 1992.

(a) Definitions. This subsection amends the Energy Policy Act to add the definitions for "forest carbon storage," "forest carbon reservoir," "forest management action" and "verification" that were specified in Section 3.
(b) Carbon Management on Federal Land. This subsection authorizes the Secretary of Agriculture to report to Congress within one year on the quantity of carbon contained in the forest carbon reservoir on Western national forests and the carbon reservoir on the public domain. \(^*\)

\(\text{**} \) The report will include an assessment of forest management actions that can increase carbon storage on these lands while providing positive impacts on watersheds and fish and wildlife habitats. Finally, the report will include an assessment of the role of forests in the carbon cycle and the contributions of forestry to the global carbon budget. This subsection is accomplished by amendment to section 1604 of the Energy Policy Act ("Assessment of Alterations in Carbon Storage in Forest and Wetland Ecosystems for Addressing Greenhouse Gas Emissions") by directing the Secretary of Agriculture to establish a 18-member, multi-stakeholder Carbon and Forestry Advisory Council for the purpose of advising the Secretary of Agriculture on the following:

- The development of the guidelines for accurate voluntary forest carbon sequestration from forest management actions;
- Evaluating the potential implementation of the guidelines;
- Estimating the effect of proposed activities on atmospheric carbon mitigation; reviewing and updating the guidelines; reporting to Congress on the results of the carbon storage program established in Section 5 of this bill; and assessing the vulnerability of forests to climate change.

The Advisory Council includes experts on carbon sequestration representing Federal, State, private, nonprofit, and exempt organizations, academia, environmental organizations and landowners, as well as independent scientists. The terms of the Advisory Council members are staggered to ensure continuity from year to year.

Criteria: The guidelines developed by the Secretary of Agriculture must be based on:

1. The mean of increases in carbon storage in excess of that which would have occurred in the absence of the forest management actions; and
2. Comprehensive carbon accounting that reflects net increases in the carbon reservoir and takes into account any carbon emissions resulting from disturbance of carbon reservoirs enhancing carbon storage over various time periods, taking into account the likely duration of carbon stored in the carbon reservoir.

Recommended Practices: The guidelines must also include recommended practices for monitoring, measurement and verification of carbon storage from forest management actions that are verifiable and monitorable:

- Are based on statistical sound sampling strategies, are cost-effective and allow pooled assessments across lands with multiple ownerships.

Guidance to States: The guidelines will include guidance to States for reporting, monitoring and verifying carbon storage achieved under the carbon storage program established in Section 5 of this bill.

Biomass energy projects: The guidelines will include guidance on calculating net greenhouse gas reductions from biomass energy projects, including net changes in carbon storage resulting from changes in land use, and the effect on biomass to energy projects (including cofiring of biomass with fossil fuels) has on the displacement of greenhouse gas emissions from fossil fuels.

Adoption of Recommendations: The subsection directs the Secretary of Energy acting through the Administrator of the Energy Information Administration, to revise the existing voluntary reporting guidelines to include the recommendations provided by the Secretary of Agriculture.

Periodic Review of Guidelines: At least once every 24 months, the Secretary of Agriculture must convene the Advisory Council and review the guidelines and revise the guidelines as necessary, including to ensure consistency with Federal laws that provide recognition, credit or reward for reductions of atmospheric greenhouse gas concentrations resulting from forest management actions.

Monitoring of State Revolving Loan Programs: States participating in the revolving loan program established in Section 5 of this bill must report annually to the Secretary of Agriculture on the results of the program. If a company or non-governmental organization provides funding for projects under specific projects, the Secretary shall provide the Secretary of Agriculture with the requested standards. The Secretary of Agriculture shall review each of these reports, that are in compliance with the guidelines established by USDA and submit the certified report to the EIA Administrator for inclusion in the 1605(b) voluntary reporting database.

Section 5. Carbon Storage and Watershed Restoration Program

This section directs the Secretary of Agriculture to establish a program to provide assistance through State revolving loan funds to Indian tribes and owners of nonindustrial private forest land to undertake forestry carbon activities. This section also allows the Secretary to establish certain conditions or agreements to protect and enhance fish and wildlife habitat and other resources. The program will be administered by the Secretary of Agriculture.

Records: USDA, in collaboration with States, will provide guidance to eligible forestry activities based on the criteria for each State, recognizing that States must have maximum flexibility to achieve the purposes of the bill in ways most appropriate for each State.

Prohibitions: Loans will not be issued for activities required under other applicable Federal, State or local laws, for costs incurred before entering into a loan agreement, or for activities prohibited by this section.

Lien: The loan terms will include a lien on all loans when the land is transferred to another party.

Buyout option: The loan terms will specify financial terms allowing the owner to pay off the loan with interest prior to harvesting the timber specified in the loan.

Guidance: USDA, in collaboration with States, will provide guidance to eligible activities based on the criteria for each State, recognizing that States must have maximum flexibility to achieve the purposes of the bill in ways most appropriate for each State.

Native species: Funding for restoration activities shall be provided only for a species that is native to a region, with preference given to species that formerly occupied the land.

Sustainable forest management plan: States must give priority to projects on land under a sustainable forest management program or a forest stewardship plan, if the projects are consistent with the program or plan.

Loan amount: Loans can cover up to 100 percent of total project cost, not to exceed $100,000 during any 2-year period.

Repayment: Loans must be repaid to the State with interest at a rate of at least 5 percent per annum. Loans are to be repaid when the land is harvested, or in accordance with any other repayment schedule determined by the State (for example, a portion of proceeds from timber sale to be paid over more than one rotation).

Risk: Landowners do not have to repay loans for timber that is lost to natural catastrophes or that cannot be harvested because of government-imposed restrictions on timber harvesting.

Lien: The loan terms will include a lien on all loans when the land is transferred to another party.

Buyout option: The loan terms will specify financial terms allowing the owner to pay off the loan with interest prior to harvesting the timber specified in the loan.

Greenhouse gas reductions: A loan agreement must include recognition that, until the loan is paid off or otherwise terminated, all reductions in atmospheric greenhouse gases achieved by projects funded by the loan are attributable to the State that provides the funding for the loan, or to any company or NGO that provides funding for the loan via the State program.

Permanent conservation easements: Loan recipients can cancel the loan by donating to the State or another appropriate entity a permanent conservation easement that permanently protects the land and resources at a level above what is required under applicable Federal, State and local laws and fulfills the purposes of the bill, including managing the land in a manner that maximizes the forest carbon reservoir of the land.

Guidance: USDA, in collaboration with States, will provide guidance to eligible activities based on the criteria for each State, recognizing that States must have maximum flexibility to achieve the purposes of the bill in ways most appropriate for each State.

Reports: The State Forester shall maintain all loan records and make them available to the public.
Tea pregnancy affects us all. Teen mothers are less likely to complete high school and are more likely to end up on welfare (nearly 80 percent of unmarried teen mothers end up on welfare). Teen pregnancy costs the United States at least $7 billion annually. The children of teenage mothers have lower birth weights, are more likely to perform poorly in school, and are at greater risk of abuse and neglect. The sons of teen mothers are 13 percent more likely to end up in prison while teen daughters are 22 percent more likely to become teen mothers themselves.

Teen pregnancy has become a significant problem in America’s fastest growing ethnic group—the Hispanic community. Latinos currently constitute approximately 11 percent of the total U.S. population. By 2050, Latinos will be the largest minority group, and by 2050 approximately one-quarter of the U.S. population will be Latino.

Latinas have the highest teen birth rate among all races and ethnic groups in the United States. In 1997, the birth rate for Latina 15- to 19-year-olds was 97.4 per 1,000, nearly double the national rate of 52.3 per 1,000. Approximately one-quarter of the births to teen mothers in 1997 to teens aged 15 to 19 were to Latinas. Further, the teen birth and pregnancy rates for Latinas have not decreased as much in recent years as have the overall U.S. teen birth and pregnancy rates.

To combat the plague of teen pregnancy in this country, I am introducing the “Teenage Pregnancy Reduction Act of 1999.” In so doing, I join Congresswoman Lowey, who has introduced the House companion bill. The Teenage Pregnancy Reduction Act of 1999 will provide in-depth evaluation of promising teenage pregnancy prevention programs. Experts on teen pregnancy have informed us that such an evaluation is needed. This three year evaluation will be funded at $3.5 million per year. The bill requires that a report of the evaluation’s results be made to Congress, and the results be disseminated to the administrators of prevention programs, medical associations, public health services, school administrators and others. In addition, the bill provides for the establishment of a National Clearinghouse on Teenage Pregnancy Prevention Programs. Lastly, the bill provides $10 million for a one-time incentive grant to programs that complete the evaluation and are found to be effective.

Social problems like teen pregnancy are not happening in a vacuum, independent from other social problems. Nevada has the highest teen pregnancy rate, and it also has the highest school dropout rate. Obviously, these two issues are related. Only one-third of teen mothers receive a high school diploma.

Senator Bingaman and I have offered a dropout bill similar to the teen pregnancy bill I introduce today. Both bills look to what states and communities are doing now and focus on those programs that are working. We can then help states and communities replicate these successful programs. But we are not going to totally solve problems like teen pregnancy through programs and legislation—we need to talk to our children. Studies show that teenagers who have strong emotional attachments to their parents are much less likely to become sexually active at an early age. We cannot legislate parents talking to their children, but we can provide the information and programs that will help parents work with their teens.

I would like to acknowledge the National Campaign to Prevent Teen Pregnancy, whose mission is to reduce the teen pregnancy rate by 50 percent between 1996 and 2005. I think that we can accomplish this goal, and I will do all that I can to help.

By Mr. MACK (for himself, Mrs. FEINSTEIN, Mr. HELMS, and Mr. ROBB):

S. 1459. A bill to amend title XVIII of the Social Security Act to protect the right of a Medicare beneficiary enrolled in a Medicare+Choice plan to receive services at a skilled nursing facility selected by that individual; to the Committee on Finance.
sick which might be the experience with the traditional original Medicare plan.

One unfortunate consequence of the Medicare+Choice option involves the inability of seniors to return to their chosen community or nursing home where they resided following a period of hospitalization. Some Medicare+Choice plans will only permit patients to be discharged from the hospital to a facility with which the Medicare+Choice plan has a contract. Then, patients cannot return to the residential community that they selected, which may have been chosen because it included a skilled nursing facility. Nor can they return to the nursing home in which they had previously resided. This can be traumatic for frail elderly patients and may contribute to their disorientation and impede their recovery. It places them in an unfamiliar setting away from home, possibly separating them from a spouse and friends. Staff at their chosen retirement community or nursing home may also be familiar with their individual needs and habits which could only assist in their return to wellness. It makes little sense for them to be sent elsewhere upon discharge from a hospital.

Passage of this legislation ensures the ability of Medicare+Choice beneficiaries to return to the residential community facility of their choice or nursing home in which they previously resided following hospitalization under the following conditions:

1. The enrollee chooses to return to the residential community facility where they had been living.
2. The facility is licensed and qualified under state and federal law to provide such services.
3. The residential community or nursing home agrees to accept the managed care plan’s payment which must be similar to the payment made to contracted facilities.

This legislation provides for continuity in the lives of the elderly following a period of hospitalization. It does not increase costs to Medicare+Choice plans or to beneficiaries. It allows people to return to their loved ones in the facility where they have chosen to live.

Mr. President, I ask unanimous consent that a copy of the legislation be printed in the Record.

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

S. 1459

SEC. 1. SHORT TITLE. This Act may be cited as the “Medicare+Choice Return To Home Act of 1999.”

SEC. 2. ENSURING CHOICE FOR SKILLED NURSING FACILITY SERVICES UNDER THE MEDICARE+CHOICE PROGRAM.

(a) In General.—Section 1852 of the Social Security Act (42 U.S.C. 1395w–22) is amended by adding at the end the following:

“(1) ENSURING CHOICE OF SKILLED NURSING FACILITY SERVICES.—

“(2) REQUIRED FACTORS.—Paragraph (1) shall not apply unless the following factors exist:

(A) The Medicare+Choice organization would be required to provide reimbursement for the services under the Medicare+Choice plan in which the individual is enrolled if the skilled nursing facility was under contract with the Medicare+Choice organization.

(B) The individual—

(i) had a contractual or other right to return, after being admitted to the continuing care retirement community described in paragraph (1)(A) or the skilled nursing facility described in paragraph (1)(B); and

(ii) elects to receive services from the skilled nursing facility after the hospitalization, whether or not, in the case of a skilled nursing facility described in paragraph (1)(A), the individual continued in such facility before entering the hospital.

(C) The skilled nursing facility has the capacity to provide the services the individual requires.

(D) The skilled nursing facility agrees to accept substantially similar payment under the same terms and conditions that apply to similar services provided to enrollees of a Medicare+Choice plan by a skilled nursing facility in which the enrollee resides, without a preceding hospital stay, regardless of whether the Medicare+Choice organization has a contract with such facility to provide such services, if—

(A) the Medicare+Choice organization has determined that the service is necessary to prevent the hospitalization of the enrollee; and

(B) the factors specified in subparagraphs (A), (C), and (D) of paragraph (2) exist.

(C) COVERAGE OF SERVICES PROVIDED TO PREVENT HOSPITALIZATION.—The Medicare+Choice organization may not deny payment for such services provided to an enrollee of a Medicare+Choice plan (offered by such organization) by a skilled nursing facility in which the enrollee resides, without a preceding hospital stay, regardless of whether the Medicare+Choice organization has a contract with such facility to provide such services, if—

(A) the Medicare+Choice organization has determined that the service is necessary to prevent the hospitalization of the enrollee; and

(B) the factors specified in subparagraphs (A), (C), and (D) of paragraph (2) exist.

(D) SKILLED NURSING FACILITY.—The term ‘skilled nursing facility’ has the meaning given such term in section 1819(a).”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act.

Mr. Hatch, for himself, Mr. Leahy, Mr. Abraham, Mr. Torricelli, Mr. DeWine, Mr. Kohl, and Mr. Schumer: S. 1461. A bill to amend the Trade Act of 1974 (15 U.S.C. 1331 et seq.) to extend consumer protection for electronic commerce by prohibiting the bad-faith registration, trafficking or use of Internet domain names that are identical to, confusingly similar to, or dilute distinctive trademarks or service marks; to the Committee on the Judiciary.

Domain Name Piracy Prevention Act of 1999

Mr. HATCH. Mr. President, I am pleased to rise today, along with my colleague, the Ranking Member on the Judiciary Committee, Mr. Leahy, to introduce legislation that will address a growing problem for consumers and American businesses online. At
issue is the deliberate, bad-faith, and abusive registration of Internet domain names in violation of the rights of trademark owners. For many trademark owners, the Internet and cyberspace provide the primary space in which their marks are used. Often, when they log on to a site is their only establishment. These protections are particularly acute in the online environment. Unauthorized uses of others' marks undercut the market by eroding consumer confidence and the communicative value of the brand names we all rely on. For that reason, Congress has enacted a number of statutes addressing the problems of trademark infringement, false advertising and unfair competition, trademark dilution, and trademark counterfeiting. Doing so has helped protect American businesses and more importantly perhaps, American consumers.

As we are seeing with increased frequency, the problems of brand-name abuse and consumer confusion are particularly acute in the online environment. What a consumer in a "brick and mortar" world has the luxury of a variety of additional indicators of source and quality aside from a brand name. For example, when one walks in to the local consumer electronics retailer, he is fairly certain with whom he is dealing, and he can often tell by looking at the products and even the storefront itself whether or not he is dealing with a reputable establishment. These protections are largely absent in the electronic world, where anyone with minimal computer knowledge can set up a storefront online.

In many cases what consumers see when they log on to a site is their only indication of source and authenticity, and legitimate and illegitimate sites may be indistinguishable in cyberspace. In fact, a well-known trademark in a domain name may be the primary source indicator for the online consumer. So it a bad actor is using that name, the trademark owner, an online consumer is at serious risk of being defrauded, or at the very least confused. The result, as with other forms of trademark violations, is the erosion of consumer confidence in brand name identifiers and in electronic commerce generally. Last week the Judiciary Committee heard testimony of a number of examples of consumer confusion on the Internet stemming from abusive domain name registrations. For example, Anne Chasser, President of the International Trademark Association, testified that a cybersquatter had registered the name "attphonecard.com" and "atctolllingcard.com" and used those names to establish sites purporting to sell calling cards and soliciting personally identifying information, including credit card numbers. Chris Young, President of Cyveillance, Inc., a company founded specifically to assist trademark owners police their marks online, to obtain that cybersquatter had registered the name "dellspares.com" and was purporting to sell Dell products online, when in fact Dell does not authorize online re-sellers to market its products. We heard similar testimony of an offshore cybersquatter selling web-hosting services under the name "bellatlantics.com". And Greg Phillips, a Salt Lake City trademark practitioner who represents Porsche in protecting their famous trademark against what is now more than 300 instances of cybersquatting, testified of several examples where bad actors have registered Porsche marks to sell counterfeit goods and non-genuine Porsche parts.

Consider also the child who in a "hunt-and-peck" manner mistakenly typed in the domain for "dosney.com", looking for the rich and family-friendly content of Disney's home page, only to wind up staring at a page of hardcore pornography. Someone snatched up the "dosney" domain in anticipation that just such a mistake would be made. In a similar case, a 12-year-old California boy was denied privileges at his school when he entered "zeada.com" in a web browser at his school library, looking for a site he expected to be affiliated with the computer game of the same name, but ended up at a pornography site.

In addition to these types of direct harm, cybersquatting harms American businesses and the goodwill value associated with their names. In part this is a result of the fact that in each case of consumer confusion there is a case of brand-name misappropriation and an erosion of goodwill. But, even absent consumer confusion, there are many many cases of cybersquatters who appropriate brand names with the sole intent of exploiting money from the lawful mark owner, or of precluding evenhanded competition, or of merely harming the goodwill of the mark.

For example, a couple of years ago a small Canadian company with a single shareholder and a couple of dozen domain names demanded that Umbro International, Inc., which markets and distributes soccer equipment, pay $50,000 to its sole shareholder, $50,000 to a charity, and provide a lifetime supply of soccer equipment in order for it to relinquish the "umbro.com" name. Warner Bros., was reportedly asked to pay $350,000 for the rights to the names "warner-records.com", "warner-brothers-records.com", "warner-pictures.com", "warner-bros-pictures.com", and "warnerpictures.com". Intel Corporation was forced to deal with a cybersquatter who registered the "pentium3.com" domain and used it to post pornographic images of celebrities.

It is time for Congress to take a closer look at these abuses and to respond with appropriate legislation. In the 104th Congress, Senator LEAHY and I sponsored the "Federal Trademark Dilution Act," which has proved useful in addressing the owners of trademark owners to police online uses of their marks that dilute their distinctive quality. Unfortunately, the economics of litigation have resulted in a situation where it is often more cost-effective to simply "pay off" a cybersquatter rather than pursue costly litigation with little hope of anything more than an injunction against the offender. And cybersquatters are becoming more sophisticated and more creative in evading what good case law has developed under the dilution statute.

The bill I am introducing today with the Senator from Vermont is designed to address these problems head on by clarifying the rights of trademark owners online with respect to cybersquatting, by providing clear deterrence to prevent such bad faith and abusive conduct, and by providing adequate remedies for trademark owners who seek to enforce their rights in court. Our bill goes beyond simply stating the remedy, however, and sets forth a substantive cause of action, based in trademark law, to define the conduct sought to be remedied and to fill in the gaps and uncertainties of current trademark law with respect to cybersquatting.

Under our bill, the abusive conduct that is made actionable is appropriately limited to bad faith registrations of others' marks by persons who seek to profit unfairly from the goodwill associated therewith. In addition,
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SEC. 2. FINDINGS.

Congress finds the following:

(1) The registration, trafficking in, or use of a domain name that is identical to, confusingly similar to, or dilutive of a trademark or service mark of another that is distinctive at the time of registration of the domain name, without regard to the goods or services of the parties, with the bad-faith intent to profit from the goodwill of another’s mark or service mark, is commonly referred to as "cyberpiracy" and "cybersquatting"—

(A) results in consumer fraud and public confusion as to the true source or sponsor of goods and services;

(B) impairs electronic commerce, which is important to interstate commerce and the United States economy;

(C) deprives legitimate trademark owners of substantial revenues and consumer goodwill; and

(D) places unreasonable, intolerable, and overwhelming burdens on trademark owners in protecting their valuable trademarks.

(2) Amendments to the Trademark Act of 1946 would clarify the rights of a trademark owner to provide for adequate remedies and to deter cyberpiracy and cybersquatting.

SEC. 3. CYBERPIRACY PREVENTION.

(a) IN GENERAL.—Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended by inserting at the end the following:

"

(d)(1)(A) Any person who, with bad-faith intent to profit from the goodwill of a trademark or service mark of another, registers, traffics in, or uses a domain name that is identical to, confusingly similar to, or dilutive of such trademark or service mark, without regard to the goods or services of the parties, shall be liable in a civil action by the owner of the mark, if the mark is distinctive at the time of the registration of the domain name.

(B) In determining whether there is a bad-faith intent described under subparagraph (A), a court may consider factors such as:

(1) the trademark or other intellectual property rights of the person, if any, in the domain name;

(2) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(3) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(4) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source or sponsorship, affiliation, or endorsement of the site;

(5) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner for a consideration in excess of reasonable value;

(6) the person's offer to sell, transfer, or assign the domain name in connection with the bona fide offering of any goods or services;

(7) the person's representation, or misrepresentation, of the meaning or source of information contained in or associated with the domain name;

(8) the person's bad-faith intent to profit from the goodwill of a trademark or service mark of another;

(9) the person's history of cybersquatting or cybergains.

"
identical to, confusingly similar to, or dilutive of the trade names, marks, or service marks of others that are distinctive at the time of registration of such domain names, without regard to the goods or services of such persons."

(ii) On involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark."

(ii) The court finds that the owner has demonstrated due diligence and was not able to find a person who would have been a defendant in a civil action under paragraph (1).

(ii) The remedies of an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or to the transfer of the domain name to the owner of the mark.";

(a) Remedies in Cases of Domain Name Piracy.—

(1) Injunctions.—Section 3(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) is amended in the first sentence by striking "section 230(f)(1)" and inserting "section 23(a), (c), or (d)".

(2) Damages.—Section 3(a) of the Trademark Act of 1946 (15 U.S.C. 1117(a)) is amended in the first sentence by inserting "(c), or (d)" after "section 23(a)".

(b) Statutory Damages.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

"(d) In a case involving a violation of section 35(d), the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $50,000 per domain name, as the court considers just. The court shall remit statutory damages in any case in which an infringer believed and had reasonable grounds to believe that use of the domain name by the infringer was a fair or otherwise lawful use."

SEC. 5. LIMITATION ON LIABILITY.

Section 230(f)(1) of the Trademark Act of 1946 (15 U.S.C. 1114) is amended—

(1) in the matter preceding subparagraph (A) by striking "under section 230(a)" and inserting "under section 23(a), (c), or (d)";

(2) by redesignating subparagraph (B) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D)(i) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name registration for another person or registrant shall be liable for any damages, in addition to any other civil action or remedy otherwise applicable.

(ii) In compliance with a court order under section 23(d) or;
that there may be concurrent uses of the same name, not infringing, such as the use of the “Delta” mark for both air travel and sink faucets. Similarly, the registration of the domain name “deltairlines.com” for a movie studio would not tend to indicate a bad faith intent on the part of the registrant to trade on Delta Airlines or Delta Faucets’ trademarks.

Second, under paragraph (1)(B)(ii), a court may consider the extent to which the domain name is the same as the registrant’s own legal name or a nickname by which that person is known. This factor recognizes, again as does the concept of fair use in trademark law, that a person should be able to be identified by their own name, whether in their business or on a web site. Similarly, a person may bear a legitimate nickname that is identical or similar to a well-known trademark, such as in the well-publicized case of the parents who registered the domain name “pokey.org” for their daughter who goes by that name, and those individuals should not be deterred by this bill from using the name. A domain name that is identical or similar to a nickname is intended to be indicative of the absence of bad-faith intent on the part of the registrant.

Third, under paragraph (1)(B)(iii), a court may consider the domain name in which the registrant had prior use, if any, of the domain name in connection with the bona fide offering of goods or services. Again, this factor recognizes that the prior use, if any, of the domain name in online commerce may be a good indicator of the intent of the person registering that name. Where the person has used the domain name in commerce without creating a likelihood of confusion as to the source or origin of the goods or services and has not otherwise attempted to use the name in order to profit from the goodwill of the trademark owner, the court may look to this as an indication of the absence of bad faith on the part of the registrant.

Fourth, under paragraph (1)(B)(iv), a court may consider the person’s legitimate non-commercial or fair use of the mark in a web site that is accessible under the domain name at issue. This factor is intended to balance the interests of trademark owners with the interests of those who would make lawful noncommercial or fair uses of others’ marks online, such as in comparative advertising, comment, criticism, parody, news reporting, etc. The fact that a person may use a mark in a site in such a lawful manner may be an appropriate indication that the person’s registration or use of the domain name lacked the required element of bad faith. This factor is not intended to create a loophole that otherwise might swallow the bill by allowing a domain name registrant to evade application of the Act by merely putting up a noninfringing site under an infringing domain name in order to avoid the enforcement of the Act. For example, a well-known case of Panavision Int’l v. Toeppehn, 111 F.3d 1316 (9th Cir. 1998), a well known cybersquatter had registered a host of domain names that infringed on true marks, including names for Panavision, Delta Airlines, Neiman Marcus, Eddie Bauer, Luft Hansa, and more than 100 other marks, and had attempted to sell domain names for amounts in the range of $10,000 to $15,000 each. His use of the “panavision.com” and “panaflex.com” domain names was seemingly more innocuous, however, as they were used to display pictures of Pana Illinois and the word “Hello” respectively. This bill would not allow a person to evade the holding of that court by allowing a domain name registrant to make a commercial use of the Panavision marks and that such uses were, in fact, diluting the Panavision Trademark Dilution Act—merely by posting noninfringing uses of the trademark on a site accessible under the domain name, as Mr. Toeppah did. This factor does not recognize the flexibility to weigh appropriate factors in determining whether the name was registered or used in bad faith, and it recognizes that one such factor may be the use the domain name registrant makes of the mark.

Fifth, under paragraph (1)(B)(v), a court may consider whether, in registering or using the domain name, the registrant intended to divert consumers away from the trademark owner’s website to a website that could harm the goodwill of the mark, either by attempting to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the mark, or by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site. This is done for a number of reasons, including to pass off inferior goods under the name of a well-known mark holder, to defraud consumers into purchasing products that mirror the site, or even just to harm the value of the mark. Under this provision, a court may give appropriate weight to evidence that a domain name registrant intended to confuse or deceive the public in this manner when making a determination of bad-faith intent.

Sixth, under paragraph (1)(B)(vi), a court may consider a domain name registrant’s offer to transfer, sell, or otherwise assign the domain name, if any, at issue. This factor recognizes that the mere offer to sell a domain name to the owner of a well-known mark holder, to defraud consumers into purchasing products that mirror the site, or even just to harm the value of the mark. Under this provision, a court may give appropriate weight to evidence that a domain name registrant intended to confuse or deceive the public in this manner when making a determination of bad-faith intent.

Seventh, under paragraph (1)(B)(vii), a court may consider whether the domain name registrant used the domain name at issue in bad faith, such as by registering or using the domain name in company with the intent to evade the case law developed under the Federal Trademark Dilution Act. This bill does not suggest that the mere registration of multiple domain names is an indication of bad faith, but allows a court to weigh the presence or absence of such marks and that such uses were, in fact, diluting the trademarks of others as part of its consideration of whether the requisite bad-faith intent exists.

Eighth, under paragraph (1)(B)(viii), a court may consider the domain name registrant’s acquisition of multiple domain names that are identical to, confusingly similar to, or dilutive of others’ marks. This factor recognizes the increasingly common cybersquatters practice known as “whois-hoarding” in which a cybersquatter registers multiple domain names—sometimes hundreds, even thousands—that mirror the trademarks of others. By sitting on these marks, they are not making the first move to offer to sell them to the mark owner, these cybersquatters have been largely successful in evading the case law developed under the Federal Trademark Dilution Act. This bill does not suggest that the mere registration of multiple domain names is an indication of bad faith, but allows a court to weigh the presence or absence of such marks and that such uses were, in fact, diluting the trademarks of others as part of its consideration of whether the requisite bad-faith intent exists.

Paragraph (1)(C) makes clear that in any civil brought under the new section 43(d), a court may order the forfeiture, cancellation, or transfer of a domain name to the owner of the mark.

Paragraph (2)(A) provides for in rem jurisdiction, which allows a mark owner to seek the forfeiture, cancellation, or transfer of an infringing domain name by filing an in rem action against the name itself, where the mark owner has satisfied the court that it has exercised due diligence in trying to locate the owner of the domain name but is unable to do so. As indicated above, a significant problem faced by trademark owners in the fight against cybersquatting is the fact that many cybersquatters register domain names under aliases or otherwise provide false information in their registration applications in order to avoid the service of process by the mark owner. This bill will alleviate this difficulty, while protecting the rights of fair play and substan-

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provided the mark owner can show that the domain name literally refers to the trademark or service mark, and that the use of the domain name infringes on the trademark or service mark of the plaintiff. Paragraph (2)(b) limits the relief available in such an action to an injunction ordering the forfeiture, cancellation, or transfer of the domain name, and the court may grant injunctive relief to the domain name or the transfer of the domain name.

SECTION 4. DAMAGES AND REMEDIES

This section applies traditional trademark remedies, including injunctive relief, recovery of defendant’s profits, actual damages, and costs, to cybersquatting cases under the new section 32(2) of the Trademark Act. The bill also amends section 35 of the Trademark Act to provide for statutory damages in cybersquatting cases, in an amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The bill requires the court to remit statutory damages in any case where the infringer of the mark has had reasonable grounds to believe that the use of the domain name was a fair or otherwise lawful use.

SECTION 5. LIMITATION ON LIABILITY

This section amends section 32(2) of the Trademark Act to extend the Trademark Act’s existing limitations on liability to the cybersquatting context. This section also creates a new subparagraph (D) in section 32(2) to encourage domain name registrars and registries to work with trademark owners to prevent cybersquatting through a limited exemption from liability for domain name registrants and registries that suspend, cancel, or transfer domain names pursuant to a court order or in the implementation of a reasonable policy prohibiting cybersquatting. This section also protects the rights of domain name registrants against overreaching trademark owners. Under subparagraph (D)(iii) of section 32(2), a trademark owner who knowingly and materially misrepresents to the domain name registrar or registry that a domain name registration shall be the exclusive domain name registrant for damages resulting from the suspension, cancellation, or transfer of the domain name. In addition, the court may grant injunctive relief to the domain name registrant by ordering the reactivation of the domain name or the transfer of the domain name back to the domain name registrant. Finally, in creating a new subparagraph (D)(iii) of section 32(2), this section codifies current case law limiting the secondary liability of domain name registrars and registries for the act of registration of a domain name, absent bad-faith on the part of the registrar and registry.

SECTION 6. DEFINITIONS

This section amends the Trademark Act’s definitions section (section 45) to add definitions for key terms used in this Act. First, the term “Internet” is defined consistent with the definition of “communications” in the Communications Act (47 U.S.C. 230(v)(1)). Second, this section creates a narrow definition of “cybersquatting” to target the specific bad faith conduct sought to be addressed while excluding such things as screen names, file names, and other identifiers not assigned by a domain name registrar or registry.

SECTION 7. SAVINGS CLAUSE

This section provides an explicit savings clause making clear that the bill does not affect traditional trademark defenses, such as fair use, or a person’s first amendment rights.

SECTION 8. SEVERABILITY

This section provides a severability clause making clear Congress’ intent that if any provision of this Act, or application made by the Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of the Act, or the amendment made by the Act, and the application of the provisions of such to any person or circumstance shall not be affected by such determination.

SECTION 9. EFFECTIVE DATE

This section provides that new statutory damages provided for under this bill shall not apply to any registration, trafficking, or use of a domain name that took place prior to the enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased to join Senator HATCH, and others, today in introducing the “Domain Name Piracy Prevention Act of 1999.”

We have worked hard to craft this legislation in a balanced fashion to protect trademark owners and consumers doing business online, and Internet users who want to participate in what the Supreme Court has described as “a unique and wholly new medium of worldwide human communication.”

"Trademarks are important tools of commerce. The exclusive right to the use of a unique mark helps companies compete in the marketplace by distinguishing their goods and services from those of their competitors, and helps consumers identify the source of a product by linking it with a particular company. The use of trademarks by companies, and reliance on trademarks by consumers, will only become more important as the global marketplace becomes larger and more accessible with electronic commerce. The reason the trademark name is used as a company’s address in cyberspace, customers know where to go online to conduct business with that company.

The growth of electronic commerce is having a positive effect on the economies of small rural states like mine. A Vermont Internet Commerce Report I commissioned earlier this year found that Vermont gained more than 1,000 new jobs as a result of Internet commerce, with the potential that Vermont could add more than 24,000 jobs over the next two years. For a small state like ours, this is very good news.

Along with the good news, this report identified a number of obstacles that stand in the way of Vermont reaching the full potential promised by Internet commerce. One obstacle is that “merchants are anxious about not being able to control where their names and brands are being displayed.” Another is the need to build consumers’ confidence in online shopping.

Cybersquatters hurt electronic commerce. Both merchant and consumer confidence in conducting business online are undermined by so-called “cybersquatters” or “cyberpirates,” who choose the rights of trademark holders by purposely and maliciously registering as a domain, name the trademarked name of another company to divert and confuse customers or to deny the company the registration of a domain name.

The “Domain Name Piracy Prevention Act of 1999,” which we introduce today, is not intended in any way to frustrate these global efforts already underway to develop inexpensive and expeditious procedures for resolving domain name disputes that avoid costly and time-consuming litigation in the court systems either here or abroad. In fact, the bill expressly provides liability limitations for domain name registrars, registries or other domain name registration authorities when they take actions pursuant to a reasonable policy prohibiting the registration of domain names that are identical, confusingly similar to or dilutive of another’s trademark. The I–CANN and WIPO consideration of these
trying to board a moving bus . . .

trademark law in the fast-developing
'attempting to apply established
described this exercise by saying that
marks as domain names. One court has
of 1995 has been used as I predicted to
of such reasonable policies.

July 29, 1999

domain names alike.

Enforcing or even modifying our
warehousing of domain names. The bill
of many online rights and interests.

Other Anti-cybersquatting Legisla-
ion is flawed. This is not the first bill
to be introduced this session to address
the problem of cybersquatting and I
appreciate the efforts of Senators
ABRAM, TORICELLI, HATCH, and
MCCAIN, to focus our attention on this
important matter. They introduced S.
1255, the 'Anticybersquatting Con-


S. 1255 would have a number of un-
intended consequences. Among the
violations were punishable
by both civil and criminal penal-

I voiced concerns at a hearing before
the Judiciary Committee last week
that S. 1255 would have a number of un-
intended consequences that could hurt
rather than promote electronic com-
merce, including the following specific
problems:

The definition in S. 1255 is overbroad.
S. 1255 covers the use or registration of a
domain name that could not
just second level domain names, but
also e-mail addresses, screen names
used in chat rooms, and even files ac-
cessible and readable on the Internet.
As one witness pointed out, "the defi-
nitions will make every fan a crimi-
nal." How? A file document about Bat-
man, for example, that uses the trade-
mark "Batman" in its name, which
also identifies its online location,
could land the writer in court under
that bill. Cybersquatting is not about
file names.

S. 1255 threatens hypertext linking.
The Web operates on hypertext linking
facilitate jumping from one site to
another. S. 1255 could disrupt this prac-
tice by imposing liability on operators
of sites with links to other sites with
trademark names in the address. One
could imagine a trademark owner not
wanting to be associated with or linked
with certain sites, and threatening suit
under this proposal unless the link
were eliminated or payments were
made for allowing the linking.

S. 1255 would criminalize dissent
and protest sites. A number of Web sites
collect complaints about trademarked
products or services, and sue the
trademark owners to identify them-

Enforcement or modifying our
trademark laws will be only part of the
solution to cybersquatting. Up to now,
people have been able to register any
number of domain names that are confusingly similar to
trademarks or personal names in order
to use them for pornographic web sites . . . have without exception lost suits
to use them for pornographic web sites
trademarked names to reach the site

The Hatch-Leahy Domain Name Pi-
cacy Prevention Act is a better solu-
tion. The legislation we introduce
today addresses the cybersquatting
problem without jeopardizing other im-
portant online rights and interests.
This bill would amend section 43 of the
Trademark Act (15 U.S.C. §1125) by
adding a new section to make liable for
actual or statutory damages any per-
son, who with bad-faith intent to
profit from the goodwill of another's
trademark, registers or uses a domain
name that is identical to, confusingly similar
to or dilutive of such trademark, with-
out regard to the goods or services of
the parties, the fact that the domain
name registrant did not compete with
the trademark owner would not be a
bar to recovery. Significant sections of
this bill include:

Definition. Domain names are nar-
rowly defined to mean alphanumeric
designations registered with or as-
signed by domain name registrars or
registries, or other domain name reg-
istration authority as part of an elec-
tronic address on the Internet. Since
registrars only second level domain
names this definition effectively ex-
cludes file names, screen names, and e-
mail addresses and, under current reg-
istration practice, applies only to sec-
ond level domain names.

Scintericity requirement. Good faith, in-
nocent or negligent uses of domain
names that are identical or similar to,
or dilutive of, another's mark are not
covered by the bill's prohibition. Thus,
registering a domain name while un-
aware that the name is another's
trademark would not be actionable.
Nor would the use of a domain name
that contains a trademark for purposes
of protest, complaint, parody or com-
ments would be actionable. Bad-faith
intent to profit is required for a violation to occur.

This requirement of bad-faith intent to
profit is critical since, as Professor

issues will inform the development by
domain name registrars and registries
of effective policies.

The Federal Trademark Dilution Act
of 1995 has been used as I predicted to
help stop misleading uses of trade-
marks as domain names. One court has
described this exercise by saying that "attending to purposefully establish
domain name registration practices
designed to discourage cybersquatting,
the legislation we introduce today is
intended to build is intended to build
upon this progress and provide con-
structive guidance to trademark hold-
ers, domain name registrars and reg-
istries and Internet users registering
domain names alike.

For example, courts have had little
trouble dealing with a notorious
"cybersquatter." Dennis Toeppen from
Illinois, who registered more than 100
trademarks—including "yankeesta-
dium.com," "deltaaairlines.com," and
"neiman-marcus.com" as "domain
names," in the pursuit of eventually
selling the names back to the compa-
nies owning the trademarks. The vari-
ous courts reviewing his activities
have unanimously determined that he
violated the Federal Trademark Dilu-
tion Act.

Similarly, Wayne State University
Law Professor Jessica Litman noted in
testimonial submitted at the Judiciary
Committee's hearing on this issue on July 22,
1999, "[t]he case involving a per-
son who registered large numbers of
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trying to board a moving bus . . .

trademark law in the fast-developing
"attempting to apply established
described this exercise by saying that "attending to purposefully establish
domain name registration practices
designed to discourage cybersquatting,
the legislation we introduce today is
intended to build is intended to build
upon this progress and provide con-
structive guidance to trademark hold-
ers, domain name registrars and reg-
istries and Internet users registering
domain names alike.

For example, courts have had little
trouble dealing with a notorious
"cybersquatter." Dennis Toeppen from
Illinois, who registered more than 100
trademarks—including "yankeesta-
dium.com," "deltaaairlines.com," and
"neiman-marcus.com" as "domain
names," in the pursuit of eventually
selling the names back to the compa-
nies owning the trademarks. The vari-
ous courts reviewing his activities
have unanimously determined that he
violated the Federal Trademark Dilu-
tion Act.

Similarly, Wayne State University
Law Professor Jessica Litman noted in
testimonial submitted at the Judiciary
Committee's hearing on this issue on July 22,
1999, "[t]he case involving a per-
son who registered large numbers of
domains for resale, the cybersquatter
son who registered large numbers of
domains for resale, the cybersquatter
Litman pointed out in her testimony, our trademark laws permit multiple business owners to register the same trademark for different classes of products. Thus, she explains:

ALTHOUGH COURTS HAVE BEEN QUICK TO IMPOSE LIABILITY FOR BAD FAITH REGISTRATION, THEY HAVE BEEN SLOW TO DO SO IN THE CASE OF CYBERSQUATTERS. CYBERSQUATTERS registered a domain name that was identical or similar to, or dilutive of, another's trademark.

The legislation outlines the following non-exclusive list of eight factors for courts to consider in determining whether such bad-faith intent to profit is proven: (1) the trademark rights of the domain name registrant in the domain name; (2) whether the domain name is the legal or nickname of the registrant; (3) the prior use by the registrant of the domain name in connection with the bona fide offering of goods or services; (4) the registrant's noncommercial or nonprofit use, or for fair use of the mark at the site under the domain name; (5) the registrant's intent to divert consumers from the mark's owner's online location in a manner that is likely to cause confusion as to the source, sponsorship, affiliation or endorsement of the site; (6) the registrant's offer to sell the domain name for substantial consideration without having or having an intent to use the domain name in the bona fide offering of goods or services; (7) the registrant's international provision of goods or services; (vii) the registrant's international provision of contact information when applying for the registration of the domain name; and (viii) the registrant's registration of multiple domain names that are identical or similar to or dilutive of another's trademark.

Damages. In civil actions against cybersquatters, the plaintiff is authorized to recover actual damages and profits, or may elect before final judgment to award of statutory damages of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. The court is directed to remit statutory damages in any case where the infringer reasonably believed that use of the domain name was a fair or otherwise lawful use.

In Rem actions. The bill would also permit an in rem civil action filed by a trademark owner in circumstances where the domain name violates the owner's rights in the trademark and the court finds that the owner demonstrated due diligence and was not able to find the domain name holder to bring an in persona civil action. The remedies of an in rem action are limited to a court order for forfeiture or cancellation of the domain name or the transfer of the domain name to the trademark owner.

Liability limitations. The bill would limit the liability for monetary damages for domain name registrants, registrars or other domain name registration authorities for any action they take to refuse to register, remove from registration, transfer, temporarily disable, or permanently cancel a domain name pursuant to a court order or in the implementation of reasonable policies prohibiting the registration of domain names that are identical or similar to, or dilutive of, another's trademark.

Preemption of reverse domain name hijacking. Reverse domain name hijacking is an effort by a trademark owner to take a domain name from a legitimate good faith domain name registrant. There have been some well-publicized cases where trademark owners demanding the take down of certain web sites set up by parents who have registered their children's names in the .org domain, such as two year old Veronica Sam's 'Little Veronica, website and 12 year old Chris 'Pokey', Van Allen's web page.

In order to protect the rights of domain name registrants in their domain names the bill provides that registrants may recover damages, including costs and attorney's fees, incurred as a result of a knowing and material misrepresentation by a person that a domain name is identical or similar to, or dilutive of, a trademark. In addition, the domain name or the transfer or return of a domain name to the domain name registrant.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Cybersquatting must tread carefully to ensure that any remedies do not impede or stifle the free flow of information on the Internet. In many ways, the United States has been the incubator of the Internet and the world closely watches whenever we venture into laws, customs or standards that affect the Internet. We must only do so with great care and caution. Fair use principles are just as critical in cyberspace as in any other intellectual property arena.

I am pleased that Chairman Hatch and I, along with Senators Abraham, Torricelli, and Kohl have worked together to find a legislative solution that respects these considerations. We also stand ready to make additional refinements to this legislation that prove necessary as this bill moves through the legislative process.

By Mr. JEFFORDS:

S. 1462. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage remitted in small order of certain covered products for personal use from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. JEFFORDS, Mr. President, today I am introducing legislation that takes another positive step toward the goal of providing access to affordable prescription drugs for patients in my state of Vermont, and many other patients across the United States. The high cost of prescription drugs is an issue that faces many Americans every single day, as they try to decide how to make ends meet, and whether they can afford to fill the prescription given to them by their doctor. Unfortunately, it is not uncommon to hear of patients who cut pills in half, or skip dosages in order to make prescriptions last longer. This is a serious health problem, and I am committed to legislative solutions that we can enact that provide immediant relief to those who need it. I will soon introduce legislation that will provide prescription drug insurance for low-income Medicare beneficiaries. And today I am introducing legislation that will allow Americans of all ages to have sufficient coverage for prescription drugs, to purchase the medicines they need at prices they can afford.

Mr. President, it is well documented that the average price of prescription medicines is much lower in Canada than in the United States, with the price of some drugs in Vermont being twice that of the same drug available only a few miles away in a Canadian pharmacy. This is true even though many of the drugs sold in Canada are actually manufactured, packed, and distributed by American companies that sell the same products in both markets, but at drastically different prices. That is why many residents of my home state travel hundreds of miles to buy their prescription medicines at the lower price. Unfortunately, in most cases this is a violation of Federal law. This does not seem fair to many Vermonters, and it does not seem fair to me.

The legislation I am introducing today will change that, so that Americans who want to buy prescription medicines in Canada can legally do so. This legislation will require the Food and Drug Administration (FDA) to promulgate new regulations permitting patients to import prescription medications purchased in Canada. Currently, it is illegal for Americans to go to Canada and purchase drugs to be brought back to the United States. But FDA and U.S. Customs employ a "discretionary enforcement policy", allowing some Americans to enter the U.S. with drugs that they bought in Canada.

My legislation does a number of things. First, it requires the Secretary of Health and Human Services to promulgate regulations that will allow individuals to import prescription FDA-approved medicines from Canada in

Liability limitations. The bill would limit the liability for monetary damages for domain name registrants, registrars or other domain name registration authorities for any action they take to refuse to register, remove from registration, transfer, temporarily disable, or permanently cancel a domain name pursuant to a court order or in the implementation of reasonable policies prohibiting the registration of domain names that are identical or similar to, or dilutive of, another's trademark.

Preemption of reverse domain name hijacking. Reverse domain name hijacking is an effort by a trademark owner to take a domain name from a legitimate good faith domain name registrant. There have been some well-publicized cases where trademark owners demanding the take down of certain web sites set up by parents who have registered their children's names in the .org domain, such as two year old Veronica Sam's 'Little Veronica, website and 12 year old Chris 'Pokey', Van Allen's web page.

In order to protect the rights of domain name registrants in their domain names the bill provides that registrants may recover damages, including costs and attorney's fees, incurred as a result of a knowing and material misrepresentation by a person that a domain name is identical or similar to, or dilutive of, a trademark. In addition, the domain name or the transfer or return of a domain name to the domain name registrant.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Cybersquatting must tread carefully to ensure that any remedies do not im
personal baggage, so long as the appropriate use is identified and the product does not represent a significant health risk. Under this bill, patients could also be asked to identify the licensed U.S. health professional responsible for treatment, and to affirm that the product is for personal use, and provide other necessary information so that the FDA can continue to ensure the safety of the U.S. drug supply. All information collected under this provision will be subject to the Privacy Act of 1974.

Under this proposal, the Secretary of Health and Human Services will also be required to promulgate regulations regarding importation of prescription drugs from Canada by mail order. The Secretary will establish criteria which will ensure the safety of patients in the United States that wish to purchase drugs by mail order from Canada.

Finally, this legislation will require the Secretary of HHS to study the safety and purity of the prescription drug products that are imported under this Act.

Mr. President, it has often been said that we have the international gold standard when it comes to drug safety. Well, we have the platinum standard when it comes to drug safety. The Secretary of HHS will study the safety and purity of the prescription drug products that are imported under this Act.

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By Mr. DeWINE (for himself, Ms. Snowe, Mr. Torricelli, Ms. Collins, Mr. Durbín, Mrs. Feinstein, Ms. Mikulski, Mr. Schumer, Mr. Bingaman, Mr. Chafee, and Mr. Kennedy):

S. 1463. A bill to establish a program for foreign micro-enterprise programs.

Mr. DeWINE. Mr. President, I rise today to introduce legislation that would ensure the future success of international micro-enterprise grant and loan programs. Many members of Congress have seen the success of micro-enterprise programs around the world. These programs reach the poorest of the poor with small loans to help them work their way out of poverty.

These have proven to be very worthwhile and successful programs administered worldwide by the U.S. Agency for International Development (USAID). Unlike other aid programs, we do not give funds away. Instead, we lend these funds to people once considered credit risks. The record of these programs boasts a client repayment rate of between 95% to 98%. Micro-enterprise programs prove that with access to credit, the poor can and do better their lives while repaying their loans.

To ensure the future of these programs and provide continued hope to others seeking to build out of poverty, I introduce today the Micro-Enterprise for Self Reliance Act of 1999. I am pleased to be introducing the legislation along with Senators Snowe, Torricelli, Collins, Durbín, Feinstein, Mikulski, Schumer, Bingaman, Chafee and Kennedy. This bill would strengthen the foundations of these programs to ensure their survival and provide the mechanisms necessary for their continued success as financial instruments that provide grants to micro-enterprise programs to increase availability of credit and other services. We also target half of all micro-enterprise programs in support of the poorest of the poor with loans of $300 or less. This is a key provision of the bill and would give strong direction to USAID to work with sections of society that respond best to micro-lending programs.

Second, this bill would authorize credits to micro-lending programs. These credits generally are used to expand already successful programs. Further, we seek to guarantee these programs by establishing a facility to help rescue micro-lending institutions that are imperiled by war, currency movements or natural disasters. The facility would provide for loans to successful institutions to help them get back on their feet.

Finally, we are interested in encouraging the future development and stability of these programs. Our bill calls for a report by USAID that would recommend other steps that could be taken to further the development of micro-lending institutions such as networks, regulations, a federal charter, financial instruments and coordination with multilateral institutions.

We believe that this investment in micro-enterprise programs now will reduce the need for foreign assistance in the future. Congress now has the chance to ensure the future of these very successful programs, and help provide a consensus of possibilities for the poor in developing countries. I thank my fellow cosponsors for their support for this legislation and look forward to working with them to gain congressional approval.

Mr. President, I ask unanimous consent that the text of the Micro-Enterprise for Self-Reliance Act be printed in the RECORD.
regulated financial institutions that can raise capital from the local and international capital markets. (B)(A) Microenterprise institutions not only reduce poverty, but also reduce the dependency on foreign assistance. (B)(B) In order to increase the credit portfolio is used to pay recurring institutional costs, assuring the long-term sustainability of development assistance. (9) Microfinance institutions leverage foreign assistance resources because loans are recycled, generating new benefits to program participants; their networks of local microfinance institutions and other assistance delivery mechanisms so that they reach large numbers of the very poor, and achieve financial sustainability. (10)(A) The development of sustainable microfinance institutions that provide credit and training, and mobilize domestic savings, are critical components to a global strategy of poverty reduction and broad-based economic development. (B) In the efforts of the United States to lead the development of a new global financial architecture, microenterprise should play a vital role. The recent shocks to international financial markets demonstrate how the financial sector can shape the direction of nations. Microfinance can serve as a powerful tool for building a more inclusive financial sector which serves the broad majority of the people, particularly the poor and women and thus generate more social stability and prosperity. (C) Over the last two decades, the United States has been a global leader in promoting the global microenterprise sector, primarily through its development assistance programs at the United States Agency for International Development. Additionally, the United States Department of the Treasury and the Department of State have used their authority to promote microenterprise in the development programs of international financial institutions and the United Nations. (11)(A) In 1994, the United States Agency for International Development launched the "Microenterprise Initiative" in partnership with the Congress. (B) The Initiative committed to expanding funding for the microenterprise programs of the United States Agency for International Development. (12) Providing the United States share of the global investment needed to achieve the goal of the microcredit summit, increased investment in microcredit institutions serving the poorest will be critical. (13)(A) In order to reach tens of millions of the poorest with microcredit, it is crucial to expand and replicate successful microcredit institutions. (B) These institutions need assistance in developing their institutional capacity to expand their services and tap commercial sources of capital. (14) Nongovernmental organizations have demonstrated competence in developing networks of local microfinance institutions and other assistance delivery mechanisms so that they reach large numbers of the very poor, and achieve financial sustainability. (15) Recognizing that the United States Agency for International Development has developed successful partnerships with nongovernmental organizations, and that the Agency will have fewer missions to carry out its work, the Agency should place priority on leveraging non-traditional networks of microfinance institutions that meet performance criteria through the central funding mechanisms of the Agency. (B) By expanding and replicating successful microfinance institutions, it should be possible to create a global infrastructure to provide financial services to the world’s poorest families. (17)(A) The United States can provide leadership to other bilateral and multilateral development agencies as such agencies expand their programs and efforts. (B) The United States should seek to improve cooperation among G-7 countries in the support of the microenterprise sector, in order to leverage the investment of the United States with that of other donor nations. (18) Through increased support for microenterprise, especially credit for the poorest, the United States can continue to play a leadership role in the global effort to expand financial services and opportunity to 100,000,000 of the poorest families on the planet.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to the development of microenterprise as an important component of United States foreign economic policy and assistance;

(2) to provide for the continuation and expansion of the commitment of the United States Agency for International Development to the development of microenterprise institutions as outlined in its 1994 Microenterprise Strategy;

(3) to support and develop the capacity of United States and indigenous nongovernmental organization intermediaries to provide credit, savings, training and technical services to microentrepreneurs;

(4) to increase the amount of assistance devoted to credit activities designed to reach the poorest sector in developing countries, and to improve the access of the poorest, particularly women, to microenterprise credit in developing countries; and

(5) to direct the United States Agency for International Development to coordinate microfinance policy, in consultation with the Department of the Treasury and the Department of State, to help create global leadership in promoting microenterprise for the poorest among bilateral and multilateral donors.

SEC. 4. MICROENTERPRISE DEVELOPMENT GRANT ASSISTANCE.

Chapter I of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) by redesignating the second section 129 (as added by section 4 of the Torture Victims Relief Act of 1998 (Public Law 105–320)) as section 130 and—

(2) by adding at the end the following new section:

"SEC. 131. MICROENTERPRISE DEVELOPMENT GRANT ASSISTANCE.

"(a) FINDINGS AND POLICY.—The Congress finds and declares that—

"(1) the development of microenterprise is a vital factor for economic growth of developing countries and in the development of free, open, and equitable international economic systems; and

"(2) it is therefore in the best interest of the United States to assist the development of microenterprises in developing countries; and

"(3) the support of microenterprise can be served by programs providing credit, savings, training, and technical assistance.

"(b) AUTHORIZATION.—(1) In carrying out the purposes of this section, the President is authorized to provide—

"(A) grants to microfinance institutions for the purpose of expanding the availability of credit, savings, and other financial services to microenterprises; and

"(B) training, technical assistance, and other support for microenterprises to enable them to better use credit, to better manage their enterprises, and to increase their income and build their assets;

"(c) capacity building for microfinance institutions in order to enable them to better meet the credit and training needs of microentrepreneurs; and

"(D) policy and regulatory programs at the country level that improve the environment for microfinance institutions that serve the poor and very poor.

"(2) Assistance authorized under paragraph (1) shall be provided through organizations that have a capacity to develop and implement microenterprise programs, including particularly—

"(A) United States and indigenous private and voluntary organizations;

"(B) United States and indigenous credit unions and cooperative organizations;

"(C) other indigenous governmental and nongovernmental organizations; and

"(D) business development services, including indigenous craft programs.

"(3) In carrying out sustainable poverty-focused programs under paragraph (1), 50 percent of all microenterprise resources shall be used for direct support of programs under this subsection through practitioner institutions that provide credit and other financial services to the poorest with loans of $500 or less in 1995 United States dollars and can cover their costs of credit programs with revenue from lending activities or that demonstrate the capacity to do so in a reasonable time period.

"(4) The President should continue support for central mechanisms and missions that—

"(A) provide technical support for field missions; and

"(B) strengthen the institutional development of the intermediary organizations described in paragraph (2);

"(C) share information relating to the provision of assistance authorized under paragraph (1) between such field missions and intermediary organizations; and

"(D) support the development of nonprofit global microfinance networks, including credit union systems, that—

"(i) are able to deliver very small loans through a vast grassroots infrastructure based on market principles; and

"(ii) act as wholesale intermediaries providing a range of services to microfinance retail institutions, including financing, technical assistance, capacity building and safety and soundness accreditation.

"(5) Assistance provided under this subsection may only be used to support microenterprise programs and may not be used to support programs not directly related to the purposes described in paragraph (1).

"(6) MONITORING SYSTEM.—In order to maximize the sustainable development impact of the assistance authorized under subsection (a)(1), the Administrator of the United States Agency for International Development shall establish a monitoring system that—
The extent to which the entity is oriented toward working directly with poor women.

(4) The extent to which the entity recovers its cost of lending to the poor.

(5) The extent to which the entity implements a plan to become financially sustainable.

(6) Additional requirement.—Assistance provided under this section may only be used to support micro- and small enterprise programs and may not be used to support programs not directly related to the purposes described in paragraphs (1) through (5).

(e) Authorization of Appropriations.—

(1) In general.—(A) There are authorized to be appropriated $1,350,000 for each of the fiscal years 2000 and 2001 to carry out this section.

(B) Amounts authorized to be appropriated under subparagraph (A) shall be made available for the subsidy costs, as defined in section 502(b) of the Federal Credit Reform Act of 1990, for activities under this section.

(2) Administrative expenses.—There are authorized to be appropriated $500,000 for each of the fiscal years 2000 and 2001 for the cost of administrative expenses in carrying out this section.

(F) RULE OF CONSTRUCTION.—Amounts authorized to be appropriated under this subsection are in addition to amounts otherwise available to carry out this section.

SEC. 6. MICROFINANCE LOAN FACILITY.

Chapter 1 of Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), as amended by this Act, is further amended by adding the following new section:

"SEC. 132. UNITED STATES MICROFINANCE LOAN FACILITY.

(a) Establishment.—The Administrator of the United States Agency for International Development is authorized to establish a United States Microfinance Loan Facility (hereinafter in this section referred to as the Facility) to pool and manage the resources of United States-supported microfinance institutions.

(b) Supervisory Board of the Facility.—The Facility shall be supervised by a board composed of the following representatives appointed by the President not later than 180 days after the date of the enactment of this Act:

(A) 1 representative from the Department of the Treasury.

(B) 1 representative from the Department of State.

(C) 1 representative from the United States Agency for International Development.

(D)(i) 2 United States citizens from United States nongovernmental organizations that operate United States-sponsored microfinance activities.

(ii) Individuals described in clause (i) shall be appointed for a term of 2 years.

(2) The Administrator of the United States Agency for International Development or his designee shall serve as Chairman and an additional voting member of the board.

(3) Disbursements.—The board shall make disbursements from the Facility to United States-sponsored microfinance institutions to prevent the bankruptcy of such institutions, (A) natural disasters, (B) national wars or civil conflict, or (C) national financial crisis or other short-term financial movements that threaten the longer-term development or operations of United States-supported microfinance institutions. Such disbursements shall be made as concessional loans that are repaid maintaining the real value of the loan to microfinance institutions but that do not require the recipient to resume self-sustained operations within a reasonable time period. The Facility shall provide for loan losses with each loan disbursed.

(4) During each of the fiscal years 2001 and 2002, funds may not be made available from the Facility until 15 days after notification that availability has been provided to the congressional committees specified in section 634A of this Act in accordance with the procedures applicable to reprogramming notifications under that section.

(d) Report.—Not later than 60 days after the date on which the last representative to the board is appointed pursuant to subsection (b), the chairman of the board shall prepare and submit to the appropriate congressional committees a report on the policies, rules, and regulations of the Facility.

(1) Availability of funds to cover subsidy costs.—Of the funds made available to carry out this part for fiscal years 2000 and 2001, up to $5,000,000 shall be available to cover the subsidy cost (as defined in section 502(b) of the Federal Credit Reform Act of 1990) to carry out this section for each such fiscal year. In addition, of such amount for each fiscal year, up to $5,000,000 may be made available for administrative expenses in carrying out this section.

(2) Applicable authorities.—The provisions of section 107(a)(1) of the Foreign Assistance Act of 1961 (as contained in section 306 of H.R. 1486, as reported to the House of Representatives on May 9, 1997) shall be applicable to assistance provided under this section, except that paragraphs (5) through (8) thereof shall not apply.

(3) Additional amounts available.—Amounts made available under paragraph (1) are in addition to amounts otherwise available to carry out this section under any other provision of law.

(4) Definitions.—In this section:

(A) Appropriate congressional committees.—The term ‘appropriate congressional committees’ means the Committee on Foreign Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(B) United States-supported microfinance institution.—The term United States-supported microfinance institution means a financial intermediary that has received funds made available under this Act for fiscal year 1990 or any subsequent fiscal year.

SEC. 7. REPORT RELATING TO FUTURE DEVELOPMENTS OF MICROFINANCE INSTITUTIONS.

(a) Report.—Not later than 180 days after the date of the enactment of this Act, the President, in consultation with the Administrator of the United States Agency for International Development, the Secretary of State, and the Secretary of the Treasury, shall prepare and transmit to the appropriate congressional committees a report on the most cost-effective methods for increasing the access of poor people to credit, other financial services, and related training.

(b) Contents.—The report described in subsection (a) shall include the following:

(1) A finding that the recipients of credit from the entity do not have access to the local formal financial sector.

(2) A description of the recipients of credit from the entity are among the poorest people in the country.
Secretary of the Treasury, will jointly develop a comprehensive strategy for advancing the global microenterprise sector in a way that maintains market principles while assuring that the very poor, particularly women, obtain access to financial services; and

(2) shall provide guidelines and recommendations for:

(A) instruments to assist microenterprise networks to develop multi-country and regional microlending programs;

(B) technical assistance to foreign government and central banks and regulatory entities to improve the policy environment for microfinance institutions, and to strengthen the capacity of supervisory bodies to supervise microcredit institutions;

(C) the potential for federal chartering of United States-based international microfinance network institutions, including proposed legislation;

(D) instruments to increase investor confidence in microcredit institutions which would strengthen the long-term financial position of microcredit institutions and attract capital from private sector entities and individuals, such as a rating system for microcredit institutions and local credit bureaus;

(E) an agenda for integrating microfinance into United States foreign policy initiatives seeking to develop and strengthen the global financial sector;

(F) innovative instruments to attract funds from the capital markets, such as instruments for leveraging funds from the local commercial banking sector, and the securitization of microloan portfolios.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 8. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT AS GLOBAL LEADER AND COORDINATOR OF BILATERAL AND MULTILATERAL microentrepreneur ASSISTANCE ACTIVITIES.

(a) FINDINGS AND POLICY.—The Congress finds and declares that—

(1) the United States can provide leadership to other bilateral and multilateral development agencies as such agencies expand their support to the microenterprise sector; and

(2) the United States should seek to improve coordination among G-7 countries in the support of the microenterprise sector in order to leverage the investment of the United States with that of other donor nations.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) the Administrator of the United States Agency for International Development and the Secretary of State should seek to support and strengthen the effectiveness of microfinance activities in United Nations agencies, such as the International Fund for Agricultural Development (IFAD) and the United Nations Development Program (UNDP), which have provided key leadership in developing the microenterprise sector; and

(2) the Secretary of the Treasury should instruct each United States Executive Director of the Multilateral Development Banks (MDBs) to advocate the development of a coherent strategy to strengthen the microenterprise sector and an increase of multilateral resource flows for the purposes of building microenterprise retail and wholesale intermediaries.

By Mr. HAGEL, for himself, Mrs. LINCOLN, Mr. ROBERTS, Ms. LANDRIEU, Mr. HUTCHINSON, Mr. COCHRAN, Mr. GRAMS, Mr. ABRAMHAM, Mr. SMITH of Oregon, Mr. HOLLINGS, Mr. CRAIG, Mr. GOFTON, Mr. GRASSLEY, Mr. CRAPO, Mr. BURNS, Mr. FRIST, Mr. BREAUX, Mr. ASHCROFT, Mr. COVERDELL, Mr. HELMS, and Mr. LOTT:

S. 1464. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish certain requirements regarding the Food Quality Protection Act of 1996, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

REGULATORY OPENNESS AND FAIRNESS ACT OF 1999

Mr. HAGEL, 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. 1464

Be it enacted by the Senate and House of Representa"tives 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 "Regulatory Openness and Fairness Act of 1999".

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


TITLE I—ISSUANCE AND CONTINUATION OF TOLERANCES

Sec. 101. Transition analysis and description of basis for decisions relating to tolerance reviews. Sec. 102. Interim procedures for reviews of tolerances. Sec. 103. Implementation rules and guidance. Sec. 104. Data in support of tolerances and regulatory actions. Sec. 105. Tolerances for emergency uses.

TITLE II—STUDIES AND REPORTS


SEC. 2. FINDINGS.

Congress finds the following:

(1) The Food Quality Protection Act of 1996 (Public Law 104-170; 110 Stat. 1489), enacted on August 3, 1996, made many major modifications to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) that require the Environmental Protection Agency to consider new kinds of information and use additional criteria in regulating pesticide chemical residues and in reviewing tolerances for pesticide chemical residues that had previously been found to be adequate to protect the public health.

(2) Amendments made by the Food Quality Protection Act of 1996 prescribe the use of a number of new risk assessment criteria that require the development of major new regulatory policies and procedures used by the Administrator to regulate pesticide chemical residues.

(b) Since the enactment of the Food Quality Protection Act of 1996 it has become clear that several of the new concepts embodied in that Act involve a high degree of complexity.

(c) Practical implementation of the concepts embodied in the Act demands new scientific tools in addition to the tools that were available when the Food Quality Protection Act of 1996 was enacted.

(3) To reach sound, suitably protective decisions on tolerance reviews under the new criteria, the Administrator also will need a greater amount of new data, not only on the newly considered nondietary routes of exposure, but also in some cases, on dietary exposure and toxicity, so that the Administrator can determine whether pesticide chemicals residues that were found safe under the former criteria satisfy the new criteria as well.

(b) Some data collection efforts are underway to obtain new data for tolerance reviews, but will not yield results for 1 or more years.

(c) In some areas, the need for new data and additional time for the Administrator about what kinds of tests should be conducted and which compounds should be tested, for tolerance reviews.

(4) The Administrator does not need to conduct public proceedings, relating to the regulations and tolerance reviews, on such topics as what new interpretations and policies are needed, what new kinds of data are needed, how the new data would be used, and how the needed regulatory transition can be achieved.

(5) These proceedings are not yet finished, and on some issues public notice and comment proceedings have been scheduled but have not yet begun.

(6) Food Quality Protection Act of 1996 amended the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) by adding several provisions that provide flexibility to the Administrator in making the transition to the new approach to regulating pesticide chemical residues.

(7) The Federal Food, Drug, and Cosmetic Act permits activities to be conducted when regulations are developed and adopted for the implementation of the new requirements in that Act.

(8) The Federal Food, Drug, and Cosmetic Act provides that the data requirements for tolerances must be set out clearly in regulations and guidelines, so that the regulated community will know what types of information the Administrator requires and what testing procedures should be used to develop the information.

(9) Amendments made by the Food Quality Protection Act of 1996 relating to risk assessments affecting tolerances allow only the use of reliable information regarding nondietary exposure routes, which were not previously considered in risk assessments affecting tolerances.

(E) Congress did not anticipate that a tolerance would be revoked because of reliance on assumptions stemming from absence of that information, without first providing notice of the information is needed and a reasonable opportunity to collect the information.

(F) When a tolerance is under review and the Administrator determines that additional information is needed to support the revocation of the tolerance, Food, Drug, and Cosmetic Act authorizes the Administrator to postpone the effective date.
of any tolerance rule resulting from the re-
view, as appropriate in cases in which additional in-
formation is pertinent to a tolerance review.

(G) The Federal Food, Drug, and Cosmetic Act permits the Administrator to conduct a tolerance review, as allowed by the available, reliable information.

(6)(A) Although the authorities described in subparagraphs (F) and (G) of paragraph (5) already are provided by law, it appears that further congressional guidance is needed to ensure that decisions of the Administrator relating to tolerance reviews are reasonable, well supported, and balanced, and to avoid disruptions in agriculture, other sectors of the economy, and international trade.

(B) During the transition to revised standards, procedures, and requirements for the regulation of pesticide chemical residues, the Administrator must ensure that deci-
sions are balanced, reasonable, and, where

needed, based in whole or in part on the absence of data that could be obtained by the Administrator to interested persons and sufficient time has been provided to allow the data to be developed, submitted, and subsequently evaluated by the Admin-
istrator.

.replace revocation or denial of a tolerance, or other adverse action regarding a tolerance, is re-
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replace determining the aggregate exposure to a pesticide chemical or the cumulative effect of exposure to 2 or more pesticide chemicals having a common mechanism of toxicity, if the use of the assumption is based in whole or in part on the absence of data that could be obtained by the Administrator by an act-

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representative of risks to consumers or to major identifiable subgroups of consumers, on a national or regional basis;

(iii) any assumption about exposure from drinking water, or another non-

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‘‘(II) any policy that the Administrator may adopt relating to any revaluation of any registration of any pesticide chemical under an Act described in subparagraph (A) or (B); and

‘‘(3) RULES AND GUIDELINES.—

‘‘(A) IN GENERAL.—The Administrator shall

amend by adding at the end the following:

‘‘(4) TOLERANCES FOR EMERGENCY USES.—

Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(l)(6)) is amended—

(1) by inserting before the first sentence the following:

(A) IN GENERAL.—

(2) by inserting before the third sentence the following:

(B) PROCEDURE.—

(3) by inserting before the fifth sentence the following:

(C) SAFETY STANDARD.—

(4) in the fifth sentence, by striking the period and inserting ‘‘, except as described in subparagraph (D).’’;

and

(5) by adding at the end the following:

(D) EMERGENCY EXEMPTIONS.—The Administra-

trator may establish a tolerance for a pesticide chemical residue associated with an emergency exemption without regard to the guidance described in subparagraph (A) or (B) resi-

due and before reviewing those other tolera-

ces, if the Administrator determines that any incremental exposure that may result from any such tolerance associated with the emer-

gency exemption will not pose any significant risk to food consumers.’’.

TITLE II—STUDIES AND REPORTS

SEC. 201. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term ‘‘Administrator’’ means the Administrator of the Environ-

mental Protection Agency.

(2) PESTICIDE CHEMICAL, PESTICIDE CHEMICAL RESIDUE.—The term ‘‘pesticide chemical’’ and ‘‘pesticide chemical residue’’ mean the meanings given the terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Agriculture.

(4) TOLERANCE.—The term ‘‘tolerance’’ means a tolerance for a pesticide chemical residue or an exemption from the require-

ment of such a tolerance, established under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a).

SEC. 202. PRIORITIES AND RESOURCES.

(a) ENVIRONMENTAL PROTECTION AGENCY PROVISION.—The Administrator shall prepare a proposal for revising the priorities of and resources available to the Administrator that will allow the Administrator to

(1) process promptly all

(A) applications for registration of pes-

ticide chemicals under the Federal Insecti-

cide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.); and

(B) petitions for tolerances (including ex-

ceptions) under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a);

(c) requests for experimental use permits, for approval of new inert ingredients, and for emergency exemptions, relating to pesticide chemicals under an Act described in subparagraph (A) or (B); and

(D) requests for decisions on the merits of the applications, petitions, and requests described in subparagraphs (A) through (C); and

(2) to perform tolerance reviews (including reassessments) and other duties relating to pesticide chemicals, as required by the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act.
SEC. 202. INTERNATIONAL TRADE EFFECTS.

(a) ASSESSMENT.—

(1) ASSESSMENT PROGRAM.—The Secretary shall establish and administer a program to continuously strengthen the United States agricultural commodities and products in the international marketplace. The commodities and products assessed shall include, but not be limited to, apples, oranges, corn, wheat, rice, soybeans, and nursery and forest products.

(2) FACTORS.—In carrying out paragraph (1), the Secretary shall examine factors pertinent to assessing the sustainability and competitive strength of each commodity and product in the international marketplace and the competitive strength of the factors to regulate actions taken under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The factors examined for each commodity and product shall include commodity changes, regional changes, prices, quality, input costs and availability, and the ratio of imports to exports.

(b) REPORT.—The Secretary shall prepare periodic reports describing the results obtained from the assessment program conducted under subsection (a). The Secretary shall submit the reports to the Committee on Agriculture of the House of Representatives and the Senate, and the reports shall be made available to the public.

SEC. 203. INTERNATIONAL TRADE EFFECTS.

(a) ASSESSMENT.—

(1) ASSESSMENT PROGRAM.—The Secretary shall establish and administer a program to continuously strengthen the United States agricultural commodities and products in the international marketplace. The commodities and products assessed shall include, but not be limited to, apples, oranges, corn, wheat, rice, soybeans, and nursery and forest products.

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(b) REPORT.—The Secretary shall prepare periodic reports describing the results obtained from the assessment program conducted under subsection (a). The Secretary shall submit the reports to the Committee on Agriculture of the House of Representatives and the Senate, and the reports shall be made available to the public.

SEC. 204. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established an advisory committee known as the Pesticide Advisory Committee (referred to in this section as the “Advisory Committee”).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Advisory Committee shall be composed of 20 members, appointed by the Administrator and the Secretary. The members of the Advisory Committee shall represent the diversity of interests and viewpoints and shall be appointed from among individuals who are representatives of organizations who are interested in the regulation of pesticide chemicals, including representatives of—

(A) organizations that represent—

(i) food consumers;

(ii) organizations with special interest in environmental protection;

(iii) farmworkers;

(iv) agricultural producers (including persons engaged in crop production, livestock and poultry production, or nursery and forest production);

(v) nonagricultural pesticide chemical users;

(vi) food manufacturers and processors;

(vii) food distributors and marketers; and

(viii) manufacturers of agricultural and nonagricultural pesticide chemicals; and

(B) Federal or State agencies.

(2) PUBLICATION.—The Secretary shall publish in the Federal Register the name, address, and professional affiliation of each member of the Advisory Committee.

(3) TERMS OF APPOINTMENT.—Each member of the Advisory Committee shall serve for a term of years determined by the Administrator and the Secretary, except that—

(A) the terms of service of the members initially appointed shall be (as specified by the Administrator and the Secretary) for such fewer number of years as will provide for the expiration of terms on a staggered basis;

(B) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of the term; and

(C) the Secretary and the Administrator may extend the term of a member of the Advisory Committee until a new member is appointed to fill the vacancy.

(4) VACANCIES.—Any vacancy occurring in the membership of the Advisory Committee shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members to execute the duties of the Advisory Committee.

(c) DUTIES.—The Advisory Committee shall—

(1) provide advice to the Administrator and the Secretary on matters related to implementation of section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), including proposed and final rules, policies, procedures, and testing guidelines used to regulate tolerances and pesticide chemical registrations;

(2) foster communication between the Administrator, the Secretary, and the various organizations which represent persons having particular interest in the regulation of pesticide chemicals under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act;

(3) carry out the functions performed by the Tolerance Reassessment Advisory Committee.

(d) MEETINGS.—The Advisory Committee shall meet at least 2 times per year, at times determined jointly by the Administrator and the Secretary. Not later than 14 days before the date of each meeting, the Administrator shall publish a notice regarding the meeting in the Federal Register.

(1) FREQUENCY.—The Advisory Committee shall meet at least 2 times per year, at times determined jointly by the Administrator and the Secretary. Not later than 14 days before the date of each meeting, the Administrator shall publish a notice regarding the meeting in the Federal Register.

(2) OPEN MEETINGS.—The Advisory Committee shall conduct its principal business—

(A) in meetings that are—

(i) open to the public; and

(ii) in facilities that can accommodate the reasonably foreseeable number of persons attending; or

(B) by teleconference, with open access.

(3) FACILITIES.—The Secretary shall be responsible for making arrangements for the meeting facilities or teleconferences.

(e) COMMUNICATIONS.—The Administrator or the Secretary shall ensure that written communications between the Administrator or Secretary, respectively, and the Advisory Committee, are recorded and made available to any person upon request.

(f) CHAIRPERSON.—The Advisory Committee shall select a Chairperson from among its members.

(1) POWERS OF THE ADVISORY COMMITTEE.—

(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Committee considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Except as otherwise provided in Federal law, the Advisory Committee may secure directly from any Federal department or agency such information as the Advisory Committee considers necessary to carry out this section.

Upon request of the Chairperson of the Advisory Committee, the head of the department or agency shall furnish the information to the Advisory Committee.

(3) POSTAL SERVICES.—The Advisory Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Advisory Committee may accept, use, and dispose of gifts or donations of services or property.

(b) ADVISORY COMMITTEE PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—

(A) IN GENERAL.—The members of the Advisory Committee shall not receive compensation for the performance of services for the Advisory Committee, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Committee.

(B) FUNDS.—Funds used to provide travel expenses under subparagraph (A) shall be paid by the Administrator from appropriations available for those purposes.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Department of Agriculture or of any other Federal agency or any employee of any organization who represents persons having particular interest in the regulation of pesticide chemicals under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act may be detailed to the Advisory Committee without reimbursement, and the detail shall be without interruption or loss of civil service status.

(c) PERMANENT COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

By Mr. THOMPSON (for himself and Mr. ASHCROFT):
S. 1469. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of rules establishing or increasing taxes; to the Committee on Governmental Affairs.

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

TAXPAYER’S DEFENSE ACT OF 1999

Mr. THOMPSON. Mr. President, today I rise to introduce the Taxpayer’s Defense Act of 1999. I am pleased to be working with my good friend from Missouri, JOHN ASHCROFT, who has been a leader on this issue in the Senate. I also want to thank Chair-
America was founded on the principle that there should be no taxation without representation. In The Second Treatise of Government, John Locke wrote, "If any one shall claim a power to lay and levy taxes on the people without consent of the people, he thereby subverts the end of government." Consent, according to Locke, could only be given by the liberty of the people, "either by themselves or their representatives chosen by them." The Boston Tea Party celebrated Americans’ opposition to taxation without representation. And the Declaration of Independence listed, among the despotism acts of King George, his “imposing Taxes on us without our Consent.” First among the powers that the Constitution gave to the Congress, our new government’s representative branch, was the power to levy taxes.

The logic of allowing only Congress to establish federal taxes is clear: Congress considers and weighs the economic and social issues that rise to national importance. While any agency or government office may view its own priorities as paramount, only Congress can decide which goals of the people merit spending hard-earned taxpayer dollars. Only Congress can determine how many taxpayer dollars should be spent. Congress’ decisions are made through an open political process that the public can see and participate in. And if the public is unhappy with a tax, they can hold Congress and the President responsible on election day.

The accountability of lawmakers is a core feature of our representative democracy. But over time, Congress has delegated more and more of its legislative authority to unaccountable federal agencies. The Taxpayer’s Defense Act would help restore constitutional balance and authority by requiring congressional approval for a rule that sets or raises a tax before the rule could take effect. Unelected agency officials could not directly establish or raise a tax, but would still have a chance to advance their proposals through an open political process in Congress.

Few would publicly dispute the American principle of no taxation without representation. But increasingly, in ways often subtle or hidden, federal agencies are taking on—or receiving from Congress—the power to tax. Federal agency taxes pass the costs of government programs on to American consumers in the form of higher prices. These secret taxes often are regressive—hitting many who struggle to get by. They also put a drag on the economy. These taxes take money from everyone, and they are imposed without accountability.

One of the main goals of agency taxation is the Federal Communications Commission’s Universal Service Tax. “Universal service” is the idea that everyone should have access to affordable telecommunications services. It originated at the beginning of the century when the nation was still being wired with telephone wires. The Telecommunications Act of 1996 included provisions that allowed the FCC to extend universal service, ensuring that telecommunications are available to all areas and to institutions that benefit the community, such as schools, libraries, and rural health care facilities.

Most importantly, the Act gave the FCC the power to decide the level of “contributions”—taxes—that telecommunications providers would have to pay to support universal service. The FCC must determine how much can be collected in taxes to subsidize a variety of “universal service” spending programs. It charges telecommunications providers, who pass the costs on to consumers in the form of higher telephone bills. The FCC recently nearly doubled the tax to $2.5 billion per year, and Administration budget have projected a rise to $10 billion per year. This agency tax is already out of control.

The FCC’s provisions for universal service have many flaws. These include the three “administrative corporations” set by the FCC. The General Accounting Office determined that the establishment of these corporations was illegal, and the FCC has collapsed them into one, no sole corporation. The head of one of these corporations was originally paid $200,000 per year—as much as the President of the United States.

It seems that the more you look, the more you find that a number of federal agencies have been given, or discovered on their own, the power of tax. Congress has given taxing authority to the Nuclear Regulatory Commission and the U.S. Department of Agriculture. Because we are within statutory parameters, we have less concern with them than others, but they are still taxes. And an important principle is at stake: no taxation without representation. The Constitution gives the taxing power only to Congress. In practice, we often see a direct correlation between an agency taxing and the agency overspending taxpayer dollars. Congress must retain the power and accountability of the purse.

More egregious examples are those where agencies have spontaneously discovered the power to tax. There’s the FCC’s telecommunications tax, and two new taxes, past and proposed, on the Internet. The first, sponsored by the National Science Foundation, collected more than $60 million before a federal judge put a stop to it. The second, under the aegis of the Commerce Department, proposes to charge $1 per Internet domain name per year. What Commerce Department official stands to be voted out of office if he or she sponsors an increase in this tax?

The burden of this activity falls, of course, on the American taxpayer, whose money is being taken, laundered through the Washington bureaucracy, and returned (in dramatically reduced amounts) for purposes set by unelected agency staffers. This is why we must require the FCC, and all agencies, to get the approval of Congress before setting future tax rates.

Some of my colleagues may question why Congress should shoulder the responsibility for taxes. Let me just note that in a recent fee-dispute case, the FCC argued, amazingly, that it had the unreviewable power to raise taxes. As the Court of Appeals put it:

[A]ccording to counsel, the Commission could impose a tax on an unregulated railroad or a tax on an individual for eating ice cream . . . . This is a preposterous position, one that we will not countenance. As this court [has] said . . . “it goes without saying that any assertion (an) agency cannot legitimize it. Unable to link its assertion of authority to any statutory provision, the [FCC’s] position in this case amounts to a bare suggestion that the agency possesses plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area. We categorically reject that suggestion.”—Comsat Corporation v. FCC, 114 F. 3d 223, 227 (D.C. Cir. 1997) (citations omitted).

Should tax dollars be used for federal programs? In what amounts? Or should Americans spend what they earn on their own, locally determined priorities? Requiring Congress to review agency taxes would answer this question.

This legislation would create a new subchapter within the Congressional Review Act for mandatory review of certain rules. The portion of any agency rule that establishes or raises a tax would have to be submitted to Congress and receive the approval of Congress and the President before the agency could put it into effect. The Act would allow the agencies to formulate tax proposals for Congress to consider under existing rulemaking procedures. It is a version of a bill introduced last Congress by Chairman Gekas in the House and John Ashcroft in the Senate.

Once submitted to Congress, a bill noting the taxing portion of a regulation would be introduced (by request) in each House of Congress by the Majority Leader. The bill would then be subject to expedited procedures, allowing a prompt decision on whether or not the agency may put the rule into effect. The rule could take effect once enacted by both Houses of Congress and signed by the President. If the rule were approved, the agency would retain power to reverse the regulation, lower the amount of the tax, or take any other legal actions with respect to the rule.

Mr. President, the rallying cry of “no taxation without representation” has been heard in America before, and now we are hearing it again. Congress must...
July 29, 1999

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not allow unelected bureaucrats determine the amount of taxes hardworking Americans have to pay. While preserving a needed flexibility, the Taxpayer’s Defense Act will allow elected officials alone to decide whether to raise taxes, and where to direct precise tax dollars.

I ask unanimous consent that a copy of the Taxpayer’s Defense Act be printed in the RECORD.

S. 1466

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 called the “Taxpayer’s Defense Act”.

SEC. 2. MANDATORY CONGRESSIONAL REVIEW.

Chapter 8 of title 5, United States Code, is amended by inserting after section 808 the following:

“SUBCHAPTER II—MANDATORY REVIEW OF CERTAIN RULES

815. Rules subject to mandatory congressional review.

(a) In this section, the term ‘tax’ means a non-penal, mandatory payment of money or its equivalent to the extent such payment does not compensate the Federal Government or other payee for a specific benefit conferred directly on the payer.

(b) A rule that establishes or increases a tax, however denominated, shall not take effect before the date of the enactment of a bill described in section 816 and is not subject to review under subchapter I. This section does not apply to a rule promulgated under the Internal Revenue Code of 1986.

816. Agency submission

Whenever an agency promulgates a rule subject to section 815, the agency shall submit to each House of Congress a report containing the text of only the part of the rule that causes the rule to be subject to section 815 and an explanation of that part. An agency shall submit such a report separately for each such rule agency promulgates. The explanation shall consist of the concise general statement of the rule’s basis and purpose required under section 553 and such explanatory documents as are mandated by other statutory requirements.

817. Approval bill

(a)(1) Not later than 3 legislative days after the date on which an agency submits a report under section 816, the Majority Leader of each House of Congress shall introduce (by request) a bill the matter after the enacting clause of which is as follows: “The following agency rule may take effect:” The text submitted under section 818 shall be set forth after the colon. If such a bill is not introduced in a House of Congress as provided in the first sentence of this subsection, any Member of that House may introduce such a bill not later than 7 legislative days after the period for introduction by the Majority Leader.

(2) A bill introduced under paragraph (1) shall be referred to the Committees in each House of Congress with jurisdiction over the subject matter of the rule involved.

(b) After the Committees of the House of Representatives to which a bill is referred shall report the bill without amendment, and with or without recommendation, not later than 30 legislative days after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee on consideration of the bill. A motion to discharge may be made only by a Member favoring the bill (but only at a time designated by the Speaker on the legislative day after the calendar day on which the Majority Leader, offering the motion announces to the House that Member’s intention to do so and the form of the motion) and is privileged. The motion is highly privileged. Debate thereon shall be limited to not more than 1 hour, the time to be divided equally between the proponent and an opponent of the motion. The motion is considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

“(B) After a bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least 3 legislative days, all points of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the Committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be limited to not more than 1 hour, and shall be equally divided and controlled by a proponent and an opponent of the bill. After general debate, the bill shall be considered as read for amendment. Under the 5-minute rule, at the conclusion of the consideration of the bill, the Committee shall rise and report the bill to the House without intervening motion. The previous question shall be considered as ordered on the bill to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.

“(C) Appeals from decisions of the Chair regarding application of the rules of the House of Representatives to the procedure relating to a bill shall be decided without debate.

“(D)(A) Any bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which a bill has been referred shall report the bill without amendment not later than the 30th day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the calendar.

“(B) When the Senate receives from the House of Representatives a bill, such bill shall not be referred to committee and shall be placed on the calendar.

“(C) A motion to proceed to consideration of a bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.

“(D)(i) If more than 10 hours of consideration of a bill, the Senate shall proceed, without intervening action or debate (except as permitted under subparagraph (F)), to a vote on the motion to reconsider or to table.

“(ii) A single motion to extend the time for consideration under clause (i) for no more than an additional 5 hours is in order before the expiration of such time and shall be decided without debate.

“(E) If the Senate has read for the third time a bill that originated in the Senate, then shall be in order at any time thereafter to move to proceed to the consideration of a bill for the same special message received from the House of Representatives and, if the Senate has read the bill, all without any intervening action or debate.

“(F) If the Senate has read for the third time a bill that originated in the Senate, the Senate shall be in order at any time thereafter to move to proceed to the consideration of a bill for the same special message received from the House of Representatives and the Senate has read the bill, all without any intervening action or debate.

“(G) Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on a bill shall be limited to not more than 4 hours. Debate on any motion or amendment shall be limited to 30 minutes. Any non-penal mandates that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponents of the Senate and the majority manager, unless the majority manager is a proponent of the bill, amendment, appeal, or point of order, in which case, the minority manager shall be in control of the time in opposition.”.

SEC. 3. TECHNICAL AMENDMENTS.

(a) SUBCHAPTER I—DISCRETIONARY CONGRESSIONAL REVIEW.

(b) TABLE OF SECTIONS—The table of sections for chapter 8 of title 5, United States Code, is amended by inserting before the reference to section 801 the following:

“SUBCHAPTER I—MANDATORY CONGRESSIONAL REVIEW;

and by inserting after the reference to section 801 the following:

“SUBCHAPTER II—MANDATORY REVIEW OF CERTAIN RULES

815. Rules subject to mandatory congressional review.

816. Agency submission.

817. Approval bill.”

(c) REFERENCE.—Section 801 of title 5, United States Code, is amended by striking this chapter and inserting this subchapter.

ADDITIONAL COSPONSORS

S. 311

At the request of Mr. McCaIN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a co-sponsor of S. 311, a bill to authorize the Disabled Veterans’ LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes.

S. 429

At the request of Mr. DURBn, the name of the Senator from Indiana (Mr. BAYh) was added as a co-sponsor of S. 429, a bill to designate the legal public