SENATE—*Friday, June 12, 1998*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation and Lord of our lives, we thank You for outward symbols of inner meaning that remind us of Your blessings. The sight of our flag stirs our patriotism and dedication. It reminds us of Your providential care through the years, of our blessed history as a people, of our role in the unfinished and unfolding drama of the American dream, and of the privilege we share living in this land.

This weekend, as we celebrate Flag Day, we repledge allegiance to our flag and recommit ourselves to the awesome responsibilities that You have entrusted to us. May the flag that waves above this Capitol remind us that this is Your land.

Thank You, Lord, that our flag also gives us a bracing affirmation of the unique role of the Senate in our democracy. In each age, You have called truly great men and women to serve as leaders. May these contemporary patriots experience fresh strength and vision, as You renew the drumbeat of Your Spirit, calling them to march to the cadence of the rhythm of Your righteousness. In the name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. ALLARD. Mr. President, this morning the Senate will be in a period of morning business until 10:30 a.m. Following morning business, the Senate will resume consideration of the tobacco bill, with a Reed amendment pending regarding advertising. The Senate may also consider the vocational education bill, the Higher Education Act, the NASA authorization bill, the drug czar office reauthorization bill, and any other legislative or executive items that may be cleared for action.

As a reminder to all Members, the majority leader has announced that there will be no rollcall votes during today's session. Therefore, any votes ordered during Friday's session with respect to the tobacco bill will be postponed to occur on Monday, June 15, at a time to be determined by the two leaders but not before 5 p.m. Any votes ordered with respect to other legislative or executive items will be postponed to occur on Tuesday, June 16. All Members will be notified of Tuesday's voting schedule as it becomes available.

I thank my colleagues for their attention.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. ALLARD assumed the chair.)

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAMS). Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, is there a time limit for addressing the Senate?

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m, with Senators permitted to speak for up to 5 minutes each.

Mr. KENNEDY. Mr. President, I ask unanimous consent to proceed for 10 minutes.

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

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, I want to take a moment or two to talk about an issue that is related to the health and well-being of our fellow citizens—the Patients' Bill of Rights legislation, which I think cries out for action in these next very few days.

Mr. President, the Patients' Bill of Rights is not on the majority leader's list of bills to be considered. The majority leader has made available to the Members which pieces of legislation he is going to call up to the floor of the Senate over the period of these next few weeks until the Fourth of July break, then the period of July and then coming into the time that we will be meeting in September. There is a whole series of bills on that list, but one that is missing and one that cries out for action as well is the Patients' Bill of Rights. We want to have the opportunity to debate and consider it, but we are unable to either get a markup of the legislation in our Human Resources Committee, the committee of appropriate jurisdiction, or on the floor of the U.S. Senate. And that is, I think, unacceptable. We are not able to have it considered—not this month, not next month, not for the remainder of this Congress. Evidently, he stands shoulder to shoulder with the guardians of the status quo who want to continue the health insurance abuses. Protecting patients may not be on the majority leader's priority list, but it is on the priority list of American families. And it is on the priority list of more than 100 organizations of doctors, nurses and patients who wrote Leader LOTT and Speaker GINGRICH yesterday asking that this legislation be considered.

I believe this is on the priority list of a majority of Members of the Senate and House—a bipartisan majority that want to protect families, not the profits of the insurance companies. Our leader on this side of the aisle, TOM DASCHLE, has said that we will offer the Patients' Bill of Rights on the first available appropriate vehicle. The American people deserve action.

The American people deserve to have their health care decisions decided by the doctors and the medical profession rather than the accountants for the insurance industry. We have had over the period of these past weeks series after series of incidents of how our fellow citizens' lives have been lost or permanently damaged because of our failure to address this particular issue. The President last year called forth a commission, which was bipartisan, which made unanimous recommendations—Republican and Democrat alike.

The Patients' Bill of Rights legislation, which has been introduced by Senator DASCHLE and which I have been honored to cosponsor with a number of our colleagues, basically reflects the judgment put forward by that bipartisan group of outstanding, thoughtful men and women who are a part of our health care system. We here in this body should address this issue, and we will. We are giving as much notice as possible to the leaders that this is an issue that is not going to go away. We are going to address it. We would vastly prefer addressing it in a way that will accommodate the kind of debate and discussion this issue deserves, but if we are not given that

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

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kind of assurance, if we are not given time to address this issue, then we will use whatever parliamentary means we must because the American people expect it.

This is a measure of enormous importance in protecting the health and the well-being of families in this country. Families that are facing medical crises, as I mentioned, should have these decisions decided by the health professions. They ought to be able to get the specialists they need. If it is, in a woman's case, a gynecologist or obstetrician, they ought to be able to call on and get the kind of specialty care they need. Women in our society ought to be able to participate in clinical trials, not be denied some of the best that is available out there that offers, in many instances, the opportunity for real hope of a possible cure or a significant improvement in their well-being. They should not be denied that. They are denied that in too many instances today.

Newborn children ought to be guaranteed they are going to be able to get the pediatric specialists who can help guide a newborn child or a baby to be able to deal with some of those extraordinary challenges that are evidenced in the first days and weeks of life. We ought to prohibit the kind of gag orders that are out there today in so many instances where doctors who are trying to practice their medicine are denied the opportunity to provide the whole range of choices and options to their patients and they are prohibited because of the HMO's decision.

We want to eliminate the kinds of incidents that have been reported on the floor of the Senate where ambulances will drive by the emergency room of a particular hospital and take someone who is in need of emergency treatment to a distant hospital because the HMO is not going to reimburse that individual for the treatment and emergency services at that particular hospital. That makes no common sense, and it does not make any sense even on the bottom line for these companies.

These kinds of things are happening every single day, and every single day we delay the debate, discussion, and conclusion of this legislation, the health of Americans across this country is being compromised. That is wrong.

We have had bipartisan support for this legislation. The two doctors in the House of Representatives, Republicans, have both supported a Patients' Bill of Rights. They are urging that we take action. I commend them for their courage and for their leadership. It is imperative that we move ahead and take action in the very near future. Every day that goes on and we fail to do so, thousands of families are being put at risk. I hope that on the first vehicle after we conclude this legislation we will have an opportunity to address it.

TOBACCO LEGISLATION

Mr. KENNEDY. Mr. President, I see our colleague and friend from Arizona in the Chamber at this time. I just want to join with the others in commending him for his leadership on this issue, on tobacco legislation. I think he has really been a very important and powerful voice in moving this process forward, and we certainly hope under his leadership we will move towards a successful conclusion in this next week.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

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

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

Mr. MCCAIN. I thank the Senator from Massachusetts for his kind remarks. As always, I am very appreciative. Sometimes, as he knows, it helps me a little more if he criticizes me from time to time, which he also does from time to time. I thank Senator KENNEDY for his involvement in this issue. He has been in the Chamber talking about it quite a bit. Obviously, Senator KENNEDY has not agreed with me on certain aspects of the bill, but we are in agreement—in fact, I think it is important that those who watch this debate understand that we are all interested, on both sides of the aisle, in trying to resolve this issue because we are concerned about our children and the fact that, as we know, teenage smoking in this country is on the rise.

PROGRESS ON THE TOBACCO BILL

Mr. MCCAIN. Mr. President, I note the presence of Senator REED, and I will be brief because I know he wants to discuss his amendment further.

Later on, Senator GRAMM will come to propose his amendment. I understand that Senator GRAMM has to go to the dentist so he perhaps may not be in his usual sunny, rosy mood as he usually is when he comes to the floor, especially debating this issue, but I am told that he will come later this morning to propose his amendment which we do plan to vote on Monday, sometime after 5 o'clock, I believe is the unanimous consent agreement.

Again, because of headlines that I have seen this morning and comments in the various newspapers about the attitude that some have taken towards the legislation, I would like to review where we have come and where we are.

Yesterday, we made further progress. We are at the point wherein I believe we can and should finish our business expeditiously. I say that for two reasons. One is the progress that we have made, but also we are all aware now, as we have been on this bill for 3 weeks—and we are going to be on it next week. I will have to ask somebody to look up when was the last time we have spent 4 weeks on a single piece of legislation, but it is not very often, obviously.

Mr. President, I think the point here is that we have been 3 weeks debating this bill. We have debated many aspects of it, some aspects of it, in the case of attorneys' fees, more than once, and that may be revisited again. But let us look at what we have done. We have provided critical funding for ground-breaking health research to find new treatment and cures for killer diseases including cancer and heart and lung diseases. These initiatives obviously are supported on both sides of the aisle. It includes assistance to our Nation's veterans who suffer from smoking-related illness.

Mr. President, I thought one of the least laudatory things that took place in the ISTEA process was that we basically, at least at one point, declared that veterans who smoked while they were in the service were guilty of gross misconduct. I still find that unbelievable, since we all know that veterans and members of the Armed Forces were encouraged to smoke. Tobacco was provided along with meals—smoke breaks. We all know that smoking was encouraged. In this bill, now we are going to earmark $3 billion to try to treat veterans who have incurred tobacco-related illnesses. I think that is very important, that they receive that assistance. I think it has to be one of our highest priorities.

We have included a major antidrug effort to attack the serious threat posed by illegal drugs, both through prevention education as well as interdiction. By the way, that is a Republican amendment, a conservative amendment, and one that was approved by both sides of the aisle because of the importance that the American people feel is associated with illegal drugs.

It now contains one of the largest tax decreases in many years, a nearly $200 billion tax cut that would eliminate the marriage penalty for low- and moderate-income Americans and achieve 100 percent deductibility of health insurance for self-employed individuals. I think most of us on both sides of the aisle believe the marriage penalty is unfair and that low-income Americans should be the first ones to receive relief. We think it is unfair for companies and corporations to have tax deductibility for their health care insurance yet individuals do not.

I think it is important that we understand, also, when we are talking about taxes on the American people, that today $50 billion of America's tax dollars go to treat tobacco-related illnesses, almost $455 per taxpaying household in every year. It provides the opportunity to settle 36 pending State cases collectively, efficiently, and in a timely fashion.

I also want to mention again, some are of the impression that if this bill

leaves the floor of the Senate, it disappears—as some, I am told, especially in the other body, would like to see happen. But there would still be 37 States that go to court. There will still be enormous legal fees. There will still be incredibly high settlements. In Minnesota, it was a $6.5 billion settlement, which was $2.5 billion above what was agreed to in the June 20 agreement. Just a few days ago, an individual won a court case that included punitive damages. There are literally thousands and thousands of cases lined up to go to court. Mr. President, those who believe that somehow this issue will not go on—the question is: Where does it go on? Does it go on in every courtroom in America?

Does it go on in States, 37 of them now—and I cannot imagine the remaining 10 of the 40 that did not enter into agreement between the attorneys general and the industry will not join sooner or later. Would that not continue, in fact would that not accelerate? The attorneys general tell me they are just waiting to see what we do.

There is a settlement in Mississippi. There is a settlement in Florida. There is a settlement in Minnesota. They entail billions and billions of dollars. What about the tax? According to reliable publications, the price of a pack of cigarettes just went up 5 cents because of the Minnesota settlement. Does anyone believe that when they make these massive payments the cost is not passed on to the consumer?

So I want to remind everybody, we are coming up on a crucial week. It is hard for me to imagine that we would continue on this legislation for very much longer. We can either move forward to a conclusion, because we have addressed most of the issues—the farm issue is still out there and we need to get a reasonable resolution of it—but for the life of me, I do not know of another major issue associated with this legislation. There may be substitutes that refine it, or even change it substantially, but the general outlines of the legislation we all know. So we are either going to move forward and cloture will be invoked, which puts us on autopilot to completion, or we will not.

I am not an expert on tobacco. I am not an expert on public health, nor have I ever claimed to be. I claim some expertise on national defense and security issues. I claim some expertise on telecommunications, aviation—other issues. I don't claim expertise on this. But I was asked by the leadership to move a bill through the Commerce Committee. We did, with a 19 to 1 vote. Then the majority leader scheduled the bill to come to the floor. I did not. I didn't make the scheduling decisions. Obviously, since the legislation went through the committee which I chair, I am the manager of this bill. I do not seek any sympathy for the fact that I have been criticized by both sides of the political spectrum rather severely, including a $100 million, so I am told, tobacco advertising campaign. But I do believe that all of us have the right to expect now to move to a conclusion to this issue. That conclusion is either a final passage or, somehow, the bill leaves the floor—although I am not sure my friends on the other side of the aisle would do so with alacrity.

But if the decision is made, or if we are unable to move forward, please, let no one be under the illusion that the issue is going away if it leaves the floor of the U.S. Senate. There will be a myriad of lawsuits. There will be incredible activity in the courts of America. And to those who are concerned about lawyers getting rich, I guarantee, they will get a lot richer under those circumstances than under ours. But that doesn't bother me. The thing that bothers me is, if we do not move forward, as I mentioned the other day, there are winners and losers; and the winners will, obviously, be the tobacco companies. They will have gotten a significant return from their $100 million ad campaign. The losers may be me, maybe even the Senator from Massachusetts, but the real losers will be the children of America.

Today, 3,000 kids start smoking. One thousand of them will die early. Tomorrow, the same, and the next day, the same, and it is on the rise. We will address, as a nation, the issue of tobacco and the issue of kids smoking. There is no doubt of that in my mind, because of the obligation we have. It is a question of how, and when. By moving this legislation forward, we can do it sooner rather than later. I am more than willing to stay on this floor all summer, if necessary. But I do not think we can afford to do that, because of the compelling legislation that we have to achieve legislative results on by the beginning of October when, there is no doubt in my mind, given the fact that it is an even-numbered year, we will go out of session.

So I urge all of my colleagues to recognize that we are now reaching a point, next week, where we either have to move forward or not. I will abide by the will of the majority and what the leadership on both sides of this body decide. I will regret it, obviously, if we do not move forward. But I also will far, far more regret the effect that it will have on the children of America.

I note the presence of my friend from Massachusetts as well as the Senator from Rhode Island, and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is now closed.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

Reed amendment No. 2702 (to amendment No. 2437), to disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met.

The Senate resumed consideration of the bill.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I know the plan this morning is for us to have the Senator from Rhode Island proceed on the amendment that he laid down last night. And subsequent to that, the Senator from Texas, Senator GRAMM, will debate his amendment for a period of time.

Let me just say, for a couple of minutes before we proceed—I want to pick up on what the Senator from Arizona said—this will close the third week of effort on this bill. Obviously, next week will be critical. We have dealt with three or four of the most contentious issues. We visited the issue of attorneys' fees twice now, notwithstanding the fact that no attorney has been paid the fees that have been thrown around on the floor of the U.S. Senate. In every State, those fees are being renegotiated, they are being subject to arbitration, subject to court decision, but we revisited that twice.

We had a spirited and important debate on the subject of liability. In fact, the bill, as brought to the floor, was changed by those who wanted to have a stronger section, and that is the will of the Senate working its way. The lookback provisions were strengthened by the will of the Senate. So the bill has, in some respects, been strengthened from the bill that was brought to the floor.

In addition to that, we have had a very long and contentious debate on the subject of how the money would be spent. The Senate, again, spoke by deciding that a significant component of that fund will go back to the American people in the form of tax relief for the marriage penalty.

In addition to that, the Senate spoke on the issue of drugs, and a very significant measure was incorporated where, again, a certain proportion of the revenues that will come from the increase of the price of cigarettes is going to go to help fight the war on drugs. I might add, the war on drugs is, in fact, the same as the war on tobacco, because tobacco is an addictive substance that kills people. In this legislation, we are seeking to have the Food and Drug Administration have the capacity to regulate it, and that is in the bill.

That is an important measure for America, that for the first time the FDA will be given the capacity to undertake important regulatory efforts with respect to the use of tobacco. All of that is now contained in this legislation.

We hear talk that there are a couple of substitutes floating around out there. I ask that those who have a substitute to come forward with them perhaps on Monday or Tuesday, and we will be able to move forward with respect to the substitutes if, in fact, they really do exist.

In addition to that, we have a major contentious issue left at some point in time to deal with, which is how to help the farmers. I am certainly particularly sensitive with respect to the Senator from Kentucky and the Senator from South Carolina and the Senators from Virginia and others who are concerned about what happens to those who are impacted by a decision that the U.S. Government may take.

Traditionally, we have tried to help people who are impacted economically negatively as a consequence of decisions that we make that suddenly come in and change their lives. I have always thought that is appropriate. I fought to do that, whether it was people in the Midwest or the South or the West. An example is the fishermen of New England who were adversely impacted by Government decisions that were made on whether or not they could fish the Georges Bank. When we took the Georges Bank away from them for a period of time, we tried to provide economic assistance. We provided, for the first time, a buyout program for some of the fishing vessels in order to help them deal with that issue.

I might add, we are not the first country to do that. Great Britain, Norway and Iceland where they tried to regulate fishing, they also provided significant buyout efforts to do that.

So it is appropriate for us to try to, in the context of the legislation, deal with the problems of the tobacco farmers.

My hope is, Mr. President, that in the next few days, we can do that. The real test before the Senate is very, very simple. There are some people who seem prepared and satisfied with the notion that we can have the status quo be the victor here; that we can leave the tobacco companies without any Federal settlement, without any global settlement, and that the Senate can somehow walk away from the children of America and have done well by the country.

The only people who will benefit by that will be the tobacco companies. Those are the only people who will benefit, and I am not so sure, given the jury verdict in Florida 2 days ago, and given the size of the settlements that have taken place in Minnesota and elsewhere, that they will actually wind up doing that well because, in the end, the lawsuits will proliferate. We may well wind up as we were with the asbestos companies where all of a sudden there is nothing left, and we don't have a tobacco cessation program, we don't have counteradvertising, we don't have any of the restraints that the FDA can impose, but at the same time nor do we have order within the process by which these companies are going to be sued. I think, in the end, nobody benefits from that—nobody benefits.

What is very, very clear is that during that period of time, a lot more young children in America will be subjected to the same barrage of opportunities to pick up a cigarette and get hooked and ultimately die prematurely of it as they are today.

During the time this debate has taken place, more than 60,000 children have started smoking, and we all know that 20,000 or so of them are going to die prematurely as a result of the habit they now have. We know to a certainty that 86 percent of all the people who smoke in America began as teenagers, and we know to a certainty if you raise the price and simultaneously have concerted efforts to reach those children, you will reduce the number of people who smoke.

If you reduce the number of people who smoke, you will give America a tax cut, because every American today is paying a very significant amount of their income to cover the health care costs of a nation that pays for people who are for a long time hooked up to tubes or require oxygen or suffer long-term stays in hospitals as a result of the diseases they get, whether it is cancer of the pancreas, cancer of the throat, cancer of the larynx, kidney problems, heart problems, emphysema—all of these are costly to America. That is the tax on America. And if we want a tax cut, the way to get that tax cut is to pass tobacco legislation.

The only benefit of not passing it would be to keep the tobacco companies liberated to pursue the policies of predatory practice which they have pursued that we now know to a certainty over the last years.

I hope we are going to vote on this next week. I hope we can have cloture on this next week. I hope the majority leader will join us next week by offering a cloture motion and bringing the Senate together to complete its important task of reducing teenage smoking in this country.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I listened to the statements of the distinguished Senator from Rhode Island and the Senator from Massachusetts. I am struck, because I think an awful lot of people become confused about what this bill is. In part, that confusion comes as a result of a substantial amount of expenditures by the tobacco companies saying to citizens of this country that this bill is a tax increase.

I heard the last few words the Senator from Massachusetts was saying. I believe he was saying this bill is not a tax increase; is that what the Senator from Massachusetts was saying? As I understand it, the underlying bill, prior to it being amended by the Senator from Texas, who has been arguing essentially that it is a tax increase, because he is using the same language the tobacco companies are using on television—that it is a tax increase; thus, we should have a tax cut in here as well.

As I understand the underlying bill, it is not a tax increase at all. It is a $15 billion payment into a tobacco trust fund by the tobacco companies that they agreed to last June 20, 1997, and it phases up to a $23 billion fee that the tobacco companies would be paying into a tobacco trust fund as a result of another settlement which occurred in Minnesota where they basically agreed to 50 percent more.

So this bill is not a tax increase. It is a fee being paid by the tobacco companies as a consequence of them now saying that they are stipulating in court documents—and the distinguished Senator from Massachusetts knows more about prosecutorial law than I do—because, as I understand it, they have stipulated now in court documents that nicotine is addictive, that they have been targeting our youth, that they have been failing to disclose all the dangers and risks that are associated with tobacco.

So if you want to talk about tax cuts, I would love to come to the floor and argue about cutting the payroll tax. There are lots of inequities in our tax system I would love to debate. The distinguished Senator from Texas has converted, very intelligently, this debate from one of trying to help Americans who are addicted to stop smoking—they are not just smoking; we now

know they are addicted. There is a big difference between just doing something sort of casually and doing what tobacco smokers do.

Forty-five million Americans—likely a very high percentage of those individuals—are addicted. That means they cannot quit, they have a physical addiction, and when they stop smoking, they have withdrawal symptoms, and they have a very difficult time.

There are 330,000 Nebraskans who smoke. They spend $250 million a year on cigarettes every single year. And I see what the distinguished Senator from Massachusetts and the Senator from Arizona are trying to do is write a law so that we have resources at the State level to help those who are addicted to stop smoking.

Just take Nebraska, I would say. We have $250 million a year being spent by 300,000 or so people who smoke. If we are able to get smoking cessation programs and educational efforts, that would mean, let us say, $50 million less a year being spent on tobacco as a result of helping people break away from this terrible addiction to nicotine. They break away from that addiction, and $50 million less, that is $250 million in their pockets.

The Senator from Texas is talking about a tax increase. We are trying to help decrease expenditures on tobacco. And the more we decrease expenditures on tobacco, the more we get a win-win: Money in the pockets of our citizens, the people who are addicted, who did not realize that tobacco was addicting; and improve health consequences.

I note with great interest that the Chamber of Commerce—U.S. Chamber of Commerce—and the National Restaurant Association are opposed to this legislation. They are opposed because they are misinformed, in my judgment. I can make the case at home—and intend to make the case at home—to my State chamber of commerce and my State restaurant association that it is in their interest to reduce the number of citizens in our State who are smoking.

Their health insurance costs are going to be lower; their absentee rates are going to be lower; their productivity rates are going to be higher. I said yesterday that one of my most conservative business friends will not even hire people who smoke as a consequence of understanding the costs that are associated with it.

I see that my friend from Texas has come to the floor. We perhaps can engage in a little colloquy about this, because as I understand this legislation that the Senator from Arizona and the Senator from Massachusetts have brought to the floor, there is a $15 billion fee in it phased up to $23 billion that the tobacco industry has agreed to pay. They agreed to pay $15 billion. And they have agreed in Minnesota to pay 50 percent more. As I see it, the more we are successful in helping people stop their smoking, break away from this terrible addiction, that is going to make them more prosperous, more healthy, as a consequence.

I have talked, and there are a number of questions in there. I would appreciate very much if the Senator from Massachusetts could help me understand if that isn't what is in this legislation, if that isn't the intent of what is in the law as seen by the Senator from Massachusetts and the Senator from Arizona.

Mr. KERRY. If I can respond, I do not think the Senator needs a lot of help. I think the Senator has adequately—more than adequately—described the virtues of what is being attempted here.

I just say to the Senator, in my State of Massachusetts we have discovered, through research, that our addicted citizens are spending $1.3 billion a year to try to get unaddicted—$1.3 billion that is diverted from money they could be putting into schools, putting into their kids' education, that they are paying for nicotine patches, they are paying for the gum, for the hypnosis, for counseling. It is an extraordinary amount of money.

This is happening because almost 90 percent of those citizens got hooked when the tobacco companies targeted them specifically as teenagers. We have now seen—and it is in the record—the degree to which that targeting was a very purposeful replenishment effort for business. They said to themselves, "We've got to replenish the people who are dying off, and we've got to get these people hooked when they are young."

So, R.J. Reynolds, Philip Morris, Brown & Williamson—their own documents testify to the degree to which they were targeting teenagers in order to get them hooked forever.

I do not want to abuse the courtesy of the Senator from Rhode Island, who is expected to proceed forward here. I think he has some time problems, so I do want to allow him to go on with his amendment. And then I know the Senator from Texas is going to go.

But the Senator from Nebraska is absolutely correct. The tax cut in this bill comes from the reduction of the cost of health care to all Americans, the reduction in the cost of lost productivity. All the things the Senator from Nebraska has said are correct.

I yield the floor.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, thank you.

AMENDMENT NO. 2702

Mr. REED. Mr. President, today I rise to continue my discussion of the amendment I offered last evening, an amendment which would deny the tax deduction for advertising expenses for those tobacco companies which disregard and violate the FDA rule with respect to advertising to children.

This is an amendment that is being cosponsored by my colleagues: Senator BOXER, Senator WYDEN, Senator KENNEDY, Senator DASCHLE, Senator DURBIN, Senator WELLSTONE, Senator FEINSTEIN, Senator BINGAMAN, and Senator CONRAD.

In addition, it has received the widespread support of the public health community. In a recent editorial in the Journal of the American Medical Association, Dr. C. Everett Koop, David Kessler, and George Lundberg wrote about the history of the tobacco industry in the United States. In their words:

> For years, the tobacco industry has marketed products that it knew caused serious disease and death. Yet, it intentionally hid this truth from the public, carried out a deceitful campaign designed to undermine the public's appreciation of these risks, and marketed its addictive products to children.

Numerous, numerous studies have implicated the tobacco industry's advertising and promotional activities as the cause of a continued increase in youth smoking in the United States. Research on smoking demonstrates that increases in youth smoking directly coincide with effective tobacco promotional campaigns.

My amendment addresses this critical issue in this ongoing debate about how we can control teenage smoking in America. It targets the industry's ceaseless efforts to market to children. It is time for Congress to put a stop to the tobacco industry's practice of luring children into untimely disease and untimely death.

This amendment is based on a bill that I introduced earlier this year, along with Senators BOXER, CHAFEE, and CONRAD. I would also like to recognize the leadership of many of my colleagues in prior congresses. Senator HARKIN, along with former Senator Bill Bradley, has made continuous efforts to try to eliminate in total the tax deduction for tobacco advertising.

While I concur with Senator HARKIN that this deduction is of questionable value, I would like to emphasize today that my amendment does not attempt to eliminate the entire deduction for tobacco manufacturers. Indeed, under my amendment, they maintain the deduction as long as they do not advertise to children. Eliminating the promotion of tobacco products to children is a necessary part of any comprehensive effort to prevent tobacco use by minors. My amendment offers a constitutionally sound way to enforce strong tobacco advertising restrictions.

Under my amendment, if tobacco manufacturers do not comply with the advertising restrictions promulgated by the Food and Drug Administration, the manufacturers' ability to deduct the cost of advertising and promotional expenses will be disallowed in that particular year. The restrictions promulgated by the FDA are appropriately

tailored to prevent advertising and marketing of tobacco products to minors.

Key components of the FDA regulation include the banning of outdoor advertising within 1,000 feet of a school; black and white text-only advertisements in youth publications—and those are publications which have a readership of more than 15 percent of young people under 18—banning the sale or giveaway of branded items—caps and trinkets, and all sorts of T-shirts—and the prohibition of sponsorship of sporting or entertainment events by brand name.

The FDA has already promulgated these regulations. They are being contested as we speak in the fourth circuit.

Today, my amendment offers an additional enforcement mechanism, an enforcement mechanism that I think will put real teeth into the restrictions. We will put on notice to the companies that they themselves have to carefully watch what they spend on advertising for young people. If they fail to adhere to the FDA rules, they will pay, and they will pay immediately because they will lose their advertising deduction.

Support for this amendment is broad based in the public health community. It is supported by Dr. C. Everett Koop, former Surgeon General of the United States. It is supported by the American Lung Association, by the Center for Tobacco-Free Kids, and by the ENACT Coalition. This is a coalition comprised of leading public health groups, including the American Cancer Society, the American Heart Association, and many others.

The importance of this issue is enormous. The facts speak for themselves. Today, some 50 million Americans are addicted to tobacco. One of every three of these long-term users of tobacco will die prematurely from diseases related to their tobacco use. Tobacco is also clearly a problem that begins with children. Almost 90 percent of those people who smoke today started before they were 18 years old. The average youth smoker in the United States starts at 13 and is a regular smoker by the age of 14½.

This is the greatest pediatric health care problem in the United States today. We have not only the opportunity but the obligation to stop it. A key component in that campaign to give children a chance to avoid smoking is effectively controlling advertising aimed at children. Each year, 1 million children become regular smokers and one-third of these children will die prematurely of long cancer, emphysema, and similar tobacco-caused diseases. Unless current trends are reversed, 5 million children today under the age of 18 will die prematurely from tobacco-related diseases.

More and more, we are learning that children are being enticed into smoking because of industry advertising and promotional efforts. A recent study by John Pierce and others found evidence that the tobacco industry's advertising and promotional activities actively influenced children who have never smoked to start smoking. Among the findings, tobacco industry promotional activities in the mid-1990s will influence almost 20 percent of those who turn 17 and try smoking. At least 34 percent of youthful experimentation with cigarettes is attributed to advertising and promotional activities.

This is an industry which has a sordid record when it comes to dealing with the children of America. We have to learn from their past record to adopt appropriate means of controlling their future conduct. They have made money ruthlessly by marketing to children. They have shown no concern for the children of America. They have only shown concern for the bottom line. And they will continue to target children unless it affects their bottom line.

The culture of big tobacco is one that has yielded incredible revenue by capitalizing on the vulnerabilities of our children. The story of tobacco and their promotional activities is a story of our century and beyond. In the 1920s, the cigarette industry, knowledgeable, of course, that their products were not safe, had the temerity to enlist physicians—or people dressed up like physicians—to be models in their advertising, to suggest that smoking was not only harmless, it was in some way beneficial. Lucky Strikes advertised "20,679 Physicians Say Luckies are Less Irritating" and "For Digestion's sake, smoke Camels," another advertising jingle of the 1920s and 1930s. In 1950, the Federal Trade Commission found that Camel advertising was deceitful, that they were suggesting that their products weren't harmful, and they, in fact, took action against them for false and deceptive advertising.

So for more than 50 years—indeed, for as long as you can recall the history of the tobacco industry—there has been a constant attempt to deceive the American public about what they are selling. That record is one that has to be countered by our legislation in this Congress.

Today, we have Winston ads that are trying to suggest that tobacco products are like health foods, proclaiming "no additives." We have a new Camel campaign, "Live Out Loud," which is a not-so-subtle stand in for the "cool" Joe Camel target of so much criticism.

We know from the documents released by the industry itself they consciously, deliberately, and consistently targeted children. In 1973, a memorandum written by a Claude Teague of RJR said, "if our Company is to survive and prosper, over the long-term we must get our share of the youth market." Another memorandum from a vice president of marketing at RJR, in 1974, C.A. Tucker, concluded, "this young adult market, the 14–24 age group * * * represent(s) tomorrow's cigarette business." What responsible group of people would describe 14- and 15-year-olds as "young adults"? This is what has been going on for years now with respect to the tobacco industry and their conscious, deliberate attempts to entice children to smoke.

In 1982, the then-chairman and chief executive officer of R.J. Reynolds Tobacco Co., Edward Horrigan, testified before the Commerce Committee and tried to dismiss suggestions that they were going after children by simply saying, "No"—in his words—"[p]eer pressure and not our advertising provides the impetus for smoking among young people."

Yet, just a few years later, in 1986, a R.J. Reynolds' Joe Camel advertising memo said this:

> Camel advertising will be directed toward using peer acceptance/influence to provide the motivation [to] target smokers to select Camel. Specifically, advertising will be developed with the objective of convincing target smokers that by selecting Camel as their usual brand they will project an image that will enhance their acceptance among their peers.

What could be more cynical, what could be more hypocritical, than an industry objective trying to dismiss their advertising, saying it has no effect at this time—it is peer pressure—and internally, in their boardrooms, consciously plotting to use that peer pressure tied into their advertising to force children to smoke.

That is the record of this industry. That is why we are here today to enact comprehensive tobacco control legislation. I argue that without appropriate restrictions on advertising, it will not be successful.

The documents that we have seen from all of these different litigations around the country reveal, time and time again reveal they have consciously targeted the young adult smoking market. A 1987 document discussed the "Project LF (Camel Wides), and it states: "Project LF is a wider circumference non-menthol cigarette targeted at younger adult male smokers (primarily 13–24 year old male Marlboro smokers.)" Executives were sitting around in the boardrooms, concocting schemes, so that 13-year-olds will begin to smoke. That is what the record of the industry is.

I am deeply skeptical that this tobacco industry is willing, even today in the glare of publicity with adverse court rulings, to change their behavior unless we act appropriately and with great vigor to ensure that they do what is right and not try to addict children in this country.

Every year the industry spends billions and billions of dollars to find new ways to hook kids into smoking. Examples of what they do are endless. We know from the research and we know

from our own experience that pivotal in the decision of a young person to smoke is the advertising they are seeing constantly. Eighty-six percent of underage smokers prefer one of the three most heavily advertised brands—Marlboro, Newport and Camel. That is not a coincidence. That is the effect of a repeated, unending assault on their minds and bodies by tobacco advertising, aimed at getting them to smoke.

One of the advertising campaigns most criticized is the Joe Camel campaign by R.J. Reynolds. When they introduced this campaign, their market share among underage smokers leaped from 3 percent to 13 percent in 3 years—a huge increase. Once you have someone hooked on a brand at 13 or 14 years old, they will probably be your smokers for life, representing to them billions of dollars in profit. They did it deliberately. They did it consciously. They were prepared to accept the criticism because they knew they were hooking these kids, they were hooking them for life, and it was going right into their bottom line. And although the Congress banned television advertising in 1970, tobacco companies routinely circumvent this restriction through the sponsorship of events that give their products television exposure. You can see that their advertising expenditures have been exploding over the last several years. As this chart indicates, from 1975 until today, their advertising expenses have increased tenfold. In 1975, the industry was spending about $491 million a year on advertising.

In 1995 alone, tobacco manufacturers spent $4.9 billion on advertising and promotional expenses, and we are subsidizing these expenses through the tax deduction. In 1995, American taxpayers subsidized $1.6 billion of these expenses that are used in a concerted, conscious effort to hook our kids. We are helping to write the check for that.

(Mr. SMITH of New Hampshire assumed the Chair.)

Mr. REED. In effect, we are subsidizing their advertising costs. In 1995, the amount of our subsidy, the $1.6 billion, paid for all of their efforts to send coupons, to have multipack promotions, to have retail value-added items such as key chains, hats, T-shirts—all the things the kids really like to wear. I don't see many adults running around with them, but I see lots of kids with Joe Camel T-shirts, and key chains, and all the cool things they get. In effect, we paid for that through this subsidy.

You can see the record on this chart of their expenditures and our support of those expenditures through this deduction. As I said, they are spending a huge amount of money trying to get kids to smoke. In ironic contrast, we spend a pittance trying to help people who are afflicted with the diseases caused by smoking. In 1995, that $4.9 billion was double the amount of money we spent for the National Cancer Institute. It was four times the amount of money we spent for the National Heart, Lung and Blood Institute. It represents 40 times what was spent at the National Institutes of Health on lung cancer research.

Those are the proportions. That is the huge amount of advertising expenditures that are being bombarded on the American public, but particularly on the children of this country. We know the cost to our society is significant: $100 billion a year in health costs and lost productivity is estimated. In 1993, health care expenditures directly caused by smoking totaled about $50 billion; 43 percent of those costs were paid for by Medicare and Medicaid.

We are paying both ways. We are helping them sell their products, and then we are taking care of the people who are ill because of their products. We have to do much more. We have to go ahead and ensure that the advertising ban that has been enacted by the Food and Drug Administration is supported with real force and real effect. That is the purpose of my amendment.

Of course, any time you talk about a situation where you are attempting to affect the commercial speech of anyone in this country, you have to reckon with the first amendment to the Constitution, and I do recognize that.

Let me again remind you that the story of the tobacco industry in America is a story inextricably linked to advertising. For decades, the tobacco industry ingeniously promoted its products and has done so with total disregard for the health of its customers. The industry relied upon image rather than information to sell its product. The tobacco industry has taken an addiction that prematurely kills and dressed it up as a glamorous symbol of success in all manner of endeavor. All of this is unsettling, but with the revelation that the industry has deliberately and ruthlessly targeted children, it becomes unconscionable, and we should not and need not accept it.

Now, as I said, we do and must and should recognize that any time you attempt to suggest restraints on commercial speech, you have to reckon with the first amendment. But the amendment I am proposing today combines the narrowly drafted and focused restraints of the FDA rule to prevent marketing to children with the recognized and broad-based authority of Congress over the Tax Code to create a provision that conforms to the first amendment.

First, let's be clear that the Constitution affords a much lesser degree of protection to commercial speech than to other constitutionally guaranteed expression. In 1975, the leading Supreme Court case on the subject of commercial speech essentially said that the Constitution imposed no restraint on Government with regard to "purely commercial speech." Today, commercial speech may be banned in advertising an illegal product or service, and, unlike fully protected speech, pure speech, it may be banned if it is unfair or deceptive. Even when it advertises a legal product and is not unfair or deceptive, the Government may regulate commercial speech more than fully protected speech.

The record of the tobacco industry clearly demonstrates that this industry, over decades, has deliberately carried out a scheme to violate the laws of every State in the Union. All 50 States bar the sale of tobacco products to minors. But as I have shown in these documents, those laws were carelessly and callously disregarded by the industry in their attempt to, as they say, "get the young adult market"—13-, 14-, 15-, 16-, and 17-year-olds.

Since this advertising campaign consciously sought to illegally market their products to children, there should be no protection. The first amendment does not give them the right to engage in illegal marketing schemes. Thus, the most basic reason that this amendment will pass constitutional muster is the fact that it is designed to prevent tobacco companies from promoting illegal transactions.

Even if one were to invoke the constitutional test applied to the legal sale of commercial products, this would still pass muster. In the Central Hudson case, the Supreme Court established the standards for evaluating a purported restraint on commercial speech. As a preliminary point, the Court drew a distinction between legal activities and unlawful activities or misleading speech.

As I have already indicated, if the commercial speech in question involves unlawful activities or it is misleading, then the Government may restrict it. Or, as the Supreme Court indicated in Central Hudson, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity.

Now, assuming for the sake of argument, despite the rapidly accumulating evidence to the contrary, that tobacco advertising would be treated as routine commercial speech and the Court would ignore the inherent illegality of their plans to market to children, the proposed restriction still meets the standards of Central Hudson. First, there is a substantial governmental interest in restricting advertising aimed at minors. Second, the proposed restraints directly advance this governmental interest. Finally, the proposed legislation is no more extensive than necessary to serve this substantial governmental interest.

Now, what could be of greater interest to the American people than the

prevention of 3,000 children a day from becoming addicted to cigarettes? I daresay that every Member of this Senate would concur that this is not only a valid governmental interest, it is a compelling one—1 million children a year become addicted to cigarettes, and one-third of these children will die prematurely as a result. The FDA has concluded in extensive rule-making that limits on advertising will avert the addiction of anywhere between 25 percent and 50 percent of these children at risk. Literally, we have it within our power to save 250,000 children a year from the ravages of smoking. Prevention of childhood smoking is clearly and unequivocally a substantial governmental interest.

The second prong of the Central Hudson test requires a showing that the proposed restraints directly advance this substantial public interest. Perhaps the most compelling evidence to establish this point is the behavior of the tobacco industry itself. They certainly feel that advertising and marketing is an important part of their strategy to addict children. The industry, overall, spends $5 billion a year on advertising; that is $13 million a day.

We know from the internal documents I have shared with you that much of this effort is directed at ensnaring children. I can remind you of the numerous documents I have cited. They indicate a deliberate and calculated attempt to addict children. Unless we restrain advertising directed at children, we will never effectively prevent the use of tobacco products by children.

All of this evidence is substantiated by the research underlying the FDA rule. In its rule-making, FDA relied on two major studies summarizing the effects of advertising on youthful tobacco use—the study of the Institute of Medicine in 1994 and the Surgeon General's Report in 1994 concluded that advertising was an important factor in young people's tobacco use. Moreover, these reports indicated that advertising restrictions must be part of any meaningful approach to reduce underage smoking. In promulgating its rule, the FDA declared:

> Collectively, the studies show that children and adolescents are widely exposed to, aware of, respond favorably to, and are influenced by cigarette advertising. One study found that 30 percent of 3-year-olds and 91 percent of 6-year-olds identified Joe Camel as a symbol of smoking. Other studies have shown that young people's exposure to cigarette advertising is positively related to smoking behavior and their intention to smoke.

All of this shows that the FDA rules and my amendment are directly related to achieving the substantial government interest.

And the final issue that has to be addressed with respect to the Central Hudson test is to ensure that the proposed restrictions are no more extensive than necessary to accomplish the governmental objective. In the realm of commercial speech, the court requires there be a "reasonable" correlation between the proposed restraint and the policy outcome sought.

Now, it is important to note that the proposed restrictions under the FDA rule do not absolutely prohibit the advertising of tobacco products. They have been carefully tailored to allow continued promotion of cigarettes to adults. Their objective is to prevent marketing to children. The FDA regulations retain the informational value that such advertising has for adults, but affects in a positive way access to these images by children.

It is also important to note that we have, over several decades, tried other means short of advertising restrictions to stem the epidemic of underage smoking. Warning labels have not worked. They are ignored by children in the clutter of the "live out loud," rock-and-roll imagery, or the Joe Camel character, all of those things.

In fact, ironically, the only one the warning labels seem to have helped at least for a while is the industry itself, because they use them in their defense to say that smokers assumed the risk when they picked up a pack of cigarettes because of that label. We tried to ban advertising on television. That has not worked either.

As Chairman Robert Pitofsky of the Federal Trade Commission pointed out in his testimony before the Senate Commerce Committee:

> After cigarette manufacturers were prohibited from advertising on television and radio in 1969 (a prohibition that was intended, in part, to protect children), they put tens of millions of dollars in print advertising to sell their products. In more recent years, the cigarette manufacturers have shifted an increasing amount of money away from traditional advertising and into sponsorships and so-called "trinkets and trash"—T-shirts, caps, and other logo-adorned merchandise—that some believe are very attractive to young people.

We simply cannot rely on the good faith of this industry to do what is right. Today, as we debate this legislation, they continue to target children. Just a few weeks ago I received a letter from a constituent in Rhode Island. He wrote me and said:

> As you consider legislation regarding tobacco company advertising aimed at children, I thought you might like to see a mailing piece that my oldest son, Mark, a junior in high school, recently received. Brown & Williamson Tobacco Company evidently got his name because he attended a concert last summer in which the group featured in the advertisement performed. I suspect that the great majority of the audience was under 18 years of age.

And this is the flier that a high school junior, a 16-year-old child received in Providence, RI.

Here it is: This is the first piece, and this is a very sophisticated piece of direct mail. This was individually addressed to the child, not to occupant, not to parent. This was individually addressed to him. It is his own mail. And we all know, when you are a youngster and you get your own mail, that is a big deal to think that you are so special that a big company like Brown & Williamson would write to you directly.

Here is what it said: "We Know You Like It Loud," the rock concert motive which they might well have sponsored. Again, as Pitofsky pointed out, they have shifted a huge amount of money away from the traditional advertising to go into rock concerts and trinkets and direct mail, and everything else.

And this is the bulk of the advertising: "You like it loud, and very, very smooth, Kool Milds, Kool Filters. Kick back today and enjoy bold taste, refreshing menthol."

And a coupon: "Relax with Kool and slip into something smooth."

"Slip into something smooth," a lifetime addiction to tobacco. That is what they want. It is happening today, directly targeted at children. That is what we are about in the Chamber. It is not about taxes. It is not about lawyer's fees. It is about an industry that continues to go after our kids without any letup, ruthlessly, relentlessly, and they are doing it today, and they will continue to do it today unless we make them understand. And the only way we do it is through the bottom line, that they can't keep doing this again and again.

We have been debating on this floor the last few weeks whether we are going to increase the price of cigarettes $1.10 or $1.50. What do they do in their promotions? They are cutting a buck. Here is one dollar off the two-pack package. Any style of Kool you want, young man. You are 16. You should be smoking. We will give you a break.

That is what this is about. We want to raise the price per pack because we don't want kids to go out there and smoke cigarettes. They want to cut cigarette prices to addict children. It is happening today, shamelessly happening today. We can stop it. We must stop it. We have to go ahead and ensure that this type of activity doesn't take place.

Now, this whole promotion—and I am not the expert on this. This is the whole rock-and-roll series of concerts that are directed at kids. Sure, there might be some college kids there, but this is what is hot in high school. They want to be grown up. They want to go to the rock concert. They are sponsoring the concerts. They are tracking the kids down afterwards. They are sending them promotional materials. They are giving them coupons. Absolutely shameless. We shouldn't accept it. We can't accept it.

Now, the proposed FDA regulations have been carefully tailored to prevent

this type of activity, to allow them to market to adults, to make conscience choices, that we can't stop, that we don't want to stop. But we have to, I think, ensure that they are not allowed to continue this type of behavior. My amendment will do that.

Now, moving away from the issue of the constitutionality, and very quickly, with respect to the tax law consequences, the Supreme Court has held that Congress is not required to subsidize first amendment rights through a tax deduction, but a first amendment question would arise if Congress were to invidiously discriminate in its subsidies in order to suppress "dangerous ideas."

Now, the appropriateness of this denial of a deduction which touches upon first amendment issues rests fundamentally on the underlying propriety of the proposed restraint. And as I indicated, the proposed FDA regulations do not "invidiously discriminate." They have been narrowly drafted to conform to the "commercial speech" doctrine of Central Hudson. They will, in fact, stand the test of a court.

And in addition, denying of a deduction as I propose would not ban any speech. The standing bill itself, my amendment, would not require the companies to say anything or refrain from saying anything. But if they violate these rules, they will have to do it on "their own nickel." It won't be subsidized to the tune of $1.6 billion a year by the taxpayers of the United States.

Let me mention something else which I think is appropriate in this context. It is that we have to be realistic and understand that this industry has avoided any type of real regulation for as long as we all can remember. There are laws on the books of the FTC for misleading in advertising. And what happens, the FTC brings a case, it takes 2 years to go through the administrative appeals, they might get an adverse decision. They will appeal it to the courts, and by that time the advertising campaign is gone anyway. They are not going to run a campaign for 100 years. It is the game they are playing. This approach, my approach will make them each year look at what they have done because they have to file their taxes. It will put their auditors and their accountants and their tax attorneys on notice that they can't claim these deductions if they are violating these rules. No messy FDA bureaucracy. No FDA agents running around scouring the countryside measuring the distance between schools and billboards. They are going to have to do it. They should do it. This enforcement mechanism, I think, is another positive aspect of this legislation.

Now, in another context this Senate has voted to deny tax benefits for those groups that engage in speech activities. The most prominent one is the fact that we have denied tax-exempt status to nonprofit groups if they engage in lobbying activities. Lobbying activities—political speech has the strictest scrutiny of the Supreme Court. It is pure speech, not commercial speech, yet we in our wisdom have said: Listen, if you are going to use your tax advantage to go ahead and engage in lobbying, you lose that tax advantage. If we do that to not-for-profit groups, where we do that to groups that are trying to affect positively the health of youth in this country, why should we be reluctant to go ahead and deny this group tax deductions if they are engaged in this type of shameless behavior? I think we should move aggressively to do that.

Let me emphasize my proposal is very narrowly tasked. It is targeted very closely along the lines of the FDA regulations to prevent access of children to this type of tobacco advertising.

Let me make another point about the context of the legislation and how it fits within the particular McCain bill. I commend the Senator from Arizona for his effort toward the goal of this legislation. Indeed, his perseverance, his strength, his endurance has carried us this far along, along with many other colleagues. But this legislation is designed to prevent children from smoking. It is not about taxes. It is not about big government. It is about making the companies stop soliciting kids to smoke.

There are two ways in which the bill does it. First, it reaffirms the full authority of the FDA to promulgate these rules. In effect, it supports the FDA's advertising bans that are being tested now by the industry. A second part is a protocol, a contractual relationship between the industry and the government, which actually imposes further restrictions on what they can do. My amendment affects only the first part of the McCain legislation. It would deny tax deductibility if the industry violated the FDA rule. Again, it is narrowly tailored, it is consistent with the Constitution, and it is something that will effectively stop the industry from doing what they are doing.

We have witnessed, for years and years and years, the industry's unrelenting attempts to addict children to nicotine. They are doing it today. They are doing it through rock concerts, through promotional giveaways, through T-shirts, through every other method of advertising. We know that. We can stop this assault on America's children. We can stop it by supporting the FDA rules and we can stop it, I think, much more decisively and definitively by adopting the amendment I propose, by telling the tobacco companies very straightforwardly: If you choose to advertise to children, you will lose your tax deduction. You will feel it in the bottom line. You will have to pay, as these kids and our society pay for their addiction.

I urge my colleagues to support this amendment.

Mr. KENNEDY. Mr. President, I commend Senator REED for his leadership on the amendment that is before the Senate at the present time. He has proposed a creative and effective enforcement mechanism to deter tobacco industry marketing targeted to children. I strongly support his amendment to eliminate the tax deduction for tobacco industry advertisements that violate FDA advertising restrictions.

Clearly, the tobacco industry should not be marketing its addictive products to children. For years, Big Tobacco has appealed to children through its advertising and promotional campaigns. Tobacco advertising was banned from television in the 1970s, but cigarette manufacturers have found new ways to hook kids on their products through colorful magazine advertisements, free t-shirts and caps with brand logos, product placements on prime-time television shows and in the movies, and sponsorship of sports events and cultural events.

In fact, studies show that more cigarette ads are placed in stores near schools than in other stores. Ads are put next to the candy counters more often than elsewhere in stores. Displays are set at eye-level for children. In stores near schools and in neighborhoods with large numbers of children under 17, there are more tobacco ads outside the store and in the store windows than in cases where schools are nearby.

Recently in Massachusetts, 3,000 teenagers surveyed stores in their communities to identify cigarette advertising aimed at children. Stores within a thousand feet of schools in low-income and minority neighborhoods had more cigarette advertising than stores in affluent communities.

According to a recent study in the Journal of the American Medical Association, children watching the Marlboro Meadowland Auto Race on television were exposed to Marlboro ads over 4,700 times in 90 minutes—4,700 times in 90 minutes. Cigarette ads are theoretically prohibited on television—but the tobacco companies have obviously found a way to get around that prohibition.

These advertising placements do not happen by accident. Tobacco companies have consistently targeted children as young as 12—because they know that once children are hooked on cigarettes, they are customers for life.

In fact, a 1996 study in the Journal on Marketing found that teenagers are three times as responsible as adults to cigarette advertising.

Before the Joe Camel advertising campaign began, less than 0.5 percent of young smokers chose Camel. After a

few years of intensive Joe Camel advertising, Camel's share of the youth market rose to 33 percent—33 percent.

Some 90 percent of current adult smokers began to smoke before the age of 18. If young men and women reach that age without beginning to smoke, it is very likely that they will never take up the habit in later years. And so the industry has cynically conducted its advertising in a way calculated to hook as many children as possible.

For at least a generation, Big Tobacco has targeted children with billions of dollars in advertising and promotional giveaways that promise popularity, maturity and success for those who begin this deadly habit.

The Centers for Disease Control and Prevention found that the average 14-year-old is exposed to $20 billion in tobacco advertising—$20 billion—beginning at age 6. It is no coincidence that the three most heavily advertised brands are preferred by 80 percent of children—Marlboro, Camel, and Newport.

A study published in the February 8, 1998 Journal of the American Medical Association also reported a strong correlation between cigarette advertising and youth smoking.

It analyzed tobacco advertising in 34 popular U.S. magazines and found that as youth readership increased, the likelihood of youth-targeted cigarette advertising increased as well.

Two recently disclosed industry documents reveal that Big Tobacco had a deliberate strategy to market its products to children. In a 1981 Philip Morris memo entitled "Young Smokers—Prevalence, Implications, and Related Demographic Trends," the author wrote that "it is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. Because of our high share of the market among the youngest smokers, Philip Morris will suffer more than other companies from the decline in the number of teenager smokers."

A 1976 R.J. Reynolds Tobacco Company memorandum stated that "young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14- to 18-year-old group is an increasing segment of the smoking population. R.J. Reynolds Tobacco must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long-term."

The conclusion is obvious. Big Tobacco's goal is to hook children into a lifetime of nicotine addiction and smoking-related illnesses. They've used Joe Camel, the Marlboro Man, and the prominent placement of tobacco advertising. Obviously, Big Tobacco knows how to stop targeting children. That's why the Reed amendment is so important. If tobacco companies continue to target children with their billboard advertisements near schools, giveways of branded items, sponsorships of sporting events, and magazine promotions, they'll lose their tax deduction.

The health of the nation's children deserves to be protected. The Reed amendment is an important enforcement mechanism to ensure that Big Tobacco plays by the rules.

If we continue to permit tobacco companies to deduct the cost of advertising targeted to children as an ordinary and necessary business expense, we will literally be providing a tax subsidy for this unlawful and immoral conduct. Unless we adopt the Reed amendment, the taxpayers will be paying approximately 35 cents of every dollar spent by the industry on a billboard, on a magazine ad, on a promotional item designed to entrap our children into a lifetime of addiction and premature death. The Senate should declare in one resounding voice that we do not consider addicting children to be "an ordinary and necessary business expense."

This amendment speaks to the tobacco industry in the only language it understands—money. It will dramatically increase the cost, and therefore help to deter, marketing campaigns which seek to convert impressionable kids into lifelong smokers. For every advertisement which does not appear because of this amendment, there may well be a child who does not light up his or her first cigarette.

The Reed amendment deserves the support of every Senator. I urge my colleagues to support it.

Mr. CONRAD. Mr. President, I rise today to express my support for the amendment of the Senator from Rhode Island, Mr. REED. The amendment of the Senator from Rhode Island is an important amendment. Senator REED has been a very important member of the task force that I chaired on the Democratic side on the tobacco issue. He has been a superb contributor to the work of the task force. In fact, he traveled to North Dakota to participate in a hearing on the tobacco issue with me. I went to Rhode Island, and we held a very informative hearing at Brown University in his State.

No one has played a more constructive role than the Senator from Rhode Island, Mr. REED. He is absolutely dedicated to the cause of trying to craft responsible national tobacco policy. As part of that effort, Senator REED has brought to us an amendment. I believe it is an important amendment. It says very simply that the tobacco companies will be denied tax deductibility for advertising if, and only if, a tobacco manufacturer violates the Food and Drug Administration's advertising restrictions.

I am a cosponsor of this amendment. I believe it is an amendment that ought to pass 100 to nothing. There is absolutely no reason why every Member of this Chamber should not support the Reed amendment. We all know that the tobacco industry has a history of marketing to children. After we received through the various trials the documents that were previously secret and beyond our observation, we now know beyond question that this industry has targeted children, sometimes as young as 12 years old. We have seen document after document from the industry itself that demonstrate the truth of those statements.

The advertising restrictions included in the FDA rule are not extraordinary. These restrictions are constitutional. They are carefully targeted to prevent the tobacco industry from advertising to kids. In every State of the Union it is illegal to sell tobacco products to children under the age of 18—in every State in this Nation. It is illegal to market to kids under the age of 18.

In every State of the Nation, the tobacco industry should be stopped from advertising to children under the age of 18. These advertising restrictions are sensible and reasonable, and again, fully constitutional. In fact, the tobacco industry found them reasonable enough to agree to them in the proposed settlement which they reached with the State attorneys general. The tobacco industry actually agreed to some restrictions that went beyond those provided for in the FDA rules. The FDA determined that in order to reduce youth smoking, the following restrictions to advertising should be enforced:

No. 1, no outdoor advertising within 1,000 feet of a public school or playground. We know that outdoor advertising has an impact. Billboards placed close to places where kids spend a great deal of time can be very influential. The tobacco industry is aware of the power of the billboard. According to the industry's own marketing materials:

> Outdoors is right up there, day and night, lurking, waiting for another ambush.

Those are the tobacco industry's own words. The FDA rules also limit advertising in publications with a significant youth readership to a black-on-white, text-only format. They also limit advertising in an audio format to words with no music or sound effects. They also limit advertising in a video format to static, black-on-white text. They also prohibit the marketing, licensing, distribution or sale of all non-tobacco promotional items such as T-shirts and caps. These restrictions do pass constitutional muster. They were designed to pass constitutional muster. These restrictions are aimed at ads that target kids. They do not attempt

to ban legitimate commercial speech. Mr. President, that is why they pass constitutional muster.

Senator REED's amendment is intended to penalize the tobacco manufacturer if it fails to limit its advertising and marketing to those who are legally able to buy the product. We know from the thousands and thousands of internal industry documents that the tobacco companies purposely and aggressively sought a youth market share. There can be no question about it. How many times have we heard on the floor the words "youth replacement smoker"? Because the industry has to find someplace to get those to fill the shoes of the 425,000 smokers who die every year from tobacco-related illness. Where do they recruit them? They recruit them from our youth. Maybe we could put up those charts that speak to these questions. These are not my words. These are not the words of the public health advocates of this bill. These are the words of the industry itself. They have said to us they don't market to children.

But in a 1978 memo from a Lorillard executive, they said, "The base of our business are high school students."

"The base of our business are high school students." What could be more clear?

Again, they have said they don't market to children, but if we look at their own documents, in this case a 1976 R.J. Reynolds research department forecast:

> Evidence is now available to indicate that the 14 to 18 year old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

These are not my words. These are the industry's own documents, Again, the claim that they don't market to children and another document from the industry, a 1975 memo from a Philip Morris researcher:

> Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . [it goes on to say] my own data . . . shows even higher Marlboro market penetration among 15 to 17 year olds.

Can there be any question that they targeted kids? Can there be any serious question when their own documents reveal that is precisely what they have done?

Finally from a Brown & Williamson document.

> The studies reported on youngsters' motivation for starting, their brand preferences, et cetera, as well as the starting behavior of children as young as 5 years old . . . the studies examined . . . young smokers' attitudes towards addiction, and contained multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.

These are the industry's documents and they reveal that they have targeted kids. This industry has spent more than $5 billion a year on advertising and marketing each year. The industry says this effort is aimed at getting adult smokers to switch. But their own documents reveal that these ads are also aimed at building youth market share. They repeatedly talk about the need to build the youth market, and they know that smokers are very loyal to the first brand they smoke. Few adults switch brands as a result of tobacco advertising. The reality is that the toys and the slogans and the marketing and the ads are targeted at kids. The campaign by the tobacco industry against our youth must stop. This amendment, the amendment of the Senator from Rhode Island, Senator REED, I think, would help. It would be another tool in the tool box to help us achieve the goals of protecting public health and reducing youth smoking.

Mr. President, I call on our colleagues to support the Reed amendment when we have a chance to vote on it next week.

I thank the Chair and yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SESSIONS). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise once again to address the issue of the constitutionality of the Commerce bill, as modified by the floor substitute.

A buzz seems to be in the air that perhaps the pending substitute bill might actually pass.

What seems to be forgotten—or ignored—however, is there are serious questions surrounding the bill's constitutionality. In a rush to do good, in the haste to pass legislation that limits youth cigarette smoking, some have either ignored the constitutional problems or deluded themselves that no such problems exist.

In 1845, Justice Joseph Story complained "how easily men satisfy themselves that the Constitution is exactly what they wish it to be." Well, the courts will not ignore the Constitution. They will scrutinize the legislation according to applicable case law and constitutional doctrine and, most assuredly, will strike down as unconstitutional pertinent provisions of the bill.

So what will we have accomplished? Major portions of this bill will fail. Teen smoking may not decrease. Or, even worse, from a public health standpoint, the bill will be tied up for a decade or more in litigation; no national tobacco program could be implemented until the litigation is resolved; and more and more teens will start and continue smoking. Many of our youth, naturally, will die prematurely—at least 10 million kids—while this is litigated, assuming it passes in its current form, as unconstitutional as it is. There will be at least 10 years of litigation, and another 10 million kids will become hooked on smoking, a high percentage of whom will probably die prematurely as a result of that.

We must, as a body, address the constitutional concerns raised by the tobacco legislation, and we should not evade this issue.

Mr. President, I want to make clear that I am a strong advocate of legislation that will reduce youth consumption of tobacco products. I also want to make it abundantly clear that I am a vociferous critic of the tobacco industry. But should our disdain for tobacco and our desire to help young people prevent us from crafting an efficacious bill that meets constitutional requisites?

We must heed Justice Oliver Wendell Holmes, Jr., who in 1904 observed that it must always be "remembered that legislatures are the ultimate guardians of the liberties and welfare of the people in quite as great degree as the court." So we must act as guardians of the Constitution. Our oaths of office require it. The American people demand no less of us.

The Commerce bill raises a number of serious constitutional issues which involve the following: No. 1, the first amendment; 2, the prohibition of bills of attainder contained in article I; 3, the takings clause; and 4, the due process clause. Allow me to address each of these issues in the order I listed them.

Let me first turn to the first amendment issue.

The Commerce bill unconstitutionally restricts tobacco product advertising, one, by apparently enacting the August 1996 FDA rule, and, two, by imposing additional restrictions that go beyond these regulations through a so-called "voluntary protocol" modeled after my original tobacco plan.

Section 103 of the floor vehicle deems the FDA rule to be "lawful and to have been lawfully promulgated under the authority of this chapter." The meaning of this is unclear, but the language will probably be interpreted as codifying the rule.

As to the protocol section of the Commerce bill, one must remember that it is intended to be voluntary. It is null and void without the participation of the tobacco companies and the other parties to the June 20, 1997, settlement.

Both of these restrictions violate the first amendment and the Supreme Court's cases defining commercial speech. Moreover, the "counter-advertising" provisions—the "coerced speech doctrine"—of the bill are subject to

first amendment challenges unless consented to by the tobacco companies, who have said they will not consent to this Commerce Committee bill.

Let me discuss these concerns in more detail.

On August 28, 1996, the U.S. Food and Drug Administration published a rule which restricted tobacco advertising. These limitations include: No outdoor advertising for cigarettes and smokeless tobacco, including billboards, posters, or placards, within 1,000 feet of the perimeter of any public playground, elementary school, or secondary school; other advertising must be in black text on a white background only, in FDA-approved publications; labeling and advertising in audio format must be in words only, with no music or sound effects, and in video format in static black and white text only, on a white background; the sale of any item—other than cigarettes or smokeless tobacco—or service, which bears the brand name, logo, et cetera, identical or similar to any brand of cigarettes or smokeless tobacco is prohibited; offering any gift or item—other than cigarettes or smokeless tobacco—to any person purchasing cigarettes or smokeless tobacco is prohibited; and sponsoring any athletic, musical, or other social or cultural event is prohibited.

In April 1997, the U.S. District Court in Greensboro, NC, while upholding the FDA's general jurisdiction over tobacco, held that the FDA did not have statutory authority to regulate advertising. The first amendment issues, therefore, were not addressed by the court. An appeal is pending in the Fourth Circuit Court of Appeals. Oral arguments were heard earlier this week.

These advertising restrictions propose to be codified in a freestanding FDA regulation of the tobacco section of the Commerce bill. The Commerce bill also broadens these restrictions, and, much like the original Hatch bill, it places these broader restrictions in a voluntary yet binding contract termed the "protocol."

Pursuant to the protocol, the tobacco companies waive their first amendment rights in exchange for the settlement of existing suits and the scaled-back civil liability limitations—in the original floor vehicle, the "soft" cap on annual payments—that is, $6.5 billion per year. These modest civil liability limitations may be nullified if the Gregg amendment is adopted.

As the bill currently stands, the proposed incentives for the tobacco industry to agree voluntarily are largely illusory, hence the explanation for the recent withdrawal by the industry from the June 20 settlement. So there is no longer any voluntary consent protocol. Private parties may waive their constitutional rights. I cite with particularity the Snepp v. United States 1980 case. We can only assume that without this waiver, parties will tie up the legislation in the courts for years. I don't think there is any question about it.

The Supreme Court has consistently held that constitutional rights may be waived provided that such waiver is knowing, voluntary and intelligent. [See Fuentes v. Shevin, 407 U.S. 67, 95 (1972); D. H. Overmyer Co., Inc. Of Ohio v. Frick Co., 405 U.S. 174, 187 (1972).] Of course, the tobacco companies have now withdrawn from the settlement, so no waiver can occur unless they rejoin the negotiations.

So, the tobacco industry will not enter into the protocols and we must analyze the bill's constitutionality on this fact. With this bill, we are not discussing restrictions which will be agreed to. Hence, the constitutionality is the problem.

Because the advertising restrictions affect only commercial speech, they are entitled to less First Amendment protection than, let's say, political speech. [E.G., Central Hudson Gas & Elec. Corp. v. Public Service Comm'n, 447 U.S. 557 (1980).] Yet, according to the 1980 Supreme Court decision in Central Hudson v. Public Service Commission, the government still bears the burden of justifying a restriction on commercial speech. I also cite, Rubin v. Coors Brewing Co. [, 115 S. Ct. 1585, 1592 (1995).] According to Central Hudson, the Supreme Court has enunciated a four-part test governing the validity of commercial speech restrictions: 1. Whether the commercial speech at issue is protected by the First Amendment, whether it concerns a lawful activity and is not misleading; and 2. Whether the asserted governmental interest in restricting it is substantial; If both inquiries yield positive answers, then; 3. Does the restriction directly advance the governmental interest asserted; and 4. Is the restriction not more extensive than is necessary to serve that interest?

In the 1996 case of 44 Liquormart, Inc. v. Rhode Island, [116 S. Ct. 1495 (1996)], the Supreme Court heightened the protection that the Central Hudson test guarantees to commercial speech. It makes clear that an effectively total prohibition on "the dissemination of truthful, non-misleading commercial messages for reasons unrelated to the preservation of a fair bargaining process" will be subject to a stricter review by the courts than a regulation designed "to protect consumers from misleading, deceptive, or aggressive sales practices."

The proposed restrictions would fall with in the scope of the first prong of the test because, presumably, the advertising is lawful and not misleading. They would also meet the second prong because protecting the public health, safety, and welfare (particularly when the public group being protected is comprised of children) is a substantial interest.

So, a court in analyzing the constitutionality of the advertising restrictions will be left to question seriously whether the third and fourth prong of the Central Hudson test has been met. In other words, the questions facing the Congress and a future court are whether the government could carry its burden of proving the advertising restrictions will directly advance the reduction of youth smoking and that the restrictions are not more extensive than necessary to accomplish this objective.

Because "broad prophylactic rules in the area of free speech are suspect," courts rigorously apply the third and fourth factors of the Central Hudson test. The Supreme Court noted in Edenfield v. Farre [507 U.S. 761, 777 (1993),] that as to the third and fourth factors "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms."

Although Congress may reasonably believe that the severe curtailment of tobacco product advertising will impact youth smoking, that fact alone will not satisfy the government's burden of providing a direct advancement of its interest. As the Second Circuit held recently, to satisfy this burden, the government must "marshall . . . empirical evidence" supporting its "assumptions," and must show that its putative interest is advanced "to a material degree" by the restriction on speech. [Bad Frog Brewery, Inc. v. New York State Liquor Authority, 134 F.3d 87, 98, 100 (2d Cir. 1998).]

This burden is a heavy burden.

It is unlikely that there is uncontroverted "empirical evidence" proving, for example, that prohibiting sponsorship of athletic, social, or cultural events under the brand name of a tobacco product, or that prohibiting advertising without notice to the FDA in any medium not pre-approved by the FDA would have a material impact on youth smoking. The Senate has held more than 30 hearings on the tobacco settlement, but have we been provided any such "empirical evidence?" And the answer is "no."

But, even if the government could carry its burden of proving direct advancement of its interest, it cannot survive the fourth prong of the Central Hudson test and prove that the FDA regulations are not more extensive than necessary.

The Supreme Court has found that a restriction on commercial speech is not sufficiently narrow, and is, thus, unconstitutional, when there are available to the government "alternatives that would prove less intrustive to the First Amendment's protections for commercial speech." [Rubin v. Coors Brewing Co., 514 U.S. 476, 491 (1995).]

There are obvious regulatory and legislative alternatives here.

First, the entire premise of the Commerce bill is that other regulations

that do not impact First Amendment freedoms will advance the government's interest in reducing youth smoking. These include (1) enforcement of the current access restrictions, public education and counter-advertising projects (2) price increases, and (3) cessation programs.

For example consider the 44 Liquormart case I mentioned earlier, [116 S. Ct. at 1510], which held that liquor price advertising restrictions failed Central Hudson's fourth factor, since the government could have accomplished its objective through increased taxation, limits on purchases, and educational campaigns.

Moreover, any assertion by the government that non-speech alternatives would be ineffective in reducing youth smoking would not be viewed favorably by the courts.

In publishing final regulations promulgated under the ADAMHA Reorganization Act of 1992, that's alcohol, drug abuse, mental health administration, an act which conditioned federal grants on state enforcement of tobacco access restrictions, Department of Health and Human Services—the federal agency with expertise on the matter—proclaimed that "aggressive and consistent enforcement of states are likely to reduce substantially illegal tobacco sales." [61 Fed. Reg. 1492 (Jan. 19, 1996).]

Likewise, the Surgeon General stated that the ADAMHA Amendments would "provide significant new leverage for increased enforcement of laws to reduce sales of tobacco products to youth." I might add, this was included in "A Report of the Surgeon General: Preventing Tobacco Use Among Young People," 254 (1994).

In addition, other measures directed at youth contained in the Hatch bill, but not the Commerce bill—such as imposing criminal penalties on purchases or possession of cgiarettes by underage persons, or making entitlement to a driver's license dependent on a record without such offenses—would clearly advance the government's interest more directly than would advertising restrictions.

Finally, the Commerce bill's Protocol restrictions, if they are somehow imposed without consent, would work an even more clear violation of the First Amendment.

The Protocol restrictions are no less broad than the voluntary restrictions in the Proposed June 20 settlement. And nearly every First Amendment scholar who has testified before Congress has concluded that such restrictions would violate the First Amendment if enacted unilaterally. I refer my colleagues to the testimony of Laurence H. Tribe, who testified before the Senate Judiciary Committee last July that any legislation containing the Proposed Resolution's advertising restrictions would be "extremely problematic under the First Amendment."

I also refer my fellow Senators to the testimony of Floyd Abrams, one of the leading legal experts in the first amendment privileges and rights, before the Senate Judiciary Committee on February 10, 1998, where he asserted that any act containing the proposed resolution's advertising restrictions would be "destined to be held unconstitutional" under Reno v. American Civil Liberties Union, [117 S. Ct. 2329,2346 (1997)].

Now, let me next discuss the counteradvertising provisions.

Another first amendment problem plaguing this bill is that, if enacted, the bill would also violate the U.S. Constitution insofar as the "counteradvertising" provisions would require the tobacco industry to fund directly political and commercial speech with which it disagrees. This violates the so-called "coerced speech" doctrine.

Section 221 of the Commerce bill would directly require the tobacco industry to fund a tobacco-free education program, which would award grants to public and nonprofit, private entities to carry out public informational and educational activities designed to reduce the use of tobacco products.

Section 1172 would direct the Secretary of Health and Human Services to disburse funds appropriated for the tobacco industry to be used "to discourage the use of tobacco products by individuals and to encourage those who use such products to quit."

Now, I do not question these objectives or the motives of those who drafted these restrictions. They certainly had the best interests of the public at heart in doing so.

Nevertheless, the Commerce Committee bill would—in these two separate instances—compel the tobacco industry to directly fund political and commercial speech to which they may be opposed, in derogation of the first amendment rights to be free from compelled speech and compelled association. Compare this to a situation where speech is subsidized by Government, but the revenues come from the General Treasury. In this situation, there would be no constitutional violation. But the bill is constitutionally infirm and violates the Constitution.

As the United States Supreme Court has held, the first amendment prohibits Government from "requiring a speaker to associate with speech with which it may disagree." That is Pacific Gas & Electric Co. v. Public Utilities Commission of California [475 U.S. 15 (1986)]. Government-compelled funding of objectionable speech infringes upon both the right of free speech and the right of free association. [Id. at 20–21]

At issue in the Pacific Gas case was a State order that required the Pacific Gas and Electric Company to disseminate the views of one of its regulatory opponents. In finding that such an order violated the first amendment, the Supreme Court held that "for corporations, as for individuals, the choice to speak includes within it the choice of what not to say. . . . Were the Government freely able to compel corporate speakers to propound messages with which they disagree, this protection of the first amendment would be empty."

I refer my colleagues to Abood v. Detroit Board of Education [431 U.S. 209, 234–35 & n.31], a 1977 case, where the Court held that Government-compelled union dues may not be used for ideological purposes.

Various Federal courts of appeals, including the Third, Seventh and Ninth Circuit Courts of Appeal, have also held that the freedom of speech includes the right not to be compelled to render financial support for other speech, especially when the views expressed are contrary to one's own. These cases include Cal-Almond, Inc. v. U.S. Department of Agriculture [14 F. 3d 429, 434–35 (9th Cir. 1993)], U.S. v. Frame [885 F. 2d 1119, 1132–33 (3rd Cir. 1989)], and Central Illinois Light Company v. Citizens Utility Board [827 F. 2d 1169 (7th Cir. 1987)].

This right to be free from compelled funding of objectionable speech is hardly a new development in the law.

As early as 200 years ago, Thomas Jefferson declared that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." [See Abood, 431 U.S. at 235 n.31.]

Moreover, as recently as last year, the Supreme Court reiterated that the protections of the first amendment are called into play whenever Government seeks to "require speakers to repeat an objectionable message out of their own mouths, or require them to use their own property to convey an antagonistic ideological message. . .." That is Glickman v. Wileman Brothers & Elliot, Inc. [117 S. Ct. 2130, 2139 (1977)], a 1997 case decided last year.

Thus, the Commerce bill—by essentially forcing tobacco manufacturers to finance an advertising campaign—could be found to infringe on their rights to be free from compelled speech and compelled association. Unless heightened legal strictures are first met, the Commerce bill may not constitutionally require the industry to fund antitobacco speech.

Keep in mind, this is a legal industry. As bad as it is, as much harm as it does, it is still legal. We are unwilling to ban this industry and to force these companies to leave our country because we have approximately 50 million smokers in this country who are hooked on cigarettes. And it has always been approved as a legal business through all of these years. So these constitutional points are important points, in spite of the fact that we may despise what these companies do.

In order for the "counter-advertising" provisions of the Commerce bill to pass constitutional muster, there must be a "narrowly tailored means of serving a compelling State interest." [See Pacific Gas, 475 U.S. at 19]

Although the Federal Government may have a "compelling State interest" in reducing the health hazards associated with smoking, the Commerce bill addresses that concern with a broadside approach that is far from narrowly tailored, and which unnecessarily tramples on important first amendment rights. The lack of "narrow tailoring" is most evident from the fact that Congress has available to it a whole host of alternative methods to encourage and finance antitobacco speech that would not impinge on any constitutional concerns.

For example, Congress could provide tax incentives to members of the mass media in exchange for their cooperation in supporting counter-advertising. Or Congress could condition the receipt of certain Federal funds—that is educational and research grants—on the requirement that recipients promote measures to reduce tobacco use. Or Congress could even directly subsidize antitobacco advertising through the Department of Health and Human Services, provided that all such funding was drawn from taxpayers "generally"—and not exacted from the tobacco industry in particular. I refer my colleagues to the Supreme Court's opinion in U.S. v. Frame [885 F. 2d 119, 1132–33 (3d Cir.)], a 1989 case, which emphasized the distinction between "money from the general tax fund" and money from "a fund earmarked for the dissemination of a particular message associated with a particular group." Should this bill become law, a Federal court would have to conclude that instead of choosing any one of these constitutionally permissible methods of funding counter-advertising, the Congress will have adopted a scheme that unnecessarily infringes upon the first amendment rights of the tobacco industry.

Let me discuss bill of attainder, takings, and due process issues raised by the Commerce bill.

The Commerce bill would impose large annual payments on these tobacco product manufacturers that enter into a voluntary protocol.

Keep in mind, they have said they are not going to enter into a voluntary protocol if the McCain bill is the bill that passes. But let's assume otherwise.

The first six annual payments are to be made regardless of sales or profits. The bill would also provide for a $10 billion up-front payment.

Any attempt to impose the Commerce bill's payment scheme on an involuntary basis would be subjected to legal challenge under at least three independent constitutional provisions—the Bill of Attainder Clause, the Takings Clause, and the Due Process Clause of the Constitution.

The implementation of the "look-back" penalties—if the industry is without fault—raises the same constitutional concerns.

The Comprehensive Tobacco Resolution agreed to between the tobacco companies and the State attorneys general contains a "look-back" provision, whereby, if prescribed goals for reducing teen smoking rates in future years are not achieved, the tobacco companies would be subject to specified monetary liabilities.

The Commerce bill imposes greater "look-back" liabilities upon the tobacco companies—amounting to more than $5 billion per year—without the consent of the industry. Thus, the bill would impose multibillion dollar liabilities upon tobacco companies—over and apart from the ongoing payments the companies would be called upon to make as part of the resolution.

Even if the companies fully complied with all measures imposed by the resolution to prevent teen smoking, they would be subject to the penalties without any showing of illegal or wrongful conduct whatever.

Let me discuss why certain provisions in this bill violate the prohibition of bills of attainder contained in Article I, Section 9, Clause 3 of our Constitution. This provision simply reads, "No Bill of Attainder or ex post facto Law shall be passed."

What is a bill of attainder? The Bill of Attainder Clause prohibits the imposition of a punishment by Congress without a judicial trial. That was decided as early as 1866 in the Cummings v. Missouri case [71 U.S. 277 (1986)]. The clause reflects the framers' belief that "the legislative branch is not so well suited as politically independent judges and juries to the task of ruling upon blameworthiness." That is U.S. v. Brown [381 U.S. 437. 445 (1965)], a 1965 case. Legislation violates the Bill of Attainder Clause if it singles out a specific group for unique treatment imposing punitive liability upon that group without a trial.

I refer my colleagues to Selective Service System v. Minnesota Public Interest Research Group, [468 U.S. 841, 846 (1984)], and also generally to Nixon v. Administrator of General Service [433 U.S. 425, 469–475 (1977).]

In sum, a general definition of what constitutes a bill of attainder demonstrates that a bill of attainder prohibited by the Constitution is composed of two elements: first, an element of punishment inflicted by some authority other than a judicial authority; and second, an element of specificity, that is, a singling out of an individual or identifiable group for the infliction of the punishment. In other words, a bill of attainder is primarily a legislative act designed to punish an individual or discrete class of individuals without a hearing or a demonstration of fault.

It is clear that a court would interpret the floor vehicle's penalties as punitive and would thus violate the Bill of Attainder prohibition.

The so-called "look-back penalties" in the floor vehicle—in other words, in the Commerce bill before this body—which are imposed on the tobacco companies if teen smoking does not meet certain goals for reduction, are subject to constitutional challenge unless they are voluntarily agreed to by the tobacco companies.

I might add, which, of course, is not the case. The companies have said they will not voluntarily agree to what they consider to be the exhorbitantly punitive bill that is before the Senate at the present time.

I am talking about even the substitute as brought forward by the distinguished Senator from Arizona.

I might add that the bill now terms the penalties "surcharges." But this simply is an attempt to elevate form over substance. No matter how they are termed, these payments are the functional equivalent of fines. Thus, the Supreme Court in United States v. Lovett, [328 U.S. 303 (1946)], held that legislative acts—no matter what there form or what they are called—that apply either to an individual or a discreet class in such a way as to impose punishment without a trial—are bills of attainder prohibited by the Constitution.

Given what we know—or do not know—about how teens react to advertising, it is possible that even if the tobacco industry does all it can to prevent teen smoking, and teen smoking still will not meet the target, then they are being punished unnecessarily, Moreover, besides the look-back penalties, the floor vehicle contains an additional provision that companies lose their liability cap protection if underage smoking exceeds the targets by a set amount. This is also done without a showing of fault.

The Bill of Attainder Clause has been invoked by lower courts to invalidate similar punitive economic legislation aimed at particular industries, companies, or individuals. Thus, for example, in SBC Communications, Inc. v. FCC, the District Court struck down provisions of the recently enacted Telecommunications Act, which subjected regional telephone companies to burdensome requirements for entry into the long distance business. [981 F. Supp. 996, 1004 (N.D. Tex 1997).] Because the "Baby Bells" were singled out for unique and economically punishing regulatory treatment—based on an unproved legislative presumption that they were engaged in ongoing anticompetitive practices—the Court held that the provisions violated the Bill of Attainder Clause.

As another example, in News America Publishing, Inc. v. FCC, the D.C. Circuit invalidated on First Amendment grounds a law that singled out Rupert Murdock for unfavorable treatment. [844 F.2d 800, 813 (D.C. Cir. 1988).]

Explaining that the "safeguards of a pluralistic system are often absent when the legislative zeros in on a small class of citizens," the D.C. Circuit found that the challenged provision "strikes at Murdoch with the precision of a laser beam," and held the provision unconstitutional. "Congress' exclusive focus on a single party clearly implicates values similar to those behind the constitutional proscription of Bill of Attainder."

The Supreme Court in Nixon v. Administrator of General Services, [433 U.S. 425, 468–484 (1977)] has indicated that the existence of punishment is dependent upon the circumstances of individual cases.

A three-part test to determine whether a legislative act is a bill of attainder was developed. One test is that of historical experience under the law of England and our own country the United States. This test involves an analysis of punishment in terms of what traditionally has been regarded as punishment for purposes of bills of attainder—which were used to seize or escheat property—and bills of pains and penalties—which were used to deprive individuals of their civil rights.

A second test is a functional one which takes into account the extent to which any enactment challenged as a bill of attainder furthers any non-punitive purposes underlying it.

A third test for determining the existence of the punishment element is a motivational one, involving an assessment of the purposes or motives of the legislative authority.

There can be little doubt that applying the Supreme Court's three-part test would result in the conclusion that the look-back penalties constitute a bill of attainder. Imposing the floor vehicle's payment scheme upon the tobacco industry without its consent would, in effect, be a fine for the tobacco industry's past conduct and would therefore constitute a bill of attainder, even if a due process hearing were held to determine factually whether goals were met or not.

First, the scheme would single out a discrete group for unique treatment, since the payments would be forced only upon the country's five major tobacco manufacturers. And, second, payments would be imposed by the terms of a congressional decree, not through a trial.

That these measures are "punitive" would be readily apparent to any court (1) from the huge payments which historically and functionally amount to a deprivation and confiscation of property; and (2) from the legislative record, which is replete with expressions of congressional condemnation of the tobacco industry and, therefore demonstrate a clear motive to punish. Thus, the bill punishes and is directed at a discrete group, that is, the tobacco companies.

Let me make clear that there is no greater critic of the tobacco industry than ORRIN HATCH.

I have fought them vigorously for most of my career.

I believe that the tobacco companies have done great harm particularly to the children of this nation.

They have hidden documents demonstrating the addictive nature of nicotine.

They have concealed evidence that cigarette smoking is a significant contributor to such diseases as cancer and emphysema.

Nevertheless, we must put our faith in the judicial process. If wrongs have been committed by the tobacco industry, the courts will reveal and punish them. That specter is what has brought the tobacco companies to the bargaining table. That threat is what caused the tobacco companies to settle with the 40 state attorney generals. That risk is what led the tobacco companies to settle the individual state suits in Mississippi, Florida, Texas, and Minnesota.

Our task is to pass moderate legislation that implements the settlement and adheres to the Constitution. Passing legislation that amounts to a bill of attainder is a very dangerous precedent.

THE TAKINGS CLAUSE

Mr. President, let me now turn to the property rights issues that the bill raises.

The Takings Clause in the Fifth Amendment provides, "nor shall private property be taken for public use without just compensation." The Takings Clause "conditions the otherwise unrestrained power of the sovereign to expropriate, without compensation, whatever it needs." United States v. General Motors Corp., [323 U.S. 373, 377 (1945).]

As the Supreme Court in Dolan v. City of Tigard, [512 U.S. 374, 384 (1994).] held: "One of the principal purposes of the Takings Clause is 'to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'"

Where there is, in fact, a permanent physical occupation—no matter how small—the Supreme Court has held that there is a per se taking, immune from application of the balancing test, which I will discuss shortly. [See Loretto v. Teleprompter Manhattan, CATV Corp., 458 U.S. 419 (1982). I refer my colleagues to the Lucas v. South Carolina Coastal Council, [505 U.S. 1003 (1992)] case and its discussion on the distinction between per se or categorical takings and regulatory takings.

As the Supreme Court noted in the 1984 case of Ruckelshaus v. Monsanto Co., while "[c]ondemnation of land by the power of eminent domain is the commonest example of [a] taking," it is well-established that the "taking of personal property" is likewise protected by the Takings Clause. [Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1003–04 (1984).]

And the Supreme Court has held explicitly that the Takings Clause protects not only against government expropriations of intangible personal property but also against government expropriations of money. [Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 162–63 (1980).] In Webb's Fabulous Pharmacies v. Beckwith, a state court, which had maintained funds owed the plaintiff in a court bank account, tried to withhold over $9,000 of interest as a fee for "receiving money into the registry of court." The Supreme Court held that because "the exaction [amounted to a] forced contribution to general governmental revenues, and [was] not reasonably related to the costs of using the courts," it constituted a taking.

It seems to me that the Commerce bill's expropriation falls under the bright line per se takings rule. Clearly, monies and assets are being expropriated, and this is not an example of a regulatory taking, where a court must balance certain factors to determine whether a diminution of value constitutes a taking. [See generally Ruckelshaus v. Monsanto, 467 U.S. 986 (1984).]

Moreover, even if the regulatory takings balancing test were applied, the Commerce bill's confiscations probably would be considered unconstitutional. In determining whether expropriation of money from the tobacco product manufacturers constitutes a taking, a reviewing court would focus upon the following factors: the character of the government action; the economic impact of the regulation on the claimant; and the extent to which the regulation has interfered with reasonable investment backed expectations.

Application of this three factor Penn Central test shows that forcing the Commerce bill's payment scheme upon the tobacco industry would constitute a taking.

First, the character of the governmental action is—quite clearly—a seizure of money. It does not even purport to function as a "fee" or a "tax," since the initial $10 billion payment and the first 6 annual payments are owned regardless of whether there is any income and regardless of whether there are any sales.

Moreover, there is no effort to make the amount of the payments relate in any way to the costs of smoking programs that the bill authorizes. And, no industry—not even the tobacco industry—could be said to "expect" that its

capital could be simply expropriated in lump sum amounts for the public's benefit. Indeed, the Supreme Court found a taking in Webb's Fabulous Pharmacy when the Government merely interfered with the right to receive interest on capital.

In this nation's history, there is no statutory precedent whatsoever for forced lump sum payments in anything even approximating the amounts contemplated here in this proposed legislation.

In addition, the floor vehicle's document provision is constitutionality suspect. I must point out that the June 20 settlement agreement presupposed voluntary participation by the tobacco companies in releasing proprietary documents.

While litigation documents already made public can be released to the FDA, as required in the bill, it is problematic that the industry could be required to release additional documents, especially work product, confidential, or privileged documents without the Court saying so. Such documents are property as defined by the Fifth Amendment.

Thus the district court in Nika Corp. v. City of Kansas City, [582 F. Supp. 343 (W.D. Mo. 1983),] held that a corporation's documents constitute property under the Fifth Amendment. I now refer my colleagues to other cases—United States v. Dauphin Deposit Trust Co., 385 F.2d 129 (3rd Cir. 1967), where the court found that a trust company has property interest in documents and business records. I also refer my colleagues to Webb's Fabulous Pharmacies, Inc. [at 162–63.]

Pursuant to the same theory, the forced funding by the industry of the depository—the leasing of the building, the salaries of the personnel, etc., indeed as for any confiscation of cash or any valuable assets—would constitute a taking under the Fifth Amendment requiring compensation. [See Webb's Fabulous Pharmacies, Inc. at 162–63.]

Furthermore, the multi-billion-dollar appropriation by the government of the tobacco companies' funds through "look-back" provisions constitutes the very type of government expropriation that the Supreme Court has held in the past to be an unconstitutional taking. Thus, where the Government does not merely impair an owner's use of private property, but actually seizes ownership of private property (such as money) for its own use without compensation, there is an unconstitutional taking. [See, e.g., Webb's Fabulous Pharmacies, 449 U.S. at 163; Loretto, 458 U.S. 419 (1982).]

DUE PROCESS

In addition to First Amendment, Bill of Attainder, and Takings concerns, forced industry payments would also violate due process. The substantive due process guarantee of the Fifth Amendment bars "arbitrary . . . government actions 'regardless of the fairness of the procedures used to implement them.'" [Zinermon v. Burch, 494 U.S. 113, 124 (1990).]

The Commerce bill's payment scheme—if imposed involuntarily—would arbitrarily compel settlement of various pending and potential litigations for the arbitrary amount. Indeed, the arbitrariness of the payments is clear on its face: the Bill expressly provides that the payments would be, in part, to settle the state attorneys general actions.

But, at the same time, the Bill gives each state the right to opt out and pursue its claims, yet fails to give the tobacco product manufacturers any offset if the states choose to exercise this right.

The possibility remains that, through no fault of the tobacco industry—and indeed despite the industry's full cooperation in efforts to end tobacco use by minors—teen smoking reduction goals established as part of a resolution may not be reached within the planned timetable.

In that event, if look-back obligations were imposed by legislative edict without the companies' consent, the companies would incur massive and unpredictable monetary liabilities, not because they failed to implement the terms of the resolution in good faith or otherwise acted improperly, but merely because the nation was unsuccessful in fully achieving its goals for reasons unrelated to any conduct of the tobacco companies. Such a legislative imposition of "look-back" liability—absent any finding of actual responsibility on the part of the tobacco companies—would flout fundamental tenets of due process.

Due Process contains two components: procedural due process and substantive due process. A statutorily imposed, non-consensual look-back scheme violates each of these components.

PROCEDURAL DUE PROCESS

As the Supreme Court restated in 1992, the right to procedural due process guarantees a "fair procedure in connection with any deprivation of life, liberty or property." [Collins v. City of Shaker Heights, 503 U.S. 115, 125 (1992).] Among other things, procedural due process requires that individuals must receive notice and an opportunity to be heard before government deprives them of property, [United States v. James Daniel Good Real Property, 510 U.S. 43, 48 (1993),] and a fair trial in a fair tribunal. [In re Murchison, 349 U.S. 133, 136 (1955).]

Here, no such fair procedures exist.

The proposed legislatively-mandated "look-back" schemes essentially provide that if teen smoking fails to decline by certain percentages, there will be no notice, no opportunity to be heard as to whether that event were caused by any tobacco company conduct, and no trial.

Instead, the tobacco companies are automatically proclaimed liable to pay billions of dollars if the Secretary determines that the goals are not met. This violates procedural due process.

The Commerce bill does provide for court review upon imposition of a penalty. But this review is simply to determine the factual determination of the Secretary of HHS on whether the targets of reduction in youth smoking have been met. If not met, the penalties, according to the bill's language, must be imposed.

SUBSTANTIVE DUE PROCESS

Even apart from its manifest failures as a matter of procedural due process, a legislatively imposed "look-back" scheme would violate substantive due process as well. The substantive due process guarantee of the Fifth Amendment bars "arbitrary . . . government action 'regardless of the fairness of the procedures used to implement them.'" [Zinermon v. Burch, 494 U.S. 113, 124 (1990).]

Here, the arbitrariness of the look-back scheme is clear; the look-back scheme would automatically assign massive liability to tobacco companies even if the companies fully complied with all steps to reduce teenage smoking.

Indeed, if one steps back from the current issues surrounding tobacco and looks to analogies for other industries, the arbitrariness, and, therefore, the unconstitutionality, of the proposed look-back scheme is even more obvious. Thus, the proposed legislative mandate would be the equivalent—for constitutional purposes—of imposing multi-billion-dollar liabilities on the automobile industry if—despite car companies' full compliance with government safety and design mandates—death rates from automobile accidents did not decline by certain desired percentages;

It would be the equivalent of imposing liabilities on the beef industry if—despite its funding of increased public health advertising programs—Americans failed to limit their meat intake and the instance of heart disease in America did not decline by certain percentages;

It would be the equivalent of imposing liabilities on the alcohol industry if—despite its best effort to educate the public and promote enforcement of state minimum age purchase laws—underage drinking and drunk driving fatalities will not decline by certain percentages.

It would be the equivalent of imposing liabilities on the airline industry if its on time performance failed to satisfy government targets, without regard to whether such deficiencies resulted from failures in the government-run air traffic control system or bad weather, rather than industry conduct.

In each of these cases, such liability would be imposed regardless of the reasonableness of the "targets."

There can be no question but that the look-back provisions here would be just as arbitrary and irrational as the above hypotheticals.

Thus, the various proposed look-back schemes irrebuttably presume that, if teen smoking does not drop by a certain percentage, it definitively is a result of conduct by the tobacco companies. This would be irrespective of any showing a tobacco company could make that it fully complied with all steps to reduce teen smoking and that the failure of the nation to meet its teen smoking goals was based solely on external factors.

Such irrebuttable presumptions have been repeatedly struck down by the Supreme Court. [Vlandis v. Kline, 412 U.S. 441, 446 (1973),] The Court struck down as an irrebuttable presumption a stricture that anyone who had an out-of-state address at the time they applied for admission to a university remained a non-state-resident throughout their tenure at the university. [See also Tot v. United States, 319 U.S. 463, 467–68 (1943).]

Moreover, in only recently striking down a punitive damage judgment, the Supreme Court has held that the Due Process Clause precludes the imposition of liability that does not bear a justifiable relationship with actual conduct. [BMW v. Gore, 116 S. Ct. 1589, 1599 (1996).

Here, the proposed "look-back" scheme would impose multi-billion-dollar liability without any showing of any improper conduct whatsoever. The Due Process Clause simply does not permit such a "deprivation [of property], through the application, not of law and legal processes, but of arbitrary coercion." [Id. at 1605 (Breyer, J., concurring).] [I refer my colleagues to Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 689 n.27 (1974), where the Supreme Court noted that liability must be imposed "with a due regard to the rights of property and the moral innocence of the party incurring the" liability.]

Mr. President, we can be sure—as sure as anything—that the tobacco industry will challenge the constitutionality of this bill on these, and perhaps even other issues.

I am confident that every argument that I have made is legitimate. The tobacco companies need only prevail on one of these theories and this opportunity we have had will have been squandered.

Mr. President, in 1878, William E. Gladstone, the famous future Prime Minister of Great Britain, remarked that the "American Constitution is . . . the most wonderful work ever struck off at a given time by the brain and purpose of man."

Indeed, the Constitution by limiting the scope of government has fostered individual autonomy, which in turn has unleashed the creative energies of the American people.

The Constitution, for over two centuries now, has been the source of our prosperity, as well as our liberty. Let us abide by its strictures. Let us pass legislation that both helps our kids and is also constitutional.

EXPLANATION OF VOTE

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted "present" on the Faircloth-Sessions amendment relating to a cap on attorneys' fees in tobacco cases.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

This Ethics Committee has advised me that voting on an amendment such as this "would not pose an actual conflict of interest" under the Senate Code of Conduct.

However, I decided that voting on this amendment could create the appearance of a conflict of interest and therefore I abstained by voting "present."

The PRESIDING OFFICER (Mr. GORTON). The Senator from Mississippi.

TRIBUTE TO THE LATE CONGRESSMAN THOMAS G. ABERNETHY

Mr. COCHRAN. Mr. President, it is with a feeling of profound sadness that I advise the Senate that former Mississippi Congressman Thomas G. Abernethy died last night in Jackson, MS. He was 95 years of age.

He served with great distinction in the U.S. House of Representatives for 30 years, and he was deeply respected as an influential and prominent political leader.

Tom Abernethy was born in Eupora, MS, on May 16, 1903. He attended the University of Alabama and the University of Mississippi and graduated from the Law Department of Cumberland University in Lebanon, TN, in 1924.

He was elected mayor of Eupora in 1927, and in 1929 he moved to Okolona, MS. He continued to practice law there and was elected district attorney in 1936. He was elected to Congress in 1942.

Tom Abernethy became a close friend and an adviser to me. I sought his advice on matters involving agriculture, the Natchez Trace Parkway, and many other issues of importance to me and to our State. I always found his advice and counsel to be very valuable and helpful.

I extend to his children, grandchildren, and great grandchildren my sincerest condolences.

The PRESIDING OFFICER. The Senator from Hawaii.

COMMEMORATING 100 YEARS OF RELATIONS BETWEEN THE PEOPLE OF THE UNITED STATES AND THE PEOPLE OF THE PHILIPPINES

Mr. AKAKA. Mr. President, I ask unanimous consent the Foreign Relations Committee be discharged from further consideration of S. Res. 235 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 235) commemorating 100 years of relations between the people of the United States and the people of the Philippines.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. AKAKA. Mr. President, today marks the centennial of the Philippines' independence from Spain and also the 100th anniversary of Philippine-American relations. I urge my colleagues to reflect upon our friendly relationship with the Filipino people and their Republic.

The Sun and Stars, the flag of the Republic of the Philippines, has once again been unfurled on the same balcony where General Emilio Aguinaldo declared the country's independence, overthrowing 300 years of Spanish colonization on June 12, 1898.

With that act by General Aguinaldo, Filipinos earned the distinct honor of being the first indigenous people in Asia to wrest their freedom and independence by force of arms from their European colonial masters.

The Philippine Centennial is a toast to the Filipino spirit, to the rebirth of a courageous nation, to Asia's first republic and constitutional democracy, and to a glorious and progressive future for the Filipino Nation.

There is no better time than now to recognize the enduring friendship between our two countries. It is a friendship which flourished despite tragic beginnings in a conflict first with the Spanish in 1898, and subsequently with Filipino independence fighters. But we moved beyond that struggle and worked diligently to grant full Philippine independence in 1946.

During World War II, Filipino troops fought bravely side-by-side with American forces and Filipino guerrilla fighters were indispensable in the liberation of the Philippines from Japanese occupation.

The Philippines continued, even after independence, to be America's most important ally in Asia, again contributing troops to the Korean conflict and to the Vietnam war.

We owe a debt of gratitude, if not more, to our Filipino friends. We rejoiced when the peaceful "people power" revolution restored democracy to the Philippines twelve years ago. Presidents Corazon Aquino and Fidel Ramos established a democratic government and instituted market-based reforms which placed the Philippines—politically and economically—on a strong foundation for the 21st century.

I am confident that newly elected President, Joseph Estrada, will continue to nurture these reforms. The Multilateral Aid Initiative for the Philippines that Congress launched following the ''people power'' revolution was an effort not only to demonstrate support for Filipino democracy but also to show our lasting commitment to an enduring relationship with the Philippines. This continues to be the basis for our policy, and it is instructive that during the current Asian financial crisis the Philippines has escaped the worst effects of the crisis.

The United States continues to be the largest trading partner and foreign investor in the Philippines. One-third of Philippines' exports come to America. Two-way trade between our two countries exceeds $12 billion.

Today, all Americans should honor our good friendship with the Philippines on this important commemoration of their independence, support their continued political and economic progress, and work to maintain the special and close relationship between our sister democracies. The Philippines has clearly become a positive role model for its Asian neighbors.

Mr. President, because of the deep and enduring ties that have traditionally bound the people of the Philippines and the United States together, I strongly urge our colleagues to adopt S. Res. 235, a resolution commemorating 100 years of friendly relations between the people of the United States and the Philippines.

Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to, en bloc, and that the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 235) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 235

Whereas 1998 marks 100 years of special ties between the people of the United States and the people of the Philippines and is also the centennial celebration of Philippine independence from Spain which initiated relations with the United States;

Whereas the people of the Philippines have on many occasions demonstrated their strong commitment to democratic principles and practices, the free exchange of views on matters of public concern, and the development of a strong civil society;

Whereas the Philippines has embraced economic reform and free market principles and, despite current challenging circumstances, its economy has registered significant economic growth in recent years benefiting the lives of the people of the Philippines;

Whereas the large Philippine-American community has immeasurably enriched the fabric of American society and culture;

Whereas Filipino soldiers fought shoulder to shoulder with American troops on the battlefields of World War II, Korea, and Vietnam;

Whereas the Philippines is an increasingly important trading partner of the United States as well as the recipient of significant direct American investment;

Whereas the United States relies on the Philippines as a partner and treaty ally in fostering regional stability, enhancing prosperity, and promoting peace and democracy; and

Whereas the 100th anniversary of relations between the people of the United States and the people of the Philippines offers an opportunity for the United States and the Philippines to renew their commitment to international cooperation on issues of mutual interest and concern: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the Philippines on the commemoration of its independence from Spain;

(2) looks forward to a broadening and deepening of friendship and cooperation with the Philippines in the years ahead for the mutual benefit of the people of the United States and the people of the Philippines;

(3) supports the efforts of the Philippines to further strengthen democracy, human rights, the rule of law, and the expansion of free market economics both at home and abroad; and

(4) recognizes the close relationship between the nations and the people of the United States and the people of the Philippines and pledges its support to work closely with the Philippines in addressing new challenges as we begin our second century of friendship and cooperation.

Mr. AKAKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

Mr. GORTON. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

SINA NAZEMI, SENATE PAGE

Mr. GORTON. This is the last day that the Spring page class will be with us. And I am going to take a moment to recognize and thank this fine group of young people for their invaluable assistance in the Senate. Their hard work keeps the Senate running smoothly on a day-to-day basis. All of our pages are accomplished students and involved in their schools and communities. However, I would like to specifically commend the page from my home State of Washington, Sina Nazemi, for his outstanding efforts. Even among this class of exceptional young people Sina has set himself apart.

Over the last 6 months I have had the opportunity to get to know Sina and while I recognized that he was a fine student and a personable young man, I have also learned that Sina is rather secretive. After six months of working in the Senate, today I learned that his peers chose Sina to serve as President of the page class. Today, the faculty and principal at the page school also recognized Sina with the Leadership Award and the Good Citizen Award. What initially prompted my recognition of Sina was his winning essay in the 1998 Law Day Essay Competition sponsored by the District of Columbia Courts and The Bar Association of the District of Columbia, which I only learned of last week.

Sina's essay is a well written piece on the importance of the first amendment that draws heavily on his first hand experience as an immigrant from Iran. He writes that the first amendment creates ''a battlefield of ideas which allows the best ideas to emerge''. I hope he was at least in part inspired by the ''battlefield of ideas'' that is evident each day on the Senate floor.

In addition to serving as class president, Sina kept pace with the rigorous academics at the Page School and the work schedule of the Senate. We keep these kids working so hard that Sina didn't even have the whole week of Easter recess off. I held an education forum in the state that week, and Sina served admirably as the moderator and spokesperson for the student group. All of this is done with diligence and enthusiasm. Sina has a great deal to be proud of yet, the modesty he shows reflect maturity beyond his years. These attributes will undoubtedly serve him well in his future. Sina, you have my best wishes and thanks for your service to the Senate.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FAREWELL TO THE SENATE PAGES

Mr. DASCHLE. Mr. President, I want to say farewell to a wonderful group of young men and women who have served as Senate pages over the last five months, and thank them for the contributions they make to the day-to-day operations of the Senate.

This particular group of pages has served with distinction and has done a marvelous job of balancing their responsibilities to their studies and to this body.

Page life is not easy. I suspect few people understand the rigorous nature of the page's work. On a typical day, pages rise early and are in school by 6:15 a.m. After several hours in school

each morning, pages then report to the Capitol to prepare the Senate Chamber for the day's session.

Throughout the day, pages are called upon to perform a wide array of tasks—from obtaining copies of documents and reports for Senators to use during debate, to running errands between the Capitol and the Senate office buildings, to lending a hand at our weekly conference luncheons.

Once we finish our business here for the day—no matter what time—the pages return to the dorm to prepare for the next day's classes and Senate session and, we hope, get some much-needed sleep.

Even with all of this, they continually discharge their tasks efficiently and cheerfully.

This page class had the good fortune to be present on the Senate floor for several landmark votes, including NATO expansion and IRS reform.

I hope before they leave they will see us pass a comprehensive national bill to reduce teen smoking.

It seems to me that would be a fitting way to thank these particular young people for their service to their country.

I hope every person in this page class gained some insight into the need for individuals to become involved in community and civic activities.

The future of our nation strongly depends on the generations who will follow us in this august body.

I look forward to the possibility that one or more of this fine group of young people will return as a Member of the U.S. Senate.

Mr. President, I would like to read into the RECORD the names and hometowns of each of the Senate pages to whom we are saying goodbye today.

They are: Philip Amylon, North Scituate, RI; Sarah Argue, Little Rock, AR; Marisa Boling, LaCrosse, WI; Sara Cannon, Seaford, DE; Colin Davis, Sioux Falls, SD; Laney Fitzgerald, Montgomery, AL; Sarah Flynn, Nashua, NH; Sarah Fowler, Kansas City, MO; Julia Le, Wilbraham, MA; Bari Lurie, Milwaukee, WI; Monique Luse, Farmington Hills, MI; Shana Marshall, Scottsburg, IN; Josh Melgaard, Pierre, SD; Sina Nazemi, Woodinville, WA; Georgia Sheridan, Santa Fe, NM; Michael Stahler, Lyndonville, VT; Angela Swanson, Springville, UT; Dan Teague, Concord, NH; Amanda Anderson, SC; Ashley Anderson, SC; Hunter Holmes, SC; Erin Lindsay, SC; Jennifer Lowry, UT; Stacie Seigler, SC; Tamarah Siegel, RI; and Bradley Wolters, WI.

I am sure all of my colleagues—I know all of my colleagues join me in thanking these fine young men and women and wish them well as they proceed to a new phase of their life. We thank them for their services. We thank them for being who they are. We thank them for being so good at what they were to us over the last several months.

Mr. President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HAGEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. HAGEL. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

ASIAN ECONOMIC CRISIS

Mr. HAGEL. Mr. President, I want to take this body on a quick trip to the other part of the world to talk very briefly about what is happening in Southeast Asia, Japan, China, Russia, and how it is impacting and affecting all of us in this country, how it will affect the geopolitical economic dynamics the rest of this year and on into the next year and, actually, on into the next century.

We start at Southeast Asia where the Asian crisis has become a significant crisis, stretching past that region of the world, now up into Japan, where we find in Japan that its economic planning agency confirmed that Japan is now in a serious recession. Last quarter, Japan found that its economy fell by an annualized rate of 5.3 percent. The yen is at an 8-year low against the dollar. The yen has dropped 50 percent in 3 years. The Japanese find themselves essentially without a credible banking system.

The President of South Korea was here this week addressing a joint meeting of Congress. Some of us had an opportunity to meet with him privately to talk about South Korea, what it is going to take to build South Korea back—infrastructure reconstruction, currency reconstruction, investment reconstruction.

Let's go further around that loop of the world to Russia. I spent some time yesterday with the Russian Ambassador to the United States. The two of us spoke for more than an hour alone. Russia has immense economic problems, and when Russia has immense economic problems and Japan has immense economic problems, as does South Korea, Southeast Asia, that spills over on to all of us.

China announced yesterday that it may have to devalue its currency. I was in China in December and met with the Premier. At that time, he assured me—and Senator CHAFEE from Rhode Island was with me—that under no circumstances would China devalue its currency, and that has been China's position all along. But the dynamics of the economic impact and the consequences of the Southeast Asian crisis have become so severe that it is now taking a rather significant toll on all those nations, including China, Japan, and Russia.

Our markets yesterday in the United States went down 160 points. The Dow Jones dropped yesterday, and as of this hour, our market in New York is down well over 100 points.

What does this tell us? If we listen to farmers and ranchers, as I do in Nebraska, and exporters and people who understand the realities and the importance of exports and the fact that economies are linked and stability is linked to economies and to economic growth, security is part of that and confidence underpins all of that.

When nations and investors lose confidence in markets, they are sending a very direct signal to all of us. They are saying clearly, plainly, "Something's wrong." We must understand that even though this is a half a world away, it is impacting us today all over this country, and it will continue to very severely impact our growth, our economy, our opportunities, and our markets. And as this economic instability and unrest continues to unfold and deepen and widen, it will require a longer time and more resources and more investment and more attention and more leadership to put it back together.

I am very concerned, Mr. President, that this Congress is not paying enough attention to what is going on around the world. I am concerned that we are not linking it, we are not interconnecting the dots. I find it remarkable that on this floor, the floor of the U.S. Senate, the last few weeks we have been consumed with billions of dollars of new taxes, building a larger Government, when essentially half of the world is burning.

I hope that our colleagues in the House take a rather serious look at what is going on around the world. I strongly recommend to our friends and colleagues in the House that they start with looking at the IMF. The IMF is not, cannot be, will not be, should not be, never was intended to be, the rescuer of all economies and all problems. But if we in this Congress continue to turn our backs on what is going on around the world, we will pay a high price.

We are paying a high price now. When you ask any farmer or rancher or exporter—not just in the Midwest, not just in my State of Nebraska, but all over the country—whether this is affecting them, we will pay a high price when it comes to military issues, strategic issues, as Secretary of Defense Bill Cohen warned earlier this year, as Secretary of State Madeleine Albright

has warned earlier this year. Chairman Greenspan talked about it this week. Secretary of Treasury Rubin talked about it this week. We are playing a very dangerous game here. And the longer we lock up, the longer we lock up important decisions on IMF, and other issues that we should be tending to and focusing on, the more dangerous this world becomes.

I hope my friends in the House are going to unlock this debate on IMF and allow this IMF debate to come to the floor of the House for an honest, open debate, and a vote. There has been a lot of misinformation spread around about IMF—what it does, what it does not do.

I recall specifically, Mr. President, in our meeting with President Kim, the President of South Korea, he brought up IMF and he said this: "I don't like a lot of what IMF is forcing us to do, but without IMF we wouldn't do it. And if we didn't do it, we would have a complete breakdown of all financial discipline, and there would be some question as to whether we could dig ourselves out of where we are."

I say these things knowing full well that these are complex, complicated issues. And there is not one answer to these. But surely, cumulatively, all of the pieces must come together, like the United States stepping up to its world responsibilities. And the IMF is one of those. And at the same time, Mr. President, this body, committees in this body will be debating—have been debating—more sanctions on nations. We are imposing more sanctions on countries today than we ever have in the history of America.

We cannot do much about the sanctions that the President was forced to impose on India and Pakistan. That is law. Do we really believe, for example, that that helps the situation by pushing India and Pakistan further away, and in Pakistan's case, in particular, grinding them down further and further into economic despair? Does that really improve the possibility that we are going to be able to resolve some of these issues—deadly, deadly issues—to continually isolate some of these countries, but, more importantly, isolating ourselves by sanctions? I do not think so. There is talk about more sanctions for China.

I hope we get very serious about this, Mr. President, and understand the consequences of what is happening around the world.

Confidence, courage, leadership, doing the right thing, making the tough choices—that is what makes the difference; always has made the difference. Imperfect possibilities? Imperfect choices? Absolutely. But we must make some choices. We must lead, just like Bosnia, just like Kosovo—bad choices all. But the longer we let, for example, Kosovo go without making any decisions, without making any choices, we run a terrible risk of great conflagration in that area.

I am grateful for an opportunity to share some of my thoughts on these issues because they are real, they are not theoretical. They impact our Nation, the world, our opportunities, and the future. We make decisions today, not to deal with problems today, we make decisions today to deal with problems tomorrow. The future is connected to our leadership, and we must act.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HAGEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, June 11, 1998, the federal debt stood at $5,496,698,230,711.55 (Five trillion, four hundred ninety-six billion, six hundred ninety-eight million, two hundred thirty thousand, seven hundred eleven dollars and fifty-five cents).

One year ago, June 11, 1997, the federal debt stood at $5,355,419,000,000 (Five trillion, three hundred fifty-five billion, four hundred nineteen million).

Five years ago, June 11, 1993, the federal debt stood at $4,300,437,000,000 (Four trillion, three hundred billion, four hundred thirty-seven million).

Twenty-five years ago, June 11, 1973, the federal debt stood at $454,094,000,000 (Four hundred fifty-four billion, ninety-four million) which reflects a debt increase of more than $5 trillion—$5,042,604,230,711.55 (Five trillion, forty-two billion, six hundred four million, two hundred thirty thousand, seven hundred eleven dollars and fifty-five cents) during the past 25 years.

COMMEMORATING THE HARLEY-DAVIDSON MOTOR COMPANY'S 95TH ANNIVERSARY

Mr. CAMPBELL. Mr. President, I am pleased to pay tribute to the Harley-Davidson Motor Company on this great American company's 95th anniversary.

As a long time Harley-Davidson rider, I have enjoyed many years of satisfaction with the company and its legendary machines. After a long day on Capitol Hill, there is nothing I enjoy more than firing up my Softail Custom. I even had one of my two official Congressional portraits taken with my Softail in front of our nation's Capitol. When I am back home in Colorado, I tool around on my black Road King, often with my wife Linda, who also has her own Heritage Softail Classic.

I can tell you that there is no better way to enjoy Colorado's great scenic beauty than from the saddle of a Harley-Davidson. The freedom of the open road and the often imitated, but never duplicated, throaty roar of an American-made machine is something that I have thoroughly enjoyed for countless thousands of miles.

Harley-Davidson not only makes great motorcycles; it also exemplifies the kind of company that I am proud to support. From its humble beginnings in a small 10 foot by 15 foot shed in a Milwaukee backyard in 1903, this company had its share of good times and bad. The Great Depression was a major blow to the American motorcycle industry, and when the dust finally cleared Harley-Davidson was one of only two U.S. motorcycle manufacturers left standing.

And it is a good thing that Harley-Davidson survived because when World War Two erupted, our country needed to call on Harley-Davidson to build bikes for U.S. and Allied troops during WW-II. Many of the orders and other messages needed to achieve victory would not have been delivered to the front lines if it had not been for brave G.I. messengers riding Harley-Davidson motorcycles.

Following the Allied victory in World War Two, the Harley-Davidson Company refocused on developing new styles of motorcycles for the American people to enjoy. The company's second generation of management brought fresh ideas that helped usher-in the celebrated "motorcycle culture" of the 1950's and 60's.

When Harley-Davidson hit a rough patch of road in the 1980's it was a daring combination of re-found independence, innovation and serious re-engineering that brought this legendary company back from the brink. Harley-Davidson successfully carried out a classic textbook comeback that exemplifies many of our nation's best traits: independence, daring, grit, tenacity, smarts, and a penchant for continuous innovation and progress while remaining firmly rooted in our heritage.

On that note, I conclude my tribute to the people of Harley-Davidson with my congratulations on 95 great years while looking forward to many more.

NATIONAL WOMEN IN BUSINESS ADVOCATE AWARD FOR 1998

Mr. HATCH. Mr. President, it is my privilege to call to my colleagues' attention the recent announcement by the U.S. Small Business Administration that Ms. Bernadette Martinelli of Park City, Utah, has been named the National Women in Business Advocate for 1998. I am sure all senators will agree that she is well-deserving of this prestigious award.

In November 1992, Ms. Martinelli founded the Park City Women's Business Network. As the owner of "Blinds

of Bern," she observed that a lack of educational and networking opportunities stifled the entrepreneurial potential for many women in the Park City area.

Bernadette Martinelli decided to make a difference. In founding the Park City Womens' Business Network, she has brought women small business owners together to meet one another, to share ideas, and to learn techniques for improving productivity. The results have been nothing short of remarkable. These efforts have helped launch the creation and fuel the expansion of many women-owned businesses in Utah.

Ms. Martinelli's organization also fulfills an important role in the community. Members volunteer their time speaking to high school students about entrepreneurial careers and providing indispensable mentoring programs for interested students. The Park City Womens' Business Network has also established an all-important "Future Entrepreneur" scholarship, awarded annually to a female high school graduate to help her to reach her goal of business ownership.

Ms. Martinelli has accomplished all of this through great personal sacrifice and perserverance. In the past few years, she found the strength to build her business, establish the networking organization, and to care for her children and her husband who is battling cancer.

Mr. President, I am proud of Bernadette Martinelli's achievements and grateful for her many contributions to the growth of small businesses in the state of Utah and to the opening of doors and possibilities for the next generation.

I join with the U.S. Small Business Administration and small business leaders around the nation in congratulating Ms. Martinelli. I ask all Senators to join me in saluting her for this well-earned national honor.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–5397. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled "Iran-Related Multilateral Sanction Regime Efforts"; to the Committee on Banking, Housing, and Urban Affairs.

EC–5398. A communication from the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report on the preservation of minority savings institutions for calendar year 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–5399. A communication from the General Counsel of the National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled "The Freedom of Information Act and Privacy Act" received on June 4, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–5400. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the report on Sub-Saharan Africa and the Export-Import Bank for the period November 1997 through May 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–5401. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the Government's helium program for fiscal year 1997; to the Committee on Energy and Natural Resources.

EC–5402. A communication from the Director of the Office of Rulemaking Coordination, Department of Energy, transmitting, pursuant to law, the report of a rule regarding a directive on Packaging and Transportation Safety (DOE O 460.1) received on May 28, 1998; to the Committee on Energy and Natural Resources.

EC–5403. A communication from the Director of the Office of Rulemaking Coordination, Department of Energy, transmitting, pursuant to law, the report of a rule regarding an implementation guide for use with an administrative directive issued by the Department of Energy received on June 3, 1998; to the Committee on Energy and Natural Resources.

EC–5404. A communication from the Director of the Office of Rulemaking Coordination, Department of Energy, transmitting, pursuant to law, the report of a rule regarding an administrative directive on the Information Security Program received on June 3, 1998; to the Committee on Energy and Natural Resources.

EC–5405. A communication from the Director of the Office of Rulemaking Coordination, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Conduct of Employees" (RIN1990-AA19) received on June 3, 1998; to the Committee on Energy and Natural Resources.

EC–5406. A communication from the Director of the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Kansas Abandoned Mine Land Reclamation Plan" received on June 4, 1998; to the Committee on Energy and Natural Resources.

EC–5407. A communication from the Director of the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, transmitting, pursuant to law, the report of two rules regarding the Texas and New Mexico Regulatory Programs received on June 4, 1998; to the Committee on Energy and Natural Resources.

EC–5408. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, a draft of proposed legislation relative to the Weir Farm National Historic Site in Connecticut; to the Committee on Energy and Natural Resources.

EC–5409. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5410. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5411. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report of the Office of Inspector General for the period October 1, 1997 through March 31, 1998; to the Committee on Governmental Affairs.

EC–5412. A communication from the Director of the Office of Personnel Management, transmitting, a draft of proposed legislation entitled "The Federal Firefighters Overtime Pay Reform Act"; to the Committee on Governmental Affairs.

EC–5413. A communication from the Interim District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Audit of Advisory Neighborhood Commission 1A For Fiscal Years 1994 Through 1997"; to the Committee on Governmental Affairs.

EC–5414. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–354 adopted by the Council on April 7, 1998; to the Committee on Governmental Affairs.

EC–5415. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–355 adopted by the Council on April 7, 1998; to the Committee on Governmental Affairs.

EC–5416. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–356 adopted by the Council on May 5, 1998; to the Committee on Governmental Affairs.

EC–5417. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the fungicide dimethomorph (FRL5795–4) received on June 9, 1998; to the Committee on Environment and Public Works.

EC–5418. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the fungicide propamocarb hydrochloride (FRL5795–3) received on June 9, 1998; to the Committee on Environment and Public Works.

EC–5419. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the pesticide quizalofop-p ethyl ester (FRL5793–5) received on June 9, 1998; to the Committee on Environment and Public Works.

EC–5420. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the insecticide tebufenozide (FRL5794–8) received on June 9, 1998; to the Committee on Environment and Public Works.

EC–5421. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the Anchorage, Alaska, carbon monoxide nonattainment area (FRL6108–6) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5422. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the

report of a rule relative to point of use drinking water devices (FRL6189–7) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5423. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule relative to the biochemical phospholipid pesticide Lyso-PE (FRL5795–1) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5424. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Indiana" (FRL6013–5) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5425. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule regarding a Colorado petition on gasoline vapor standards (FRL6106–6) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5426. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule regarding the pesticide glyphosate (FRL5788–4) received on June 5, 1998; to the Committee on Environment and Public Works.

EC–5427. A communication from the Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule relative to threatened population segments of bull trout in the Klamath and Columbia Rivers (RIN1018–AB94) received on June 4, 1998; to the Committee on Environment and Public Works.

EC–5428. A communication from the Secretary of Treasury, Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission, transmitting a draft of proposed legislation relative to over-the-counter derivatives; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5429. A communication from the Administrator of the Foreign Agricultural Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Agreements for the Development of Foreign Markets for Agricultural Commodities" (RIN0551–AA24) received on June 9, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5430. A communication from the Administrator of the Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Fees for Official Inspection and Official Weighing Services" (RIN0580–AA59) received on June 9, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5431. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule regarding volume regulation percentages for the California raisin crop (Docket 98–989–1 FIR) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5432. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule regarding the salable quantity and allotment percentage of spearmint oil (Docket 98–985–2 FIR) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5433. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Witchweed; Regulated Areas" (Docket 98–040–1) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5434. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Karnal Bunt Status of the Mexicali Valley of Mexico" (Docket 97–060–2) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5435. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Karnal Bunt; Compensation for the 1996–1997 Crop Season" (Docket 96–016–29) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5436. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "EIA; Handling Reactors at Livestock Markets" (Docket 97–099–2) received on June 9, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5437. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mediterranean Fruit Fly; Addition to Quarantined Areas" (Docket 97–056–13) received on June 9, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5438. A communication from the Manager of the Federal Crop Insurance Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule regarding crop provisions for the insurance of stonefruit received on June 3, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5439. A communication from the Manager of the Federal Crop Insurance Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule regarding crop provisions for the insurance of peanuts (RIN0563–AA85) received on June 4, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5440. A communication from the Acting Administrator of the Agricultural Marketing Service, transmitting, pursuant to law, the report of a rule entitled "Onions Grown in South Texas; Removal of Sunday Packing and Loading Prohibitions" (Docket FV98–959–2 FIR) received on June 5, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5441. A communication from the ADM-Performance Evaluation and Records Management, transmitting, pursuant to law, the report of a rule regarding FM broadcast stations in Coon Valley and Westby, Wisconsin and Lanesboro, Minnesota (Docket 97–169) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5442. A communication from the ADM-Performance Evaluation and Records Management, transmitting, pursuant to law, the report of a rule regarding FM broadcast stations in Pima, Arizona (Docket 97–228) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5443. A communication from the ADM-Performance Evaluation and Records Management, transmitting, pursuant to law, the report of a rule regarding the Equipment Authorization Process for Radio Frequency Equipment (Docket 97–94) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5444. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Shark Fisheries; Quota Adjustment" received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5445. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program" (RIN0648–AH65) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5446. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding shrimp fishery of the Gulf of Mexico (RIN0648–AL14) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5447. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding data collection on shrimp fishery of the Gulf of Mexico (Docket 980513127–8127–01) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5448. A communication from the Director of Congressional Relations, Consumer Products Safety Commission, transmitting, pursuant to law, the Commission's Annual Report for fiscal year 1997; to the Committee on Commerce, Science, and Transportation.

EC–5449. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Hazardous Materials: Formal Interpretation of Regulations" (Notice 98–6) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5450. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the Hazardous Materials Ticketing Program (Notice 98–5) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5451. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Voluntarily-Installed Shoulder Belts" (RIN2127–AF91) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5452. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Diodes Used on School Bus Stop Signal Arms" (Docket 98–3870) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5453. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; Macy's Fourth of July Fireworks, East River, New York" (Docket 01-98-014) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5454. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the Harvard-Yale Regatta (Docket 01-98-017) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5455. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding marine events in Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia (Docket 05-98-037) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5456. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Construcciones Aeronauticas Airplanes (Docket 97-NM-43-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5457. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Saab Airplanes (Docket 97-NM-134-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5458. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace Airplanes (Docket 98-NM-43-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5459. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Dornier airplanes (Docket 98-NM-46-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5460. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 98-NM-52-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5461. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain de Havilland airplanes (Docket 98-NM-60-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5462. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Airbus airplanes (Docket 98-NM-22-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5463. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain de Havilland airplanes (Docket 98-NM--58-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5464. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Short Brothers airplanes (Docket 98-NM-32-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5465. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Stevensville, MT" (Docket 97-ANM-17) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5466. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Cedar City, UT" (Docket 97-ANM-21) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5467. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Cortez, CO" (Docket 98-ANM-02) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5468. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding the classification of airspace at Yuma, AZ (Docket 97-AWP-14) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5469. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain British Aerospace airplanes (Docket 97-CE-100-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5470. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule regarding airworthiness directives on certain Allison Engine Company turbofan engines (Docket 97-ANE-60-AD) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5471. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Porterville, CA" (Docket 98-AWP-2) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

EC-5472. A communication from the ADM-Performance Evaluation and Records Management, transmitting, pursuant to law, the report of a rule regarding FM broadcast stations in McMillan and Sault Ste. Marie, Michigan (Docket 97-222) received on June 4, 1998; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 1104. A bill to direct the Secretary of the Interior to make corrections in maps relating to the Coastal Barrier Resources System (Rept. No. 105-214).

By Mr. CHAFEE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 2038. A bill to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts and to further define the criteria for capital repair and operation and maintenance (Rept. No. 105-215).

By Mr. BOND, from the Committee on Appropriations, without amendment:

S. 2168. An original bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes (Rept. No. 105-216).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 887. A bill to establish in the National Park Service the National Underground Railroad Network to Freedom program, and for other purposes (Rept. No. 105-217).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BOND:

S. 2168. An original bill making appropriations for the Departments of Veterans Affiars and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2169. A bill to encourage States to require a holding period for any student expelled for bringing a gun to school; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2169. A bill to encourage States to require a holding period for any student expelled for bringing a gun to school; to the Committee on the Judiciary.

GUN LEGISLATION

Mr. WYDEN. Mr. President, these tragic incidents involving students bringing guns to school have taught us that we must proceed on two tracks. Government's first responsibility is to protect our citizens, particularly our young people, from violence. The only way to do that when a student brings a gun to school is to get them out of the classroom, off the streets, and in front of someone who is in the best position to determine what steps to take. The legislation I am introducing today with Senator GORDON SMITH will help that happen.

Mr. President, all over my state people are calling out for help. The Springfield Chief of Police and the Governor both recognize that the way we currently deal with kids and guns is not working. These kids are slipping through the cracks—only to resurface in deadly and dangerous ways. Mr. President, our current policies are not working. They are not serving anyone. Simply put, when it comes to kids bringing guns to school, we can and must do a better job. We must stop the violence before it spreads across one more school yard. The memorial fence at Thurston High School is the last memorial fence I ever want to see—in Springfield, Oregon, in Pearl Mississippi, in Jonesboro, Arkansas—or anywhere else in the country. Let it end here.

Today, Senator SMITH and I are introducing legislation that encourages states to pass laws to require a student who brings a gun to school to be held for up to 72 hours and undergo a psychological evaluation. If a State adopts such a law, the state would be eligible for an increase of 25% in the Juvenile Justice funds that would enable it to provide the type of psychological evaluation and other treatment that such a student needs.

Bringing a gun to school is a warning sign that must be taken seriously. And while so-called "zero tolerance policies" that mandate a student be expelled for bringing a gun to school may adequately punish the behavior, they are clearly not enough. We must offer services to this student—see what is going on in that student's head and help them through the rough spots. We must find a balance between preventing these crimes from occurring and punishing them once they do.

Voters in Oregon are tough on juvenile crime, especially serious crimes. We have the minimum sentences. We have the prisons. We do not allow juveniles probation or parole. We do not release juveniles early for good behavior. What Oregon needs is a system that works from the beginning—when the warning signs appear, not just at the end, when harm has been done. Oregon needs resources to identify these kids and help them before there's an arrest to be made. Across the country the message is spoken loud and clear: punishment, while important, is only part of the solution. It does not save lives. Prevention does.

Mr. President, my bill will help communities better identify and service students at-risk of endangering themselves or others with a firearm. My bill gives everyone involved—teachers, public school administrators, law enforcement, police officers and juvenile justice professions—the tools they need to get a troubled student the help he or she needs. Under the State laws my bill would promote, when a student brings a gun to school, the public school must report this behavior to law enforcement and the juvenile authorities immediately. Police must then come to the school and determine if there is probable cause to take action. If there is cause to take action, the police must bring the student into the station for two purposes: first, the student must have a mental health professional give him or her a psychological evaluation, and second, the student must immediately be scheduled for a judicial hearing. The State has up to 72 hours to complete these intervention measures. States pass a law following these parameters will receive a significant bonus: they will receive 25 percent more money to spend on juvenile prevention and intervention services.

Mr. President, no one wishes to see the tragedy at Thurston High School repeated. It is my hope that this legislation will give States the incentive they need to enact tough preventative detention laws to assure that this doesn't happen again. I ask unanimous consent that my statement and a copy 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. 2169

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

SECTION 1. HOLDING PERIOD FOR STUDENTS BRINGING A GUN TO SCHOOL.

(a) IN GENERAL.—Notwithstanding section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) or any other provision of law, for fiscal year 2000 and each fiscal year thereafter, the amount that would otherwise be allocated to a State under that section for a fiscal year shall be increased by 25 percent, if the State has in effect a State law described in subsection (b) by not later than the first day of that fiscal year. Any additional amount made available to a State under this subsection may be used by the State for prevention and intervention programs related to school violence.

(b) STATE LAW DESCRIBED.—A State law is described in this subsection if it requires that—

(1) any administrator or employee of a public or private school who has reasonable cause to believe that a student is or has been in possession of a firearm while in or on the premises of a school building in violation of Federal or State law, shall immediately report the student's conduct to an appropriate law enforcement agency and to an appropriate juvenile department or agency of the State;

(2) upon receipt of a report under paragraph (1), the appropriate law enforcement agency shall immediately cause an investigation to be made to determine whether there is probable cause to believe that the student, while in or on the premises of a public building, possessed a firearm in violation of Federal or State law;

(3) if a determination of probable cause is made under paragraph (2)—

(A) the student shall immediately be detained by the appropriate law enforcement agency for not more than 72 hours in an appropriate juvenile justice setting for purposes of psychological evaluation and for a judicial determination (pursuant to a hearing) regarding whether the student is a danger to himself or herself or to others; and

(B) a parent, guardian, or other adult with responsibility for the student shall be notified of that detention and the purposes of that detention; and

(4) if the court makes a determination under paragraph (3)(A) that the student is a danger to himself or herself or others, the student shall be placed in an appropriate juvenile justice setting to receive professional psychological counseling.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

ADDITIONAL COSPONSORS

S. 375

At the request of Mr. MCCAIN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 375, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 852

At the request of Mr. LOTT, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 981

At the request of Mr. LEVIN, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of S. 981, a bill to provide for analysis of major rules.

S. 1423

At the request of Mr. HAGEL, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1423, a bill to modernize and improve the Federal Home Loan Bank System.

S. 1569

At the request of Mr. COVERDELL, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1569, a bill to amend the Internal Revenue Code of 1986 to raise the 15 percent income tax bracket into middle class income levels, and for other purposes.

S. 1571

At the request of Mr. MCCAIN, the name of the Senator from Iowa (Mr. GRASSLEY) was withdrawn as a cosponsor of S. 1571, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 1758

At the request of Mr. LUGAR, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of

S. 1758, a bill to amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.

S. 1993

At the request of Ms. COLLINS, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 1993, a bill to amend title XVIII of the Social Security Act to adjust the formula used to determine costs limits for home health agencies under medicare program, and for other purposes.

S. 2078

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

S. 2099

At the request of Mr. CAMPBELL, the name of the Senator from New York (Mr. D'AMATO) was added as a cosponsor of S. 2099, a bill to provide for enhanced Federal sentencing guidelines for counterfeiting offenses, and for other purposes.

S. 2107

At the request of Mr. ABRAHAM, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 2107, a bill to enhance electronic commerce by promoting the reliability and integrity of commercial transactions through establishing authentication standards for electronic communications, and for other purposes.

S. 2154

At the request of Mrs. BOXER, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2154, a bill to promote research to identify and evaluate the health effects of silicone breast implants, and to ensure that women and their doctors receive accurate information about such implants.

SENATE RESOLUTION 193

At the request of Mr. REID, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of Senate Resolution 193, a resolution designating December 13, 1998, as "National Children's Memorial Day."

AMENDMENTS SUBMITTED

CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT OF 1998

JEFFORDS AMENDMENT NO. 2704

Mr. HAGEL (for Mr. JEFFORDS) proposed an amendment to the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

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

Sec. 1. Short title.
Sec. 2. Findings and purpose.
Sec. 3. Voluntary selection and participation.
Sec. 4. Construction.

TITLE I—VOCATIONAL EDUCATION

Subtitle A—Federal Provisions

Sec. 101. Reservations and State allotment.
Sec. 102. Performance measures and expected levels of performance.
Sec. 103. Assistance for the outlying areas.
Sec. 104. Indian and Hawaiian Native programs.
Sec. 105. Tribally controlled postsecondary vocational institutions.
Sec. 106. Incentive grants.

Subtitle B—State Provisions

Sec. 111. State administration.
Sec. 112. State use of funds.
Sec. 113. State leadership activities.
Sec. 114. State plan.

Subtitle C—Local Provisions

Sec. 121. Distribution for secondary school vocational education.
Sec. 122. Distribution for postsecondary vocational education.
Sec. 123. Local activities.
Sec. 124. Local application.
Sec. 125. Consortia.

TITLE II—TECH-PREP EDUCATION

Sec. 201. Short title.
Sec. 202. Purposes.
Sec. 203. Definitions.
Sec. 204. Program authorized.
Sec. 205. Tech-prep education programs.
Sec. 206. Applications.
Sec. 207. Authorization of appropriations.
Sec. 208. Demonstration program.
Sec. 301. Administrative provisions.
Sec. 302. Evaluation, improvement, and accountability.
Sec. 303. National activities.
Sec. 304. National assessment of vocational education programs.
Sec. 305. National research center.
Sec. 306. Data systems.
Sec. 307. Promoting scholar-athlete competitions.
Sec. 308. Definition.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

TITLE V—REPEAL

Sec. 501. Repeal.

TITLE I—VOCATIONAL EDUCATION

Subtitle A—Federal Provisions

SEC. 101. RESERVATIONS AND STATE ALLOTMENT.

(a) RESERVATIONS AND STATE ALLOTMENT.—

(1) RESERVATIONS.—From the sum appropriated under section 401 for each fiscal year, the Secretary shall reserve—

(A) 0.2 percent to carry out section 103;

(B) 1.80 percent to carry out sections 104 and 105, of which—

(i) 1.25 percent of the sum shall be available to carry out section 104(b);

(ii) 0.25 percent of the sum shall be available to carry out section 104(c); and

(iii) 0.30 percent of the sum shall be available to carry out section 105; and

(C) 1.3 percent to carry out sections 106, 303, 304, 305, and 306, of which not less than 0.65 percent of the sum shall be available to carry out section 106 for each of the fiscal years 2001 through 2005.

(2) STATE ALLOTMENT FORMULA.—Subject to paragraphs (3) and (4), from the remainder of the sums appropriated under section 401 and not reserved under paragraph (1) for a fiscal year, the Secretary shall allot to a State for the fiscal year—

(A) an amount that bears the same ratio to 50 percent of the sums being allotted as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(B) an amount that bears the same ratio to 20 percent of the sums being allotted as the product of the population aged 20 to 24, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(C) an amount that bears the same ratio to 15 percent of the sums being allotted as the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

(D) an amount that bears the same ratio to 15 percent of the sums being allotted as the amounts allotted to the State under subparagraphs (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year.

(3) MINIMUM ALLOTMENT.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraphs (B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than ½ of 1 percent of the amount appropriated under section 401 and not reserved under paragraph (1) for such fiscal year. Amounts necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amounts to be paid to other States.

(B) REQUIREMENT.—Due to the application of subparagraph (A), for any fiscal year, no State shall receive more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act).

(C) SPECIAL RULE.—

(i) IN GENERAL.—Subject to paragraph (4), no State, by reason of subparagraph (A), shall be allotted for a fiscal year more than the lesser of—

(I) 150 percent of the amount that the State received in the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act); and

(II) the amount calculated under clause (ii).

(ii) AMOUNT.—The amount calculated under this clause shall be determined by multiplying—

(I) the number of individuals in the State counted under paragraph (2) in the preceding fiscal year; by

(II) 150 percent of the national average per pupil payment made with funds available

under this section for that year (or in the case of fiscal year 1999, only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of this Act).

(4) HOLD HARMLESS.—

(A) IN GENERAL.—No State shall receive an allotment under this section for a fiscal year that is less than the allotment the State received under part A of title I of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311 et seq.) (as such part was in effect on the day before the date of enactment of this Act) for fiscal year 1997.

(B) RATABLE REDUCTION.—If for any fiscal year the amount appropriated for allotments under this section is insufficient to satisfy the provisions of subparagraph (A), the payments to all States under such subparagraph shall be ratably reduced.

(b) REALLOTMENT.—If the Secretary determines that any amount of any State's allotment under subsection (a) for any fiscal year will not be required for such fiscal year for carrying out the activities for which such amount has been allotted, the Secretary shall make such amount available for reallotment. Any such reallotment among other States shall occur on such dates during the same year as the Secretary shall fix, and shall be made on the basis of criteria established by regulation. No funds may be reallotted for any use other than the use for which the funds were appropriated. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the succeeding fiscal year and shall be deemed to be part of the State's allotment for the year in which the amount is obligated.

(c) ALLOTMENT RATIO.—

(1) IN GENERAL.—The allotment ratio for any State shall be 1.00 less the product of—

(A) 0.50; and

(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of the Commonwealth of Puerto Rico and the United States Virgin Islands), except that—

(i) the allotment ratio in no case shall be more than 0.60 or less than 0.40; and

(ii) the allotment ratio for the Commonwealth of Puerto Rico and the United States Virgin Islands shall be 0.60.

(2) PROMULGATION.—The allotment ratios shall be promulgated by the Secretary for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term "per capita income" means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department of Education.

(d) DEFINITION OF STATE.—For the purpose of this section, the term "State" means each of the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the United States Virgin Islands.

SEC. 102. PERFORMANCE MEASURES AND EXPECTED LEVELS OF PERFORMANCE.

(a) PUBLICATION OF PERFORMANCE MEASURES.—

(1) IN GENERAL.—The Secretary shall publish the following performance measures to assess the progress of each eligible agency:

(A) Student attainment of academic skills.

(B) Student attainment of job readiness skills.

(C) Student attainment of vocational skill proficiencies for students in vocational education programs, that are necessary for the receipt of a secondary diploma or its recognized equivalent, or a secondary school skill certificate.

(D) Receipt of a postsecondary degree or certificate.

(E) Retention in, and completion of, secondary school education (as determined under State law), placement in, retention in, and completion of postsecondary education, employment, or military service.

(F) Participation in and completion of vocational education programs that lead to non-traditional employment.

(2) SPECIAL RULE.—The Secretary shall establish 1 set of performance measures for students served under this Act, including populations described in section 114(c)(16).

(b) EXPECTED LEVELS OF PERFORMANCE.—In developing a State plan, each eligible agency shall negotiate with the Secretary the expected levels of performance for the performance measures described in subsection(a).

SEC. 103. ASSISTANCE FOR THE OUTLYING AREAS.

(a) IN GENERAL.—From the funds reserved under section 101(a)(1)(A), the Secretary—

(1) shall award a grant in the amount of $500,000 to Guam for vocational education and training for the purpose of providing direct educational services related to vocational education, including—

(A) teacher and counselor training and retraining;

(B) curriculum development; and

(C) improving vocational education programs in secondary schools and institutions of higher education, or improving cooperative education programs involving both secondary schools and institutions of higher education; and

(2) shall award a grant in the amount of $190,000 to each of American Samoa and the Commonwealth of the Northern Mariana Islands for vocational education for the purpose described in paragraph (1).

(b) SPECIAL RULE.—

(1) IN GENERAL.—From funds reserved under section 101(a)(1)(A) and not awarded under subsection (a), the Secretary shall make available the amount awarded to the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau under section 101A of the Carl D. Perkins Vocational and Applied Technology Education Act (as such section was in effect on the day before the date of enactment of this Act) to award grants under the succeeding sentence. From the amount made available under the preceding sentence, The Secretary shall award grants, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau for the purpose described in subsection (a)(1).

(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(3) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this Act for any fiscal year that begins after September 30, 2004.

(4) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under this subsection to pay the administrative costs of the Pacific Region Educational Library regarding activities assisted under this subsection.

SEC. 104. INDIAN AND HAWAIIAN NATIVE PROGRAMS.

(a) DEFINITIONS; AUTHORITY OF SECRETARY.—

(1) DEFINITIONS.—For the purpose of this section—

(A) the term "Act of April 16, 1934" means the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", enacted April 16, 1934 (48 Stat. 596; 25 U.S.C. 452 et seq.);

(B) the term "Bureau funded school" has the meaning given the term in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026);

(C) the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii; and

(D) the terms "Indian" and "Indian tribe" have the meanings given the terms in section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801).

(2) AUTHORITY.—From the funds reserved pursuant to section 101(a)(1)(B), the Secretary shall award grants and enter into contracts for Indian and Hawaiian native programs in accordance with this section, except that such programs shall not include secondary school programs in Bureau funded schools.

(b) INDIAN PROGRAMS.

(1) AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), from the funds reserved pursuant to section 101(a)(1)(B)(i), the Secretary is directed—

(i) Upon the request of any Indian tribe, or a tribal organization serving an Indian tribe, which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act (25 U.S.C. 450 et seq.) or under the Act of April 16, 1934; or

(ii) upon an application received from a Bureau funded school offering post-secondary or adult education programs filed at such time and under such conditions as the Secretary may prescribe,

to make grants to or enter into contracts with any Indian tribe or tribal organization, or to make a grant to such Bureau funded school, as appropriate, to plan, conduct, and administer programs or portions of programs authorized by, and consistent with the purpose of, this Act.

(B) REQUIREMENTS.—The grants or contracts described in subparagraph (A), shall be subject to the following:

(i) TRIBES AND TRIBAL ORGANIZATIONS.—Such grants or contracts with any tribes or tribal organization shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this subsection.

(ii) BUREAU FUNDED SCHOOLS.—Such grants to Bureau funded schools shall not be subject

to the requirements of the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or the Act of April 16, 1934.

(C) REGULATIONS.—If the Secretary promulgates any regulations applicable to subparagraph (B), the Secretary shall—

(i) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

(ii) promulgate the regulations under subchapter III of chapter 5 of title 5, United States Code, commonly known as the "Negotiated Rulemaking Act of 1990".

(D) APPLICATION.—Any Indian tribe, tribal organization, or Bureau funded school eligible to receive assistance under this paragraph may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau funded school.

(E) PERFORMANCE MEASURES AND EVALUATIONS.—Any Indian tribe, tribal organization, or Bureau funded school that receives assistance under this section shall—

(i) establish performance measures and expected levels of performance to be achieved by students served under this section; and

(ii) evaluate the quality and effectiveness of activities and services provided under this subsection.

(F) MINIMUM.—In the case of a Bureau funded school, the minimum amount of a grant awarded or contract entered into under this section shall be $35,000.

(G) RESTRICTIONS.—The Secretary may not place upon grants awarded or contracts entered into under this paragraph any restrictions relating to programs other than restrictions that apply to grants made to or contracts entered into with States pursuant to allotments under section 101(a). The Secretary, in awarding grants and entering into contracts under this paragraph, shall ensure that the grants and contracts will improve vocational education programs, and shall give special consideration to—

(i) grants or contracts which involve, coordinate with, or encourage tribal economic development plans; and

(ii) applications from tribally controlled community colleges that—

(I) are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(II) operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization, and issue certificates for completion of vocational education programs.

(H) STIPENDS.—

(i) IN GENERAL.—Funds received pursuant to grants or contracts described in subparagraph (A) may be used to provide stipends to students who are enrolled in vocational education programs and who have acute economic needs which cannot be met through work-study programs.

(ii) AMOUNT.—Stipends described in clause (i) shall not exceed reasonable amounts as prescribed by the Secretary.

(2) MATCHING.—If sufficient funding is available, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend no less than the amount expended during the prior fiscal year on vocational education programs, services, and activities administered either directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from accounts and programs that support other Indian education programs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall prepare jointly a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of the funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

(3) SPECIAL RULE.—Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this Act.

(c) HAWAIIAN NATIVE PROGRAM.—From the funds reserved pursuant to section 101(a)(1)(B)(ii), the Secretary shall award grants or enter into contracts, with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii, for the planning, conduct, or administration of programs, or portions thereof, that are described in this Act and consistent with the purpose of this Act, for the benefit of Hawaiian natives.

SEC. 105. TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS.

(a) IN GENERAL.—It is the purpose of this section to provide grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of such institutions.

(b) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From the funds reserved pursuant to section 101(a)(1)(B)(iii), the Secretary shall make grants to tribally controlled postsecondary vocational institutions to provide basic support for the vocational education and training of Indian students.

(2) AMOUNT OF GRANTS.—

(A) IN GENERAL.—If the sum appropriated for any fiscal year for grants under this section is not sufficient to pay in full the total amount that approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant that received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control.

(B) PER CAPITA DETERMINATION.—For the purposes of paragraph (1), the per capita payment for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled postsecondary vocational institutions under this part for such program year by the sum of the Indian student counts of such institutions for such program year. The Secretary shall, on the basis of the most accurate data available from the institutions, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this section.

(c) ELIGIBLE GRANT RECIPIENTS.—To be eligible for assistance under this section a tribally controlled postsecondary vocational institution shall—

(1) be governed by a board of directors or trustees, a majority of whom are Indians;

(2) demonstrate adherence to stated goals, a philosophy, or a plan of operation which fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(3) have been in operation for at least 3 years;

(4) hold accreditation with or be a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(5) enroll the full-time equivalency of not less than 100 students, of whom a majority are Indians.

(d) GRANT REQUIREMENTS.—

(1) APPLICATIONS.—Any tribally controlled postsecondary vocational institution that desires to receive a grant under this section shall submit an application to the Secretary. Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this section that will allow the Secretary to audit and monitor programs.

(2) NUMBER.—The Secretary shall award not less than 2 grants under this section for each fiscal year.

(3) CONSULTATION.—In awarding grants under this section, the Secretary shall, to the extent practicable, consult with the boards of trustees of, and the tribal governments chartering, the institutions desiring the grants.

(4) LIMITATION.—Amounts made available through grants under this section shall not be used in connection with religious worship or sectarian instruction.

(e) USES OF GRANTS.—

(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary vocational institution having an application approved by the Secretary, an amount necessary to pay expenses associated with—

(A) the maintenance and operation of the program, including development costs, costs of basic and special instruction (including special programs for individuals with disabilities and academic instruction), materials, student costs, administrative expenses, boarding costs, transportation, student services, daycare and family support programs for students and their families (including contributions to the costs of education for dependents), and student stipends;

(B) capital expenditures, including operations and maintenance, and minor improvements and repair, and physical plant maintenance costs, for the conduct of programs funded under this section; and

(C) costs associated with repair, upkeep, replacement, and upgrading of the instructional equipment.

(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution's operating and maintenance expenses and such other information concerning costs as the Secretary may reasonably require.

(f) EFFECT ON OTHER PROGRAMS.—

(1) IN GENERAL.—Except as specifically provided in this Act, eligibility for assistance under this section shall not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial

assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or any other applicable program for the benefit of institutions of higher education or vocational education.

(2) PROHIBITION ON ALTERATION OF GRANT AMOUNT.—The amount of any grant for which tribally controlled postsecondary vocational institutions are eligible under this section shall be altered because of funds allocated to any such institution from funds appropriated under the Act of November 2, 1921 (commonly known as the "Synder Act") (42 Stat. 208, chapter 115; 25 U.S.C. 13).

(3) PROHIBITION ON CONTRACT DENIAL.—No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under such Act of November 2, 1921, may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

(g) NEEDS ESTIMATE AND REPORT ON FACILITIES AND FACILITIES IMPROVEMENT.—

(1) NEEDS ESTIMATE.—The Secretary shall, based on the most accurate data available from the institutions and Indian tribes whose Indian students are served under this section, and in consideration of employment needs, economic development needs, population training needs, and facilities needs, prepare an actual budget needs estimate for each institution eligible under this section for each subsequent program year, and submit such budget needs estimate to Congress in such a timely manner as will enable the appropriate committees of Congress to consider such needs data for purposes of the uninterrupted flow of adequate appropriations to such institutions. Such data shall take into account the goals and requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

(2) STUDY OF TRAINING AND HOUSING NEEDS.—

(A) IN GENERAL.—The Secretary shall conduct a detailed study of the training, housing, and immediate facilities needs of each institution eligible under this section. The study shall include an examination of—

(i) training equipment needs;

(ii) housing needs of families whose heads of households are students and whose dependents have no alternate source of support while such heads of households are students; and

(iii) immediate facilities needs.

(B) REPORT.—The Secretary shall report to Congress not later than July 1, 1999, on the results of the study required by subparagraph (A).

(C) CONTENTS.—The report required by subparagraph (B) shall include the number, type, and cost of meeting the needs described in subparagraph (A), and rank each institution by relative need.

(D) PRIORITY.—In conducting the study required by subparagraph (A), the Secretary shall give priority to institutions that are receiving assistance under this section.

(3) LONG-TERM STUDY OF FACILITIES.—

(A) IN GENERAL.—The Secretary shall provide for the conduct of a long-term study of the facilities of each institution eligible for assistance under this section.

(B) CONTENTS.—The study required by subparagraph (A) shall include a 5-year projection of training facilities, equipment, and housing needs and shall consider such factors as projected service population, employment, and economic development forecasting, based on the most current and accurate data available from the institutions and Indian tribes affected.

(C) SUBMISSION.—The Secretary shall submit to Congress a detailed report on the results of such study not later than the end of the 18-month period beginning on the date of enactment of this Act.

(b) DEFINITIONS.—For the purposes of this section:

(1) INDIAN; INDIAN TRIBE.—The terms "Indian" and "Indian tribe" have the meaning given such terms in section 2 of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801).

(2) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTION.—The term "tribally controlled postsecondary vocational institution" means an institution of higher education that—

(A) is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes; and

(B) offers technical degrees or certificate granting programs.

(3) INDIAN STUDENT COUNT.—The term "Indian student count" means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational institution, determined as follows:

(A) REGISTRATIONS.—The registrations of Indian students as in effect on October 1 of each year.

(B) SUMMER TERM.—Credits or clock hours toward a certificate earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(C) ADMISSION CRITERIA.—Credits or clock hours toward a certificate earned in classes during a summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credit earned by such student for purposes of obtaining a secondary school diploma or its recognized equivalent shall be counted toward the computation of the Indian student count.

(D) DETERMINATION OF HOURS.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational institution shall be included in determining the sum of all credit or clock hours.

(E) CONTINUING EDUCATION.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is in accordance with the institution's system for providing credit for participation in such programs.

SEC. 106. INCENTIVE GRANTS.

(a) IN GENERAL.—The Secretary may make grants to States that exceed the expected levels of performance for performance measures established under this Act.

(b) USE OF FUNDS.—A State that receives an incentive grant under this section shall use the funds made available through the grant to carry out innovative vocational education, adult education and literacy, or workforce investment programs as determined by the State.

Subtitle B—State Provisions

SEC. 111. STATE ADMINISTRATION.

Each eligible agency shall be responsible for the State administration of activities under this title, including—

(1) the development, submission, and implementation of the State plan;

(2) the efficient and effective performance of the eligible agency's duties under this title; and

(3) consultation with other appropriate agencies, groups, and individuals that are involved in the development and implementation of activities assisted under this title, such as employers, parents, students, teachers, labor organizations, State and local elected officials, and local program administrators.

SEC. 112. STATE USE OF FUNDS.

(a) RESERVATIONS.—From funds allotted to each State under section 101(a) for each fiscal year, the eligible agency shall reserve—

(1) not more than 14 percent of the funds to carry out section 113;

(2) not more than 10 percent of the funds, or $300,000, whichever is greater, of which—

(A) $600,000 shall be available to provide technical assistance and advice to local educational agencies, postsecondary educational institutions, and other interested parties in the State for gender equity activities; and

(B) the remainder may be used to—

(i) develop the State plan;

(ii) review local applications;

(iii) monitor and evaluate program effectiveness;

(iv) provide technical assistance; and

((v) assure compliance with all applicable Federal laws, including required services and activities for individuals who are members of populations described in section 114(c)(16); and

(3) 1 percent of the funds, or the amount the State expended under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) for vocational education programs for criminal offenders for the fiscal year 1997, whichever is greater, to carry out programs for criminal offenders.

(b) REMAINDER.—From funds allotted to each State under section 101(a) for each fiscal year and not reserved under subsection (a), the eligible agency shall determine the portion of the funds that will be available to carry out sections 121 and 122.

(c) MATCHING REQUIREMENT.—Each eligible agency receiving funds under this title shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds received under subsection (a)(2).

SEC. 113. STATE LEADERSHIP ACTIVITIES.

(A) MANDATORY.—Each eligible agency shall use the funds reserved under section 112(a)(1) to conduct programs, services, and activities that further the development, implementation, and improvement of vocational education within the State and that are integrated, to the maximum extent possible, with challenging State academic standards, including—

(1) providing comprehensive professional development (including initial teacher preparation) for vocational, academic, guidance, and administrative personnel, that—

(A) will help the teachers and personnel to assist students in meeting the expected levels of performance established under section 102;

(B) reflects the eligible agency's assessment of the eligible agency's needs for professional development; and

(C) is integrated with the professional development activities that the State carries

out under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6001 et seq.);

(2) developing and disseminating curricula that are aligned, as appropriate, with challenging State academic standards, and vocational and technological skills;

(3) monitoring and evaluating the quality of, and improvement in, activities conducted with assistance under this title;

(4) providing gender equity programs in secondary and postsecondary vocational education;

(5) supporting tech-prep education activities;

(6) improving and expanding the use of technology in instruction;

(7) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards, and vocational and technological skills; and

(8) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities.

(b) PERMISSIVE.—Each eligible agency may use the funds reserved under section 112(a)(1) for—

(1) improving guidance and counseling programs that assist students in making informed education and vocational decisions;

(2) supporting vocational student organizations, especially with respect to efforts to increase the participation of students who are members of populations described in section 114(c)(16);

(3) providing vocational education programs for adults and school dropouts to complete their secondary school education; and

(4) providing assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education.

SEC. 114. STATE PLAN.

(a) STATE PLAN.—

(1) IN GENERAL.—Eeach eligible entity desiring assistance under this title for any fiscal year shall prepare and submit to the Secretary a State plan for a 3-year period, together with such annual revisions as the eligible agency determines to be necessary

(2) HEARING PROCESS.—The eligible agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups (including employers, labor organizations, and parents), an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the eligible agency's response to such recommendations shall be included with the State plan.

(b) PLAN DEVELOPMENT.—The eligible agency shall develop the State plan with representatives of secondary and postsecondary vocational education, parents, representatives of populations described in section 114(c)(16), and businesses, in the State and shall also consult the Governor of the State.

(c) PLAN CONTENTS.—The State plan shall include information that—

(1) describes the vocational education activities to be assisted that are designed to meet and reach the State performance measures;

(2) describes the integration of academic and technological education with vocational education;

(3) describes how the eligible agency will disaggregate data relating to students participating in vocational education in order to adequately measure the progress of the students;

(4) describes how the eligible agency will adequately address the needs of students in alternative education programs;

(5) describes how the eligible agency will provide local educational agencies, area vocational education schools, and eligible institutions in the State with technical assistance;

(6) describes how the eligible agency will encourage the participation of the parents of secondary school students who are involved in vocational education activities;

(7) identifies how the eligible agency will obtain the active participation of business, labor organizations, and parents in the development and improvement of vocational education activities carried out by the eligible agency;

(8) describes how vocational education relates to State and regional employment opportunities;

(9) describes the methods proposed for the joint planning and coordination of programs carried out under this title with other Federal education programs;

(10) describes how funds will be used to promote gender equity in secondary and postsecondary vocational education;

(11) describes how funds will be used to improve and expand the use of technology in instruction;

(12) describes how funds will be used to serve individuals in State correctional institutions;

(13) describes how funds will be used effectively to link secondary and postsecondary education;

(14) describes how funds will be allocated and used at the secondary and postsecondary level, any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia;

(15) describes how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this title and the data the eligible agency reports to the Secretary are complete, accurate, and reliable;

(16) describes the eligible agency's program strategies for populations that include, at a minimum—

(A) low-income individuals, including foster children;

(B) individuals with disabilities;

(C) single parents and displaced homemakers; and

(D) individuals with other barriers to educational achievement, including individuals with limited English proficiency;

(17) describes how individuals who are members of the special populations described in subsection (c)(16)—

(A) will be provided with equal access to activities assisted under this Act; and

(B) will not be discriminated against on the basis of their status as members of the special populations; and

(d) PLAN APPROVAL.—

(1) IN GENERAL.—The Secretary shall approve a State plan, or a revision to an approved State plan, only if the Secretary determines that—

(A) the State plan, or revision, respectively, meets the requirements of this section; and

(B) the State's performance measures and expected levels of performance under section 102 are sufficiently rigorous to meet the purpose of this Act.

(2) DISAPPROVAL.—The Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for a hearing.

(3) PEER REVIEW.—The Secretary shall establish a peer review process to make recommendations regarding approval of State plans.

(4) TIMEFRAME.—A State plan shall be deemed approved if the Secretary has not responded to the eligible agency regarding the plan within 90 days of the date the Secretary receives the plan.

(e) ASSURANCES.—A State plan shall contain assurances that the State will comply with the requirements of this Act and the provisions of the State plan, and provide for such fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State under this Act.

(f) ELIGIBLE AGENCY REPORT.—

(1) IN GENERAL.—The eligible agency shall annually report to the Secretary regarding—

(A) the quality and effectiveness of the programs, services, and activities, assisted under this title, based on the performance measures and expected levels of performance described in section 102; and

(B) the progress each population of individuals described in section 114(c)(16) is making toward achieving the expected levels of performance.

(2) CONTENTS.—The eligible agency report also—

(A) shall include such information, in such form, as the Secretary may reasonably require, in order to ensure the collection of uniform data; and

(B) shall be made available to the public.

Subtitle C—Local Provisions

SEC. 121. DISTRIBUTION FOR SECONDARY SCHOOL VOCATIONAL EDUCATION.

(a) ALLOCATION.—Except as otherwise provided in this section, each eligible agency shall distribute the portion of the funds made available for secondary school vocational education activities under section 112(b) for any fiscal year to local educational agencies within the State as follows:

(1) SEVENTY PERCENT.—From 70 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 70 percent as the amount such local educational agency was allocated under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received under such section by all local educational agencies in the State for such year.

(2) TWENTY PERCENT.—From 20 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 20 percent as the number of students with disabilities who have individualized education programs under section 614(d) of the Individuals With Disabilities Education Act (20 U.S.C. 1414(d)) served by such local educational agency for the preceding fiscal year bears to the total number of such students served by all local educational agencies in the State for such year.

(3) TEN PERCENT.—From 10 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 10 percent as the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of all local educational agencies in the State for such year.

(b) MINIMUM ALLOCATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no local educational agency shall receive an allocation under subsection (a) unless the amount allocated to such agency under subsection (a) is not less than $25,000. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocated requirement of this paragraph.

(2) WAIVER.—The eligible agency may waive the application of paragraph (1) for a local educational agency that is located in a rural, sparsely populated area.

(3) REALLOCATION.—Any amounts that are not allocated by reason of paragraph (1) or (2) shall be reallocated to local educational agencies that meet the requirements of paragraph (1) or (2) in accordance with the provisions of this section.

(c) LIMITED JURISDICTION AGENCIES.—

(1) IN GENERAL.—In applying the provisions of subsection (a), no eligible agency receiving assistance under this title shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

(2) SPECIAL RULE.—The amount to be allocated under paragraph (1) to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

(d) ALLOCATIONS TO AREA VOCATIONAL EDUCATION SCHOOLS AND EDUCATIONAL SERVICE AGENCIES.—

(1) IN GENERAL.—Each eligible agency shall distribute the portion of funds made available for any fiscal year by such entity for secondary school vocational education activities under section 112(b) to the appropriate area vocational education school or educational service agency in any case in which—

(A) the area vocational education school or educational service agency, and the local educational agency concerned—

(i) have formed or will form a consortium for the purpose of receiving funds under this section; or

(ii) have entered into or will enter into a cooperative arrangement for such purpose; and

(B)(i) the area vocational education school or educational service agency serves an approximately equal or greater proportion of students who are individuals with disabilities or are low-income than the proportion of such students attending the secondary schools under the jurisdiction of all of the local educational agencies sending students to the area vocational education school or the educational service agency; or

(ii) the area vocational education school, educational service agency, or local educational agency demonstrates that the vocational education school or educational service agency is unable to meet the criterion described in clause (i) due to the lack of interest by students described in clause (i) in attending vocational education programs in that area vocational education school or educational service agency.

(2) ALLOCATION BASIS.—If an area vocational education school or educational service agency meets the requirements of paragraph (1), then—

(A) the amount that will otherwise be distributed to the local educational agency under this section shall be allocated to the area vocational education school, the educational service agency, and the local educational agency, based on each school's or agency's relative share of students described in paragraph (1)(B)(i) who are attending vocational education programs (based, if practicable, on the average enrollment for the prior 3 years); or

(B) such amount may be allocated on the basis of an agreement between the local educational agency and the area vocational education school or educational service agency.

(3) STATE DETERMINATION.—

(A) IN GENERAL.—For the purposes of this subsection, the eligible agency may determine the number of students who are low-income on the basis of—

(i) eligibility for—

(I) free or reduced-price meals under the National School Lunch Act (7 U.S.C. 1751 et seq.);

(II) assistance under a State program funded under part A of title IV of the Social Security Act;

(III) benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(IV) services under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.); or

(ii) another index of economic status, including an estimate of such index, if the eligible agency demonstrates to the satisfaction of the Secretary that such index is a more representative means of determining such number.

(B) DATA.—If an eligible agency elects to use more than 1 factor described in subparagraph (A) for purposes of making the determination described in such subparagraph, the eligible agency shall ensure that the data used is not duplicative.

(4) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area vocational education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium.

(5) SPECIAL RULE.—Notwithstanding the provisions of paragraph (1), (2), (3), and (4), any local educational agency receiving an allocation that is not sufficient to conduct a secondary school vocational education program of sufficient size, scope, and quality to be effective may—

(A) form a consortium or enter into a cooperative agreement with an area vocational education school or educational service agency offering secondary school vocational education programs of sufficient size, scope, and quality to be effective and that are accessible to students who are individuals with disabilities or are low-income, and are served by such local educational agency; and

(B) transfer such allocation to the area vocational education school or educational service agency.

(e) SPECIAL RULE.—Each eligible agency distributing funds under this section shall treat a secondary school funded by the Bureau of Indian Affairs within the State as if such school were a local educational agency within the State for the purpose of receiving a distribution under this section.

SEC. 122. DISTRIBUTION FOR POSTSECONDARY VOCATIONAL EDUCATION

(a) DISTRIBUTION.—

(1) IN GENERAL.—Except as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available for postsecondary vocational education under section 112(b) for any fiscal year to eligible institutions within the State in accordance with paragraph (2).

(2) ALLOCATION.—Each eligible institution in the State having an application approved under section 124 for a fiscal year shall be allocated an amount that bears the same relationship to the amount of funds made available for postsecondary vocational education under section 112(b) for the fiscal year as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled for the preceding fiscal year by such eligible institution in vocational education programs that do not exceed 2 years in duration bears to the number of such recipients enrolled in such programs within the State for such fiscal year.

(3) SPECIAL RULE FOR CONSORTIA.—In order for a consortium to receive assistance under this section, such consortium shall operate joint projects that—

(A) provide services to all postsecondary institutions participating in the consortium; and

(B) are of sufficient size, scope, and quality to be effective.

(4) MINIMUM ALLOCATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no eligible institution shall receive an allocation under paragraph (2) unless the amount allocated to the eligible institution under paragraph (2) is not less than $65,000.

(B) WAIVER.—The eligible agency may waive the application of subparagraph (A) in any case in which the eligible institution is located in a rural, sparsely populated area.

(C) REALLOCATION.—Any amounts that are not allocated by reason of subparagraph (A) or (B) shall be reallocated to eligible institutions that meet the requirements of subparagraph (A) or (b) in accordance with the provisions of this section.

(5) DEFINITION OF PELL GRANT RECIPIENT.—The term "Pell Grant recipient" means a recipient of financial aid under subpart 1 of part 1 of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a).

(b) ALTERNATIVE ALLOCATION.—An eligible agency may allocate funds made available for postsecondary education under section 112(b) for a fiscal year using an alternative formula if the eligible agency demonstrates to the Secretary's satisfaction that—

(1) the alternative formula better meets the purpose of this Act; and

(2)(A) the formula described in subsection (a) does not result in an allocation of funds to the eligible institutions that serve the highest numbers or percentages of low-income students; and

(B) the alternative formula will result in such a distribution.

SEC. 123. LOCAL ACTIVITIES.

(a) MANDATORY.—Funds made available to a local educational agency or an eligible institution under this title shall be used—

(1) to initiate, improve, expand, and modernize quality vocational education programs;

(2) to improve or expand the use of technology in vocational instruction, including professional development in the use of technology, which instruction may include distance learning;

(3) to provide services and activities that are of sufficient size, scope, and quality to be effective;

(4) to integrate academic education with vocational education for students participating in vocational education;

(5) to link secondary education (as determined under State law) and postsecondary

education, including implementing tech-prep programs;

(6) to provide professional development activities to teachers, counselors, and administrators, including—

(A) inservice and preservice training in state-of-the-art vocational education programs;

(B) internship programs that provide business experience to teachers; and

(C) programs designed to train teachers specifically in the use and application of technology;

(7) to develop and implement programs that provide access to, and the supportive services needed to participate in, quality vocational education programs for students, including students who are members of the populations described in section 114(c)(16);

(8) to develop and implement performance management systems and evaluations; and

(9) to promote gender equity in secondary and postsecondary vocational education.

(b) PERMISSIVE.—Funds made available to a local educational agency or an eligible institution under this title may be used—

(1) to carry out student internships;

(2) to provide guidance and counseling for students participating in vocational education programs;

(3) to provide vocational education programs for adults and school dropouts to complete their secondary school education;

(4) to acquire and adapt equipment, including instructional aids;

(5) to support vocational student organizations;

(6) to provide assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education; and

(7) to support other vocational education activities that are consistent with the purpose of this Act.

SEC. 124. LOCAL APPLICATION.

(a) IN GENERAL.—Each local educational agency or eligible institution desiring assistance under this title shall submit an application to the eligible agency at such time, in such manner, and accompanied by such information as the eligible agency (in consultation with such other educational entities as the eligible agency determines to be appropriate) many require.

(b) CONTENTS.—Each application shall, at a minimum—

(1) described how the vocational education activities will be carried out pertaining to meeting the expected levels of performance;

(2) described the process that will be used to independently evaluate and continuously improve the performance of the local educational agency or eligible institution, as appropriate;

(3) described how the local educational agency or eligible institution, as appropriate, will plan and consult with students, parents, representatives of populations described in section 114(c)(16), businesses, labor organizations, and other interested individuals, in carrying out activities under this title;

(4) described how the local educational agency or eligible institution, as appropriate, will review vocational education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to the programs, for populations described in section 114(c)(16); and

(5) described how individuals who are members of the special populations described in section 114(c)(16) will not be discriminated against on the basis of their status as members of the special populations.

SEC. 125. CONSORTIA.

A local educational agency and an eligible institution may form a consortium to carry out the provisions of this subtitle if the sum of the amount the consortium receives for a fiscal year under sections 121 and 122 equals or exceeds $65,000.

TITLE II—TECH-PREP EDUCATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Tech-Prep Education Act".

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to provide implementation grants to consortia of local educational agencies, postsecondary educational institutions, and employers or labor organizations, for the development and operation of programs designed to provide a tech-prep education program leading to a 2-year associate degree or a 2-year certificate;

(2) to provide, in a systematic manner, strong, comprehensive links among secondary schools, post-secondary educational institutions, and local or regional employers, or labor organizations; and

(3) to support the use of contextual, authentic, and applied teaching and curriculum based on each State's academic, occupational, and employability standards.

SEC. 203. DEFINITIONS.

(a) In this title.

(1) ARTICULATION AGREEMENT.—The term "articulation agreement" means a written commitment to a program designed to provide students with a non duplicative sequence of progressive achievement leading to degrees or certificates in a tech-prep education program.

(2) COMMUNITY COLLEGE.—The term "community college"—

(A) has the meaning provided in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141) for an institution which provides not less than a 2-year program which is acceptable for full credit toward a bachelor's degree; and

(B) includes tribally controlled community colleges.

(3) TECH-PREP PROGRAM.—The term "tech-prep program" means a program of study that—

(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

(B) integrates academic and vocational instruction, and utilizes work-based and worksite learning where appropriate and available;

(C) provides technical preparation in a career field such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, health occupations, business, or applied economics;

(D) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

(E) leads to an associate or a baccalaureate degree or a certificate in a specific career field; and

(F) leads to placement in appropriate employment or further education.

SEC. 204. PROGRAM AUTHORIZED.

(a) DISCRETIONARY AMOUNTS.—

(1) IN GENERAL.—For any fiscal year for which the amount appropriated under section 207 to carry out this title is equal to or less than $50,000,000, the Secretary shall award grants for tech-prep education programs to consortia between or among—

(A) a local educational agency, an intermediate educational agency or area vocational education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and

(B)(i) a nonprofit institution of higher education that offers—

(I) a 2-year associate degree program, or a 2-year certificate program, and is qualified as institutions of higher education pursuant to section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)), including an institution receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational institution; or

(II) a 2-year apprenticeship program that follows secondary instruction,

if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) pursuant to the provisions of section 435(a)(3) of such Act (20 U.S.C. 1083(a)); or

(ii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)), if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

(2) SPECIAL RULE.—In addition, a consortium described in paragraph (1) may include 1 or more—

(A) institutions of higher education that award a baccalaureate degree; and

(B) employer or labor organizations.

(b) STATE GRANTS.—

(1) IN GENERAL.—For any fiscal year for which the amount made available under section 207 to carry out this title exceeds $50,000,000, the Secretary shall allot such amount among the States in the same manner as funds are allotted to States under paragraphs (2), (3), and (4) of section 101(a).

(2) PAYMENTS TO ELIGIBLE AGENCIES.—The Secretary shall make a payment in the amount of a State's allotment under this paragraph to the eligible agency that serves the State and has an application approved under paragraph (4).

(3) AWARD BASIS.—From amounts made available to each eligible agency under this subsection, the eligible agency shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech-prep education programs to consortia described in subsection (a).

(4) STATE APPLICATION.—Each eligible agency desiring assistance under this title shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

SEC. 205. TECH-PREP EDUCATION PROGRAMS.

(a) GENERAL AUTHORITY.—Each consortium shall use amounts provided through the grant to develop and operate a tech-prep education program.

(b) CONTENTS OF PROGRAM.—Any such tech-prep program shall—

(1) be carried out under an articulation agreement between the participants in the consortium;

(2) consist of at least 2 years of secondary school preceding graduation and 2 years or more of higher education, or an apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency in mathematics,

science, reading, writing, communications, and technologies designed to lead to an associate's degree or a certificate in a specific career field;

(3) include the development of tech-prep education program curricula for both secondary and postsecondary levels that—

(A) meets academic standards developed by the State;

(B) links secondary schools and 2-year postsecondary institutions, and where possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields;

(C) uses, where appropriate and available, work-based or worksite learning in conjunction with business and industry; and

(D) uses educational technology and distance learning, as appropriate, to involve all the consortium partners more fully in the development and operation of programs.

(4) include a professional development program for academic, vocational, and technical teachers that—

(A) is designed to train teachers to effectively implement tech-prep education curricula;

(B) provides for joint training for teachers from all participants in the consortium;

(C) is designed to ensure that teachers stay current with the needs, expectations, and methods of business and industry;

(D) focuses on training postsecondary education faculty in the use of contextual and applied curricula and instruction; and

(E) provides training in the use and application of technology;

(5) include training programs for counselors designed to enable counselors to more effectively—

(A) make tech-prep education opportunities known to students interested in such activities;

(B) ensure that such students successfully complete such programs;

(C) ensure that such students are placed in appropriate employment; and

(D) stay current with the needs, expectations, and methods of business and industry;

(6) provide equal access to the full range of technical preparation programs to individuals who are members of populations described in section 114(c)(16), including the development of tech-prep education program services appropriate to the needs of such individuals; and

(7) provide for preparatory services that assist all participants in such programs.

(c) ADDITIONAL AUTHORIZED ACTIVITIES.—Each such tech-prep program may—

(1) provide for the acquisition of tech-prep education program equipment;

(2) as part of the program's planning activities, acquire technical assistance from State or local entities that have successfully designed, established and operated tech-prep programs;

(3) acquire technical assistance from State or local entities that have designed, established, and operated tech-prep programs that have effectively used educational technology and distance learning in the delivery of curricula and services and in the articulation process; and

(4) establish articulation agreements with institutions of higher education, labor organizations, or businesses located outside of the State served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs.

SEC. 206. APPLICATIONS.

(a) IN GENERAL.—Each consortium that desires to receive a grant under this title shall submit an application to the Secretary or the eligible agency, as appropriate, at such time and in such manner as the Secretary or the eligible agency, as appropriate, shall prescribe.

(b) THREE-YEAR PLAN.—Each application submitted under this section shall contain a 3-year plan for the development and implementation of activities under this title.

(c) APPROVAL.—The Secretary or the eligible agency, as appropriate, shall approve applications based on the potential of the activities described in the application to create an effective tech-prep education program described in section 205.

(d) SPECIAL CONSIDERATION.—The Secretary of the eligible agency, as appropriate, shall give special consideration to applications that—

(1) provide for effective employment placement activities or the transfer of students to 4-year institutions of higher education;

(2) are developed in consultation with 4-year institutions of higher education;

(3) address effectively the needs of populations described in section 114(c)(16);

(4) provide education and training in areas or skills where there are significant workforce shortages, including the information technology industry; and

(5) demonstrate how tech-prep programs will help students meet high academic and employability competencies.

(e) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In awarding grants under this title, the Secretary shall ensure an equitable distribution of assistance among States, and the Secretary or the eligible agency, as appropriate, shall ensure an equitable distribution of assistance between urban and rural consortium participants.

(f) NOTICE.—

(1) IN GENERAL.—In the case of grants to be awarded by the Secretary, each consortium that submits an application under this section shall provide notice of such submission and a copy of such application to the State educational agency and the State agency for higher education of the State in which the consortium is located.

(2) NOTIFICATION.—The Secretary shall notify the State educational agency and the State agency for higher education of a State each time a consortium located in the State is selected to receive a grant under this title.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title such sums as may be necessary for fiscal year 1999 and each of the 5 succeeding fiscal years.

SEC. 208. DEMONSTRATION PROGRAM.

(a) DEMONOSTRATION PROGRAM AUTHORIZED.—From funds appropriated under subsection (e) for a fiscal year, the Secretary shall award grants to consortia described in section 204(a) to enable the consortia to carry out tech-prep education programs.

(b) PROGRAM CONTENTS.—Each tech-prep program referred to in subsection (a)—

(1) shall—

(A) involve the location of a secondary school on the site of a community college;

(B) involve a business as a member of the consortium; and

(C) require the voluntary participation of secondary school students in the tech-prep education program; and

(2) may provide summer internships at a business for students or teachers.

(c) APPLICATION.—Each consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may require.

(d) APPLICABILITY.—The provisions of sections 204, 205, 206, and 207 shall not apply to this section, except that—

(1) the provisions of section 204(a) shall apply for purposes of describing consortia eligible to receive assistance under this section;

(2) each tech-prep education program assisted under this section shall meet the requirements of paragraphs (1), (2), (3)(A), (3)(B), (3)(C), (3)(D), (4), (5), (6), and (7) of section 205(b), except that such paragraph (3)(B) shall be applied by striking ", and where possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields"; and

(3) in awarding grants under this section the Secretary shall give special consideration to consortia submitting applications under subsection (c) that meet the requirements of paragraphs (1), (3), (4), and (5) of section 206(d), except that such paragraph (1) shall be applied by striking "or the transfer of students to 4-year institutions of higher education".

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1999 and each of the 5 succeeding fiscal years.

TITLE III—GENERAL PROVISIONS

SEC. 301. ADMINISTRATIVE PROVISIONS.

(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for vocational education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out vocational education and tech-prep activities.

(b) MAINTENANCE OF EFFORT.—

(1) DETERMINATION.—No payments shall be made under this Act for any fiscal year to an eligible agency for vocational education or tech-prep activities unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of the State for vocational education for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for vocational education for the second fiscal year preceding the fiscal year for which the determination is made.

(2) WAIVER.—The Secretary may waive the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for 1 fiscal year only, on making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the applicant to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

(c) REPRESENTATION.—The eligible agency shall provide representation to the statewide partnership.

SEC. 302. EVALUATION, IMPROVEMENT, AND ACCOUNTABILITY.

(a) LOCAL EVALUATION.—Each eligible agency shall evaluate annually the vocational education and tech-prep activities of each local educational agency or eligible institution receiving assistance under this Act, using the performance measures established under section 102.

(b) IMPROVEMENT ACTIVITIES.—If, after reviewing the evaluation, an eligible agency determines that a local educational agency or eligible institution is not making substantial progress in achieving the purpose of this Act, the local educational agency or eligible institution, in consultation with teachers, parents, and other school staff, shall—

(1) conduct an assessment of the educational and other problems that the local educational agency or eligible institution shall address to overcome local performance problems;

(2) enter into an improvement plan based on the results of the assessment, which plan shall include instructional and other programmatic innovations of demonstrated effectiveness, and where necessary, strategies for appropriate staffing and staff development; and

(3) conduct regular evaluations of the progress being made toward program improvement goals.

(c) TECHNICAL ASSISTANCE.—If the Secretary determines that an eligible agency is not properly implementing the eligible agency's responsibilities under section 114, or is not making substantial progress in meeting the purpose of this Act, based on the performance measures and expected levels of performance under section 102 included in the eligible agency's State plan, the Secretary shall work with the eligible agency to implement improvement activities.

(d) WITHHOLDING OF FEDERAL FUNDS.—If, after a reasonable time, but not earlier than 1 year after implementing activities described in subsection (c), the Secretary determines that the eligible agency is not making sufficient progress, based on the eligible agency's performance measures and expected levels of performance, the Secretary, after notice and opportunity for a hearing, shall withhold from the eligible agency all, or a portion, of the eligible agency's grant funds under this title. the Secretary may use funds withheld under the preceding sentence to provide, through alternative arrangements, services, and activities within the State to meet the purpose of this Act.

SEC. 303. NATIONAL ACTIVITIES.

The Secretary may, directly or through grants, contracts, or cooperative agreements, carry out research, development, dissemination, evaluation, capacity-building, and technical assistance activities that carry out the purpose of this Act.

SEC. 304. NATIONAL ASSESSMENT OF VOCATIONAL EDUCATION PROGRAMS.

(a) IN GENERAL.—The Secretary shall conduct a national assessment of vocational education programs assisted under this Act, through studies and analyses conducted independently through competitive awards.

(b) INDEPENDENT ADVISORY PANEL.—The Secretary shall appoint an independent advisory panel, consisting of vocational education administrators, educators, researchers, and representatives of labor organizations, business, parents, guidance and counseling professionals, and other relevant groups, to advise the Secretary on the implementation of such assessment, including the issues to be addressed and the methodology of the studies involved, and the findings and recommendations resulting from the assessment. The panel shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary an independent analysis of the findings and recommendations resulting from the assessment. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this subsection.

(c) CONTENTS.—The assessment required under subsection (a) shall include descriptions and evaluations of—

(1) the effect of the vocational education programs assisted under this Act on State and tribal administration of vocational education programs and on local vocational education practices, including the capacity of State, tribal, and local vocational education systems to address the purposes of this Act;

(2) expenditures at the Federal, State, tribal, and local levels to address program improvement in vocational education, including the impact of Federal allocation requirements (such as within-State distribution formulas) on the delivery of services;

(3) preparation and qualifications of teachers of vocational and academic curricula in vocational education programs, as well as shortages of such teachers;

(4) participation in vocational education programs;

(5) academic and employment outcomes of vocational education, including analyses of—

(A) the number of vocational education students and tech-prep students who meet State academic standards:

(B) the extent and success of integration of academic and vocational education for students participating in vocational education programs; and

(C) the degree to which vocational education is relevant to subsequent employment or participation in postsecondary education;

(6) employer involvement in, and satisfaction with, vocational education programs;

(7) the use and impact of educational technology and distance learning with respect to vocational education and tech-prep programs; and

(8) the effect of performance measures, and other measures of accountability, on the delivery of vocational education services.

(d) CONSULTATION.—

(1) IN GENERAL.—The Secretary shall consult with the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate in the design and implementation of the assessment required under subsection (a).

(2) REPORTS.—The Secretary shall submit to the Committee on Education and Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary—

(A) an interim report regarding the assessment on or before July 1, 2001; and

(B) a final report, summarizing all studies and analyses that relate to the assessment and that are completed after the assessment, on or before July 1, 2002.

(3) PROHIBITION.—Notwithstanding any other provision of law or regulation, the reports required by this subsection shall not be subject to any review outside of the Department of Education before their transmittal to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary, but the President, the Secretary, and the independent advisory panel established under subsection (b) may make such additional recommendations to Congress with respect to the assessment as the President, the Secretary, or the panel determine to be appropriate.

SEC. 305. NATIONAL RESEARCH CENTER.

(a) GENERAL AUTHORITY.—

(1) IN GENERAL.—The Secretary, through grants, contracts, or cooperative agreements, may establish 1 or more national centers in the areas of—

(A) applied research and development; and

(B) dissemination and training.

(2) CONSULTATION.—The Secretary shall consult with the States prior to establishing 1 or more such centers.

(3) ELIGIBLE ENTITIES.—Entities eligible to receive funds under this section are institutions of higher education, other public or private nonprofit organizations or agencies, and consortia of such institutions, organizations, or agencies.

(b) ACTIVITIES.—

(1) IN GENERAL.—The national center or centers shall carry out such activities as the Secretary determines to be appropriate to assist State and local recipients of funds under this Act to achieve the purpose of this Act, which may include the research and evaluation activities in such areas as—

(A) the integration of vocational and academic instruction, secondary and postsecondary instruction;

(B) effective inservice and preservice teacher education that assists vocational education systems;

(C) education technology and distance learning approaches and strategies that are effective with respect to vocational education;

(D) performance measures and expected levels of performance that serve to improve vocational education programs and student achievement;

(E) effects of economic changes on the kinds of knowledge and skills required for employment or participation in postsecondary education;

(F) longitudinal studies of student achievement; and

(G) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include—

(i) serving as a repository for information on vocational and technological skills, State academic standards, and related materials; and

(ii) developing and maintaining national networks of educators who facilitate the development of vocational education systems.

(2) REPORT.—The center or centers conducting the activities described in paragraph (1) annually shall prepare a report of key research findings of such center or centers and shall submit copies of the report to the Secretary, the Secretary of Labor, and the Secretary of Health and Human Services. The Secretary shall submit that report to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, the Library of Congress, and each eligible agency.

(c) REVIEW.—The Secretary shall—

(1) consult at least annually with the national center or centers and with experts in education to ensure that the activities of the national center or centers meet the needs of vocational education programs; and

(2) undertake an independent review of each award recipient under this section prior to extending an award to such recipient beyond a 5-year period.

SEC. 306. DATA SYSTEMS.

(a) IN GENERAL.—The Secretary shall maintain a data system to collect information about, and report on, the condition of vocational education and on the effectiveness of State and local programs, services, and activities carried out under this Act in order to provide the Secretary and Congress, as well as Federal, State, local, and tribal

agencies, with information relevant to improvement in the quality and effectiveness of vocational education. The Secretary annually shall report to Congress on the Secretary's analysis of performance data collected each year pursuant to this Act, including an analysis of performance data regarding the populations described in section 114(c)(16).

(21) DATA SYSTEM.—In maintaining the data system, the Secretary shall ensure that the data system is compatible with other Federal information systems.

(c) ASSESSMENTS.—As a regular part of its assessments, the National Center for Education Statistics shall collect and report information on vocational education for a nationally representative sample of students. Such assessment may include international comparisons.

SEC. 307. PROMOTING SCHOLAR-ATHLETE COMPETITIONS.

Section 10104 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8004) is amended—

(1) in subsection (a), by striking "to be held in 1995"; and

(2) in subsection (b)—

(A) in paragraph (4), by striking "in the summer of 1995;" and inserting "; and";

(B) in paragraph (5), by striking "in 1996 and thereafter, as well as replicate such program internationally; and" and inserting "and internationally."; and

(C) by striking paragraph (6).

SEC. 308. DEFINITION.

In this Act, the term "gender equity", used with respect to a program, service, or activity, means a program, service, or activity that is designed to ensure that men and women (including single parents and displaced homemakers) have access to opportunities to participate in vocational education that prepares the men and women to enter high-skill, high-wage careers.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out title I, and sections 303, 304, 305, and 306, such sums as may be necessary for fiscal year 1999 and each of the 5 succeeding fiscal years.

TITLE V—REPEAL

SEC. 501. REPEAL.

(a) REPEAL.—The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is repealed.

(b) REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.—

(1) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking "Vocational Education Act of 1963" and inserting "Vocational Education Act of 1963" and inserting "Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

(2) NATIONAL DEFENSE AUTHORIZATION ACT.—Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(A) in section 1114(b)(2)(C)(v) (20 U.S.C. 6314(b)(2)(C)(v)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act," and inserting "Carl D. Perkins Vocational and Applied Technology Education Act of 1998";

(B) in section 9115(b)(5) (20 U.S.C. 7815(b)(5)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act" and inserting "Carl D. Perkins Vocational and Applied Technology Education Act of 1998";

(C) in section 14302(a)(2) (20 U.S.C. 8852(a)(2))—

(i) by striking subparagraph (C); and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(D) in the matter preceding subparagraph (A) of section 14307(a)(1) (20 U.S.C. 8857(a)(1)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act" and inserting "Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

(4) EQUITY IN EDUCATIONAL LAND-GRANT STATUS ACT OF 1994.—Section 533(c)(4)(A) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) is amended by striking "(20 U.S.C. 2397h(3)" and inserting ", as such section was in effect on the day preceding the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

(5) IMPROVING AMERICA'S SCHOOLS ACT OF 1994.—Section 563 of the Improving America's Schools Act of 1994 (20 U.S.C. 6301 note) is amended by striking "the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)" and inserting "July 1, 1999".

(6) INTERNAL REVENUE CODE OF 1986.—SECTION 135(C)(3)(B) OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. 135(C)(3)(B)) IS AMENDED—

(A) by striking "subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act" and inserting "subparagraph (C) or (D) of section 2(3) of the Workforce Investment Partnership Act of 1998"; and

(B) by striking "any State (as defined in section 521(27) of such Act)" and inserting "any State or outlying area (as the terms 'State' and 'outlying area' are defined in section 2 of such Act)".

(7) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) (as amended by subsection (c)(5)) is further amended by striking "Carl D. Perkins Vocational Education Act" and inserting "Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

(8) VOCATIONAL EDUCATION AMENDMENTS OF 1968.—Section 104 of the Vocational Education Amendments of 1968 (82 Stat. 1091) is amended by striking "section 3 of the Carl D. Perkins Vocational Education Act" and inserting "the Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

(9) OLDER AMERICANS ACT OF 1965.—The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(A) in section 502(b)(1)(N)(i) (42 U.S.C. 3056(b)(1)(n)(i)), by striking "or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)"; and

(B) in section 505(d)(2) (42 U.S.C. 3056c(d)(2))—

(i) by striking "employment and training programs" and inserting "workforce investment activities"; and

(ii) by striking "the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)" and inserting "the Carl D. Perkins Vocational and Applied Technology Education Act of 1998".

ADDITIONAL STATEMENTS

RECOGNITION OF THE HANNIBAL COURIER-POST'S 160TH ANNIVERSARY

• Mr. BOND. Mr. President, I rise today to recognize the Hannibal Courier-Post on it's 160th Anniversary. Several years ago, a Courier-Post reporter, Gene Hoenes, was quoted as saying, "People listen to facts announced on the radio and see news on television, but they don't really believe it until they read it in the newspaper."

From the beginning, this newspaper has provided important information for the people of Hannibal in my home State of Missouri. In the early days, just about anyone who had a cause started a paper, although few survived. Eventually, several of the small and struggling papers merged into what is now the Hannibal Courier-Post, the oldest existing newspaper in Missouri.

It is truly impressive that Hannibal Courier-Post is having it's 160th Anniversary. I commend all of the people who have helped to make the Courier-Post succeed throughout it's many years of existence.

TRIBUTE TO KATHY WEMHOFF

• Mr. CRAIG. Mr. President, I rise to recognize one of my Idaho constituents, Kathy Wemhoff. With Flag Day quickly approaching on June 14th, I wanted to congratulate Kathy on being the Idaho state winner of The Citizens Flag Alliance Essay Contest. Kathy won a scholarship and went on to compete in the national competition.

Her essay, titled, "The American Flag Protection Amendment: A Right of the People * * * The Right Thing to Do" focuses on the importance of the American flag to all citizens and discusses reasons why we should have a flag protection amendment. I think she has done an excellent job of making the case for protecting the flag, and I recommend her essay to every member of the Senate.

I feel strongly about the protection of this flag. It is a beacon to us—a reminder of those who died for us and the values that unite us. As we near U.S. Flag Day, I'd like to remind the Senate of the already-proposed amendment to protect our flag and ask all my colleagues to support this important matter. Kathy's feelings are shared by most Americans. Let's not ignore them. Let's support them and build our nation's pride! Let me now read Kathy's essay:

THE AMERICAN FLAG PROTECTION AMENDMENT: A RIGHT OF THE PEOPLE * * * THE RIGHT THING TO DO

I pledge allegiance, to the flag, of the United States of American. . ." Every day, millions of voices speak these words first published in "Youth's Companion" on September 8, 1892: voices belonging to the men

of the armed forces, school children, and the citizens of the United States of America. The pledge, written for the National Public Schools Celebration of Columbus Day, became enormously popular in a very short time. On Columbus Day of that year, only one month after its publication, more than twelve million school children took the pledge (Quaife 154). The birth of the pledge and its enormous success demonstrate the importance that the American populace place on the flag.

The pledge must hold some special meaning for such a great number of people to believe and repeat these words daily. No words could be clearer than those of the Pledge of Allegiance. Every man, woman, and child who repeats the words not only understands them, but also lives by them. The people are voicing their loyalty to and belief in the nation and its flag as they put their hands to their hearts. Even centuries after the nation's establishment, the flag remains a symbol of the United States and the freedom of the people who reside within.

Symbols have substantial importance in this world, but what exactly is a symbol? A symbol may be an object or idea which suggests some other more distinguished idea by reason of relationship, association, or convention. A Christmas tree or stockings, for example, are symbols heavily depended upon by most people. Few can imagine Christmas without a tree or stockings. The symbol relates the person to that event or object which would otherwise seem unimportant. Without the flag to represent the dedication, honor, and freedom of the United States, we the people will lose our faith in the country. The flag reminds the citizens of their freedom and the soldiers who fought and died for that freedom. The flag, so admirable fluttering in the air, must be preserved from the elements and protected from desecration. The thought of the flag torn and dirtied by carelessness or hatred turns the stomachs of the people who look to the flag with admiration. Not only can this behavior be labeled unjust to the flag, but also to the country and all its people. The need for a law to protect the flag from inequitable harm has arisen, for the flag is relied upon as the national symbol of freedom.

Old Glory, millions of times unraveled and sewn again since Independence Day, July 4, 1776, remains for the most part preserved and protected throughout the country (Quaife 109). People young and old care for the flag as if it were a delicate vase shielded from all harm for many centuries, carrying it in from the rain, never letting it touch the ground, and even guarding it with rifles. When the flag rises, American citizens young and old stand and salute it to show their respect for what it represents: honor, nobility, and the individual soldiers who fought for our freedoms: of life, liberty, and the pursuit of happiness (Berkin 425). These freedoms are extremely important, yet often taken advantage of.

There remains an exception to the behavior that most possess around the flag; people may desecrate it without punishment. No law exists at this time to protect the flag from ill treatment. Those who desire to fight in the flag's honor can do so by joining forces with all our nations' people and fighting for the creation of a law to protect and preserve it. The Constitution and laws of the country are made by the people, and for the people; therefore, the people have the right to fight for the protection of the American flag. Not a law of one town or of one state, but a law of the nation should be created: an amendment to the United States Constitution guarding against desecration of our nation's symbol of freedom.

The American Flag remains protected from "disloyal utterances" by the Sedition Act, passed in 1918, but holds no personal amendment or act to prevent it from being physically damaged (Berkin 425). An amendment with strength will uphold the credibility of the flag, saving it the humility of desecration or desertion. A simple and unadorned, yet specifically detailed amendment will hold anyone disrespectful to the flag's rights in contempt of the nation. Any purposeful act of aggression against the flag, such as dragging it in the dirt or burning it, would result in heavy punishment. The guidelines of what exactly would be punishable would be stated in the Flag Amendment; the Supreme Court would have the authority to enforce punishment when these laws were violated.

A decision of the court may be based upon much of the same facts as was the case "United States vs. O'Brien, 1968" when four young men burned their draft cards in protest of the Vietnam War. The O'Brien case dealt with the issue of symbolic speech, whether or not certain actions should be allowed to fall under the First Amendment's guarantee of free speech (McClenaghan 118). Burning a flag or desecrating one in any other manner would follow the court ruling of the O'Brien case; a limitless variety of conduct cannot be labeled "speech"; therefore, unacceptable behavior toward the flag can be punishable by law. The flag, protected by the First Amendment under symbolic speech, would then also have an amendment that described the limits of what behavior would be acceptable in its handling and what punishment could be given in the event of its desecration.

The flag, for so many reasons, deserves and needs protection from desecration and misuse. Since the majority of the nation's people view the flag as a symbol of their freedom, it deserves an amendment to recognize and protect it. The need for this amendment exists because of the few people of the nation who cannot respect the flag or look to it as a symbol of their freedom. All citizens should support the cause of creating an amendment to protect the flag from dishonor. It is of great importance to have a symbol of the nation's freedom and unity so that the people do not forget or take advantage of the rights they possess by living in America.

MEASURE PLACED ON THE CALENDAR—H.R. 3978

Mr. HAGEL. Mr. President, I understand that there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will report the bill for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 3978) to restore provisions agreed to by the conferees to H.R. 2400, entitled the "Transportation Equity Act for the 21st Century," but not included in the conference report to H.R. 2400, and for other purposes.

Mr. HAGEL. Mr. President, I object to further proceedings at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

AMENDING THE CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT

Mr. HAGEL. Mr. President, I ask unanimous consent the Labor Committee be discharged from further consideration of H.R. 1853 and, further, that the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2704

Mr. HAGEL. On behalf of Senator JEFFORDS, I send a substitute amendment to the desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. HAGEL], for Mr. JEFFORDS, proposes an amendment numbered 2704.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. HAGEL. I ask unanimous consent the amendment be agreed to.

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

The amendment (No. 2704) was agreed to.

Mr. HAGEL. Mr. President, I ask unanimous consent the bill be considered read the third time and passed, as amended, and the motion to reconsider be laid upon the table.

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

The bill (H.R. 1853), as amended, was passed.

Mr. HAGEL. Mr. President, I further ask unanimous consent the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

There being no objection, the Presiding Officer (Mr. KYL) appointed Mr. JEFFORDS, Mr. COATS, Mr. GREGG, Mr. FRIST, Mr. DEWINE, Mr. ENZI, Mr. HUTCHINSON, Ms. COLLINS, Mr. WARNER, Mr. MCCONNELL, Mr. KENNEDY, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. WELLSTONE, Mrs. MURRAY, and Mr. REED conferees on the part of the Senate.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. HAGEL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: Calendar No. 579, Wilma A. Lewis, to be United States Attorney for the District of Columbia.

I further ask unanimous consent the nomination be confirmed, the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action and the Senate then return to legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF JUSTICE

Wilma A. Lewis, of the District of Columbia, to be United States Attorney for the District of Columbia for the term of four years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

ORDERS FOR MONDAY, JUNE 15, 1998

Mr. HAGEL. Mr. President, I ask unanimous consent when the Senate completes its business today it stand in adjournment until 1 p.m. on Monday, June 15. I further ask on Monday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin a period of morning business until 2 p.m., with Senators permitted to speak for up to 5 minutes each.

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

Mr. HAGEL. I further ask unanimous consent that following morning business, the Senate resume consideration of S. 1415, the tobacco bill.

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

PROGRAM

Mr. HAGEL. Mr. President, for the information of all Senators, the Senate will reconvene on Monday, June 15, at 1 p.m., and begin a period of morning business until 2 p.m. Following morning business, the Senate will resume consideration of the tobacco bill.

As a reminder to all Members, any votes ordered on Monday with respect to the tobacco bill will be postponed, to occur Monday evening at 5 p.m. It is expected that no more than two votes will be ordered to occur on Monday. The Senate may also attempt to reach agreement to consider the Higher Education Act, the NASA authorization bill, drug czar office reauthorization bill, and any other legislative or executive items that may be cleared for action.

Any votes ordered with respect to any items other than the tobacco bill will be postponed, to occur on Tuesday morning at a time to be determined by the two leaders.

ADJOURNMENT UNTIL 1 P.M., MONDAY, JUNE 15, 1998

Mr. HAGEL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 1:56 p.m., adjourned until Monday, June 15, 1998, at 1 p.m.

CONFIRMATION

Executive nomination confirmed by the Senate June 12, 1998:

DEPARTMENT OF JUSTICE

WILMA A. LEWIS, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.