

protecting the proceeds. Under current law, any money received by Holocaust survivors in their settlements with banks and other organizations that once cooperated with the Nazis would be treated as gross income for federal tax purposes.

Mr. President, I firmly believe that victims of the Holocaust have suffered far too much for any such taxation to be just. These settlements represent but a fraction of what is owed to those who suffered under Nazi tyranny. To treat them as income subject to taxation would be wrong.

This is why this legislation is so important. It will prevent the federal government from taxing away any monies obtained by Holocaust survivors or their families in a settlement related to thefts by the Nazis or their sympathizers. It will prevent yet another injustice from being done to those who survived the brutal Nazi regime. It will also keep our nation firmly on the side of justice.

By Mrs. FEINSTEIN:

S. 781. A bill to amend section 2511 of title 18, United States Code, to revise the consent exception to the prohibition on the interception of oral, wire, or electronic communications that is applicable to telephone communications; to the Committee on the Judiciary.

TELEPHONE PRIVACY ACT OF 1999

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce today the "Telephone Privacy Act of 1999." This legislation would prohibit the recording of a telephone call unless all the parties on the call have given their consent.

I am introducing this bill because our nation's telephone privacy laws are confused and in conflict. We need a national law governing telephone privacy so that telephone users have a uniform standard to rely on.

Currently, thirty-seven states require only the consent of one party to record a phone call. Fifteen states require the consent of all parties to be taped. This jumbled collection of telephone privacy laws leaves most consumers confused about their rights to protect their phone calls from surreptitious taping.

Today, consumers who seek to block surreptitious taping of their phone calls face an incredible burden. The problem is especially acute during interstate calls because the legality of surreptitiously recording a phone call depends on the state where the call is recorded. Thus, when a party makes an interstate call, one's rights may depend on the laws governing taping in other states.

The recent well-publicized taping of Monica Lewinsky's phone conversations by Linda Tripp illustrates this problem. Maryland, where Linda Tripp recorded the conversations, is a state

that requires the consent of all parties. However, Washington D.C., where Monica Lewinsky lived at the time, requires only one-party consent. Two people living within a half-hour drive from each other should have the same laws apply to them.

In practice, any person who wants to protect herself against surreptitious recording must know the telephone privacy laws of other states. Our laws cannot reasonably expect a consumer to have this knowledge. People who make lots of interstate calls might be forced into the position of knowing the telephone privacy laws of all 50 states.

Not only will the Telephone Privacy Act of 1999 promote uniformity of laws, it will also create a standard that better protects privacy. The Telephone Privacy Act would require an all-party consent standard for taping phone calls no matter where one lived in the United States. It would end the practice of one-party consent that exists under Federal law and in a number of states.

While surreptitious taping has legitimate uses, such as lawful surveillance by the police, our laws should not reward the practice of surreptitious taping. This practice violates individual privacy and offends common decency.

Phone calls remain one of the few avenues of communication where people still feel safe enough to have intimate conversations. We should protect this expectation of privacy. If a telephone user intends to tape a phone call, the other party on the line ought to be informed.

Moreover, the one-party consent standard is an anachronism. It is inconsistent with other more privacy-respecting provisions of our communication laws. Federal law makes it a felony, for example, for a third party to tap or record a telephone conversation between others. It is also a felony to surreptitiously tape a cellular telephone call.

The bill has been carefully drafted so that it does not affect the rights of law enforcement officials to tape or monitor conversations as they are carrying out their duties.

Nor does it affect the practice of businesses taping customer calls, as long as the customer is notified at the outset that the call is being taped. It also does not affect the right of people to surreptitiously tape threatening or harassing phone calls.

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. 781

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Privacy Act of 1999".

SEC. 2. REVISION OF CONSENT EXCEPTION TO PROHIBITION ON INTERCEPTION OF ORAL, WIRE, OR ELECTRONIC COMMUNICATIONS APPLICABLE TO TELEPHONE COMMUNICATIONS.

Paragraph (d) of section 2511(2) of title 18, United States Code, is amended by striking "unless such communication" and all that follows and inserting "unless—

"(i) such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or

"(ii) in the case of a telephone communication, any other party to such communication has not given prior consent to such interception."

By Mrs. FEINSTEIN:

S. 782. A bill to amend title 18, United States Code, to modify the exception to the prohibition on the interception of wire, oral, or electronic communications to require a health insurance issuer, health plan, or health care provider obtain an enrollee's or patient's consent to their interception, and for other purposes; to the Committee on the Judiciary.

PATIENTS' TELEPHONE PRIVACY ACT

Mrs. FEINSTEIN. Mr. President, today I introduce a bill to protect the medical privacy rights of patients when they talk to their health care insurers or providers. The bill requires health care insurers and providers to obtain patients' "express consent" before tape-recording or monitoring conversations.

Today, the health insurance industry routinely tape-records and monitors incoming telephone calls of patients with questions about their health insurance coverage. This bill halts that common practice with two simple rules.

First, health insurance companies and health care providers must obtain the patient's "express consent" before tape-recording or monitoring a conversation. Second, health insurance companies and health care providers must give patients the option not to be tape-recorded or monitored.

The bill puts control of medical privacy back where it belongs—in the hands of patients who have no choice but to share personal information with their health insurance and health care providers.

The bill protects all patients—

Whether covered by private or public health plans,

Whether covered by group, individual, or self-insured health plans,

Whether covered by Medicare or Medicaid,

Whether covered by Federal health plans, or

Whether covered by the Children's Health Insurance Plan.

Let me emphasize again who would be subject to the bill—the health insurance and health care industry—a huge industry that necessarily affects all of us. First, the bill would cover communications between patients and health

insurers. Second, the bill would cover communications between patients and "health care providers," which includes physicians and other health care professionals.

Federal law now requires that only one party must consent to the tape-recording or monitoring of a telephone conversation. In California, state law provides that all parties must consent before a telephone conversation may be tape-recorded. Nearly a dozen other states have adopted similar two-party consent laws. They include Delaware, Florida, Illinois, Kansas, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, and Washington.

Even two-party consent laws, however, do not adequately address this problem. Health insurance companies tape-record or monitor patients' calls based on the patient's implied consent. Implied consent arises from the patient talking after hearing the health insurer's recording that the call may be tape-recorded or monitored. In this case, courts have held that consent is given implicitly.

Consequently, merely changing federal law to a two-party consent rule would not solve the problem. The key requirement must be that the health insurer or health care provider obtains the patient's express consent. Only this change will protect individuals when they call their health insurance provider with questions about their health care coverage. When my office contacted the top 100 health insurance providers in this country, we learned from nearly all who responded that they routinely monitor or tape-record calls received from patients.

Let me share with my colleagues some responses that we received. Kaiser Permanente operates in nineteen states and the District of Columbia, and provides care to more than nine million members. Their practice varies from state to state, depending on applicable state laws.

Kaiser Permanente may: Monitor randomly selected calls, in which case it may, or may not, notify patients in advance; or tape-record all or randomly selected calls, in which case it may, or may not, notify patients in advance.

United HealthCare wrote to me that they did not believe that tape-recording or monitoring calls even presents a privacy issue. Their rationale was that they only randomly tape-record calls and only after advising the caller that they may record the call.

Great-West responded that a patient has the option of communicating in writing if the patient does not want a telephone call to be tape-recorded. Let me say simply—that is not good enough for me. Imagine the undue burden the task of writing a letter may place on elderly or seriously ill patients.

Despite the two-party consent rule in California, New York Life Care Health

Plans, Inc., asserted that no violation of California law occurs without a "confidential communication." Under California state law, the definition of a "confidential communication" does not include communications where the parties may expect that the may be recorded. New York Life asserted that, since they told patients that their calls could be monitored, their calls were not confidential calls.

New York Life's display of legal bootstrapping shows little, if any, regard for medical privacy rights. Their interpretation of the word "confidential" turns its commonly understood meaning on its head! In the minds of most people, what could be more confidential than matters about one's personal health problems? Surely little, if anything. How many of my colleagues in the Senate would say that communications about their health problems with health insurance or health care providers are not confidential?

Blue Cross Blue Shield of the National Capital Area does not give patients any notice that their calls may be monitored. Their Associate General Counsel responded that, in both Maryland and the District of Columbia, telephone communications in the normal course of business do not meet the definition of an "interception." Thus, consent is not required. Although Virginia law considers a telephone to be an "intercepting device," Virginia follows the one-party consent rule.

Finger Lakes Blue Cross Blue Shield randomly tape-records calls from patients and only now is setting up a front-end recording to inform patients of that practice. New York requires only one party to consent.

None of the health insurance providers who responded to my office gave me a valid reason for tape-recording or monitoring patients' calls. The standard response from health insurers was that they tape-record or monitor patients' calls for so-called "quality control," an ambiguous term at best. Indeed, no one explained what that term means, how tape-recording calls benefits patients, or why tape-recording calls was necessary.

Of course, health insurance providers are not the only business entities that tape-record telephone conversations. How many of us realize that when we call for airline tickets, bank account information, mutual fund transfers, or any myriad of other daily concerns, the other party on the telephone line will be tape-recording the conversation? Yet, personal health information is far more personal in nature and, accordingly, entitled to greater protection. It stands alone as uniquely different from other commercial transactions.

This bill does not attempt to change the consent rule for other business entities. It would apply only to health insurance and health care providers. Most patients today have almost no

choice about their health insurer provider or, increasingly, about their health care provider. In turn, the health insurer may give the patient no option except to submit to tape-recording the conversation. An elderly, or seriously ill patient, is simply not going to object.

Admittedly, much disclosure of medical information occurs both with patient consent and for valid medical reasons. For instance, insurance companies receive information from physicians based upon a written consent form signed by the patient at the physician's request. Yet, increasingly, threats to medical health privacy have become less visible and, in that sense, more alarming. Many individuals are left with a false sense of privacy. The potential for misuse of personal health information is real and growing.

A fundamental right to medical privacy is embedded in American society. Most Americans presume that telephone conversations about their health problems are confidential. Sadly, they are wrong.

Conversations with our health insurance and health care providers often contain deeply personal information, including prescription drugs, psychiatric care, alcohol dependency—the list goes on and on. Surely they deserve protection. Traditionally, Americans have relied upon a confidential relationship with their doctors.

Let's restore at least some measure of protection to telephone conversations about our personal health problems. This bill allows health insurance and health care providers to continue their routine practice of tape-recording or monitoring patients' calls—but only with the patient's express consent.

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. 782

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patients' Telephone Privacy Act of 1999".

SEC. 2. MODIFICATION OF EXCEPTION TO PROHIBITION ON INTERCEPTION OF COMMUNICATIONS.

(a) MODIFICATION.—Section 2511(2)(d) of title 18, United States Code, is amended—

(1) by striking "It shall not be unlawful" and inserting "(i) Subject to clause (ii), it shall not be unlawful"; and

(2) by adding at the end the following:

"(ii)(I) With respect to a wire, oral, or electronic communication between a health insurance issuer or health plan and an enrollee of such health insurance issuer or health plan, or between a health care provider and a patient, it shall not be unlawful under this chapter for a health insurance issuer, health plan, or health care provider to intercept such communication only if the patient has given prior express consent to such interception.

“(II) In this paragraph—

“(A) the term ‘health insurance issuer’ has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

“(B) the term ‘health plan’ means a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), an individual or self-insured health plan, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.), the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.), the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, and a health plan offered under chapter 89 of title 5; and

“(C) the term ‘health care provider’ means a physician or other health care professional.”

(b) RECORDING AND MONITORING OF COMMUNICATIONS WITH HEALTH INSURERS.—

(1) COMMUNICATION WITHOUT RECORDING OR MONITORING.—Notwithstanding any other provision of law, a health insurance issuer, health plan, or health care provider that notifies any customer of its intent to record or monitor any communication with such customer shall provide the customer the option to conduct the communication without being recorded or monitored by the health insurance issuer, health plan, or health care provider.

(2) DEFINITIONS.—In this subsection:

(A) HEALTH CARE PROVIDER.—The term “health care provider” means a physician or other health care professional.

(B) HEALTH INSURANCE ISSUER.—The term “health insurance issuer” has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b).

(C) HEALTH PLAN.—The term “health plan” means—

(i) a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

(ii) an individual or self-insured health plan;

(iii) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(iv) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(v) the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.);

(vi) the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, United States Code; and

(vii) a health plan offered under chapter 89 of title 5, United States Code.

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date that is 60 days after the date of enactment of this Act.

By Mrs. FEINSTEIN (for herself, and Mr. SESSIONS):

S. 783. A bill to limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies; to the Committee on the Judiciary.

JAMES GUELFF BODY ARMOR ACT OF 1999

Mrs. FEINSTEIN. Mr. President, I am pleased today to introduce the James Guelff Body Armor Act of 1999.

Currently, Federal law does not limit access to body armor for individuals

with even the grimmest history of criminal violence. However, it is unquestionable that criminals with violent intentions are more dangerous when they are wearing body armor.

Many will recall the violent and horrific shootout in North Hollywood, California, just two years ago. In that incident, two suspects wearing body armor and armed to the teeth, terrorized a community. Police officers on the scene had to borrow rifles from a nearby gunshop to counteract the firepower and protective equipment of these suspects.

Another tragic incident involves San Francisco Police Officer James Guelff, for whom this act is named. On November 13, Officer Guelff responded to a distress call. Upon reaching the crime scene, he was fired upon by a heavily armed suspect who was shielded by a kevlar vest and bulletproof helmet. Officer Guelff died in the ensuing gunfight.

Lee Guelff, James Gueff’s brother, recently wrote a letter to me about the need to revise the laws relating to body armor. He wrote:

It’s bad enough when officers have to face gunmen in possession of superior firepower . . . But to have to confront suspects shielded by equal or better defensive protection as well goes beyond the bounds of acceptable risk for officers and citizens alike. No officer should have to face the same set of deadly circumstances again.

I couldn’t agree with Lee more. Our laws need to recognize that body armor in the possession of a criminal is an offensive weapon. We need to make sure that our police officers on the streets are adequately supplied with body armor, and that hardened-criminals are deterred from using body armor.

The James Guelff Body Armor Act of 1999 has three key provisions to achieve these goals. First, it increases the penalties criminals receive if they commit a crime wearing body armor. Specifically, a violation will lead to an increase of two levels under the Federal sentencing guidelines. Second, it makes it unlawful for violent felons to purchase, use, or possess body armor. Third, this bill enables Federal law enforcement agencies to directly donate surplus body armor to local police.

I will address each of these three provisions.

Enhancing criminal penalties for individuals who wear body armor during the commission of a crime: Criminals who wear body armor during the commission of a crime should face enhanced penalties because they pose an enhanced threat to police and civilians alike. Assailants shielded by body armor can shoot at the police and civilians with less fear than individuals not so well protected.

In the North Hollywood shoot-out, for example, the gunmen were able to hold dozens of officers at bay because of their body armor. This provision will deter the criminal use of body armor,

and thus deter the escalation of violence in our communities

Making it unlawful for violent felons to wear body armor: This bill makes it a crime for individuals with a violent criminal record to wear body armor. It is unconscionable that criminals can obtain and wear body armor without restriction when so many of our police lack comparable protection.

The bill recognizes that there may be exceptional circumstances where an individual with a brutal history legitimately needs body armor to protect himself or herself. Therefore, it provides a mechanism for violent felons to obtain specific permission from the Secretary of the Treasury to wear body armor.

This provision has already been codified into law in California. Several other states are also actively considering legislation to restrict violent felons access to body armor.

California police applied the law for the first time earlier this year. Police arrested an individual for wearing body armor who had a violent criminal record. Besides a conviction for second-degree assault in 1993, the suspect is independently facing charges for threatening to kill his ex-girlfriend. He also is facing trial for issuing death threats against security guards at a West Hollywood Nightclub.

Direct donation of body armor: The James Guelff Body Armor Act of 1999 speeds up the procedures by which Federal agencies can donate surplus body armor to local police.

It is disturbing that so many of our local police officers do not have access to bullet-proof vests. The United States Department of Justice estimates that 25% of State, local, and tribal law enforcement officers, approximately 150,000 officers, are not issued body armor.

Getting our officers more body armor will save lives. According to the Federal Bureau of Investigation, greater than 30% of the 1,182 officers killed by guns in the line of duty since 1980 could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest.

Last year, Congress made some inroads into this shortage of body armor by enacting the “Bulletproof Vest Partnership Grant Act of 1998.” This act established a \$25 million annual fund to help local and State police purchase body armor. The James Guelff Body Armor Act of 1999 will provide a further boost to the body armor resources of local and State police departments.

This legislation has attracted the support of a broad cross-section of the law enforcement community. The Fraternal Order of Police, the National Association of Police Organizations, the National Sheriffs’ Association, the National Troopers Coalition, the International Association of Police Chiefs,

the Federal Law Enforcement Officers Association (FLEOA), the Police Executive Research Forum, the International Brother of Police Officers, and the National Association of Black Law Enforcement Executives, have all endorsed the legislation.

Richard J. Gallo, President of the Federal Law Enforcement Officers Association notes:

In the past, FLEOA members have confronted individuals, with prior criminal convictions, wearing body armor and violently resisting arrest. Federal, state and local law enforcement officers, and the public, deserve protection from this, and at the very least, will now know these felons will receive enhanced sentences for using body armor during the commission of a criminal act.

Robert Stewart, Executive Director of the National Organization of Black Law Enforcement Executives, writes:

There is a societal obligation to assure the men and women in blue are afforded all the protection they need to maintain public order. Very real fiscal constraints can, however, compromise the ability of local governments to accomplish that critical goal. Hence, NOBLE heartily endorses the James Guelff Body Armor Act of 1999.

I look forward to working with my fellow Senators from both sides of the aisle in turning this bill into law.

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. 783

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "James Guelff Body Armor Act of 1999".

SEC. 2. FINDINGS.

Congress finds that—

(1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear;

(2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear;

(3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;

(4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing 2 layers of body armor and a 1997 bank shoot out in north Hollywood, California, between police and 2 heavily armed suspects outfitted in body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime;

(5) of the approximately 1,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest;

(6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor;

(7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and

(8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.

SEC. 3. DEFINITIONS.

In this Act:

(1) **BODY ARMOR.**—The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(2) **LAW ENFORCEMENT AGENCY.**—The term "law enforcement agency" means an agency of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

(3) **LAW ENFORCEMENT OFFICER.**—The term "law enforcement officer" means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH RESPECT TO BODY ARMOR.

(a) **SENTENCING ENHANCEMENT.**—The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement, increasing the offense level not less than 2 levels, for any offense in which the defendant used body armor.

(b) **APPLICABILITY.**—No amendment made to the Federal Sentencing Guidelines pursuant to this section shall apply if the Federal offense in which the body armor is used constitutes a violation of, attempted violation of, or conspiracy to violate the civil rights of any person by a law enforcement officer acting under color of the authority of such law enforcement officer.

SEC. 5. PROHIBITION OF PURCHASE, USE, OR POSSESSION OF BODY ARMOR BY VIOLENT FELONS.

(a) **DEFINITION OF BODY ARMOR.**—Section 921 of title 18, United States Code, is amended by adding at the end the following:

"(35) The term 'body armor' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment."

(b) **PROHIBITION.**—

(1) **IN GENERAL.**—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

"§ 931. Prohibition on purchase, ownership, or possession of body armor by violent felons

"(a) **IN GENERAL.**—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

"(1) a crime of violence (as defined in section 16); or

"(2) an offense under State law that would constitute a crime of violence if it occurred within the special maritime and territorial jurisdiction of the United States.

"(b) **EXCEPTION.**—

"(1) **APPLICATION.**—A person who is subject to the prohibition of subsection (a) whose employment, livelihood, or safety is dependent on the ability to possess and use body armor, may file a petition with the Secretary for an exception to the prohibition of subsection (a).

"(2) **ACTION BY SECRETARY.**—Upon receipt of a petition under paragraph (1), the Secretary may reduce or eliminate the prohibition of subsection (a), impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition, as the Secretary determines to be appropriate, based on a determination that the petitioner—

"(A) is likely to use body armor in a safe and lawful manner; and

"(B) has a reasonable need for such protection under the circumstances.

"(3) **FACTORS FOR CONSIDERATION.**—In making a determination under paragraph (2) with respect to a petitioner, the Secretary shall consider—

"(A) any continued employment of the petitioner;

"(B) the interests of justice;

"(C) any relevant evidence; and

"(D) the totality of the circumstances.

"(4) **CERTIFIED COPY OF PERMISSION.**—The Secretary shall require, as a condition of granting any exception to a petitioner under this subsection, that the petitioner agree to maintain on his or her person a certified copy of the Secretary's permission to possess and use body armor, including any conditions or limitations.

"(5) **RULE OF CONSTRUCTION.**—Nothing in this subsection may be construed to—

"(A) require the Secretary to grant relief to any particular petitioner; or

"(B) imply that any relief granted by the Secretary under this subsection relieves any other person from any liability that may otherwise be imposed.

"(c) **IMMUNITY FROM LIABILITY.**—

"(1) **IN GENERAL.**—An officer or employee of a law enforcement agency who enforces the prohibition specified in subsection (a) against a person who has been granted relief pursuant to subsection (b), shall be immune from any liability for false arrest arising from the enforcement of this section unless the person has in his or her possession a certified copy of the permission granting the person relief from the prohibition, as required by subsection (b)(4).

"(2) **RULE OF CONSTRUCTION.**—The immunity from liability described in paragraph (1) shall not relieve any person or entity from any other liability that may otherwise be imposed."

(2) **CLERICAL AMENDMENT.**—The analysis for chapter 44 of title 18, United States Code, is amended by adding at the end the following: "931. Prohibition on purchase, ownership, or possession of body armor by violent felons."

(c) **PENALTIES.**—Section 924(a) of title 18, United States Code, is amended by adding at the end the following:

"(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both."

SEC. 6. DONATION OF FEDERAL SURPLUS BODY ARMOR TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) **DEFINITIONS.**—In this section, the terms "Federal agency" and "surplus property" have the meanings given such terms under section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) **DONATION OF BODY ARMOR.**—Notwithstanding section 203 of the Federal Property

and Administrative Services Act of 1949 (40 U.S.C. 484), the head of a Federal agency may donate body armor directly to any State or local law enforcement agency, if such body armor is—

- (1) in serviceable condition; and
- (2) surplus property.

(c) NOTICE TO ADMINISTRATOR.—The head of a Federal agency who donates body armor under this section shall submit to the Administrator of General Services a written notice identifying the amount of body armor donated and each State or local law enforcement agency that received the body armor.

(d) DONATION BY CERTAIN OFFICERS.—

(1) DEPARTMENT OF JUSTICE.—In the administration of this section with respect to the Department of Justice, in addition to any other officer of the Department of Justice designated by the Attorney General, the following officers may act as the head of a Federal agency:

(A) The Administrator of the Drug Enforcement Administration.

(B) The Director of the Federal Bureau of Investigation.

(C) The Commissioner of the Immigration and Naturalization Service.

(D) The Director of the United States Marshals Service.

(2) DEPARTMENT OF THE TREASURY.—In the administration of this section with respect to the Department of the Treasury, in addition to any other officer of the Department of the Treasury designated by the Secretary of the Treasury, the following officers may act as the head of a Federal agency:

(A) The Director of the Bureau of Alcohol, Tobacco, and Firearms.

(B) The Commissioner of Customs.

(C) The Director of the United States Secret Service.

By Mr. ROCKEFELLER (for himself, Mr. MACK, Mr. FRIST, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. SARBANES, Mr. CONRAD, Mr. JOHNSON, Mr. WELLSTONE, Mr. SMITH of Oregon, Ms. COLLINS, Mr. JEFFORDS, Mr. MOYNIHAN, Mr. BINGAMAN, Mr. INOUE, Mr. CRAIG, Mr. GRAHAM, Mr. KERRY, Mr. HARKIN, and Mr. LEAHY):

S. 784 A bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program; to the Committee on Finance.

MEDICARE CANCER CLINICAL TRIALS COVERAGE ACT

Mr. ROCKEFELLER. Mr. President, I am pleased to be introducing the "Medicare Cancer Clinical Trials Coverage Act of 1999" with my colleague from Florida, Senator MACK. This legislation would establish a demonstration project to assure Medicare beneficiaries with cancer that Medicare will cover their routine patient costs when part of a clinical trial.

I would like to thank Senator MACK for his leadership and dedication on this issue. It has been a pleasure to work with Senator MACK, a tireless champion for cancer patients throughout his years of service in the Senate.

With 1,500 deaths due to cancer each day and 1.3 million new cancer diag-

noses this year, there is a clear and urgent need for this legislation. Our senior population is especially at risk—Medicare beneficiaries make up half of all cancer diagnoses and 60% of all cancer deaths. Yet, Medicare's policy toward covering quality cancer care is ambiguous and its enforcement practices are unpredictable.

Our legislation represents a significant step forward in the fight to prevent, detect and treat cancer quickly and effectively. It is based on a very simple premise: given the disproportionate impact that cancer has on older Americans, Medicare should be responsible for the routine patient care costs associated with approved clinical trials.

Cancer clinical trials often represent a cancer patient's best hope for survival, especially when their cancer fails to respond to traditional therapies. Yet, under current law, Medicare beneficiaries can be denied coverage for the routine patient care costs associated with clinical trials. However, if the same care is provided outside of a clinical trial setting, it is covered by Medicare.

It is a tragedy that the costs of participating in a clinical trial are discouraging patients from using what might be their best weapon in a battle with cancer. Medicare beneficiaries who are cancer patients are left with only two choices: pay the costs out of their own pocket, or forgo treatment all together. It is unfair, and unconscionable, that we force cancer patient to make this decision.

There are other compelling reasons to cover these costs. By paying for these routine costs, we provide incentives for researchers to include more Medicare beneficiaries in cancer clinical trials. Researchers know that patients who are at different stages physically, mentally, and emotionally will react very differently to treatments—even if they are fighting the same cancer. But what they don't know is how age and health interact with the safety and effectiveness of new drugs and treatments. Our bill helps them find the answers to those critical questions.

Our bill saves money in the long-run by ensuring the Medicare program pays for treatments that work. Clinical studies can determine which interventions work the best, and when they are the most effective.

Finally, in establishing a demonstration project, this bill will also provide valuable information about the costs and benefits of providing coverage for clinical trials for other life-threatening diseases. We started with cancer first because cancer is a major affliction of Medicare beneficiaries. In addition there is a well-established national clinical cancer trial system to deliver this patient care.

Mr. President, our legislation does not create a new benefit. It merely en-

sures that patients enrolled in clinical studies receive Medicare coverage for the same type of routine patient care costs, such as hospital and physician fees, that would be covered outside of a trial setting. We are not asking Medicare to pay for the cost of research. These expenses will still be covered by trial sponsors, including pharmaceutical companies.

The "Medicare Cancer Clinical Trials Coverage Act" is a modest proposal, but it has the potential to become a new weapon in the fight against cancer. But we must act now. We have fought for this proposal in previous sessions of Congress, and I believe the momentum is building to get the legislation passed this year. I look forward to working with Senator MACK and others to take an important step forward for cancer patients.

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

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

S. 784

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Cancer Clinical Trial Coverage Act of 1999".

SEC. 2. MEDICARE CANCER PATIENT DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—Not later than January 1, 2000, the Secretary of Health and Human Services (in this Act referred to as the "Secretary") shall establish a demonstration project that provides for payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) of routine patient care costs—

(1) that are provided to an individual diagnosed with cancer and enrolled in the medicare program under such title as part of the individual's participation in an approved clinical trial program; and

(2) that are not otherwise eligible for payment under such title for individuals who are entitled to benefits under such title.

(b) APPLICATION.—The beneficiary cost-sharing provisions under the medicare program, such as deductibles, coinsurance, and copayment amounts, shall apply to any individual participating in a demonstration project conducted under this Act.

(c) APPROVED CLINICAL TRIAL PROGRAM.—For purposes of this Act, the term "approved clinical trial program" means a clinical trial program that is approved by—

- (1) the National Institutes of Health;
- (2) a National Institutes of Health cooperative group or a National Institutes of Health center;
- (3) the Food and Drug Administration (in the form of an investigational new drug or device exemption);
- (4) the Department of Veterans Affairs;
- (5) the Department of Defense; or
- (6) a qualified nongovernmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants.

(d) ROUTINE PATIENT CARE COSTS.—

(1) IN GENERAL.—For purposes of this Act, "routine patient care costs" shall include the costs associated with the provision of items and services that—

(A) would otherwise be covered under the medicare program if such items and services were not provided in connection with an approved clinical trial program; and

(B) are furnished according to the design of an approved clinical trial program.

(2) EXCLUSION.—For purposes of this Act, “routine patient care costs” shall not include the costs associated with the provision of—

(A) an investigational drug or device, unless the Secretary has authorized the manufacturer of such drug or device to charge for such drug or device; or

(B) any item or service supplied without charge by the sponsor of the approved clinical trial program.

SEC. 3. STUDY, REPORT, AND TERMINATION.

(a) STUDY.—The Secretary shall study the impact on the medicare program under title XVIII of the Social Security Act of covering routine patient care costs for individuals with a diagnosis of cancer and other diagnoses, who are entitled to benefits under such title and who are enrolled in an approved clinical trial program.

(b) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary shall submit a report to Congress that contains a statement regarding—

(1) any incremental cost to the medicare program under title XVIII of the Social Security Act resulting from the provisions of this Act; and

(2) a projection of expenditures under the medicare program if coverage of routine patient care costs in an approved clinical trial program were extended to individuals entitled to benefits under the medicare program who have a diagnosis other than cancer.

(c) TERMINATION.—The provisions of this Act shall not apply after December 31, 2004.

Mr. FRIST. Mr. President, I am pleased to join today with my colleagues, Senators ROCKEFELLER and MACK to introduce legislation that will provide Medicare patients who are battling cancer with coverage of their health care costs when they participate in approved clinical trials. For patients suffering from life-threatening illness such as cancer, the opportunity to participate in clinical trials often offers them their best hope for access to the latest and most advanced treatment modalities.

Medicare currently does not pay the costs of patient care associated with clinical trials because they are experimental therapies. Our bill proposes that we begin a demonstration project through Medicare—the nation’s largest third party payor—to provide coverage of routine patient costs associated with approved cancer clinical trials. It is a demonstration program because there has been much debate over the costs associated with clinical trials and a clear need exists to gather better cost data. Unfortunately, dispute still exists over how to distinguish between routine patient costs and those associated with the trial. The full impact on health care costs is not yet known.

Thus our bill requires the Secretary of Health and Human Services to conduct this demonstration project to study the feasibility of covering patient costs for beneficiaries diagnosed

with cancer and enrolled in clinical trials approved by the National Institutes of Health, the Food and Drug Administration, Department of Defense, and the Department of Veteran Affairs. The Secretary is required to report to Congress concerning the incremental costs attributed to the trial and the advisability of covering other diseases. Once Congress has these data in hand, we will be able to make the determination to enact legislation to make the coverage of routine care costs in clinical trials a permanent part of the Medicare program.

We have spent many years debating this bill and urging the Administration to begin this demonstration project. As a research investigator involved in clinical trials, as a thoracic cancer surgeon, and as co-director of the Thoracic Oncology Clinic at Vanderbilt University Medical Center, I know first-hand the critical importance of clinical trials in determining the very best therapies in our battles against cancer. Only through participation in clinical trials can we advance quality care for patients with cancer.

Since I have come to the United States Senate, I have urged my colleagues to make federal funding for both basic and clinical research a national priority by doubling the budget of the National Institutes of Health over the next five years. Last year we witnessed an historic increase of \$2 billion that brought us closer to this goal. But we cannot stop there. If we do not capitalize on this investment by further supporting our clinical research infrastructure and the conduct of clinical trials, we will not reap the full benefits of our investment.

Clinical trials are scientific studies that allow us to investigate how new medicines and clinical treatments work in patients. Patients should recognize that clinical trials are by their nature investigational and therefore are not a magic bullet or without risk. Patients should be fully informed of the potential benefits and, equally important, the potential risks of participating in a clinical investigation. With this in mind, patients should be given the opportunity to participate in clinical investigations which may allow them to receive cutting-edge treatments that may improve their chances of survival. Clinical investigations advance our scientific knowledge and help bring about medical innovations to find better treatments for patients.

We must continue to foster both public and private efforts to support clinical trials. I believe our foremost federal responsibility is to address access to clinical trials in our publicly-financed programs such as Medicare. We must first determine the criteria the Medicare program will use to evaluate which clinical trials are eligible for coverage and which costs will be covered. This has not been an easy task.

We have also been reviewing the proposal to require private health plans and insurers to cover routine costs associated with standard patient care while participating in a clinical trial. The Senate Health and Education Committee, on which I serve, had an informative debate last month on the issue of clinical trials coverage during our consideration of S. 326, “The Patients’ Bill of Rights.” The amendment we were considering went beyond the Medicare demonstration project by requiring private sector health plans to cover costs associated with clinical trials for patients with any life-threatening or serious illness. Several members of our committee, including myself, expressed concern that before mandating such broad requirements on the private sector, we should first determine what costs would be incurred. In a time of rising health care costs, we must be cautious in our efforts to provide patient protections that do not drive up costs further or we will not be serving patients well.

Therefore, I offered an amendment to have a comprehensive study conducted by the Institute of Medicine to assess patient access to clinical trials and the coverage of routine patient care costs by private health plans and insurers. Our efforts should not end there. That is just the beginning. I am encouraged by recent collaborative efforts between the National Institutes of Health and the American Association of Health Plans to increase participation of patients in clinical trials and to encourage health plans to cover routine patient costs. We need to monitor this effort closely and explore other ways to promote public-private collaboration and to gather the necessary data that will reveal the true impact on health care costs. I will continue to pursue this effort in a systematic way with my colleagues.

We must not wait any longer to launch the Medicare demonstration project that our bill today addresses. The longer we wait, the longer patients are denied access to potentially life-saving therapies and the longer it will take for new therapies to become standard therapy. And we must continue to address the issue of clinical trial coverage by the private sector to bring about patients’ access to new clinical therapies while being mindful of the costs we are imposing. Patients and their families deserve that we give thoughtful consideration to both of these legislative proposals this year.

By Ms. MIKULSKI (for herself,
Ms. SNOWE, Mr. SARBANES, Ms.
COLLINS, and Mr. LOTT):

S. 786. A bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies

during the first 15 days of such month, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY FAMILY PROTECTION ACT

Ms. MIKULSKI. Mr. President, today, I rise to talk about an issue that is very important to me, very important to my constituents in Maryland and very important to the people of the United States of America.

For the third Congress in a row, I am joining in a bipartisan effort with my friend and colleague, Senator OLYMPIA SNOWE, to end an unfair policy of the Social Security System.

Senator SNOWE and I are introducing the Social Security Family Protection Act. This bill addresses retirement security and family security. We want the middle class of this Nation to know that we are going to give help to those who practice self-help.

What is it I am talking about? We have found that Social Security does not pay benefits for the last month of life. If a Social Security retiree dies on the 18th of the month or even on the 30th of the month, the surviving spouse or family members must send back the Social Security check for that month.

I think that is a harsh and heartless rule. That individual worked for Social Security benefits, earned those benefits, and paid into the Social Security trust fund. The system should allow the surviving spouse or the estate of the family to use that Social Security check for the last month of life.

This legislation has an urgency, Mr. President. When a loved one dies, there are expenses that the family must take care of. People have called my office in tears. Very often it is a son or a daughter that is grieving the death of a parent. They are clearing up the paperwork for their mom or dad, and there is the Social Security check. And they say, "Senator, the check says for the month of May. Mom died on May 28. Why do we have to send the Social Security check back? We have bills to pay. We have utility coverage that we need to wrap up, mom's rent, or her mortgage, or health expenses. Why is Social Security telling me, 'Send the check back or we're going to come and get you?'"

With all the problems in our country today, we ought to be going after drug dealers and tax dodgers, not honest people who have paid into Social Security, and not the surviving spouse or the family who have been left with the bills for the last month of their loved one's life. They are absolutely right when they call me and say that Social Security was supposed to be there for them.

That is what our bill is going to do. That is why Senator SNOWE and I are introducing the Family Social Security Protection Act. When we talk about retirement security, the most important part of that is income security. And the safety net for most Americans is Social Security.

We know that as Senators we have to make sure that Social Security remains solvent, and we are working to do that. We also don't want to create an undue administrative burden at the Social Security Administration—a burden that might affect today's retirees. But it is absolutely crucial that we provide a Social Security check for the last month of life.

How do we propose to do that? We have a very simple, straightforward way of dealing with this problem. Our legislation says that if you die before the 15th of the month, you will get a check for half the month. If you die after the 15th of the month, your surviving spouse or the family estate would get a check for the full month.

We think this bill is fundamentally fair. Senator SNOWE and I are old-fashioned in our belief in family values. We believe you honor your father and your mother. We believe that it is not only a good religious and moral principle, but it is good public policy as well.

The way to honor your father and mother is to have a strong Social Security System and to make sure the system is fair in every way. That means fair for the retiree and fair for the spouse and family. That is why we support making sure that the surviving spouse or family can keep the Social Security check for the last month of life.

Mr. President, we urge our colleagues to join us in this effort and support the Social Security Family Protection Act.

By Mr. BURNS (for himself, Mr. ENZI and Mr. CRAIG):

S. 788. A bill to amend the Federal Meat Inspection Act to provide that a quality grade label issued by the Secretary of Agriculture may not be used for imported meat and meat food products; to the Committee on Agriculture, Nutrition, and Forestry.

USDA GRADE RESCISSION ACT OF 1999

Mr. BURNS. Mr. President, I rise today to sponsor a bill on an issue of great importance to my state and the agricultural industry. The issue is that of rescinding the USDA Grade Stamp on foreign meat products coming into America from other countries and unfairly receiving the USDA Grade Stamp.

This language offered today will insure that all meat products imported from a foreign country will not be graded USDA. For years other countries have used the USDA Grade Stamp to their advantage. Particularly, Canada and Mexico ship livestock into the United States and reap the benefits of the premium given for USDA Prime, USDA Choice or USDA Select.

USDA Prime and USDA Choice grades are given a premium price. Competition from foreign countries effectively prevents that same number of American livestock producers from re-

ceiving a premium. USDA should mean just that the meat was raised and slaughtered in the United States, and given the stamp by the United States Department of Agriculture.

Currently, boxed beef is not eligible to receive the USDA Grade Stamp. However, agricultural producers across the border ship livestock to the United States and feed them for a short period of time in order to bypass that restriction. The animals are then slaughtered here as United States product. This is not only unfair, it is a betrayal of trust. It is one that we will no longer tolerate. My bill provides for a 90 day feeding period to prevent this from happening, yet maintain the profits light-weight cattle from foreign countries bring to American feeders.

The huge influx of imports from both Canada and Mexico that American agricultural producers are currently faced with has provided an added hardship to the agricultural economy. Additionally, when consumers see the USDA Grade Stamp on a meat product they are under the assumption they are buying U.S. made product. In fact, this is usually not the case. Even though carcasses are required to have a "foreign origin marking", it is trimmed off for marketing purposes.

Essentially, this bill will protect both the American producer and the American consumer. The USDA Grade Stamp on foreign product is a detriment to both. It is a detriment to the producer because foreign countries get the benefit of the grade stamp, without having to pay for it. America's producers need the assurance that the USDA label really means just that—produced in the U.S. It is a detriment to the consumer because they deserve to know that they are buying American. I've said it before and I'll say it again. U.S. consumers deserve to know that they are buying absolutely the safest food supply in the world, which is grown by American farmers and ranchers. With this in mind we then should be informing the American consumer that they really are purchasing American product.

I am proud and very pleased to serve as sponsor of this bill and I look forward to moving it through the legislative process so we may give our consumers and producers the information and advantage of knowing their meat was produced in the USA.

By Mr. McCAIN:

S. 789. A bill to amend title 10, United States Code, to authorize payment of special compensation to certain severely disabled uniformed services retirees; to the Committee on Armed Services.

LEGISLATION TO AUTHORIZE SPECIAL PAY FOR SEVERELY DISABLED RETIRED VETERANS

Mr. McCAIN. Mr. President, I am introducing legislation today to authorize special compensation for severely

disabled military retirees who suffer under an existing law regarding "concurrent receipt." As many of my colleagues know, current law requires military retirees who are rated as disabled to offset their military retired pay by the amount they receive in veterans' disability compensation. This requirement is discriminatory and wrong.

Today, America's disabled military retirees—those individuals who dedicated their careers to military service, and who suffered disabling injuries in the course of that service—cannot receive concurrently their military retirement pay, which they have earned through at least 20 years of service in the Armed Forces, and their veterans' disability compensation, which they are owed due to pain and suffering incurred from military service. In other words, the law penalizes the very men and women who have sacrificed their physical or psychological well-being in uniformed service to their country.

The legislation I am introducing today does not provide for full payment to eligible veterans of both the disability compensation and the retired pay they have earned. I regret that such a proposal, which I support in principle, would be far more expensive than many of my colleagues could accept. I learned that lesson the hard way in the course of sponsoring more ambitious concurrent receipt proposals in previous Congresses.

My current legislation would instead authorize special compensation for the most severely disabled retired veterans—those who have served for at least 20 years, and who have disability ratings of between 70 and 100 percent. More specifically, it would authorize monthly payments of \$300 for totally disabled retired veterans; \$200 for retirees rated as 90 percent disabled; and \$100 for retirees with disability ratings of 70–80 percent.

These men and women suffer from disabilities that have kept them from pursuing second careers. If we cannot muster the votes to provide them with their disability pay and retired pay concurrently, the least we can do is authorize a modest special compensation package to demonstrate that we have not forgotten their sacrifices. At \$42 million per year, this legislation comes nowhere near approaching the price tag of more expensive concurrent receipt proposals. Moreover, it involves only discretionary, not mandatory, spending.

In short, it is affordable. And it is the right thing to do. But don't take my word for it. The Military Coalition, an organization of 30 prominent veterans' and retirees' advocacy groups, supports my legislation, as do many other veterans' service organizations, including the American Legion and Disabled American Veterans. These highly respected organizations recognize, as I

do, that severely disabled military retirees deserve, at a minimum, special compensation for the honorable service they have rendered the United States.

My interest in actively resolving the concurrent receipt issue dates to 1993, when I included a provision in the Fiscal Year 1994 Defense Authorization bill directing the Department of Defense (DoD) to submit a concurrent receipt legislative proposal to the House and Senate Armed Services Committees. When that deadline was not met, I took the opportunity at a Senate Armed Services Personnel Subcommittee hearing to ask the then-Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy about the status of the concurrent receipt report. Although he replied that Congress would receive it in June 1993, the report arrived seven months late. Clearly, the concurrent receipt issue was not then a DoD priority, nor is it today.

I also worked with the Armed Services Committee to include legislation in the FY 1994 Defense Authorization bill to exempt military retirees who are rated as 100 percent disabled from the requirement to offset their military pay by the amount they receive in veterans' disability pay. Although I had assumed that no one could deny a military retiree with 100 percent disability from receiving both his retirement and his disability pay, my legislation was never enacted into law.

Undeterred, in 1994 I introduced legislation, which was included in the Senate version of the Defense Appropriations bill for FY 1995, directing the Secretary of Defense to authorize the concurrent payment of military retired pay and veterans' disability compensation. Although my amendment had 16 cosponsors and received bipartisan support in the Senate, it was regrettably reduced to just a study by the House of Representatives during conference negotiations on the bill.

This amendment was heralded by more than 30 separate veterans' associations as a means of redressing the unjust offset of retirement pay with disability compensation. It provided for concurrent payment of retirement and disability compensation if the following criteria were met:

- (1) the veteran had completed 20 years of military service;
- (2) the disability was incurred or aggravated in the performance of duty in military service; and
- (3) the disability was rated as 100 percent at the time of retirement or within four years of the veteran's retirement date.

I introduced these concurrent receipt amendments because the existing requirement that military retired pay be offset dollar-for-dollar by veterans' disability compensation is inequitable. I firmly believe that non-disability military retired pay is post-service com-

ensation for services rendered in the United States military. Veterans' disability pay, on the other hand, is compensation for a physical or mental disability incurred from the performance of such service. In my view, the two pays are for very different purposes: one for service rendered and the other for physical or mental "pain and suffering." This is an important distinction evident to any military retiree currently forced to offset his retirement pay with disability compensation.

Concurrent receipt is, at its core, a fairness issue, and present law simply discriminates against career military people. Retired veterans are the only group of federal retirees who are required to waive their retirement pay in order to receive VA disability. This inequity needs to be corrected.

In the 105th Congress, I was proud to have co-sponsored S. 657, a bill sponsored by Senator DASCHLE that would eliminate the offset on a graduated scale based on the inverse of the retiree's disability rating. For instance, a veteran who is 90 percent disabled would have to offset his retirement pay by an amount equal to 10 percent of his total VA disability. This compromise would establish the right of a disabled military retiree to receive at least a portion of his earned military retirement. Unfortunately, the full Congress did not act on this legislation before adjourning in October 1998.

In the past, Congressional attempts to rectify discrimination against disabled career service members have been accompanied by staggering cost estimates, dooming to failure again and again proposed remedies to the concurrent receipt dilemma. The concurrent receipt legislation I supported in the 105th Congress reflected an attempt to ease the offset burden on retired disabled service members while avoiding significant deficit expansion. My current legislation in the 106th Congress is even more conscious of the costs associated with properly compensating disabled military retirees.

Unfortunately, cost concerns must remain a consideration as we seek to promote a system of concurrent receipt that is both equitable and consistent with our balanced budget objective. While I would prefer to implement a system aimed first and foremost at severely disabled veterans, as my earlier legislation proposed, I believe S. 657 represented a step in the right direction and was worthy of Congress' support. Similarly, I believe the special compensation authorized by my current legislation makes progress by targeting the most severely disabled veterans, even if it does not revoke the discriminatory concurrent receipt restrictions that remain in place today.

I continue to hope that the Pentagon, once it finally understands our

message that it cannot continue to unfairly penalize disabled military retirees, will provide Congress with a fair and equitable plan to properly compensate retired service members with disabilities. It is hard to disagree with the simple logic that disabled veterans both need and deserve our full support after the untold sacrifices they made in defense of this country.

I look forward to the day when our disabled retirees are no longer unduly penalized by existing limitations on concurrent receipt of the benefits they deserve. In the meantime, I urge my colleagues to support this legislation.

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. 789

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

SECTION 1. SPECIAL COMPENSATION FOR SEVERELY DISABLED UNIFORMED SERVICES RETIREES.

(a) AUTHORITY.—(1) Chapter 71 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1413. Special compensation for certain severely disabled uniformed services retirees

“(a) AUTHORITY.—The Secretary concerned shall, subject to the availability of appropriations for such purpose, pay to each eligible disabled uniformed services retiree a monthly amount determined under subsection (b).

“(b) AMOUNT.—The amount to be paid to an eligible disabled uniformed services retiree in accordance with subsection (a) is the following:

“(1) For any month for which the retiree has a qualifying service-connected disability rated as total, \$300.

“(2) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, \$200.

“(3) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent or 70 percent, \$100.

“(c) ELIGIBLE MEMBERS.—An eligible disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services in a retired status (other than a member who is retired under chapter 61 of this title) who—

“(1) completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled; and

“(2) has a qualifying service-connected disability.

“(d) QUALIFYING SERVICE-CONNECTED DISABILITY DEFINED.—In this section, the term ‘qualifying service-connected disability’ means a service-connected disability that—

“(1) was incurred or aggravated in the performance of duty as a member of a uniformed service, as determined by the Secretary concerned; and

“(2) is rated as not less than 70 percent disabling—

“(A) by the Secretary concerned as of the date on which the member is retired from the uniformed services; or

“(B) by the Secretary of Veterans Affairs within four years following the date on

which the member is retired from the uniformed services.

“(e) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

“(f) SOURCE OF FUNDS.—Payments under this section for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

“(g) OTHER DEFINITIONS.—In this section:

“(1) The term ‘service-connected’ has the meaning give that term in section 101 of title 38.

“(2) The term ‘disability rated as total’ means—

“(A) a disability that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

“(B) a disability for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

“(3) The term ‘retired pay’ includes retainer pay, emergency officers’ retirement pay, and naval pension.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1413. Special compensation for certain severely disabled uniformed services retirees.”.

(b) EFFECTIVE DATE.—Section 1413 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1999, and shall apply to months that begin on or after that date. No benefit may be paid to any person by reason of that section for any period before that date.

By Mr. LAUTENBERG:

S. 790. A bill to amend the Federal Food, Drug, and Cosmetic Act to require manufacturers of bottled water to submit annual reports, and for other purposes; to the Committee on Environment and Public Works.

THE BOTTLED WATER SAFETY AND RIGHT-TO-KNOW ACT OF 1999

Mr. LAUTENBERG. Mr. President, I am introducing today the Bottled Water Safety and Right-to-Know Act of 1999. This legislation is designed to ensure that bottled water safety standards protect public health, and to give consumers the right to know about contaminants in their bottled water.

Mr. President, I have been interested in bottled water for several years. Bottled water consumption has doubled in the U.S. since 1987, largely due to the public perception that bottled water is cleaner and safer than tap water. This is especially true in my state, where we hear so often about contamination of tap water. Unfortunately, bottled water today does not have to meet all the same safety standards met by tap water. Nor do consumers have the right to know about the contaminants found in bottled water. Let me discuss each of these issues in more detail.

There is an important disparity between contaminant standards for bottled water and those for tap water. Bottled water is regulated as a food by the Food and Drug Administration (FDA) under the Food, Drug, and Cos-

metic Act, while tap water is regulated by the Environmental Protection Agency (EPA). Unfortunately, several contaminants are regulated less stringently in bottled water by the FDA than in tap water by the EPA. In particular, the FDA has no standard for phthalate, a probable human carcinogen which leaches out of some plastic bottles, no ban on fecal coliform of E. Coli, and weaker standards for several other contaminants. In addition, the infrastructure guaranteeing the safety of bottled water is far weaker than the regulatory programs the EPA and its state and local partners have established for tap water.

There is, in addition, a disparity in the transparency of information about the two types of water. Public water systems have long been required to monitor contaminant levels and allow no more than a maximum amount of contamination in their water. Facing only these regulatory requirements, however, water companies had little incentive to provide more than the minimum-required level of drinking water protection. The Safe Drinking Water Act Amendments of 1996 changed that by adding consumer Right-to-Know requirements to the existing regulatory programs. The purpose of the Right to Know requirements is to increase public understanding of drinking water threats, foster public demand for prevention of those threats, and thereby lead water companies and state and local agencies to go beyond the minimum requirements in preventing the threats.

Unfortunately, no equivalent Right to Know exists for bottled water. Customers have no way to know whether the bottled product—hundreds of times more expensive than what comes out of the tap—is the safer, cleaner product. In other words, Mr. President, bottled water is the snake oil of the 1990’s—it is sold as a cleaner product purely on the basis of claims and perception, not facts.

The Bottled Water Safety and Right-to-Know Act of 1999 would correct these deficiencies, establishing contaminant standards and Right-to-Know requirements for bottled water at least as stringent as those placed on tap water.

First, the bill would give the FDA two years to make all standards for contaminants in bottled water as protective of public health as the tap water standards established by the EPA, the State of California, the World Health Organization, and the European Union. If the FDA failed to implement this requirement, the bill would transfer regulatory authority over bottled water to the EPA.

Second, the bill would require that bottled water companies list, on their products’ labels, the concentration of any regulated contaminant found at levels high enough to cause adverse

health effects, and of any other contaminants whose presence in tap water would be disclosed to the public under federal law. Bottled water without contamination would require no such contaminant labelling. In addition, labels would name the source of the water, the type of treatment applied, and whether the treatment meets the EPA's criteria of full protection of immuno-compromised individuals from *Cryptosporidium* and other microbial pathogens.

Finally, the bill would require bottled water companies to send the FDA information on the contaminants in the water, the source of the water, and type of treatment applied. The FDA would then make the reported information, information on the recent inspection and enforcement history of the relevant bottled water facilities, and other background information available to the public through the Internet and in paper form through a 1-800 number, both of which would be printed on bottle labels.

Mr. President, bottled water consumers have the right to bottled water that is as safe as tap water, and they have the right to know about the contaminants in their bottled water.

I urge my colleagues to co-sponsor this legislation, and ask unanimous consent that the bill be printed in the RECORD.

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

S. 790

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bottled Water Safety and Right to Know Act of 1999".

SEC. 2. CONSUMER CONFIDENCE REPORTS.

Section 410 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 349) is amended—

(1) in subsection (b), by adding at the end the following:

"(5) The Secretary shall—

"(A) not later than 6 months after the date of enactment of this paragraph identify contaminants for which—

"(i) the Administrator has established a national primary drinking water regulation under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g-1) and the Secretary has not established a standard of quality regulation for such contaminant or has established a standard of quality regulation or monitoring requirement that may be less protective of public health than the national primary drinking water regulation; or

"(ii) the Secretary has established a standard of quality regulation for such contaminant that may be less protective of public health than the standard for such a contaminant issued by the World Health Organization, the European Union, or the State of California; and

"(B) not later than 12 months after that date of enactment, propose an interim standard of quality regulation, for each contaminant identified under subparagraph (A), that contains a standard or monitoring requirement that is at least as protective of public health as the more protective of—

"(i) the national primary drinking water regulation described in subparagraph (A); or

"(ii) a standard issued by the World Health Organization, European Union, or the State of California; and

"(C) not later than 24 months after that date of enactment, issue a final regulation of the standard described in subparagraph (B), for each identified contaminant.

"(6) The Secretary is authorized to award grants to the States for the enforcement of the regulations described in paragraph (5).

"(7)(A) Not later than 24 months after the date of enactment of this paragraph, the Secretary shall publish final regulations as described in paragraph (5) in the Federal Register.

"(B) If the Secretary fails to publish the regulations described in subparagraph (A), then—

"(i) all functions that the Secretary of Health and Human Services exercised before the effective date of this subparagraph (including all related functions of any officer or employee of the Department of Health and Human Services) relating to inspections and enforcement concerning bottled water shall be transferred to the Environmental Protection Agency;

"(ii) all references to the Secretary in paragraph (5), notwithstanding the references in clause (i) and (ii) of subparagraph (A), and all references in paragraph (6) and subsections (c), (d), and (e) shall instead be to the Administrator;

"(iii) except as otherwise provided in this subparagraph, the assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred under clause (i), subject to section 1531 of title 31, United States Code, shall be transferred to the Environmental Protection Agency, and unexpended funds transferred pursuant to this subparagraph shall be used only for the purposes for which the funds were originally authorized and appropriated;

"(iv) all orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

"(I) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official of a Federal agency, or by a court of competent jurisdiction, in the performance of functions that are transferred under this subparagraph; and

"(II) that were in effect before the effective date of this subparagraph, or were final before the effective date of this subparagraph and are to become effective on or after the effective date of this subparagraph;

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator or other authorized official, a court of competent jurisdiction, or by operation of law;

"(v) this subparagraph shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Secretary on the effective date of this subparagraph, with respect to functions transferred by this subparagraph;

"(vi) such proceedings and applications described in clause (v) shall be continued and

orders shall be issued in such proceedings and appeals taken from the orders, and payments shall be made pursuant to the orders, as if this subparagraph had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, set aside, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law;

"(vii) nothing in this subparagraph shall be construed to prohibit the discontinuance or modification of any such proceeding described in clause (v) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subparagraph had not been enacted;

"(viii) this subparagraph shall not affect suits commenced before the effective date of this subparagraph, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subparagraph had not been enacted;

"(ix) no suit, action, or other proceeding commenced by or against the Secretary, or by or against any individual in the official capacity of such individual as an officer of the Secretary, shall abate by reason of the enactment of this subparagraph;

"(x) any administrative action relating to the preparation or promulgation of a regulation by the Secretary relating to a function transferred under this subparagraph may be continued by the Administrator with the same effect as if this subparagraph had not been enacted; and

"(xi) a reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

"(I) the Secretary with regard to functions transferred under this subparagraph, shall be deemed to refer to the Administrator; and

"(II) the Department of Health and Human Services with regard to functions transferred under this subparagraph, shall be deemed to refer to the Environmental Protection Agency.

"(C) As used in subparagraph (B), the term 'Federal agency' has the meaning given the term 'agency' by section 551(1) of title 5, United States Code.";

(2) by adding at the end the following:

"(c)(1) Not later than 18 months after the date of enactment of this subsection, the Secretary shall issue regulations that require each manufacturer of bottled water to submit reports and display information as required under paragraph (2).

"(2) The regulations issued under paragraph (1) shall require that each manufacturer of bottled water shall—

"(A) not later than 36 months after the date of enactment of this subsection and annually thereafter, prepare and submit in electronic form, on a form provided by the Secretary, an annual report to the Secretary that describes, at a minimum—

"(i) the source of the water purveyed;

"(ii) the type of treatment to which the water has been subjected and whether such treatment meets the Secretary's criteria for full protection of immuno-compromised individuals from *cryptosporidium* and other microbial pathogens;

"(iii) the amount and range of any regulated contaminant detected in the water during the reporting year, the maximum contaminant level goal for the contaminant, if any, and whether the goal was exceeded during the reporting year; and

“(iv) the amount and range of any unregulated contaminant detected in the water during the reporting year that is subject to unregulated contaminant monitoring or notification requirements under sections 1445 or 1414, respectively, of the Safe Drinking Water Act (42 U.S.C. 300j-4; 300g-3), or that the Secretary determines may present a threat to public health; and

“(B) for the second and each subsequent reporting year, display on the labels of the bottled water—

“(i) if the maximum contaminant level goal or lowest health advisory level under the Safe Drinking Water Act (whichever is lower) for a regulated contaminant is exceeded during the preceding reporting year—

“(I) the amount and range of the regulated contaminant in the bottled water;

“(II) the maximum contaminant level goal for the contaminant; and

“(III) a plain definition of ‘maximum contaminant level goal’ as determined by the Administrator;

“(ii) the amount and range of any unregulated contaminant detected in the water during the preceding reporting year that is subject to unregulated contaminant monitoring or notification requirements under sections 1445 or 1414, respectively, of the Safe Drinking Water Act (42 U.S.C. 300j-4; 300g-3) or that the Secretary has determined may present a threat to public health;

“(iii) the source of the water;

“(iv) the type of treatment, if any, to which the water has been subjected and whether such treatment meets the Secretary’s criteria for full protection of immuno-compromised individuals for cryptosporidium and other microbial pathogens;

“(v) the address for the Internet website described in paragraph (3)(A); and

“(vi) the toll-free telephone number described in paragraph (3)(B).

“(3) Not later than 6 months after the date on which an annual report referred to in paragraph (2) is submitted to the Secretary, the Secretary shall make the report available to the public—

“(A) on an Internet website maintained by the Secretary; and

“(B) in paper form, in English, Spanish, and in any other language determined to be appropriate by the Secretary, upon request made through use of a toll-free telephone number maintained by the Secretary.

“(4) In addition to submitting an annual report under paragraph (2), the manufacturer may also submit a supplement to the Secretary that contains additional information that the manufacturer determines to be appropriate for public education. The Secretary may make the supplement available to the public in the same manner as the annual report is made available to the public under paragraph (3).

“(5) In the same manner as the annual report is made available to the public under paragraph (3), the Secretary shall make the following information available to the public:

“(A) The definitions of the terms ‘maximum contaminant level goal’ and ‘maximum contaminant level’.

“(B) For any regulated contaminant described in paragraph (2)(A), a statement setting forth—

“(i) the maximum contaminant level goal;

“(ii) the maximum contaminant level; and

“(iii) if a violation of the maximum contaminant level has occurred during the reporting year, the potential health concerns associated with such a violation.

“(C) For any unregulated contaminant described in paragraph (2)(A), a statement describing the health advisory or explaining the reasons for determination by the Secretary that the contaminant may present a threat to public health.

“(D) A statement explaining that the presence of contaminants in bottled drinking water does not necessarily create a health risk.

“(E) The date of the last Federal and State inspections of the bottled water facilities relating to the safety of the water.

“(F) A statement describing any violations discovered at the facilities during the inspections described in subparagraph (E) and any enforcement actions that were taken as a consequence of the violations.

“(G) The date of recall of any bottled water and the reasons for the recall.

“(d) Every manufacturer of bottled water who is subject to any requirement of this section shall maintain such records, make such reports, conduct such monitoring, and provide such information as the Secretary may reasonably require by regulation in order to assist the Secretary in establishing regulations under this section, in determining whether the manufacturer has acted or is acting in compliance with this section, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks.

“(e) Not later than 12 months after the date of enactment of this subsection, and annually thereafter, the Secretary shall make available to the public, in the same manner as the annual report is made available under subsection (c)(3), information regarding violations of bottled water regulations relating to inspections, and any enforcement actions taken in regards to such violations. The Secretary shall establish and administer a grant program to fund the gathering of such information.

“(f) In this section:

“(1) The term ‘bottled water’ means all water sold in the United States that—

“(A) is intended for human consumption;

“(B) is sealed in bottles or other containers; and

“(C) may be still or carbonated, but has no sweeteners or juices added to the water, except for trace levels of flavorings.

“(2) The term ‘contaminant’ means any physical, chemical, biological, or radiological substance or matter in water.

“(3) The term ‘maximum contaminant level’ has the meaning given the term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f).

“(4) The term ‘maximum contaminant level goal’ means a goal established by the Administrator under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g-1).

“(5) The term ‘regulated contaminant’ means a contaminant that is regulated under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g-1).

“(6) The term ‘unregulated contaminant’ means a contaminant that is not regulated under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g-1).”.

SEC. 3. PROHIBITED ACTS.

Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

“(aa) The failure by a manufacturer of bottled water to submit an annual report or display the required information on labels of bottled water in accordance with section 410(c).”.

By Mr. SHELBY (for himself and Mr. SESSIONS):

S.J. Res. 18. A joint resolution honoring World War II crewmembers of the USS *Alabama* on the occasion of the 1999 annual reunion of the USS *Alabama* Crewmen’s Association; to the Committee on Veterans’ Affairs.

JOINT RESOLUTION FOR THE SAILORS OF THE BATTLESHIP USS ALABAMA

Mr. SHELBY. Mr. President, I rise today to honor a number of American heroes. During World War Two, over 6,300 sailors and Marines were members of the crew of the Battleship USS *Alabama*. The ship and crew were instrumental in the defeat of both Germany and Japan. The crew was credited with the downing of 22 enemy aircraft and was awarded numerous citations and medals including the European-African-Middle Eastern Medal and the Asiatic-Pacific Campaign Medal with nine battle stars.

This week, the USS *Alabama* Crewman’s Association is holding its annual reunion at Battleship Memorial Park in Mobile, Alabama. I ask the Senate to pass this Joint Resolution which commends and recognizes the gallant crewmen of the USS *Alabama*. To those men I say congratulations and thank you for a job well done.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 18

Whereas the members of the crew of the battleship U.S.S. Alabama (BB-60) during World War II were a courageous group who braved both Arctic chill and Pacific heat to help defend our great country against enemy oppression;

Whereas the U.S.S. Alabama crewed by those men was awarded nine battle stars and shot down 22 enemy aircraft; and

Whereas the U.S.S. Alabama Crewmen’s Association is holding its annual reunion on April 15 to 18, 1999: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMMENDATION AND RECOGNITION OF CREWMEN OF THE U.S.S. ALABAMA.

The United States honors the 6,300 persons who were members of the U.S.S. Alabama’s crew during World War II, commends and thanks them for their sacrifice and service in the defense of the United States, and recognizes those among them who are assembling April 15 to 18, 1999, as the U.S.S. Alabama Crewmen’s Association on the occasion of the association’s 1999 annual reunion.

ADDITIONAL COSPONSORS

S. 51

At the request of Mr. BIDEN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Oregon (Mr. WYDEN), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 51, a bill to reauthorize the Federal programs to