At the request of Mr. Sessions, the name of the Senator from Arkansas (Mr. Hutchinson) was added as a cosponsor of S. 567, a bill to amend the Internal Revenue Code of 1986 to provide capital gain treatment under section 631(b) of such Code for outright sales of timber by landowners.

S. 599

At the request of Mr. Roberts, the name of the Senator from Illinois (Mr. Fitzgerald) was added as a cosponsor of S. 599, a bill to amend the Omnibus Trade and Competitiveness Act of 1988 to establish permanent trade negotiating authority.

S. 611

At the request of Ms. Mikulski, the name of the Senator from New Jersey (Mr. Torricelli) was added as a cosponsor of S. 611, a bill to amend title II of the Social Security Act to provide that the reduction in social security benefits which are required in the case of spouses and surviving spouses who are also receiving joint Social Security pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 619

At the request of Mrs. Lincoln, her name was added as a cosponsor of S. 619, a bill to establish a grant program that provides incentives for States to enact mandatory minimum sentences for certain firearms offenses, and for other purposes.

S. CON. RES. 14

At the request of Mr. Campbell, the name of the Senator from Michigan (Ms. Stabenow), was added as a cosponsor of S. Con. Res. 14, a concurrent resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of it.

S. J. RES. 10

At the request of Mr. Kennedy, the name of the Senator from Iowa (Mr. Harkin), the Senator from Michigan (Ms. Stabenow), and the Senator from Minnesota (Mr. Wellstone) were added as cosponsors of S. J. Res. 10, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. RES. 44

At the request of Mr. Cochran, the names of the Senator from Idaho (Mr. Craig), the Senator from Alaska (Mr. Murkowski), and the Senator from Massachusetts (Mr. Kennedy) were added as cosponsors of S. Res. 44, a resolution designating each of March 2001, and March 2002, as "Arts Education Month".

S. RES. 63

At the request of Mr. Campbell, the name of the Senator from Vermont (Mr. Jeffords) was added as a cosponsor of S. Res. 63, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

Amendment No. 15

At the request of Mr. Domenici, the name of the Senator from Kentucky (Mr. Bunning) was added as a cosponsor of amendment No. 15 proposed to S. 27, a bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Statements on Introduced Bills and Joint Resolutions

By Mr. Durbin (for himself, Mr. Brownback, Mr. Graham, and Mr. Bingaman), S. 622. A bill to amend titles V, XVIII, and XIX of the Social Security Act to promote tobacco cessation under the medicare program, the medicaid program, and maternal and child health services block grant program; to the Committee on Finance.

Mr. Durbin. Mr. President, I rise today to introduce legislation that expands treatment to millions of Americans suffering from a deadly addiction: tobacco. I am pleased to have Senators Brownback, Bingaman, and Graham of Florida join me in this effort. The Medicare, Medicaid and MCH Smoking Cessation Promotion Act of 2001 will help make smoking cessation therapy accessible to recipients of Medicare, Medicaid, and the Maternal and Child Health, MCH, Program.

We have long known that cigarette smoking is the largest preventable cause of death, accounting for 29 percent of U.S. deaths in 1997. It is well documented that smoking causes virtually all cases of lung cancer and a substantial portion of coronary heart disease, peripheral vascular disease, chronic obstructive lung disease, and cancers of other sites. And the harmful effects of smoking do not end with the smoker. Women who use tobacco during pregnancy are more likely to have adverse birth outcomes, including babies with low birth weight, which is linked with an increased risk of infant death and a variety of infant health disorders.

Still, despite enormous health risks, 48 million adults in the United States smoke cigarettes, approximately 22.7 percent of American adults. The rates are higher for our youth, 36.4 percent of all high school seniors report daily smoking. In Illinois, the adult smoking rate is about 24.2 percent. Perhaps most distressing and surprising, data indicate that about 13 percent of mothers in the United States smoke during pregnancy.

Today, the Surgeon General released a new report that documents the health effects for women who smoke. Women now represent 39 percent of all smoking related deaths in the United States each year, more than double the percent in 1965.

More than 21 percent of women in my state of Illinois smoke. Lung cancer is the leading cancer killer among women surpassing breast cancer in 1987, and smoking causes 87 percent of lung cancer cases. In fact, lung cancer death rates among women increased by more than 400 percent between 1960 and 1990. And smoking among girls is on the rise as well. From 1991 to 1998, smoking among high school girls increased from 27 to 34.9 percent.

There is no doubt that smoking rates among women and girls are linked to targeted tobacco advertising. The Centers for Disease Control and Prevention's National Health Interview Survey showed an abrupt increase in smoking initiation among girls around 1967, about the same time that Philip Morris and other tobacco companies launched advertisements for brands specifically targeted at men and girls. Six years after the introduction of Virginia Slims and other such brands, the rate of smoking initiation of 12-year-old girls increased by 110 percent.

The report released today echoes this concern, highlighting the targeting of women in tobacco marketing. Between 1995 and 1998, expenditures in the United States for cigarette advertising and promotion increased from $4.90 billion to $6.73 billion. In 1999, these promotional expenditures leaped another 22 percent, to a new high of $8.24 billion.

As a result, we are not only paying a heavy health toll, but an economic price as well. The total cost of smoking in 1993 in the U.S. was about $102 billion, with over $50 billion in health care expenditures directly linked to smoking. The Centers for Disease Control and Prevention, CDC, reports that approximately 43 percent of these costs were paid by government funds, primarily Medicaid and Medicare. Smoking costs Medicaid alone more than $12.9 billion per year. According to the American Lung Association, my state of Illinois spends $2.9 billion each year in public and private funds to combat smoking-related diseases.

Today, however, we also know how to help smokers quit. Advancements in treating tobacco use and nicotine addiction have helped millions kick the habit. While more than 40 million adults continue to smoke, nearly as many persons are former smokers living longer, healthier lives. In large part, this is because new tools are available. Effective pharmacotherapy and counseling regimens have been tested and proven effective. The Surgeon General's 2000 report, Reducing Tobacco Use, concluded that 'pharmacologic treatment of nicotine addiction, combined with behavioral support, will enable 10 to 25 percent of
It is estimated that Medicare will pay $800 billion to treat tobacco-related diseases over the next twenty years. In a study of adults 65 years of age or older who received advice to quit, behavioral and pharmacotherapy, 24.8 percent reported having stopped smoking six months following the intervention. The total economic benefits of quitting after age 65 are notable. Due to a reduction in the risk of lung cancer, coronary heart disease and emphysema, studies have found that heavy smokers over age 65 who quit can avoid up to $4,592 in lifelong illness-related costs.

Second, our measure provides coverage for both prescription and nonprescription smoking cessation drugs in the Medicaid program. The bill eliminates the provision in current federal law that allows states to exclude FDA-approved smoking cessation therapies from coverage under Medicaid. It is estimated that pregnant women and purchasers to include counseling on the potentially harmful effects of tobacco use paid for a moderately priced effective smoking cessation intervention in just three to four years.

The health benefits tobacco quitters enjoy are undisputed. They live longer. After five years, the number of people in the United States who continue to smoke is half that of those who have never smoked. Male smokers who quit between the ages of 35 and 39 add an average of five years to their lives; women can add three years. Even older Americans over age 65 can extend their life expectancy by giving up cigarettes.

Former smokers are also healthier. They are less likely to die of chronic lung diseases. After ten smoke-free years, their risk of lung cancer drops to as much as one-half that of those who continue to smoke. After five to fifteen years the risk of stroke and heart disease for ex-smokers returns to the level of those who have never smoked. They have fewer days of illness, reduced rates of bronchitis and pneumonia, and fewer health complaints.

New Public Health Service Guidelines released last summer conclude that tobacco dependence treatments are both effective and cost effective relative to other medical and disease prevention interventions. The guidelines urge health care insurers and purchasers to include counseling and FDA-approved pharmacotherapeutic treatments as a covered benefit.

Unfortunately, the federal government, a major purchaser of health care through Medicare and Medicaid, does not currently adhere to its own published guidelines. It is high time that government-sponsored health programs catch up with science. That is why we are introducing legislation to improve smoking cessation benefits in government-sponsored health programs.

The Medicare, Medicaid and MCH Smoking Cessation Promotion Act of 2000 improves access to and coverage of smoking cessation treatment therapies in four primary ways.

First, our bill adds a smoking cessation counseling benefit to Medicare. By 2020, 35% of the U.S. population will be 65 years of age or older. It is estimated that Medicare will pay $800 billion to treat tobacco-related diseases over the next twenty years. In April 1998, the Surgeon General’s report concludes that the health benefits from tobacco cessation are undisputed. They live longer. After 15 years, the risk of premature death for ex-smokers returns to nearly as much as one-half that of those who continue to smoke. After five to ten smoke-free years, the number of people in the United States who continue to smoke is half that of those who have never smoked. Male smokers who quit between the ages of 35 and 39 add an average of five years to their lives; women can add three years. Even older Americans over age 65 can extend their life expectancy by giving up cigarettes.

Former smokers are also healthier. They are less likely to die of chronic lung diseases. After ten smoke-free years, their risk of lung cancer drops to as much as one-half that of those who continue to smoke. After five to fifteen years the risk of stroke and heart disease for ex-smokers returns to the level of those who have never smoked. They have fewer days of illness, reduced rates of bronchitis and pneumonia, and fewer health complaints.

New Public Health Service Guidelines released last summer conclude that tobacco dependence treatments are both effective and cost effective relative to other medical and disease prevention interventions. The guidelines urge health care insurers and purchasers to include counseling and FDA-approved pharmacotherapeutic treatments as a covered benefit.

Unfortunately, the federal government, a major purchaser of health care through Medicare and Medicaid, does not currently adhere to its own published guidelines. It is high time that government-sponsored health programs catch up with science. That is why we are introducing legislation to improve smoking cessation benefits in government-sponsored health programs.

The Medicare, Medicaid and MCH Smoking Cessation Promotion Act of 2000 improves access to and coverage of smoking cessation treatment therapies in four primary ways.

First, our bill adds a smoking cessation counseling benefit to Medicare. By 2020, 35% of the U.S. population will be 65 years of age or older. It is estimated that Medicare will pay $800 billion to treat tobacco-related diseases over the next twenty years. In
"(ii) by any other health care professional who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service."

"(C) The term 'counseling for cessation of tobacco use' does not include coverage for drugs or biologicals that are not otherwise covered under this title.".

"(c) PAYMENT AND ELIMINATION OF COST-SHARING FOR COUNSELING FOR CESSATION OF TOBACCO USE.—

(1) PAYMENT AND ELIMINATION OF COINSURANCE.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 223(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Pub. L. No. 106–554, as amended—(A) by striking ''and'' before ''(II)''; and (B) by inserting before the semicolon at the end the following: ''and counseling for cessation of tobacco use (as defined in section 1861(ww)), any drug or biological used to promote tobacco cessation, and any health promotion counseling that includes cessation counseling as defined in section 1833(b) of the Social Security Act and the elimination of coinsurance for such counseling for purposes of promoting, and when used to promote, tobacco cessation, as defined in section 1861(ww))."

(2) ELIMINATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(a)(2)(A)) is amended by inserting after ''1861(a)(10)(A)'', ''and (V) with respect to counseling for cessation of tobacco use (as defined in section 1861(ww))'', the amount paid shall be 100 percent of the lesser of the actual charge for the service or the amount determined as a fee schedule established by the Secretary for each service''.

(3) ELIMINATION OF DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395l(a)(2)(A)) is amended by inserting after ''1861(a)(10)(A)'', ''and counseling for cessation of tobacco use (as defined in section 1861(ww))'', the following: ''and counseling for cessation of tobacco use (as defined in section 1861(ww))'',

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 1 year after the date of enactment of this Act.

SEC. 4. PROMOTING CESSATION OF TOBACCO USE UNDER THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM.

(a) QUALITY MATERNAL AND CHILD HEALTH SERVICES—COUNSELING AND MEDICATIONS.—Section 501 of the Social Security Act (42 U.S.C. 701) is amended by adding at the end the following new subsection:

"(c) For purposes of this title, the term 'maternal and child health services' includes counseling for cessation of tobacco use (as defined in section 1861(ww)), any drug or biological used to promote tobacco cessation, and any health promotion counseling that includes cessation counseling as defined in section 1833(b) of the Social Security Act.

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. KENNEDY, and Mr. SARBANES).

S. 623. A bill to amend title XVIII of the Social Security Act and the Employee Retirement Income Security Act of 1974 to improve access to health insurance and Medicare benefits for individuals ages 55 to 64, to amend the Internal Revenue Code so that to allow a 50 percent credit against income tax for payment of such premiums and of premiums for certain COBRA continuation coverage, and for other purposes;

Mr. ROCKEFELLER. Mr. President, the problem of the uninsured continues to plague our Nation, and it is particularly severe for older Americans who are facing the loss of health coverage but who are not yet eligible for Medicare. Today, more than 10 million Americans are without health insurance.

Adults between the ages of 55 to 64 are the fastest growing group of uninsured. Individuals 55 and older who have been laid off or retire early are particularly vulnerable to loss of health insurance. They have a difficult time buying health insurance on their own because they tend to have more chronic health problems that can result in either the denial of coverage, limited coverage, or very expensive policies.

This is the age group where early detection and access to preventative care become crucial. For example, only 16 percent of uninsured women report having had a mammogram in the past year, compared to 42 percent of insured women. Because regular preventative care is not received, the uninsured are more likely to be diagnosed at a more advanced stage of cancer, over 40 percent of uninsured adults with a late stage breast and prostate cancer, and more than twice as likely to be diagnosed with late stage melanoma than the insured.

The uninsured are more likely than those with insurance to be hospitalized for conditions that could have been avoided such as poorly controlled diabetes. Delaying or not receiving treatment can lead to more serious illness and avoidable health problems, which has a direct impact on the health care needs of this segment of the population as they become old enough for Medicare coverage.

Lack of insurance and gaps in coverage affect more than just those without insurance. There is a cost to society, as well. When an uninsured person goes to a public hospital or clinic, and emergency room, or a private physician for care and cannot pay the full cost, some of the bill is passed on to those who do pay, through higher insurance premiums and in the form of the promise of future health care programs. One way or another, we all pay indirectly for having a large and growing uninsured population.

With the aging of the baby boom generation, this particularly vulnerable group is expected to increase significantly. In 1999, there were 23.1 million Americans in this age group. This is expected to increase to 35 million Americans by the year 2020. Unless we effect positive change to address the barriers facing the growing number of uninsured in this age group, this problem will only get worse.

I join Senators KENNEDY, DASCHLE, and SARBANES, and Representatives. STARK, BROWN, GEPHARDT, RANGEL, DINGELL, and a number of their colleagues today to introduce an improved version of the Medicare Early Access Act. Our legislation will create an opportunity for people between ages 55 and 64 to purchase Medicare coverage, which is really the only affordable option for this group, because of their age and the likelihood of chronic and/or preexisting conditions.

The Medicare Early Access and Tax Credit Act would reduce the number of uninsured Americans by more than 500,000. This bill provides new insurance coverage options through a Medicare buy-in for people aged 55 through 64 or through a special COBRA continuation program for workers aged 55 through 64 whose employers reneged on the promise of retiree health coverage programs. One way or another, we all pay indirectly for having a large and growing uninsured population.

This legislation improves upon the existing Medicare Early Access Act by adding a new 50 percent federal tax credit to the program to make it more affordable for people age 55 and over to obtain health insurance coverage. By including a tax credit, we are making this option available to a broader range of people.

A survey released last session by the Commonwealth Fund finds that one in five seniors age 50–64 reported a period of time when they were without health insurance coverage since turning age 50. Access to employer insurance is reduced as people approach age.
sixty-five and retire. Consequently, older Americans rely most heavily on individual insurance, which is expensive and limited for people with serious health problems. Because average health expenses increase sharply with age, people closest to age sixty-five face the greatest risk of being uninsured and being charged the highest premiums in the individual market. Clearly, we need to take real steps to address the needs of this population.

The Commonwealth survey also found that, when asked what source they would trust more to provide health insurance for adults ages 50 to 64, Medicare-trunked employer-sponsored coverage and direct purchase of private individual health insurance. Half of uninsured adults ages 50-64 said they would trust Medicare the most as a source of coverage.

The Medicare Early Access and Tax Credit Act provides an insurance option for people who are unable to purchase health insurance in the private market either because of pre-existing conditions, age related premium increases, or both.

The Medicare Early Access and Tax Credit Act is not the solution to solving America’s health insurance coverage problems. But, it is a simple and obvious step to take to open new doors to a vulnerable segment of our population who are lacking affordable coverage elsewhere, and who need the opportunity to buy in to Medicare. I urge my colleagues to join us in making health insurance a reality for people in their later years of life, who are not yet eligible for the safety net of Medicare.

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:

SEC. 101. ACCESS TO MEDICARE BENEFITS FOR INDIVIDUALS 62-TO-65 YEARS OF AGE

(a) In General.—Title XVIII of the Social Security Act is amended—

(1) by redesignating section 1859 and part D as section 1859 and part E, respectively; and

(2) by inserting after such section the following new part:

"(3) COBRA continuation coverage premiums."

"(A) Prior to, and in the case of an individual who

(B) Eligibility of individuals age 62-to-65 years of age.

(1) In general.—Subject to paragraph (2), an individual who

(2) Limitation on eligibility if terminated enrollment.—If an individual described in paragraph (1) enrolls under this part and coverage of the individual is terminated under section 1859(d)(1) other than because of age, the individual is not again eligible to enroll under this subsection unless the following requirements are met:

(1) New coverage under group health plan or federal health insurance program.—After the date of termination of coverage under such section, the individual obtains coverage under a group health plan or a Federal health insurance program.

(2) Subsequent loss of new coverage.—The individual subsequently loses eligibility for the coverage described in subparagraph (A) and exhausts any eligibility the individual may subsequently have for coverage under a Federal or State COBRA continuation provision.

(3) Change in health plan eligibility does not affect coverage.—In the case of an individual who is eligible for group coverage under this part and an individual obtains coverage under a group health plan or a Federal health insurance program.

(4) Enrollment process; coverage.

"(a) In general.—An individual may enroll in the program established under this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed by the Secretary consistent with the provisions of this subsection. Such enrollment provisions shall provide a process under which—

(1) individuals eligible to enroll as of a month are permitted to pre-enroll during the enrollment period described in this subsection, and

(2) each individual seeking to enroll under section 1859(b) is notified, before enrollment, that the deferred monthly premium amount the individual will be liable for under section 1859(b) upon enrolling at 65 years of age as determined under section 1859(c).

(1) Initial enrollment period.—If the individual is eligible to enroll under such a
section for January 2002, the enrollment period shall end on February 28, 2002. Any such enrollment before January 1, 2002, is conditioned upon compliance with the conditions of eligibility for January 2002.

(1) In general.—If the individual is eligible to enroll under such section for a month after January 2002, the enrollment period shall begin on the first day of the second month before the month in which the individual first is eligible to so enroll and shall end four months later. Any such enrollment which occurs on the first day of the third month of such enrollment period is conditioned upon compliance with the conditions of eligibility for such third month.

(2) Authority to correct for government errors.—The provisions of section 1837(b) apply with respect to enrollment under this part in the same manner as they apply to enrollment under part B.

(3) Date coverage begins.—

(a) In general.—The period during which an individual is entitled to benefits under this part shall begin as follows, but in no case earlier than January 1, 2002:

(A) In the case of an individual who enrolls (including pre-enrolls) before the month in which the individual satisfies the conditions for enrollment under section 1859, the first day of such month of eligibility.

(B) In the case of an individual who enrolls during or after the month in which the individual first satisfies eligibility for enrollment under such section, the first day of the following month.

(4) Authority to provide for partial months of coverage.—Under regulations, the Secretary may, in the Secretary’s discretion, provide for coverage periods that include less than a month in order to avoid lapses of coverage.

(5) Limitation on payments.—No payments may be made under this title with respect to the expenses of an individual enrolled under this part unless such expenses were incurred by such individual during a period which, with respect to the individual, is a coverage period under section 1859.

(6) Termination of coverage.—

(a) Authority to correct for government errors.—The provisions of section 1837(b) apply with respect to coverage provided under this title for any month in the succeeding year:

(A) Base monthly premium for individuals 62 years of age or older.—A base monthly premium for individuals 62 years of age or older, equal to 1⁄12 of the base annual premium rate computed under subsection (b) for each premium area.

(B) Deferred monthly premiums for individuals 62 years of age or older.—The Secretary shall, during September of each year (beginning with 2001), determine under subsection (c) the amount of deferred monthly premiums that shall apply with respect to individuals who first obtain coverage under this part under section 1859(b) in the succeeding year.

(7) Estimation of premium areas.—

(a) For purposes of this part, the term ‘ premium area’ means such an area as the Secretary shall specify to carry out this part. The Secretary from time to time may change the boundaries of such premium areas. The Secretary shall seek to minimize the number of such areas specified under this paragraph.

(b) Base annual premium for individuals 62 years of age or older.—

The Secretary shall estimate the average, annual per capita amount that would be payable under this title with respect to individuals residing in the trust fund, and shall take into account such factors as the Secretary deems appropriate and shall limit the maximum premium under this paragraph in a premium area to assure participation in all areas throughout the United States.

(8) Base annual premium.—The base annual premium, under this subsection for months in a year for individuals 62 years of age or older residing in a premium area is equal to the average, annual per capita amount estimated in the trust fund, under section 1859(b)(1)(A) as if all such individuals were eligible for and enrolled under this title during the entire year (and assuming that section 1862(b)(2)(A)(i) did not apply).

(b) Geographic adjustment.—The Secretary shall adjust the amount determined under paragraph (1) for each premium area (specified under subsection (a)(3)) in order to take into account such factors as the Secretary deems appropriate and shall limit the maximum premium under this paragraph in a premium area to assure participation in all areas throughout the United States.

(c) Deferred premium rate for individuals 62 years of age or older.—The deferred premium rate for individuals who first obtain coverage under section 1859(b) in a year shall be computed by the Secretary as follows:

(1) Estimation of national, per capita annual average expenditures for enrollment group.—The Secretary shall estimate the national, per capita annual average expenditures for enrollment group for benefits under part B during the period of enrollment under section 1859(b). In making such estimates, Congress has determined that expenditure data for a specified year shall be available at the beginning of a year before 2005, the Secretary may base such estimates on the average, per capita amount that would be payable if the program had been in operation over a previous period of at least 4 years.

(2) Difference between estimated expenditures and estimated premiums.—为基础 on the characteristics of individuals in such group, the Secretary shall determine during the period of coverage of the group under this part under section 1859(b) the excess (if any) over the estimated premiums of such individuals in such group.

(A) The amount estimated under paragraph (1); (B) The average, annual per capita amount of premiums that will be payable for months during the year under section 1859(c)(i) for individuals in such group (including premiums that would be payable if there were no enrollments in enrollment under clause (i) or (ii) of section 1859A(d)(1)(A).

(c) Actuarial computation of deferred monthly premium rates.—The Secretary shall determine deferred monthly premium rates for individuals in such a manner so that—

(A) The estimated actuarial value of such premiums payable under section 1859(b), is equal to

(B) The estimated actuarial present value of the differences described in paragraph (2).

Such rate shall be computed for each individual in the group in a manner so that the rate is based on the number of months between the first month of coverage based on enrollment under section 1859(b) and the month in which the individual attains 65 years of age.

(d) Terminants of actuarial present values.—The actuarial present values described in paragraph (3) shall reflect—

(A) The estimated probabilities of survival at ages 62 through 84 for individuals enrolled during the year; and

(B) The estimated effective average interest rates that would be earned on investment of the amounts described in paragraph (2) during the period in question.

(9) Sec. 1859c. Payment of premiums.

(a) Payment of base monthly premium.—

(1) In general.—The Secretary shall provide for payment and collection of the base monthly premium, determined under section 1859(b)(1)(A) for the age (and age cohort, if applicable) of the individual involved and the premium area in which the individual principally resides, in the same manner as for payment of monthly premiums under section 1840, except that, for purposes of applying this section, any reference in such section to the Federal Supplementary Medical Insurance Trust Fund is deemed a reference to the Trust Fund established under section 1899D.

(2) Period of payment.—In the case of an individual who participates in the program established by this title, the base monthly premium shall be payable for the period commencing with the first month of the individual’s coverage period and ending with the last month of the individual’s coverage under this title terminates.

(b) Payment of deferred premium for individuals covered after attaining age 65.—

(1) Rate of payment.—

(A) In general.—In the case of an individual who is covered under this part for a month as a result of an enrollment under section 1859(b), subject to subparagraph (B), the individual is liable for payment of a deferred
premium in each month during the period described in paragraph (1) or (2) of section 1859A(d)(1)(A), subject to clause (ii), the amount of the deferred premium otherwise established under this paragraph shall be pro-rated to reflect the number of months of coverage under this part under such enrollment compared to the maximum number of months of coverage that the individual would have had if the enrollment were not so terminated.

(1) Rounding to 12-Month Minimum Coverage Periods.—In applying clause (i), the number of months of coverage (if not a multiple of 12) shall be rounded to the next highest multiple of 12, except that in no case shall this clause result in a number of months of coverage that is not a multiple of 12.

(2) Period of Payment.—The period described in this paragraph for an individual is the period beginning with the first month in which the individual has attained 65 years of age and ending with the month before the month in which the individual attains 85 years of age.

(3) Collection.—In the case of an individual who is liable for a premium under this subsection, the amount of the premium shall be collected in the same manner as the premium for enrollment under such part is collected under section 1840, except that any reference in such section to the Federal Supplementary Medical Insurance Trust Fund is deemed to be a reference to the Medicare Early Access Trust Fund established under section 1859D.

(c) Application of Certain Provisions.—The provisions of section 1840 (other than subsection (a), which shall apply to premiums collected under this subsection in the same manner as they apply to premiums collected under part B, except that any reference in such section to the Federal Supplementary Medical Insurance Trust Fund is deemed a reference to the Trust Fund established under section 1859D.

SEC. 1859D. MEDICARE EARLY ACCESS TRUST FUND.

(a) Establishment of Trust Fund.—(1) In General.—Thereby created on the books of the Treasury of the United States a trust fund to be known as the ‘Medicare Early Access Trust Fund’ (in this section referred to as the ‘Trust Fund’). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(b)(1) and such amounts as may be deposited in, or appropriated to, such fund as provided in this title.

(2) Premiums.—Premiums collected under section 1859D shall be transferred to the Trust Fund.

(b) Incorporation of Provisions.—(1) In General.—Subject to paragraph (2), subsections (b) through (i) of section 1841 shall apply with respect to the Trust Fund and this part in the same manner as they apply with respect to the Federal Supplementary Medical Insurance Trust Fund and part B, respectively.

(2) Most and Certain References.—In applying provisions of section 1841 under paragraph (1)—
the Internal Revenue Code of 1986), based on a separation of employment occurring on or after July 1, 2001. The previous sentence shall not be construed as requiring the individual to be receiving such unemployment compensation at the time of loss of coverage eligibility of the individual—

(ii) LOSS OF EMPLOYMENT-BASED COVERAGE.—Immediately before the time of such separation of employment, the individual was covered under a group health plan on the basis of such employment, and, because of such loss, is no longer eligible for coverage under such plan (including such eligibility based on the election of a Federal State COBRA continuation provision) as of the last day of the month involved.

(iii) PREVIOUS CREDIBLE CONTINUATION COVERAGE FOR REDUCTION IN ELIGIBILITY .—For provision of such coverage described in such clause as of the last day of the month involved.

(iv) INDIVIDUAL TO WHOM COBRA CONTINUATION COVERAGE MADE AVAILABLE.—An individual described in this clause is an individual—

(I) who was offered coverage under a Federal or State COBRA continuation provision at the time of such loss, is no longer eligible for such coverage under such plan (including such eligibility based on the election of a Federal State COBRA continuation provision) as of the last day of the month involved.

(v) MONTHS OF POSSIBLE COBRA CONTINUATION COVERAGE.—A month described in this clause is a month for which an individual described in clause (ii) could have had coverage described in such clause as of the last day of the month if the individual (or the spouse of the individual) had elected such coverage on a timely basis.

(E) NOT ELIGIBLE FOR COVERAGE UNDER FEDERAL HEALTH INSURANCE PROGRAM OR GROUP HEALTH PLAN.—If the individual is not eligible for benefits or coverage under a Federal health insurance program or under a group health plan (whether on the basis of the individual’s employment or employment of the individual’s spouse) as of the last day of the month involved.

(2) SPouse OF DISPLACED WORKER.—Subject to paragraph (3), an individual who meets the following requirements with respect to a month described in clause (ii)—

(A) Age.—As of the last day of the month, the individual has not attained 62 years of age.

(B) Married to displaced worker.—The individual is the spouse of an individual at the time the individual enrolls under this part with respect to such month; and

(C) Medicare eligibility (but for age).—Exhaustion of any COBRA continuation coverage under Federal State COBRA continuation provision or group health plan.—The individual meets the requirements of subparagraphs (B) and (C) of clause (ii). Use the individual’s spouse lost such coverage.

(D) Medicare eligibility (but for age).—The termination of a period of coverage under paragraph (1) or (3) that is attributable to such an individual’s attainment of Medicare eligibility as a participant or beneficiary under such a health plan on or under a Federal health insurance program.

(E) Change in health plan eligibility affects continued eligibility.—For provision that terminates enrollment under this section with respect to an individual who becomes eligible for coverage under a group health plan or under a Federal health insurance program, see section 1859A(d)(1)(C).

(4) REENROLLMENT PERIODS.—Nothing in this subsection shall be construed to mean enrollees enrolled under such subsection, terminates such enrollment from subsequently reenrolling under such subsection if the individual is eligible to enroll under such subsection at that time.

(1) ENROLLMENT.—Section 1859A of such Act, as so inserted, is amended—

(1) in subsection (a), by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “; and”, and by adding at the end the following new paragraph:

(3) individuals whose coverage under this part would terminate because of subsection (d)(1)(B)(ii) are provided and an opportunity to continue enrollment in accordance with section 1859E(c)(1).

(2) in subsection (b) by inserting after Notwithstanding any other provision of law, the following:

(3) individuals whose coverage under this part would terminate because of subsection (d)(1)(B)(ii) are provided and an opportunity to continue enrollment in accordance with section 1859E(c)(1).

(2) in subsection (d)(1), by adding at the end the following new paragraph:

(b) in subsection (c)(1), by striking the period at the end of paragraph (2) and inserting “; and”, and by adding at the end the following new paragraph:

(c) PREMIUMS.—Section 1859B of such Act, as so inserted, is amended—

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

(B) Base monthly premium for individuals under 62 years of age.—A base monthly premium for individuals under 62 years of age, equal to 1⁄12 of the base annual premium rate computed under subsection (d)(3) for each premium area and age cohort.

(c) their election is effective.

(2) in subsection (a)(3), by inserting after to be eligible for such such clause as of the last day of the month involved.

(3) in subsection (b), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(4) in subsection (d), by adding at the end the following new paragraph:

(B) TERMINATION BASED ON AGE.—

(1) AT AGE 65.—Subject to clause (ii), the individual attains 65 years of age.

(2) AT AGE 65.—If the individual is eligible to enroll under such such clause as of the last day of the month in which the individual attains 65 years of age; and

(3) in subsection (d)(1), by adding at the end the following new paragraph:

(C) OBTAINING ACCESS TO EMPLOYMENT-BASED COVERAGE UNDER FEDERAL HEALTH INSURANCE PROGRAM FOR INDIVIDUALS UNDER 62 YEARS OF AGE.—In the case of an individual who has not attained 62 years of age, the individual is eligible for benefits under such program as of the last day of the month in which the individual attains 62 years of age, unless the individual has elected such coverage on a timely basis.

(2) GEOGRAPHIC ADJUSTMENT.—The Secretary shall adjust the amount determined under paragraph (1)(A) for each premium area specified under subsection (a)(3) in the same manner and for the same purpose as provided under subsection (b)(2).

(3) in subsection (d)(1), by adding at the end the following new paragraph:

(B) TERMINATION BASED ON AGE.—

(1) AT AGE 65.—Subject to clause (ii), the individual attains 65 years of age.

(2) AT AGE 65.—If the individual is eligible to enroll under such such clause as of the last day of the month in which the individual attains 65 years of age; and

(3) in subsection (d)(1), by adding at the end the following new paragraph:

(D) ACCESS TO COVERAGE .—The termination of a period of coverage under paragraph (1)(C) shall take effect on the date on which the individual is eligible to begin a period of creditable coverage (as defined in section 2701(c) of the Public Health Service Act) under a group health plan or under a Federal health insurance program.

(c) PREMIUMS.—Section 1859B of such Act, as so inserted, is amended—

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

(B) Base monthly premium for individuals under 62 years of age, equal to 1⁄12 of the base annual premium rate computed under subsection (d)(3) for each premium area and age cohort.

(2) in subsection (a)(3), by inserting after to be eligible for such such clause as of the last day of the month involved.

(3) in subsection (b), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(b) in subsection (c)(1), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(c) PREMIUMS.—Section 1859B of such Act, as so inserted, is amended—

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

(B) Base monthly premium for individuals under 62 years of age, equal to 1⁄12 of the base annual premium rate computed under subsection (d)(3) for each premium area and age cohort.

(2) in subsection (a)(3), by inserting after to be eligible for such such clause as of the last day of the month involved.

(3) in subsection (b), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(b) in subsection (c)(1), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(c) PREMIUMS.—Section 1859B of such Act, as so inserted, is amended—

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

(B) Base monthly premium for individuals under 62 years of age, equal to 1⁄12 of the base annual premium rate computed under subsection (d)(3) for each premium area and age cohort.

(2) in subsection (a)(3), by inserting after to be eligible for such such clause as of the last day of the month involved.

(3) in subsection (b), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:

(b) in subsection (c)(1), by striking the period at the end of paragraph (2), by adding at the end the following new paragraph:
order to continue entitlement to benefits under this title after attaining 62 years of age.

"(2) ARRANGEMENTS WITH STATES FOR DETERMINATIONS RELATING TO UNEMPLOYMENT COMPENSATION ELIGIBILITY.—The Secretary may provide for appropriate arrangements with States for the determination of whether individuals in the State meet or would meet the requirements of section 1359(a)(1)(C)(i)."

(e) CONFORMING AMENDMENT TO HEADING TO PART.—The heading of part D of title XVIII of the Social Security Act, as so inserted, is amended by striking "92" and inserting "95".

TITLE III OF THE PROTECTION FOR EARLY RETIREES

Subtitle A—Amendments to the Employee Retirement Income Security Act of 1974

SEC. 301. COBRA CONTINUATION BENEFITS FOR CERTAIN RETIRED WORKERS WHO LOSE RETIREE HEALTH COVERAGE.

(a) ESTABLISHMENT OF NEW QUALIFYING EVENT.—

(1) IN GENERAL.—Section 603 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163) is amended by inserting after paragraph (5) the following new paragraph:

"(6) QUALIFIED RETIREE.—The term 'qualified retiree' means, with respect to a qualifying event described in section 603(7), the individual's relationship to such qualified beneficiary under the plan on the basis of the day before such qualifying event, is a beneficiary described in section 607(3)(D) who is a covered employee, the later of—

(A) the date that is 36 months after the earlier of the date the qualified retiree becomes entitled to benefits under title XVIII of the Social Security Act, or the date of the death of the qualified retiree; or

(B) the date that is 36 months after the date of the qualifying event."

(b) INCREASED LEVEL OF PREMIUMS PERIODICAL.—Subsection (A) of section 607 of such Act (29 U.S.C. 1162) is amended—

(1) in paragraph (3)—

(i) by striking "(B) includes an increase in premiums resulting from a reduction in the average actuarial value of benefits under the plan (through reduction or elimination of benefits, an increase in premiums, deductibles, copayments, and coinsurance, or any combination thereof), since the date of commencement of coverage of the beneficiary by reason of the retirement of the covered employee (or, if later, January 6, 2001), in an amount equal to at least 50 percent of the total average actuarial value of the benefits under the plan as of such date (taking into account an appropriate adjustment to permit comparison of values over time); and

(ii) by striking "(C) the individual's relationship to such qualified beneficiary under the plan on the basis of the day before such qualifying event, is a beneficiary described in section 607(3)(D) who is a covered employee, the later of—

(A) the date that is 36 months after the earlier of the date the qualified retiree becomes entitled to benefits under title XVIII of the Social Security Act, or the date of the death of the qualified retiree; or

(B) the date that is 36 months after the date of the qualifying event.

(c) SPECIAL RULE FOR CERTAIN BENEFICIARIES.—In the case of a qualifying event described in section 603(7), in applying the first sentence of subparagraph (A) of paragraph (3), the coverage offered that is the most prevalent coverage option (as determined under regulations of the Secretary) continues under the plan (or, if none, under the most prevalent other plan offered by the same plan sponsor) shall be treated as the coverage described in such sentence, and if the plan and qualified beneficiary (other than the individual's relationship to such qualified retiree) and the individual's relationship to such qualified beneficiary involved.

(d) INCREASED LEVEL OF PREMIUMS PERIODICAL.—Subsection (A) of section 602(1) of such Act (29 U.S.C. 1162(1)) is amended—

(1) by striking "The coverage" and inserting the following:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the coverage; and

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

"(B) CERTAIN RETIREES.—In the case of a qualifying event described in section 603(7), in applying the first sentence of subparagraph (A) and the fourth sentence of paragraph (3), the coverage offered that is the most prevalent coverage option (as determined under regulations of the Secretary) continues under the plan (or, if none, under the most prevalent other plan offered by the same plan sponsor) shall be treated as the coverage described in such sentence, and if the plan and qualified beneficiary (other than the individual's relationship to such qualified beneficiary involved).

(e) CONFORMING AMENDMENT TO HEADING.—Section 602(3) of such Act (29 U.S.C. 1162) is amended by inserting after paragraph (5) the following new paragraph:

"(6) QUALIFIED RETIREE.—The term 'qualified retiree' means, with respect to a qualifying event described in section 603(7), the individual's relationship to such qualified beneficiary under the plan on the basis of the day before such qualifying event, is a beneficiary described in section 607(3)(D) who is a covered employee, the later of—

(A) the date that is 36 months after the earlier of the date the qualified retiree becomes entitled to benefits under title XVIII of the Social Security Act, or the date of the death of the qualified retiree; or

(B) the date that is 36 months after the date of the qualifying event."
Subtitle C—Amendments to the Internal Revenue Code

SEC. 321. COBRA CONTINUATION BENEFITS FOR CERTAIN RETIRED WORKERS WHO LOSE RETIREE HEALTH COVERAGE.

(a) Establishment of New Qualifying Event.

(1) In general.—Section 4980B(f)(3) of the Internal Revenue Code of 1986 is amended by inserting after subparagraph (F) the following new subparagraph:

"(G) The termination or substantial reduction in benefits (as defined in subsection (g)(1) of group health plan coverage as a result of a plan change or termination in the case of a covered employee who is a qualified retiree.)."

(2) Qualified retiree; qualified beneficiary; and substantial reduction defined.—Section 4980B(g) of such Code is amended—

(i) by striking "(4), or (6)"; and
(ii) by adding after subparagraph (F) the following new subparagraph:

"(G) The termination or substantial reduction in benefits (as defined in subsection (g)(1) of group health plan coverage as a result of a plan change or termination in the case of a covered employee who is a qualified retiree.)."

(b) Qualified retiree and beneficiary provided continuation coverage extended.—In the case of an individual who is a beneficiary under the plan on the basis of a qualifying event described in section 2203(6), any reference in subparagraph (B), the coverage''; and

(ii) by inserting after subparagraph (F) the following new subparagraph:

"(G) The termination or substantial reduction in benefits (as defined in subsection (g)(1) of group health plan coverage as a result of a plan change or termination in the case of a covered employee who is a qualified retiree.)."

(c) Type of Coverage in Case of Termination or Substantial Reduction of Retiree Health Coverage.—Section 2202(3) of such Act (42 U.S.C. 300b-2(3)) is amended—

(1) by striking "The coverage'' and inserting "(4), or (6)''; and
(2) by adding at the end the following:

"(B) Certain retirees.—In the case of a qualifying event described in section 2203(6), in applying the first sentence of paragraph (A) and the fourth sentence of paragraph (3), the coverage offered that is the most prevalent coverage option (as determined under regulations of the Secretary of Labor) continued under the group health plan (or, if none, under the most prevalent other plan offered by the same plan sponsor) shall be treated as the coverage described in such sentence, or (at the option of the plan and qualified beneficiary) such other coverage option as may be offered and elected by the qualified beneficiary involved.

(d) Increased Level of Premiums Permitted.—Section 2203(3) of such Act (42 U.S.C. 300b-2(3)) is amended by adding at the end the following new sentence: "In the case of an individual provided coverage in the plan by reason of a qualifying event described in section 2203(6), any reference in subparagraph (A) to "125 percent of the applicable premium for employed individuals (and their dependents, if applicable) for the coverage option referred to in paragraph (1)'' is amended—

(1) in paragraph (4)(A), by striking "or (4)'' and inserting "(4), or (6)''; and
(2) by adding at the end the following: "The notice under paragraph (4) in the case of a qualifying event described in section 2203(6) shall be provided at least 90 days before the date of the qualifying event.

(e) Notice.—Section 2203(a) of such Act (42 U.S.C. 300b-6(a)) is amended—

(1) in paragraph (4)(A), by striking "(or (4)'' and inserting "(4), or (6)''; and
(2) by adding at the end the following: "The notice under paragraph (4) in the case of a qualifying event described in section 2203(6) shall be provided at least 90 days before the date of the qualifying event.

(f) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to qualifying events occurring on or after January 6, 2001. In the case of a qualifying event occurring on or after such date and before the date of the enactment of this Act, such event shall be deemed (for purposes of such amendments) to have occurred on the date of the enactment of this Act.

(2) Advance Notice of Terminations and Reductions.—The amendment made by subsection (e)(2) shall apply to qualifying events occurring after the date of the enactment of this Act, except that in no case shall notice be required under such amendment before such date.
CONGRESSIONAL RECORD—SENATE

March 27, 2001

TITLE IV—50 PERCENT CREDIT AGAINST INCOME TAX FOR CERTAIN COBRA CONTINUATION COVERAGE PREMIUMS AND FOR CERTAIN COBRA CONTINUATION COVERAGE PREMIUMS...

SEC. 401. 50 PERCENT INCOME TAX CREDIT FOR CERTAIN COBRA BUY-IN PREMIUMS AND FOR CERTAIN COBRA CONTINUATION COVERAGE PREMIUMS.

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

SEC. 25B. MEDICARE-BUY-IN PREMIUMS AND CERTAIN COBRA CONTINUATION COVERAGE PREMIUMS.

"(a) In General.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid during such year as—

"(1) qualified continuation health coverage premiums, and

"(2) Medicare-biuy-in coverage premiums.

"(b) Definitions.—For purposes of this section—

"(1) QUALIFIED CONTINUATION HEALTH COVERAGE PREMIUMS.—The term 'qualified continuation health coverage premiums' means, for any period, premiums paid for continuation coverage (as defined in section 4980B(f)(3)(G) under a group health plan for such period but only if failure to offer such coverage to the taxpayer for such period would constitute a failure by such health plan to meet the requirements of section 4980B(f) and only if the continuation coverage is provided because of a qualifying event described in section 4980B(b)(1)(C).

"(2) MEDICARE-BUY-IN PREMIUMS.—The term 'Medicare-buy-in coverage premiums' means premiums paid under part D of title XVIII of the Social Security Act.''

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter J of chapter 1 of such Code is amended by inserting after the item relating to section 25A the following new item:

"Sec. 25B. Medicare-buy-in premiums and certain COBRA continuation coverage premiums."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

By Mr. GREGG (for himself and Mrs. HUTCHISON): S. 624. A bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off and biweekly work programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, I rise today to introduce legislation that, if enacted, could have a monumental impact on the lives of thousands of working men, women and families in America. Today, with Senator KAY BAILEY HUTCHISON, I am pleased to introduce the Workplace Flexibility Act. The Workplace Flexibility Act has as its primary purpose, giving families and employers greater freedom in meeting and balancing the demands of work and family.

The demand for family time is significant. In fact, families today are spending close to 40 percent less time with their families and children than in the 1960s. This is an important and even critical issue to many Americans. In fact, survey upon survey has found that the issue of workplace flexibility and family time is the number one issue women want addressed.

The Workplace Flexibility Act is not a total solution, but it is an important part of the solution. It gives working families a choice.

The Workplace Flexibility Act in a nutshell consists of two main provisions. The first allows employees the option of taking time off in lieu of overtime pay. The second gives employees the option of "flexing" their schedules over a two week period. In other words, employees at have 10 "flexible" hours that they could work in one week in order to take 10 hours off in the next week. Flexible work arrangements have been available to Federal government workers since 1978. In the 1970's, 80's, and 90's federal government workers have had this special privilege. The Federal program was so successful in fact, that the President in 1993 issues an Executive Order extending it to parts of the Federal Government that had not yet had the benefits of the program.

Yet members of the private sector do not have this option. The Workplace Flexibility Act corrects this and extends this option to all businesses covered by the Fair Labor Standards Act.

So, who are these workers who are currently covered by the FLSA but do not have the ability to exercise workplace flexibility? They are some of the hardest working Americans. Sixty percent of these workers have only a high school education. Eighty percent of them make less than $28,000. A great percentage of them are single mothers with children. They are working hard to meet their family's economic needs as well as their emotional needs. And while government cannot mandate love and nurture, it can get out of the way and eliminate barriers to opportunities for love and nurture. That is what the Workplace Flexibility Act does.

In the subsequent weeks and months we will undoubtedly hear from some that what working families really need is more money. They need their overtime pay. That may well be true for some families, and this bill does not affect them in any way. But for other families and families who want to choose to take time off with pay to attend a child's school play or PTA meeting, the issue is time, not money. The point is this—the family should have the right to choose. Washington should not decide for them which priority is important for their family.

I am one who believes in the working men and women of America and in their ability to know what is best for their families. It is time for Congress to give families what they want, and it is time for Congress to do what they need. It's time to give working families what every Federal employee has already, workplace flexibility.

I ask unanimous consent that the material be printed in the RECORD, as follows:

S. 624

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 "Workplace Flexibility Act".

SEC. 2. WORKPLACE FLEXIBILITY OPTIONS.

(a) COMPENSATORY TIME OFF.—Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

"(c) Except as provided in subparagraph (B), no employee may be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation. The acceptance of compensatory time off in lieu of monetary overtime compensation may not be a condition of employment or of working overtime.

"(B) In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required under this subsection to receive compensatory time off in lieu of monetary overtime compensation in accordance with the agreement.

"(2) An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensation at a rate not less than one and one-half times for each hour of employment for which monetary overtime compensation is required by this section.

"(d) In this subsection—
"(I) The term 'employee' means an individual—
"(i) who is an employee (as defined in section 3);
"(II) who is not an employee of a public agency; and
"(III) to whom subsection (a) applies.

"(3) An employer may provide compensatory time off to employees under paragraph (2)(A) only pursuant to the following:

"(A) The compensatory time off may be provided only in accordance with—
"(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or
"(ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by
such employee and was not a condition of employment.

“(B) The compensatory time off may only be provided to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time off in lieu of monetary overtime compensation.

“(C) No employee may receive, or agree to receive, the compensatory time off unless the employee has been employed for at least 12 months, and for at least 1,250 hours of service with the employer during the previous 12-month period.

“(D) An employee shall be eligible to accrue compensatory time off if such employee has not accrued compensated time off in excess of the limit applicable to the employee prescribed by paragraph (4).

“4(A) An employee may accrue not more than 160 hours of compensatory time off.

“(B) Not later than January 31 of each calendar year, the employer of the employee shall provide monetary compensation for any unused compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year. For purposes of this paragraph, the compensatory time shall be provided not later than 31 days after the end of the 12-month period.

“(C) The employer may provide monetary compensation for an employee’s unused compensated time off in excess of 80 hours at any time after providing the employee with at least 30 days’ written notice. The compensation shall be provided at the rate prescribed by paragraph (8).

“(D) An employer that has adopted a policy offering compensatory time off to employees may discontinue the policy for employees described in paragraph (3)(A)(i) after providing 30 days’ written notice to the employees who are subject to an agreement or understanding described in paragraph (3)(A)(ii).

“(E) An employer may withdraw an agreement or understanding described in paragraph (3)(A)(i) only pursuant to the terms of an agreement or understanding described in paragraph (3)(A)(ii).

“(F) An employer may withdraw a policy described in paragraph (3)(A)(i) only pursuant to the terms of an agreement or understanding described in paragraph (3)(A)(ii).

“(G) An employer that provides compensated time off under paragraph (2) shall, upon the voluntary or involuntary termination of employment, pay the employee the compensation involved in the violation that was initially accrued by the employee.

“(H) The employer shall be subject to such liability in addition to any other remedy available for such violation under this section or section 17, including a criminal penalty under subsection (e).

“(I) Calculations and Special Rules.—Section 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)), as added by subsection (e), is amended by adding at the end the following:

“(1) In addition to any amount that an employer is required to pay under section (b) for a violation of a provision of section 7, an employer that violates section 7(r)(6)(A) shall be liable to the employee affected in an amount equal to—

“(i) the rate of compensation (determined in accordance with section 7(r)(6)(A)); and

“(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee;

“(J) An employee may accrue not more than 80 hours of compensatory time off under paragraph (2) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensated time off in accordance with paragraph (8).

“(K) An employer who has accrued compensated time off authorized to be provided under paragraph (2) shall, upon the voluntary or involuntary termination of employment, pay the employee the compensation involved in the violation that was initially accrued by the employee.

“(L) An employer shall be liable to the employee affected in an amount equal to—

“(i) the rate of compensation (determined in accordance with section 7(r)(6)(A)); and

“(ii) the number of hours of compensatory time off involved in the violation that was initially accrued by the employee.

“(M) No employee may receive, or agree to receive, the compensatory time off described in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.

“11A. Biweekly Work Programs.

“(a) In General.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

“‘SEC. 13A. Biweekly Work Programs."

“(1) In General.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section.

“(2) Collective Bargaining Agreement.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with such agreement.

“(b) Biweekly Work Programs.—

“(1) In General.—Notwithstanding section 7, an employer may establish biweekly work programs that allow the use of a biweekly work schedule—

“(A) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

“(B) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved.

“(2) Conditions.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

“(A) Agreement or Understanding.—The program may be carried out only in accordance with—

“(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

“(ii) in the case of an employee who is not represented by a labor organization described in clause (1), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement or understanding was entered into knowingly and voluntarily by such employee and was not a condition of employment.

“(B) Statement.—The program shall apply to an employee described in subparagraph (A)(i) if such employee has affirming, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to participate in the program.

“(C) Minimum Service.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

“(3) Compensation for Hours in Schedule.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than...
the regular rate at which the employee is employed. (C) In addition to any other amount that an employer shall be subject to such remedies for a violation of subsection (a) relating to section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216, 217) for such a violation. (c) Notice to Employees.—Not later than 30 days after the date of enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)) to employees so that the notice reflects amendments made by this Act and provides that an employer who fails to provide such notice shall be subject to such remedies for a violation of subsection (a) relating to section 12(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216, 217) for such a violation.

3. Termination. The authority provided by this Act and the amendments made by this Act terminates 5 years after the date of enactment of this Act.
March 27, 2001

CONGRESSIONAL RECORD—SENATE

4657

option nor may acceptance of comp time be a condition of employment or of working overtime.

Employers may not accrue more than 160 hours of comp time. If unused, such hours must be cashed out at the end of the preceding calendar year or not later than 31 days after the end of an alternative 12-month period designated by the employer. An employer may, upon 30 days written notice to the employee, cash-out all hours banked in excess of 80. Employees who terminate their employment either voluntarily or involuntarily must be paid for any unused comp time.

An employee may withdraw an agreement or understanding at any time by submitting a written notice of withdrawal to the employer and an employer must, within 30 days after receiving the written request, provide the employee the monetary compensation due.

Comp time may be used, upon request by a worker within a reasonable period after making the request if it does not unduly disrupt the operations of the employer.

SECTION 3, BI-WEEKLY WORK PROGRAMS: FLEX-TIME

Gives employers and employees the option of a 2-week 80 hour work period during which, without incurring an overtime penalty, up to 10 hours could be "flexed" between the two week period. Employers could, if agreed upon by their employers, choose to work 2 weeks of 40 hours each, 50 hours in one week and 30 in another, etc. Employers would not be required to pay overtime rates (time-and-a-half) until 80 hours had been worked in 2 calendar weeks. For hours worked in excess of 80 in a 2 week period, a worker would have to be compensated either in cash or in paid comp time. The employer has agreed to a comp time option, each at not less than a time-and-a-half basis.

Like comp time, this program is completely voluntary and may not affect collective bargaining agreements that are in force.

Congress would be covered by both provisions which sunset after 5 years.

Mr. SPECTER, Mr. DASCHLE, Mr. SMITH of Oregon, Mr. LEAHY, Ms. COLLINS, Mr. LEIBERMAN, Ms. SNOWE, Mr. WYDEN, Mr.

According to the Bureau of Labor Statistics, both mother and father work outside the home in almost two thirds of American households. Moreover, 75 percent of mothers with school age children are now in the workforce, up dramatically in recent years. While the causes for this are many, including expanded work opportunities for women and a heavy tax burden on working families, the results are clear: fewer hours are spent by mothers and fathers with their children and with each other. This shrinking window of family time is weakening the essential family bond that is the bedrock of our strength as a nation.

Not only will our bill make it easier for parents to spend more quality time at home or engaged in personal or community activities, it will do so without a hit to the monthly bottom line. Since comp time and flex time are paid, workers will receive the same amount of money as they would if they did not have these options. The only difference is that this legislation will allow workers the flexibility of taking a day, a week, or even a month off once they have accumulated time in their bank.

Let me make one point very clear: the Workplace Flexibility Act expands, but does not replace the existing law requiring overtime pay for overtime work. For those employees required to work overtime, they will always have the option of receiving overtime pay at the standard time-and-a-half rate. This bill simply affords the employee additional options, upon the mutual agreement of the employee and employer.

An employer who violates this or any other provision of our labor laws would be subject to severe civil fines and possibly even prison. In fact, this bill heightens those protections by providing the employee quadruple damages against an employer who violates the law.

But rather than foster antagonism between labor and management, these added scheduling options have been proven both in this country and abroad to encourage greater cooperation between employees and their employers. Flexible scheduling has created win-win situations for millions of salaried and federal workers and their employers.

For the first time in 50 years, America’s blue collar working men and women will be empowered to determine the course of their own work. And thereby, workers will be given greater control over the most precious asset in their lives and in the lives of their families: time.

I urge my colleagues to respond to the growing need for workplace flexibility by supporting the Workplace Flexibility Act.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. SMITH of Oregon, Mr. LEAHY, Ms. COLLINS, Mr. LEIBERMAN, Ms. SNOWE, Mr. WYDEN, Mr.
I rise today to introduce with Senator Jeffords, Mr. Schumer, Mr. Chafee, Mr. Akaka, Mr. Ensign, Mr. Bayh, Mr. Biden, Mr. Ronklam, Mrs. Boxer, Mr. Breaux, Ms. Cantwell, Mr. Carnahan, Mr. Carper, Mr. Cleland, Mrs. Clinton, Mr. Corzine, Mr. Dayton, Mr. Dodd, Mr. Dorgan, Mr. Durbin, Mr. Edwards, Mrs. Feinstein, Mr. Graham, Mr. Harkin, Mr. Inouye, Mr. Johnson, Mr. Kerry, Ms. Landrieu, Mr. Levin, Mrs. Lincoln, Ms. Mikulski, Mr. Miller, Mrs. Murray, Mr. Nelson of Nebraska, Mr. Reed, Mr. Reid, Mr. Rockefeller, Mr. Sarteano, Ms. Stabenow, Mr. Torricelli, and Mr. Wellstone:...
crimes targeting individuals because of their race, color, religion, national origin, gender, disability or sexual orientation.

While current hate crime laws help us better understand the problem and penalize those who would resort to such violent acts, these laws do not extend to the thousands of people who are victimized because of their gender, sexual orientation or disability. Nor are they broad enough to help those who were not engaging in such federally protected activities as attending school, or voting, when they were victimized.

In New Jersey, for example, a mentally disabled man was tortured by eight different people at a party. The man was burned with cigarettes, beaten, choked, and then left alone in the wilderness. The student who this man was tortured only because of his disability. This was the third time this man had been attacked at a party.

Just recently, my staff met with a constituent who is a teacher at a Beverly Hills high school. The teacher expressed concern about the safety of gay students, many of whom had been targeted and attacked by other students on account of their sexual orientation. She felt that teachers like herself did all they could to protect the students while they were on school property. She feared for their safety, however, once the students were off school grounds. Even within the school, the teacher explained, some officials did little to create an environment of tolerance and mutual respect for the students. As a result, the bias-motivated acts committed against them often went unreported, whether they took place in the school or within their communities.

My constituent’s appeal for help on behalf of her young students amplifies the need to send a strong message of mutual tolerance and respect to our youngsters. Nearly two-thirds of these crimes are committed by our nation’s youth and young adults. In many ways, reinforcing the strength of our diverse nation must begin with our youth.

As these stories illustrate, the perpetrators of hate crimes have no respect for boundaries. They are neither confined to any one region of the country, nor any one age group. The perpetrators of these crimes target individuals not because of what the victims have, or what they have done, but for who they are. Hate crimes are not like other crimes of violence. Their impact is pervasive.

Opponents of hate crimes legislation argue that these crimes are no different from any other crime; that they should be treated like other crimes of violence. Research by the American Psychological Association, APA, suggests otherwise. According to the APA, hate crime victims and their communities are often left with psychological wounds that run deeper and take significantly longer to heal than the wounds of victims of non-bias-related crimes.

Much like victims of non-bias related crimes, victims of hate crimes are likely to exhibit symptoms of depression, post-traumatic stress disorder, anxiety, high levels of anger, and a decreased sense of control. Unlike victims of non-bias related crimes, however, hate crime victims experience psychological after-effects at a much higher level. According to the APA, hate crime victims need “as much as five years to overcome the emotional distress of the incident.” Compared with “victims of non-bias crimes who experience a drop off in crime-related psychological problems within two years of the crime.” The financial costs for mental health and medical treatment following an attack only add to the psychological stress of the victim.

Hate crimes pose a very real threat to the social health of the community. Individuals who live in communities where hate crimes have occurred often experience an increased sense of fear and intimidation. They also tend to feel a heightened sense of vulnerability and are much less likely to report such crimes should they occur again, for fear of retaliation. Hate crimes also breed mistrust within the community. Members of the victimized groups are likely to believe that law enforcement agencies are biased against their group and, that when needed, the law enforcement community will not respond.

In essence, hate crimes have been shown to produce deep psychological wounds in the victim. They engender a sense of disunity and division within the community, which undermines the basic tenets on which this nation was founded. A country that prides itself on its diversity, our nation cannot continue to withstand these acts of hatred and intolerance. No individual or group should be targeted for violence and no such act of violence should go unpunished.

No American should have to live in fear because of his or her perceived race, sexual orientation, ethnicity or disability. No American should be afraid to walk down the street for fear of a hate-motivated attack. No American should be deterred by intimidation from living in the home of his or her choice. And certainly, no American should be deterred from reporting a hate-based crime because they are afraid that the police will not properly respond to the needs necessary to protect them.

This legislation is not only overdue, it is necessary for the safety and well-being of millions of Americans. It is necessary for the safety and well-being of millions of Americans.

Certainly, none of us would be willing to send the message that today, basic civil rights protections do not extend to a few and under certain circumstances.

By introducing this legislation today, we are sending a signal that we are unwilling to turn a blind eye to this epidemic of hate that threatens to envelop our Nation. I urge my colleagues to join in this message by supporting the enactment of “The Local Law Enforcement Enhancement Act of 2001.”

By Mr. JEFFORDS (for himself and Mr. BAUCUS):
S. 626. A bill to amend the Internal Revenue Code of 1986 to permanently extend the work opportunity credit and the welfare-to-work tax credit, and for other purposes; to the Committee on Finance.
Mr. GRASSLEY. Mr. President, I rise today to introduce the Long-Term Care and Retirement Security Act. This legislation, which I sponsored in the 106th Congress with my distinguished colleagues from Florida, Senator Bob Graham, would ease the tremendous cost of long-term care.

The bill that Senator Graham and I are reintroducing today would allow individuals a tax deduction for the cost of long-term care insurance premiums.

Increasingly, Americans are interested in private long-term care insurance to pay for nursing home stays, assisted living, and other long-term care services. However, most people find the policies unaffordable. The younger the person, the lower the insurance premium, yet most people aren't ready to buy a policy until retirement. A deduction would encourage many people to buy long-term care insurance.

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

The Van Zee family of Otley, Iowa, typifies many families who would benefit from his legislation. Renee Van Zee at 55 years old has early onset Alzheimer's disease. Three years after her diagnosis, she can't feed, bathe or dress herself. Her daughter, Leanna, and her husband, Albert, are pulling out all the stops to keep Mrs. Van Zee out of a nursing home. They care for her full-time. They've found some services through Medicaid and Medicare and received a donated hospital bed. Even so, caring for Mrs. Van Zee is difficult. She can't be left alone at any time. The family's network of services is piecemeal, like that of many families in similar straits. Those services could change with any change in their circumstances. The family bears considerable out-of-pocket expenses for Mrs. Van Zee's nutritional supplements. The supplements cost $4.90 for a four-pack of cans. Mrs. Van Zee consumes two or three cans a day. It's obvious how this situation affects a family's finances. Working adults quit their jobs to care for a loved one, and take on a host of new expenses at the same time.

The Long-Term Care and Retirement Security Act would help the 22 million family caregivers like the Van Zees. A $3,000 tax credit would help to pay for Mrs. Van Zee's nutritional supplements or hire an extra nurse. The legislation also would help families like the Van Zees buy long-term care insurance. Someone like Mrs. Van Zee could have bought herself insurance years ago, had the credit.

I urge my colleagues to support and co-sponsor this bill.

By Mr. GRASSLEY (for himself and Mr. GRAHAM):

S. 627. A bill to amend the Internal Revenue Code of 1986 to allow individuals a deduction for the cost of long-term care insurance premiums...
such “opt-out” mechanism, or refuse to honor the invitation or permission, submitted a re-
erated by the invitation or permission; and
 Nhce because recipients of unsolicited com-
ermecial electronic mail are unable to avoid the
receipt of such mail through reasonable means,
such mail may invade the privacy of recipients.

(10) The practice of sending unsolicited
commercial electronic mail is sufficiently
profitable that senders of such mail will not
be unduly burdened by the costs associated
with providing an “opt-out” mechanism to
recipients and ensuring that recipients who
exercise such an opportunity will not receive fur-
ther messages from that sender.

(11) In legislating against certain abuses on
the Internet, Congress should be very careful
to avoid infringing in any way upon con-
stitutionally protected rights, including the
rights of assembly, free speech, and privacy.

(b) CONGRESSIONAL DETERMINATION OF Pub-
lic Policy.—On the basis of the findings in
subsection (a), the Congress determines that—

(1) there is substantial government inter-
est in regulation of unsolicited commercial
electronic mail;

(2) senders of unsolicited commercial elec-
tronic mail should not mislead recipients as to
the source or nature of such mail; and

(3) recipients of unsolicited commercial
electronic mail have a right to decline to re-
ceive additional unsolicited commercial
electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term “af-
firmative consent” shall mean consent, used with respect
to a commercial electronic mail message, means—

(A) the message falls within the scope of an
invitation or permission, and whose product, service,
and conspicuous notice of an opportunity not
to receive such mail quickly and easily.

(2) COMMERCIAL ELECTRONIC MAIL ME-
SAGE.—The term “commercial electronic mail
message” means any electronic mail message the pri-
mary purpose of which is to advertise or promote, for a com-
mercial purpose, a commercial product or service (in-
cluding content on an Internet website). An
electronic mail message shall not be consid-
ered to be a commercial electronic mail mes-
sage solely because such message includes a
reference to a commercial entity that serves to
identify the sender or a reference or link to an Internet
website operated for a com-
mercial purpose.

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) DOMAIN NAME.—The term “domain
name” means any alphanumeric designation which
is registered with or assigned by any
domain name registrar, domain name regu-
lator, other domain name registration au-
thority as part of an electronic address on
the Internet.

(5) ELECTRONIC MAIL ADDRESS.—

(A) In general.—The term “electronic mail
address” means a destination (com-
monly expressed as a string of characters) to
which electronic mail can be sent or deliv-
ered.

(B) INCLUSION.—In the case of the Internet,
the term “electronic mail address” may in-
clude an electronic mail address consisting of
a user name of a domain name re-
ferred to as the “local part”) and a reference to
an Internet domain (commonly referred to as
the “domain part”).

(6) FTC ACT.—The term “FTC Act” means
11 et seq.).

(7) FUNCTIONING RETURN ELECTRONIC MAIL
ADDRESS.—

(A) The term “functioning return elec-
tronic mail address” means a legitimately
obtained electronic mail address, clearly and
conspicuously displayed in a commercial
electronic mail message, that—

(i) remains capable of receiving messages
for no less than 30 days after the trans-
mis

(ii) has capacity reasonably cal-
culated, in light of the number of recipients
of such an electronic mail message, to enable it to receive the full expected
county of reply messages from such recipi-

(8) HEADER INFORMATION.—The term “head-
er information” means the source, destina-
tion, and routing information attached to the
beginning of an electronic mail message,
including the originating domain name and
originating electronic mail address.

(9) IMPLIED CONSENT.—The term “implied
consent”, when used with respect to a com-
mercial electronic mail message, means—

(A) within the 5-year period ending upon
receipt of such message, there has been a
business transaction between the sender and
the recipient (including a transaction involv-
ing the provision, free of charge, of informa-
tion, goods, or services requested by the re-

(B) the recipient was, at the time of such
transaction or thereafter, provided a clear
and conspicuous notice of an opportunity not
to receive unsolicited commercial electronic
mail messages from the sender and has not
exercised such opportunity.

(10) INITIATE.—The term “initiate”, when used with respect to a commercial electronic
mail message, means to originate such mes-
sage, to procure the origination of such mes-
sage or to assist in the origination of such

(11) INTERNET.—The term “Internet” has the
meaning given that term in the Internet
Access Act (Pub. L. 102-277, Div. C,
Title XI, §1101(e)(3)(c)).

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

(13) PROTECTED COMPUTER.—The term “pro-
tected computer” has the meaning given
that term in section 1030(e)(2) of title 18,
United States Code.

(14) RECIPIENT.—The term “recipient”, when
used with respect to a commercial electronic
mail message, means the address-

(15) ROUTINE CONVEYANCE.—The term “rou-
tine conveyance” means the transmission,
routing, relaying, handling, or storing,
through an automatic technical process, of
an electronic mail message for which an-
other person has provided and selected the
recipient addresses.

(16) SENDER.—The term “sender”, when
used with respect to a commercial electronic
mail message, means a person who initiates
such a message and whose product, service,
or Internet web site is advertised or pro-
posed by the message, but does not include
any person, including a provider of Internet
access service, whose role with respect to the
message is limited to routine conveyance of
the message.

(17) UNSOLICITED COMMERCIAL

(A) IN GENERAL.—The term “unsolicited
commercial electronic mail message” means
any commercial electronic mail message

(18) USES OF ELECTRONIC MAIL.

Use of electronic mail, transmitted,
transmitted, routed, relayed, handled,
or stored, on any electronic mail system,
in a reply submitted pursuant to section
5(a)(3), or in response to any other oppor-
tunity the sender may have provided to the
recipient, a desire not to receive commercial
electronic mail messages from the sender.

(B) EXCLUSION.—Notwithstanding subpara-
graph (A), the term “unsolicited commercial
email message” does not include an
electronic mail message sent by or on behalf
of one or more lawful owners of copyright,
patent, publicity, or trademark rights to an
unauthorized user of protected material no-
tifying such user that the use is unauthor-
ized and requesting that the use be termi-
nated that permission for such use be ob-
tained from the rights holder or holders.

SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

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

"§ 1348. Unsolicited commercial electronic mail con-
aining fraudulent transmission information

"(a) IN GENERAL.—Any person who inten-
tionally initiates the transmission of any
unsolicited commercial electronic mail message to a protected computer with knowledge that such message contains or is accompanied by header information that is materially or intentionally false or misleading shall be fined or imprisoned for not more than 1 year, or both, under this title.

"(b) Definitions.—Any term used in subsection (a) that is defined in section 5 of the Unsolicited Commercial Electronic Mail Act of 2001 has the meaning giving it in that section.

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

"1348. Unsolicited commercial electronic mail containing fraudulent routing information.

SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES.

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It shall be unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that contains, or is accompanied by, header information that is materially or intentionally false or misleading, or not legitimately obtained.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It shall be unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message with a subject heading that such person knows is likely to mislead the recipient about a material fact regarding the contents or subject matter of the message.

(b) INCLUSION OF RETURN ADDRESS IN COMMERCIAL ELECTRONIC MAIL.—It shall be unlawful for any person to initiate the transmission of a commercial electronic mail message to a protected computer unless such message contains a functioning return electronic mail address to which a recipient may send a reply to the sender to indicate a desire not to receive further messages from that sender at the electronic mail address at which the message was received.

(c) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request to a sender, through an electronic mail message sent to an electronic mail address provided by the sender pursuant to paragraph (3), not to receive further electronic mail messages from that sender, it shall be unlawful for the sender, or any person acting on behalf of the sender, to initiate the transmission of an unsolicited commercial electronic mail message to such a recipient within the United States more than 10 days after receipt of such request.

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND CONSPICUOUS DISCLOSURES.—It shall be unlawful for any person to transmit an unsolicited commercial electronic mail message to a protected computer unless the message provides, in a manner that is clear and conspicuous to the recipient:

(A) identification that the message is an advertisement or solicitation;

(B) notice of the opportunity under paragraph (3) to obtain further unsolicited commercial electronic mail messages from the sender; and

(C) a valid physical postal address of the sender.

(b) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the laws of any State with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association, or

(f) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

SEC. 6. ENFORCEMENT.

(a) ENFORCEMENT BY COMMISSION.—

(1) IN GENERAL.—Section 5 of this Act shall be enforced by the Commission under the FTC Act. For purposes of such Commission enforcement, any offense of this Act shall be treated as a violation of a rule under section 18 (15 U.S.C. 57a) of the FTC Act regarding unfair or deceptive acts or practices.

(2) SCOPE OF COMMISSION ENFORCEMENT AUTHORITY.—

(A) The Commission shall prevent any person to whom a rule of the FTC Act applies and who violates or attempts to violate such rule from engaging in such conduct and shall require such person to stop such conduct and—

(i) provide to the Commission—

(A) any information that the Commission may request in writing; and

(B) a written report of any action the person may have taken to cease such conduct, including the date on which such person took such action.

(ii) include any other terms and provisions of the FTC Act were incorporated into and made a part of this section.

(B) Nothing in this Act shall be construed to give the Commission authority over activities that are otherwise outside the jurisdiction of the FTC Act.

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—

(1) IN GENERAL.—Compliance with section 5 of this Act shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(i) national banks, and Federal branches and agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks, and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration with respect to any Federal credit union;

(D) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to—

(i) the operation or flight of any commercial air carrier subject to part 121;

(ii) the operation or flight of any air carrier subject to part 129;

(iii) the operation or flight of any air carrier subject to part 135;

(iv) the operation or flight of any air carrier subject to part 137;

(v) the operation or flight of any air carrier subject to part 139;

(vi) the operation or flight of any air carrier subject to part 141;

(vii) the operation or flight of any air carrier subject to part 142;

(viii) the operation or flight of any air carrier subject to part 143;

(ix) the operation or flight of any air carrier subject to part 145;

(x) the operation or flight of any air carrier subject to part 147;

(xi) the operation or flight of any air carrier subject to part 149;

(xii) the operation or flight of any air carrier subject to part 151;

(xiii) the operation or flight of any air carrier subject to part 153;

(xiv) the operation or flight of any air carrier subject to part 155;

(xv) the operation or flight of any air carrier subject to part 157;

(xvi) the operation or flight of any air carrier subject to part 159;

(xvii) the operation or flight of any air carrier subject to part 161;

(xviii) the operation or flight of any air carrier subject to part 163;

(xix) the operation or flight of any air carrier subject to part 165;

(xx) the operation or flight of any air carrier subject to part 167;

(2) STATUTORY DAMAGES.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the smaller of—

(A) the amount determined by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $50 (with each separately proximately caused unlawful message treated as a separate violation); or

(B) $500,000.

In determining the per-violation penalty under this paragraph, the court shall take into account the nature and circumstances of the unlawful messages, including any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(3) TREBLE DAMAGES.—If the court finds that the defendant committed the violation willfully and knowingly, the court may increase the amount recoverable under paragraph (2) up to threefold.

(4) ATTORNEY FEES.—In the case of any successful action under subparagraph (A), the court shall award reasonable attorney fees and costs to the Plaintiff in an amount equal to the amount determined under paragraph (2).

(5) NOTICE.—

(A) PRE-FILING.—Before filing an action under paragraph (1), an attorney general shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) CONTEMPTUOUS.—If an attorney general determined that it is not feasible to provide the notice required by subparagraph (A) before filing the action, the notice and a copy of the complaint shall be provided to the Commission when the action is filed.

(6) INTERVENTION.—If the Commission receives notice under paragraph (4), it—
(A) may intervene in the action that is the subject of the appeal; and
(B) shall have the right—
(i) to be heard with respect to any matter that arises in that action; and
(ii) to file a cross-appeal.

(7) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to preclude an administrative action by a State from exercising the powers conferred on the attorney general by the laws of that State to—
(A) conduct investigations;
(B) administer oaths or affirmations; or
(C) compel the attendance of witnesses or the production of documentary and other evidence.

(8) VENUE; SERVICE OF PROCESS.—
(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that has venue over the defendant.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—
(i) is an inhabitant; or
(ii) maintains a physical place of business.

(9) LIMITATION ON STATUTORY DAMAGES.—The limitation on statutory damages under Federal law while Federal action is pending.—If the Commission or any other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(d) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—
(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—
(A) enjoin further violation by the defendant; or
(B) recover damages in any amount equal to the greater of—
(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or
(ii) the amount determined under paragraph (2).

(2) STATUTORY DAMAGES.—For purposes of paragraphs (1)(B)(i) and (B), the amount determined under this paragraph is the smaller of—
(A) the amount determined by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $20 (with each separately addressed unlawful message carried over the facilities of the provider of Internet access service treated as a separate violation); or
(B) $500,000.

In determining the per-violation penalty under this paragraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on the provider to continue to do business, and such other matters as justice may require.

(3) TREBLE DAMAGES.—If the court finds that the defendant committed the violation willfully and knowingly, the court may increase the amount recoverable under paragraph (2) up to three times the amount; and

(4) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable attorneys’ fees, against any party.

(5) EVIDENTIAL PRESUMPTION.—For purposes of an action alleging a violation of section 5(c)(4) of this Act, a recipient that has submitted a complaint about a commercial electronic mail message to an electronic mail address maintained and published by the provider of Internet access service for the purpose of receiving complaints about unsolicited commercial electronic mail messages shall create a rebuttable presumption that the message in question was unsolicited within the meaning of this Act.

(e) AFFIRMATIVE DEFENSE.—A person shall not be liable for damages under subsection (c)(2) or (d)(2) if—
(1) such person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of section 5; and
(2) any violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 7. EFFECT ON OTHER LAWS.

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

(b) STATE LAW.—No State or local government may impose any civil liability for commercial activities or actions in interstate or foreign commerce in connection with an activity or action described in section 5 of this Act that is inconsistent with or more restrictive than the treatment of such activities or actions under this Act, except that this Act shall not preempt any civil action under—
(1) State trespass, contract, or tort law; or
(2) any provision of Federal, State, or local criminal law or any civil remedy available under such law that relates to acts of computer fraud perpetrated by means of the unauthorized transmission of unsolicited commercial electronic mail messages, provided that the mere sending of unsolicited commercial electronic mail messages that complies with this Act shall not constitute an act of computer fraud for purposes of this subparagraph.

SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

Not later than 18 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness of, and any need for, provisions of this Act and the need (if any) for the Congress to modify such provisions.

SEC. 9. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 10. EFFECTIVE DATE.

The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.

Mr. WYDEN. Mr. President, Internet communications are increasingly important to Americans’ daily lives and business. However, as the public’s reliance on online and Internet services continues to grow, so do the burdens and frustrations stemming from unwanted junk e-mail.

This type of e-mail is commonly known as “spam,” and it isn’t hard to see why. Getting spam e-mail in your in-box is a lot like getting its namesake lunchmeat in your lunchbox: You didn’t order it, and you really can’t tell where the stuff comes from.

Until now, you also have been virtually powerless to stop it. The recipient has no opportunity to refuse to accept the message, and thus is forced to take the time and bear the costs of storing, accessing, reviewing, and deleting such unwanted e-mail. In short, spammers have all the power. A spammer can send a recipient whatever messages it wants, and the recipient has no choice but to deal with them.

Tools of the spammer. E-mail technology enables spammers to send huge quantities of messages quickly and cheaply. With the stroke of a key, a spammer can let fly a torrent of tens or hundreds of thousands of identical e-mails at minimal cost. Such bulk spam can clog up the network, impairing Internet service for everyone. For example, back in December, an influx of millions of junk e-mails slowed Verizon’s network to a crawl, causing delays of several hours for customers trying to send and receive messages.

Spam affects Internet companies as well as end users. Internet service providers are the ones who have to deal directly with the traffic jams caused when bulk spam floods their networks. And when consumers become frustrated by the receipt of spam, the first place they turn to complain will be the Internet companies from whom they purchase service. Left unchecked, spam would have a significant impact on how consumers perceive and use Internet services and e-commerce.

Because of this, Internet service providers have often played a major role in trying to shield their customers from spam. But the bottom line is that existing laws do not provide the tools to deal with the mounting problem of junk e-mail.

That is why I am teaming up again today with my good friend Senator Bunning to introduce the “Controlling the Assault of Non-Solicited Pornography And Marketing Act,” the CAN SPAM Act, for short. This bipartisan legislation says that if you want to send unsolicited marketing e-mail, you’ve got to play by a set of rules, rules that allow consumers to see where the messages are coming from, and to tell the sender stop. The basic goal is simple: give the consumer more control.

Specifically, our bill would require a sender of any marketing e-mail to include a working return address, so that the recipient can send a reply e-mail demanding not to receive any further
messages. A spammer would be prohibited from sending further messages to a consumer that has told it to stop.

The bill also would prohibit spammers from using falsified or deceptive headers or subject lines, so that consumers will be able to tell where their marketing e-mails are coming from.

The bill includes strong enforcement provisions to ensure compliance. Spammers that intentionally disguise their identities would be subject to misdemeanor criminal penalties. The Federal Trade Commission would have authority to impose civil fines. State attorneys general would be able to bring suit on behalf of the citizens of their states. And Internet service providers would be able to bring suit to keep unlawful spam off of their networks. In all cases, particularly high penalties would be available for true "bad actors"—the shady, high-volume spammers who have no intention of being in a lawful and responsible manner.

Our goal here is not to discourage legitimate online communications with consumers. Senator BURNS and I have no intention of interfering with a company's ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth. Rather, we want to go after those unscrupulous individuals who use e-mail to annoy and mislead. I believe this bill strikes that important balance.

Senator BURNS and I have worked with a number of different groups in shaping this legislation, and we believe we have made real progress in addressing some concerns that were raised about the spam bill we proposed last year. We feel that the version of the bill we introduce today is a workable, common-sense approach. I am pleased that Senators LIEBERMAN, LANDRIEU, TORRICELLI, BREAUX, and MURKOWSKI are cosponsoring this bill today, and I look forward to working with them and the rest of my Senate colleagues to see that the bill moves forward as quickly as possible.

By Mr. VOINOVICH:
S. 631. A bill to provide for pension reform, for private purposes; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation that I believe will provide for the financial future of millions of Americans, help boost this nation's savings rate, and bolster long-term economic growth. My bill, the Comprehensive Retirement Security and Pension Reform Act, mirrors H.R. 10, legislation introduced earlier this year by my friend and fellow Ohioan, Rep. Jim Jordan. It is estimated that right now, an astounding 75 million American workers have no pension plan. In other words, roughly half of America's workers lack a key mechanism they will need in order to achieve a comfortable retirement. This situation is intolerable and must change.

In my view, we must do more to encourage more citizens to ensure their financial independence in their golden years. That's why I strongly believe we must pass the Comprehensive Retirement Security and Pension Reform Act. The increased personal savings and investment that would result from expanding pensions would reinvigorate our savings ethic, which has been eroding over recent years. Somewhere needs to be done quickly to encourage more Americans to save and plan for their retirement and I believe the legislation I am introducing today is an important step in the right direction.

Among the important things the bill I am introducing today does is raise the maximum annual contribution to an Individual Retirement Account, IRAs, from $2,000 per individual to $5,000. The contribution limits for IRAs, have remained unchanged since 1981. Since sixty-nine percent of all IRA participants contribute the maximum, the $2,000 limit has been a barrier to encouraging Americans to save for their own retirement. If the original IRA contribution limit in 1975, of $150, had been indexed for inflation, it would have reached $5,353 in the year 2000. Clearly, today's working men and women want to, and are ready to, invest in their retirement. If Congress would only let them. The time has come to raise the contribution limit.

In addition, the Comprehensive Retirement Security and Pension Reform Act includes provisions to encourage employers to offer pensions, increase participation by eligible employees, raise limits on benefits and contributions, improve asset portability, strengthen legal protections for plan participants, and to preempt regulatory burdens on plan sponsors.

When the baby boomers start to retire in a few short years, this country will begin to experience a retirement tsunami unlike anything it has ever experienced. This 20-year period will put great strain on the economy and the federal budget, especially on government programs that provide services to senior citizens. One of the best ways to help prepare for this is to encourage private saving. The Comprehensive Retirement Security and Pension Reform Act is an important step in this direction and I urge my colleagues to join in supporting this legislation.

By Mr. NELSON of Florida:
S. 632. A bill to reinstate a final rule promulgated by the Administrator of the Environmental Protection Agency, and for other purposes; to the Committee on Environment and Public Works.

Mr. NELSON of Florida. Mr. President, I rise today to express my grave concern about the Bush administration's latest decision to roll back measures designed to safeguard public health. Last Tuesday, the administration announced it would revoke the new, safer arsenic standard for drinking water and revert to the standard we have had in effect since 1942. The administration stated that the lower standard for drinking water should not go into effect because there was "no consensus on a particular safe level" of arsenic in drinking water. The administration also claims it would cost industry too much money to comply with the lower standard.

The old standard of 50 parts per billion was established almost 60 years ago—before research linked arsenic to some forms of cancer. A 1999 study by the National Academy of Sciences, a study mandated by Congress for drinking-water, concluded that the current arsenic standard for drinking water could result in one additional case of cancer for every 100 people consuming such drinking water. The same study determined that long-term exposure to low concentrations of arsenic in drinking water can lead to skin, bladder, lung, and prostate cancer. Non-cancer effects of ingesting arsenic at these levels can include cardiovascular disease, diabetes and anemia as well as reproductive, developmental, immunological, and neurological effects. In response, the Environmental Protection Agency adopted a rule that set a new standard of 10 parts per billion which the EPA deemed safe for drinking water.

This standard also has been adopted by the European Union and the World Health Organization.

Is cost a sufficient reason for reversal? No. That's because Congress consistently has made clear that it will help states and municipalities with the funds necessary to provide their citizens with safe drinking water.

Even the Governor of Florida recognizes the health risks of arsenic. Arsenic was discovered recently in the soil in playgrounds in Tarpon Springs, Miami and Crystal River. It leached into the soil from pressure-treated wood used for park boardwalks and other outdoor structures. Last week, Gov. Jeb Bush ordered the state's wood-treatment plant to stop using arsenic to treat wood. I commend him for that decision.

If arsenic in the soil is dangerous for children, it only stands to reason that the danger is even greater when it is found in drinking water. The administration should join the State of Florida in recognizing the danger of arsenic and restore the 10 parts per billion standard. In the meantime, I am introducing legislation to restore the federal rule containing the new, safer drinking-water standard. The American people deserve clean, safe drinking water. If the Administration won't act, Congress must.
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. 632
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That--

SEC. 1. SHORT TITLE. This Act may be cited as the "Arsenic Reduction in Drinking Water Act of 2001".

SEC. 2. DEFINITIONS. In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) PUBLIC WATER SYSTEM.—The term "public water system" has the meaning given the term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f).

(3) STATE.—The term "State" has the meaning given the term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f).

SEC. 3. REINSTATEMENT OF FINAL RULE. On and after enactment of this Act, the final rule promulgated by the Administrator entitled "Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring" (66 Fed. Reg. 6766 (January 22, 2001)), and the amendments to parts 9, 141, and 142 of title 40, Code of Federal Regulations, made by that rule, shall have full force and effect.

SEC. 4. ASSISTANCE FOR COMPLIANCE WITH ARSENIC STANDARD. (a) IN GENERAL.—For each fiscal year for which funds are made available to carry out this section, the Administrator, using data obtained from the most recent available needs survey conducted by the Administrator under section 1452(h) of the Safe Drinking Water Act (42 U.S.C. 300t-12(h)), shall allocate the funds to States for use in carrying out treatment projects to comply with the final rule reinstated by section 3.

(b) RATIO.—The Administrator shall allocate funds to a State under subsection (a) in the ratio that—

(1) the financial need associated with treatment projects for compliance with the final rule reinstated by section 3 for public water systems in the State; bears to

(2) the total financial need associated with treatment projects for compliance with the final rule reinstated by section 3 for all public water systems in all States.

By Mrs. HUTCHISON (for herself and Mr. ROCKEFELLER):

S. 633. A bill to provide for the review and management of airport congestion, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. HUTCHISON. Mr. President, I rise today, with my colleague Senator ROCKEFELLER, to introduce legislation that will bring real relief to the hundreds of millions of passengers that have been suffering through the dramatic increase in the number of flight delays and cancellations in our passenger aviation system.

I know that many of my colleagues are, by necessity, frequent fliers. So you know how bad it is out there and you have heard the statistics. More than twenty-five percent of the scheduled flights last year were delayed or canceled. The length of the average delay has increased, despite the extra tarmac time built into eighty-three percent of flights by the airlines to compensate for delays they know are going to occur.

Not coincidentally, the number of annual air travelers is also rising. Between 1995 and 1999, the number of air travelers increased nearly sixteen percent, from about 582 million to 674 million. The Federal Aviation Administration estimates that this number will increase to more than 1 billion by the end of this decade. To meet this increased demand, the number of scheduled flights has also increased.

However, there has not been a commensurate increase in the number of new aviation facilities. Only one major airport was added to the heart of that decade in Denver, and only a handful of new runways and terminals have been completed to deal with the new demand.

Unfortunately, the process for making capital improvements to existing airports is often painfully slow and easily derailed by well-organized groups that use every possible impediment to delay a new runway until it becomes impossibly expensive and difficult to build.

Unless we significantly expand the capacity of our aviation system, we will not be able to meet the growing demand for air travel. Air fares will skyrocket and delays will continue to spread across the system. The loss of American productivity, from millions of hours lost while sitting on an airport tarmac, will be incalculable.

Fixing the problem will call for more infrastructure and better air traffic control facilities. But we must meet the challenge now so these new runways and terminals can be ready before we have a truly congested system.

Until now, most of the focus here in Congress has been on passenger service. The Commerce Committee recently reported a bill, which I cosponsored, to force airlines to live up to their promises to provide improved customer service, especially during delays and cancellations. Passenger service is critical, but the real cause of consumers' frustration is the explosive growth in the number and length of flight delays. That is where this bill will fill a real gap.

The bill instructs the Secretary to develop a procedure to ensure that the approval process for runways, terminals and airports is streamlined. Federal, state, regional and local reviews would take place simultaneously, not one after the other.

In no way would this mean that environmental laws would be ignored or broken. The bill does not limit the grounds on which a lawsuit may be filed. It simply provides the community with a reasonable time line to get an answer. If that answer is "no," then the community is free to explore other transportation options.

The bill also addresses the unfortunate practice of the airlines to over-sell flights at peak hours. At many airports, these schedules are so cunningly packed that, even in perfect weather conditions throughout the country, there is no way the airlines could possibly meet them. The result is chronically late flights.

The legislation directs the Secretary to study the options to ease congestion at crowded airports. The legislation also grants the airlines a limited antitrust exemption, so that they may consult with one another, subject to the Secretary's approval, to re-schedule flights from the most congested hours to off-peak times.

We have all experienced flights that push away from the gate only to languish for hours on the tarmac waiting for a legal, technical or mechanical reason to get underway. These flights as on-time departures. This legislation would change the definition of "on-time departure" to mean that the flight is airborne within 20 minutes of its scheduled departure time.

Our national economic health depends upon the reliability of our aviation system. If we fail to act now, that reliability will be placed in serious jeopardy.

Mr. ROCKEFELLER. Mr. President, I join today with the chairwoman of the Aviation Subcommittee in introducing the Aviation Delay Prevention Act. The bill is intended to start a dialogue about some of the solutions for reducing congestion, specifically ways to expedite airport construction, and provide a mechanism for air carriers to talk about changing flight schedules to reduce delays. This is a tough issue with no easy, simple solutions. Senator HUTCHISON and I know this.

I know that this specific piece of legislation is intended to provide a framework for a debate on how to provide a better air transportation system for travelers. We must, though, continue our efforts to work through every issue in our efforts to enable the FAA, airports and air carriers to provide a more efficient air transportation system.

Senator HUTCHISON and I want to provide our colleagues with constructive and feasible legislative provisions that are well thought out and considered these issues.

We will hold a hearing on this bill on Thursday, eliciting testimony from the Department of Transportation, DOT, the Federal Aviation Administration, the FAA, airports and airlines, as well as general aviation.

We do know we are facing an aviation system that today is overcrowded and cannot keep up with demand. Tomorrow's demand forecasts are also daunting, with an increase in passenger traffic from about 670 million passengers to more than a billion. As we review the problems of our aviation system, I am constantly thinking and envisioning a system with twice the

CONGRESSIONAL RECORD—SENATE 4665

March 27, 2001
number of planes, and twice the number of people traveling within the next 10 years. Today, right now, we have airports that are full, and in some cases, all of the planes. We have terminals that need to be expanded, and runways that must be built. One thing all of us know is that without adequate runways and terminals, no one is well served.

We see it first hand as we fly around the country, as our planes are delayed, as we talk with constituents at home and here in Washington, that our aviation system is running on empty. Last year, we had to fight and claw our way to getting bills that finally provides sufficient money for the FAA to be able to build new runways and buy new equipment. We must be vigorous in ensuring that the Administration does not make cuts to these key programs, as was initially proposed by the Bush Administration. Knowing that it takes years to build a runway and years to develop new air traffic control systems, we cannot shortchange the system.

Last year, as part of the Wendell H. Ford Aviation Investment and Reform Act, FAIR–21, P.L. 106–181, we set out a road map for a more businesslike Federal Aviation Administration, FAA, creating a corporate-type Board with people from non-aviation related businesses to oversee air traffic control. We created a Chief Operating Officer, COO, to run air traffic, with specific authority to focus on operations, the budget and establishing a goal-oriented ATC. In addition, we made sure that the money was provided to buy new ATC equipment to expand ATC capacity.

With respect to airports, we authorized significant increases in Airport Improvement Program monies, increases of $1.25, $1.35 and $1.45 billion over 1999 funds, $1.95 billion. We also gave airlines the ability to increase their passenger facility fees from $3 to $4.50 per person. The money is there to build and expand capacity. But, nothing happens overnight and we all know it.

With the reforms of the FAA and the funding, we are on a path to change. Yet, even with that path, we are not able to keep up with demand, particularly in the short term. Secretary Mienta has already stated he wants to use the reforms of FAIR–21 and not get bogged down in an age-old debate over FAA privatization/corporatization. The Air Transport Association, ATA, has echoed this sentiment. Nonetheless, we must look at ways particularly in the near term, to provide relief to travelers, and in the longer term figure out better ways to build runways, while being cognizant of the need to be environmentally conscious.

Right now we have runway construction under way at Denver, Detroit-Metro, Minneapolis-St. Paul, Houston, and Orlando. Miami is set to begin construction within the next month or two as is St. Louis. Charlotte is awaiting the United-US Airways merger decision before it begins construction since the carriers will help finance the project. At our own airport, runway planning is ongoing. Chip Barclay, the President of the American Association of Airport Executives, in testimony before a House Committee recently noted that if we could build 50 more miles of additional runways we could solve our airport capacity problem. Fifty miles. Each of us wants them built more quickly, but changes in the laws may not expedite the current construction. Yet, we can ensure, as this bill does, that the FAA and other Federal, State and local agencies do a better job of coordinating the various environmental and planning reviews necessary before a runway is built. It is a starting point for the discussion, but by no means an end point. A goal we want to expedite construction, without intruding upon the necessary environmental reviews.

AAAE has put out a proposal to expedite runway construction, and we will carefully evaluate it too. I have been developing my own legislation which will build upon the proposal today and want to work with Senator HUTCHISON and other members on that bill. I have learned that this is a complicated problem, with no easy, or quick, solutions. As the legislation we introduce today is considered by the Committee, changes will be made to reflect many concerns and issues. Senator HUTCHISON and I want to work with the entire aviation community in addressing and solving this issue.

By MS. COLLINS:

S. 634. A bill to amend section 2007 of the Social Security Act to provide grant funding for additional Enterprise Communities, for establishing and coordinating the various environmental and planning reviews necessary before a runway is built. It is a starting point for the discussion, but by no means an end point. A goal we want to expedite construction, without intruding upon the necessary environmental reviews.

AAAE has put out a proposal to expedite runway construction, and we will carefully evaluate it too. I have been developing my own legislation which will build upon the proposal today and want to work with Senator HUTCHISON and other members on that bill. I have learned that this is a complicated problem, with no easy, or quick, solutions. As the legislation we introduce today is considered by the Committee, changes will be made to reflect many concerns and issues. Senator HUTCHISON and I want to work with the entire aviation community in addressing and solving this issue.

Ms. COLLINS. Mr. President, in 1993, Congress created the Community Empowerment Program to support the remaining years of the designations. My bill, the Enterprise Communities Enhancement Act of 2001, also authorizes the States to make annual grants for each of the seven remaining years of the previous bill. The program of $500,000 for each of the 20 Round II Enterprise Communities. By guaranteeing funding, Congress would demonstrate its support for the work being done by these communities and reduce local leaders with the assurance that Federal dollars will be available as they make their plans for the future.

The Enterprise Communities Enhancement Act will also allow for more local control over how the annual funding is used. My bill allows communities to use funds to capitalize local revolving loan accounts should community leaders deem such accounts as an important part of their economic development efforts.

I have long been a strong supporter of Empower Lewiston—the local effort that secured and is implementing the Enterprise Community designation for the city of Lewiston, Maine. Thousands of local people and businesses worked together for a year to develop a strategic plan for the city as a whole and those neighborhoods most affected by poverty. The plan includes proposals to enhance lifelong learning and employment opportunities, improve the community’s housing, and revitalize the city’s downtown.

Empower Lewiston has been able to leverage its funding by more than 50 to 1, generating more than $11 million in public and private investment in the community. Included among the projects that have been funded are investments in a local employment firm
that created 60 new jobs and in the Seeds of Change program that enhances assistance among community residents. Looking ahead, Empower Lewiston will be developing a community resource center, working to develop safe and affordable housing, and expanding education programs that target the needs of local residents.

Empower provides a wonderful example of what the new Enterprise Communities are able to accomplish. By passing the Enterprise Communities Enhancement Act, Congress can ensure that communities such as Lewiston will have the resources they need to complete their missions and create a brighter future.

By Mr. DODD:

S. 635. A bill to reinstate a standard for arsenic in drinking water; to the Committee on Environment and Public Works.

Mr. DODD. 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. 635

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 “Arsenic Standard Reinstatement Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) in 1996, Congress amended the Safe Drinking Water Act (42 U.S.C. 300f et seq.) to require the Administrator of the Environmental Protection Agency to revise the standard for arsenic in drinking water;

(2) after conducting scientific and economic analyses, the Environmental Protection Agency promulgated a final rule to reduce the public health risks from arsenic in drinking water by reducing the permissible level of arsenic in water from 50 parts per billion (.05 milligrams per liter) to 10 parts per billion (.01 milligrams per liter);

(3) the new standard would provide additional protection against cancer and other health problems for 13,000,000 people;

(4) the National Academy of Sciences has determined that drinking water containing 50 parts per billion of arsenic “could easily” result in a 1-in-100 risk of cancer;

(5) 50 parts per billion of arsenic causes a cancer risk that is 10,000 times the level of any cancer risk caused by any carcinogen that the Environmental Protection Agency permits to be present in food;

(6) 10 parts per billion of arsenic in drinking water is the standard used by the European Union, Japan, and the World Health Organization;

(7) public water systems may apply for financial assistance through the drinking water State revolving loan fund under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

(8) in 2000, the revolving loan fund program has made $3,600,000,000 available to assist public water systems with projects to improve infrastructure; and

(9) on March 22, 2001, the Administrator of the Environmental Protection Agency proposed to withdraw the pending arsenic standard that was promulgated on January 22, 2001, and due to take effect on March 23, 2001.

SEC. 3. REINSTATEMENT OF FINAL RULE.

(a) IN GENERAL.—On and after the date of enactment of this Act, the final rule promulgated by the Administrator of the Environmental Protection Agency entitled “Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring” (66 Fed. Reg. 6876 (January 22, 2001)), and the amendments to parts 9, 141, and 142 of title 40, Code of Federal Regulations, made by that rule, shall have full force and effect.

(b) MAXIMUM CONTAMINANT LEVEL.—The maximum contaminant level for arsenic in drinking water of .01 milligrams per liter established by this Act in subsection (a) shall not be subject to revision except by Act of Congress.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 29—CONGRATULATING THE CITY OF DETROIT AND ITS RESIDENTS ON THE OCCASION OF THE TERCENTENNIAL OF ITS FOUNDING

Mr. LEVIN (for himself and Ms. STabenow) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 29

Whereas Detroit is the 10th most populous city in the United States and the most populous city in Michigan;

Whereas Detroit is the oldest major city in the Midwest, and 2001 is the 300th anniversary of Detroit’s founding;

Whereas Detroit began as a French community on the Detroit River when Antoine de la Mothe Cadillac founded a strategic garrison and fur trading post on the site in 1701;

Whereas Detroit was named Fort Pontchartrain de’ Etoit (meaning “straight”) at the time of its founding and became known as Detroit because of its position along the Detroit River;

Whereas the Detroit region served as a strategic staging area during the French and Indian War;

Whereas the Ottawa Native American Chieftain Pontiac attempted a historic but failed attack on the French and British forces at Vincennes in 1763;

Whereas Detroit became the capital of the Northwest Territory in 1796 and was transferred to the British by the peace treaty of 1763;

Whereas the Ottawa Native American Chieftain Pontiac attempted a historic but unsuccessful campaign to wrest control of the garrison at Detroit from British hands in 1763;

Whereas in the nineteenth century, Detroit was a vocal center of antislavery advocacy and, for more than 40,000 individuals seeking freedom in Canada, an important stop on the Underground Railroad;

Whereas Detroit entrepreneurs, including Henry Ford, perfected the process of mass production and made automobiles affordable for people from all walks of life;

Whereas Detroit is the automotive capital of the Nation and an international leader in automobile manufacturing and trade;

Whereas the contributions of Detroit residents to civilian and military production have sustained the Nation, contributed to United States victory in World War II, and resulted in Detroit being called the Arsenal of Democracy;

Whereas residents of Detroit played a central role in the development of the organized labor movement and contributed to protections for workers’ rights;

Whereas Detroit is home to the United Auto Workers Union and many other building and service trades and industrial unions;

Whereas Detroit has a rich sports tradition and has produced many sports legends, including: Ty Cobb, Al Kaline, Willie Horton, Hank Greenberg, Mickey Cochrane, and Sparky Anderson of the Detroit Tigers; Dick “Night Train” Lane, Joe Schmidt, Billy Sims, Dutch Clark, and Barry Sanders of the Detroit Lions; Dave Bing, Bob Lanier, Isaiah Thomas, and Joe Dumars of the Detroit Pistons; Gordie Howe, Terry Sawchuk, Ted Lindsay, and Steve Yzerman of the Detroit Red Wings; boxing greats Joe Louis, Sugar Ray Robinson, and Thomas Hearns; and Olympic speed skaters Jeanne Omelenchuk and Sheila Young-Ochowicz;

Whereas the cultural attractions in Detroit include the Detroit Institute of Arts, the Charles H. Wright Museum of African-American History (the largest museum devoted exclusively to African-American art and culture), the Detroit Historical Museum, the Detroit Symphony, the Michigan Opera Theater, the Detroit Science Center, and the Dossin Great Lakes Museum;

Whereas several centers of educational excellence are located in Detroit, including Wayne State University, the Detroit Mercy, Marygrove College, Sacred Heart Seminary College, the Center for Creative Studies—College of Art and Design, and the Lewis College of Business (the only institution in Michigan designated as a “Historically Black College”);

Whereas residents of Detroit played an integral role in developing the distinctly American sounds of jazz, rhythm and blues, rock ’n roll, and techno;

Whereas Detroit has been the home of Berry Gordy, Jr., who created the musical genre that has been called the Motown Sound, and many great musical artists, including Aretha Franklin, Anita Baker, and Al Green, who were a large part of the Motown Sound, and many great musical artists, including Aretha Franklin, Anita Baker, and Al Green;

Whereas Detroit is the heart of the Motor City, a symbol of American ingenuity, strength, and determination; and

Whereas Detroit is home to the United Auto Workers Union and many other building and service trades and industrial unions;

There being no objection, the bill was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 148. Mr. KERRY (for himself, Mr. BIDEN, Mr. WELLSTONE, Ms. CANTWELL, and Mr. DODD) proposed an amendment to the bill S. 27, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

SA 149. Mr. THOMPSON (for himself, Mr. TORRICELLI, and Mr. NICKLES) proposed an amendment to the bill S. 27, to strengthen the provisions of the act.

SA 150. Mr. BOND submitted an amendment intended to be proposed by him to the bill S. 27, sup. which was ordered to lie on the table.