United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 106th CONGRESS, FIRST SESSION

Vol. 145 WASHINGTON, WEDNESDAY, NOVEMBER 17, 1999 No. 163

Senate

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

REVISED NOTICE—NOVEMBER 17, 1999

If the 106th Congress, 1st Session, adjourns sine die on or before November 18, 1999, a final issue of the Congressional Record for the 106th Congress, 1st Session, will be published on December 3, 1999, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through December 1. The final issue will be dated December 3, 1999, and will be delivered on Friday, December 4, 1999.

If the 106th Congress does not adjourn until a later date in 1999, the final issue will be printed at a date to be announced.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Records@Reporters''.

Members of the House of Representatives' statements may also be submitted electronically by e-mail or disk, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, signed manuscript. Deliver statements (and template formatted disks, in lieu of e-mail) to the Official Reporters in Room HT–60.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

WILLIAM M. THOMAS, *Chairman.*

NOTICE

Effective January 1, 2000, the subscription price of the Congressional Record will be $357 per year, or $179 for 6 months. Individual issues may be purchased for $3.00 per copy. The cost for the microfiche edition will remain $141 per year; single copies will remain $1.50 per issue. This price increase is necessary based upon the cost of printing and distribution.

MICHAEL F. DiMARIO, *Public Printer.*

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

Printed on recycled paper.

The PRESIDENT pro tempore. We will now be led in prayer by Father Paul Lavin, St. Joseph's Catholic Church, Washington, DC.

We are pleased to have you with us.

PRAYER

The guest Chaplain, Father Paul Lavin, offered the following prayer:

In the book of Ecclesiastes we hear:

A good name is better than ointment, and the day of death than the day of birth.

It is better to harken to a wise man's rebuke than to harken to the song of fools;

For as the crackling of thorns under a pot, so is the fool's laughter.

Better is the end of speech than its beginning; better is the patient spirit than the lofty spirit.—Eccl. 7:1–8.

Let us pray:

As this session of the Senate draws to a close, let the end of our speech be better than the beginning. Let the decisions we have made and the ones we will make in these closing hours reflect Your will and be pleasing to You.

May the time we and our staffs spend with our families and with those we represent be really times of re-creation in Your Spirit, and may all of us return here safely.

May the gifts of the Father, Son, and Holy Spirit unite us in faith, hope, and love, now and forever. Amen.

PLEDGE OF ALLEGIANCE

The Honorable WAYNE ALLARD, a Senator from the State of Colorado, led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, today the Senate will resume consideration of the pending Wellstone amendment with 1 hour of debate remaining under the previous agreement. After all time is used or yielded back, the Senate will proceed to a vote on the Wellstone amendment, which will be followed by a vote on the Moynihan amendment No. 2663. Therefore, Senators can expect two back-to-back votes to begin at approximately 10:30 a.m. It is hoped that further progress can be made on the appropriations process during today's session, and therefore votes can be anticipated throughout the day. It is also hoped that an agreement can be reached regarding the remaining amendments to the bankruptcy reform bill so that the Senate can complete the bill prior to the impending adjournment.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 1999

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The bill clerk read as follows:

A bill (S. 625) to amend title 11, United States Code, and for other purposes.

Pending:

Feingold amendment No. 2522, to provide for the expenses of long term care.

Hatch/Torricelli amendment No. 1729, to provide for domestic support obligations.

WELLSTONE amendment No. 2537, to disallow claims of certain insured depository institutions.

Wellstone amendment No. 2538, with respect to the disallowance of certain claims and to prohibit certain coercive debt collection practices.

Feinstein amendment No. 1696, to limit the amount of credit extended under an open end consumer credit plan to persons under the age of 21.

Feinstein amendment No. 2755, to discourage indiscriminate extensions of credit and resulting consumer insolvency.

Schumer/Durbin amendment No. 2759, with respect to national standards and homeowner home maintenance costs.

Schumer/Durbin amendment No. 2762, to modify the means test relating to safe harbor provisions.

Schumer amendment No. 2763, to ensure that debts incurred as a result of clinic violence are nondischargeable.

Schumer amendment No. 2764, to provide for greater accuracy in certain means testing.

Schumer amendment No. 2765, to include certain dislocated workers' expenses in the debtor's monthly expenses.

Dodd amendment No. 2531, to protect certain education savings.

Dodd amendment No. 2753, to amend the Truth in Lending Act to provide for enhanced information regarding credit card balance payment terms and conditions, and to provide for enhanced reporting of credit card solicitations to the Board of Governors of the Federal Reserve System and to Congress.

Hatch/Dodd/Gregg amendment No. 2536, to protect certain education savings.

Feingold amendment No. 2748, to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

Schumer/Santorum amendment No. 2761, to improve disclosure of the annual percentage rate for purchases applicable to credit card accounts.

Durbin amendment No. 2659, to modify certain provisions relating to pre-bankruptcy financial counseling.

Durbin amendment No. 2661, to establish parameters for presuming that the filing of a case under chapter 7 of title 11, United States Code, does not constitute an abuse of that chapter.

Torricelli amendment No. 2655, to provide for enhanced consumer credit protection.

Wellstone amendment No. 2752, to impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

Moynihan amendment No. 2663, to make certain improvements to the bill with respect to low-income debtors.

AMENDMENT NO. 2752

The PRESIDING OFFICER. Under the previous order, there will now be 1 hour of debate on the Wellstone amendment No. 2752.

Who yields time?

Mr. GRASSLEY. Mr. President, maybe to be fair to everybody, I better suggest the absence of a quorum and that time would be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, I yield 10 minutes to Senator DORGAN.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first of all, I commend Senator WELLSTONE for his leadership on this issue. I rise to support the amendment that he has offered. I have been involved with Senator WELLSTONE in constructing this proposal. The proposal very simply is to try to have a time out of sorts with respect to the mergers that are occurring in the agricultural processing industries. The question at the root of all of this is, What is the value of a family farm in our country and do we care about whether this country has family farmers in its future?

If we do, if we care about keeping family farmers in our country's future, then we must do something about the concentration that is occurring and plugging the arteries of the free market system in the agricultural economy. Family farmers are not able to compete in a free and open system. It is just not happening. Why? Because of these mergers and concentration in the large agricultural industries.

Let me show you with this chart what is happening to family farmers. The family farm share of the retail cereal grains dollar has gone down, down, and way down. Why? Why is the family farm share of the food dollar going down? Because as my friend from Minnesota likes to say, the big food giants have muscled their way to the dinner table. He is absolutely correct. They are grabbing more of the food dollar. The family farmer gets less. The food processors are making substantial amounts, record dollars, and the family farmers are, unfortunately, not able to make it.

The farm share of the retail pork dollar is down, down, way down. The family farm share of the retail beef dollar? Exactly the same thing.

Why is all of this occurring? Because concentration in these industries means there are fewer firms. For example, in market concentration in meat processing, in beef, the top four firms

control 80 percent of the profits; in sheep, 73 percent; pork, 57 percent. Exactly the same is true in grain. Wet corn milling, 74 percent, the top four companies.

The point is, this massive concentration is plugging the arteries of the market system. There isn't competition, or at least the kind of competition that is fair competition for family farms.

Now, our proposal is very simple. It proposes a moratorium on certain kinds of mergers. We are talking only about the largest firms. And then during that moratorium for 18 months we have a commission review the underlying statutes that determine what is competitive and what is anticompetitive.

There are people here who don't care about family farmers. They say, if the market system would decide that family farms should continue, then they will continue. And if the market system is ambivalent to it, then we won't have family farmers. But that is because the view of such people matches the view of economists, which is that you can value only that which you can measure in quantitative terms. If you can attach dollars and cents to it, then it has value. If you can't, it doesn't. The fact is, family farm enterprises have value far beyond their production of corn or wheat. Family farms in my State produce much more than their crops. They also produce a community. They have a social product as well as a material product.

Now, this product is invisible to economists and to policy experts who only see what they can count in money, but it is crucially important to our country. We tend to view our economy as a kind of Stuff Olympics: Those who produce the most stuff win. We are a country that produces more stuff than we need in many areas but much less of what we really need in other areas. And one such thing we lack is the culture and the opportunity we get when we continue a network of family farms. Europeans call this contribution ''multifunctionality.'' That is just a fancy way of saying that an enterprise can serve us in more ways than an economist can give credit for. A small town cafe is much more to that small town than its financial statement. It is the hub of the community. It is the hub of interaction, the crossroads where people meet rather than be blips on a computer screen. The same is true with family farms. It is much more important to this country than the financial receipts would show.

To those who do not care much about family farms, none of this matters. To those of us who believe a network of family farms preserved for our future enhances and strengthens this country, we believe very strongly that we must take actions to give family farmers a chance to survive.

One of those actions—only one—is to say, let us stop this massive concentration in the giant food industries that is choking the life out of family farms. Why is it that when you buy a loaf of bread, the amount of money the farmers get from that loaf of bread is now not even the heel, it is less than the heel?

Why is it that anyone in the food processing industry who touches that which farmers produce—wheat, corn, soybeans, and more—makes record profits, but the farmers are going broke?

Why is it that a farmer who gases a tractor, plows the land, and nurtures the grain all summer, combines it and harvests it in the fall, goes to the elevator only to be told the county elevator and the grain trade have described that food as worthless. Then someone gets hold of that same grain and crisps it, shreds it, flakes it, puffs it, puts it in a box and gets it on the grocer's shelf. The grain then sells for $4 or $5 a box, and all of a sudden it has great value as puffed or shredded wheat. The processor makes record profits and family farmers are making record losses.

Why is that? Because this system does not stack up. It does not stack up in a manner that allows fair, free, and open competition. When you have this kind of concentration, there is not a free market. That is true in the grain processing industry, it is true in meat, and it is true as well in the other areas I have discussed.

Family farmers are seeing record declines in their share of the cereal dollar while everyone else who handles the grain the farmer produced is making a record profit. That is the point.

I am for a free, fair, and open economy and fair competition. But our economic system today is not providing that because some are choking the life out of family farmers by clogging the marketplace with unfair competition. We have antitrust laws to deal with this. They are not very effective, frankly. When Continental and Cargill can decide to marry, and are then sufficiently large to create a further anticompetitive force in this market, then there is something wrong with the underlying antitrust laws.

This bill is not a Cargill-Continental bill, incidentally. It is not aimed at any specific company. It is aimed rather at having a timeout on the massive orgy of mergers that is occurring at the upper level of the corporate world, $100 million or more in value, and at evaluating what is happening to the market system.

If we believe in the free market, we have to nurture that free market and protect it. A free market exists when you have free, fair, and open competition.

The last antitrust buster of any great note was Teddy Roosevelt at the start of the century saying the robber barons of oil could not continue to rob the American people.

My point is that if we want to keep family farms in our future, we must take bold and aggressive action to make certain that competition is fair to family farms. Today, it is not. They are losing their shirts primarily because of the unfair competition that comes from substantial concentration.

My point, to conclude, is we lose something very significant, much more than economists can measure, when we decide we will not care about the destruction of the network of family farms in this country. Europe has 7.5 million family farms dotting the landscape because they decided long ago that these contribute much more to their culture and economy than what the balance sheet shows in numbers. They do in this country as well. It is time we take bold action to do something about it.

The first step, a modest step in my judgment, proposed by the Senator from Minnesota, myself, and others is to do something about antitrust, the concentration that is clogging the free market, taking money away from family farmers and putting us in a position where the family farm in this country is devastated.

We can stop this. This is not rocket science. Good public policy directed in the right area will give economic help and opportunity to families who are attempting to farm in America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I rise again to oppose the Wellstone amendment. I stand here as perhaps one of the only Members of the Senate who has made his living from agribusiness, specifically as a food processor. I think I know of what I speak this morning.

I tell my colleagues, if they are listening via TV or however, this is a vote about whether or not you believe and trust in the free-market system.

I also rise as somebody who cares a great deal about farmers. I have voted consistently for farm aid in its many forms as we try to provide it in the Senate. But I am saying the Wellstone amendment will not turn around the ag economy. It does nothing to open overseas markets. It does nothing about global oversupply of grain, and it does nothing to relieve the onerous regulatory burdens placed on family farmers by the Federal Government, such as estate taxes, the unworkable H–2A program, the way the Food Quality Protection Act is being implemented, or the loss of water rights. It goes on and on.

The family farmer is more under assault by regulation by this Government than it has ever been by the food processing industry. Frankly, what we are saying is the food processor who perhaps wants to buy 100 million pounds of grain but is offered 200 million pounds because it is produced is somehow to be penalized by the Senate for participating in the free market. It is not right. It is not our system.

The Wellstone amendment implies that the Antitrust Division at the Justice Department is incapable of handling these agribusiness mergers. Yet the evidence is to the contrary. This is the same Antitrust Division that has required numerous divestitures in recent agribusiness acquisitions, such as the Cargill-Continental, Monsanto-Dekalb Genetics Corporation. This is the same Antitrust Division that rigorously pursued antitrust proceedings against Microsoft.

Antitrust policy has an important implication to American business and deserves the scrutiny of the Judiciary Committee, not posturing on the floor of the Senate. Senator HATCH, the chairman of the Judiciary Committee, has already announced there will be in his committee hearings on agribusiness concentration, as there ought to be, but not here, not this way, not this amendment.

The Wellstone amendment additionally is not evenhanded in its approach. It exempts agricultural cooperatives, some of which are large agribusinesses in their own right. I know from my own experience how to take a small company and make it big by the inefficiencies of the large companies. The Wellstone amendment will prevent mergers that are often necessary to keep plants competitive, employing people in rural and urban areas, and providing important outlets for farm products.

It does not distinguish between good mergers and bad mergers. Some of these things have to happen because there is an oversupply of food processors, in fact. The same market forces that are affecting the farmer also affect the food processor.

The WELLSTONE amendment will effectively guarantee that no medium-size agribusiness will be capable of growing large enough to rival the scale of the existing large agribusinesses. Again, I say the American dream is for the little guy to become a big guy. This says the food processor has one of two options if he is in trouble: He can either struggle and try to continue or else he can go bankrupt. I point out if you are interested in farmers, remember that more than two-thirds of the farmers of this country do not grow for the agricultural cooperatives; they grow for stock-held-owned companies.

The Wellstone amendment will not deconcentrate agribusiness, but it will ensure small- and medium-size agribusinesses are prevented from taking advantage of the same efficiencies enjoyed by their larger competitors. Frankly, the kind of distrust of the market represented by this amendment is the kind of thing we should expect from the Duma in Russia and the National Assembly of France but never from the Senate.

In conclusion, I appeal to my colleagues' common sense. This amendment is before us today in the name of saving family farmers.

I ask my colleagues to consider for a moment just who supplies the family farmer with critical crop inputs, such as seed and fertilizer. Who does the family farmer sell their production to for processing and marketing? The answer, in most cases, of course, is agribusinesses, the one sector of the economy that is being singled out today for a federally mandated merger moratorium that is certainly a counter to the free market that I believe we value in this country.

I remind my colleagues that agribusinesses and farmers are intertwined and interdependent. They are under the same market forces on both sides. When the very visible hand of government intervention in the market place is raised in an attempt to punish agribusinesses, inevitably it will punish family farmers, too.

I say again, most farmers do not grow for agricultural cooperatives. They often grow for small family food processors. So what happens to them? Ultimately, no matter the good intentions of those who are behind this amendment because I stand with them when it comes to trying to help the family farmer, I just simply say this is not the way.

I ask unanimous consent to have printed in the RECORD an editorial from not my paper but I believe it is Senator WELLSTONE's paper, the Star Tribune in Minneapolis.

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

[From the Star Tribune, Nov. 15, 1999]

GIANT KILLER: WELLSTONE'S MISGUIDED AG MERGER PLAN

In the great tradition of prairie populism, Sen. Paul Wellstone has responded to the current farm recession by calling for a federal moratorium on big agribusiness mergers. As a cry of alarm for farmers, this is useful politics. But as a device to restore commodity prices, it is practically pointless, and as a tool of antitrust policy, it is exceedingly blunt.

When it resumes debate on the topic this week, the Senate should embrace Wellstone's plan for an agricultural antitrust commission, but it should reject the notion of blocking all mergers, good and bad.

Wellstone is right about one thing: Consolidation in agribusiness is perfectly real and genuinely troublesome. A series of agronomy mergers has greatly reduced the number of companies that sell seed and fertilizer to farmers. Meanwhile, the top four meatpacking companies have doubled their share of the beef and pork markets since 1980, to 80 percent and 54 percent respectively.

But that trend has nothing to do with this year's commodities collapse, which stems almost entirely from a glut of grain in world markets. Just three years ago, farmers were receiving near-record prices, yet the grain and meat industries already were highly concentrated. Milk processing is just as concentrated as grain or meat, yet dairy farmers earned huge profits last year.

Whether consolidation inflicts long-term damage is harder to know. One federal study found that large meat packers discriminate against small livestock farmers, and another found that big beef processors were able to drive down cattle prices by about 4 percent. But several other studies by the U.S. Department of Agriculture (USDA) have found that big, efficient meatpackers improve quality control and save money for consumers. One USDA study even found that livestock farmers got higher prices as the beef industry consolidated, apparently because highly efficient meatpackers passed along some of their savings in the form of higher prices to farmers.

To support an outright merger moratorium, you would have to believe that all mergers are wrong or that the current group of federal antitrust regulators is incapable of sorting good from bad.

But neither proposition holds up. The 1986 merger of Hormel Foods and Jennie-O Foods, for example, greatly expanded the state's turkey industry while improving the competitiveness of two venerable Minnesota companies. When Michael Foods of St. Louis Park bought Papetti Hygrade of New Jersey in 1997, it enabled two modest egg-processors to survive against much bigger world rivals. Nor is it clear that federal regulators are asleep at the switch. The Justice Department put Cargill Inc. through an antitrust wringer this year before downsizing its purchase of part of Continental Grain.

As usual, however, there is something smoldering when Wellstone smells smoke. The Justice Department needs more staff and more money to keep up with a tidal wave of merger applications. His proposed antitrust commission should study whether consolidation in agribusiness is reducing the diversity and independence of American farming.

Wellstone isn't grandstanding when he says that thousands of farmers are in genuine trouble this year. But that doesn't mean the populists should get whatever they want, or that what they want would be good for farmers if they got it.

Mr. SMITH of Oregon. The first paragraph states:

In the great tradition of prairie populism, Sen. Paul Wellstone has responded to the current farm [crisis] by calling for a federal moratorium on big agribusiness mergers. As a cry of alarm for farmers, this is useful politics. But as a device to restore commodity prices, it is practically pointless, and as a tool of antitrust policy, it is [an] exceedingly blunt [instrument].

I join with this editorial in saying that Senator WELLSTONE's motives are good, but his means are just simply misdirected in this case.

Ultimately, no matter the good intentions of those who are behind this amendment, it is the family farmers who will pay the greatest price for hobbling the innovation and competitiveness of small- and medium-sized agribusinesses in such a sweeping way.

The consequences of the Wellstone amendment run contrary to the stated objectives of its supporters. It will not spur new competition in the large agribusiness sector. It will not induce higher commodity prices for producers. It would be a vote of no confidence in the ability of the antitrust division to enforce our existing antitrust statutes.

So I plead with my colleagues, if they can hear my voice. I ask them to vote no on the Wellstone amendment. This is not the way to help the family farmer. We should trust the marketplace, unless we as a government are prepared to subsidize even more and more aspects of our agriculture in this country. We already do a great deal. We may yet need to do more. But we must

not do more in this way, in this Senate, in this time.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Will the Chair be kind enough to notify me when I have used up 10 minutes of my time?

The PRESIDING OFFICER. Yes; the Chair will do that.

Mr. WELLSTONE. I thank the Chair.

Mr. President, before we get right into the debate, I wish to also mention another debate in agriculture and say to my colleagues from some of our Midwest dairy States that I share their indignation at the way in which the extension of the Northeast Dairy Compact and the blocking of the milk marketing order reform by the Secretary of Agriculture—kind of two hits on us—has been put into a conference report. We voted on this on the floor of the Senate. This was not passed by either House. Yet it was tucked into a conference report.

I think it is an outrageous process. I think people are sick and tired of these backroom deals. I intend to be a part of every single effort that is made by Senators KOHL, FEINGOLD, GRAMS, myself, others, to raise holy heck about this.

After having said that, let me respond to some of the comments on the floor. First of all, I thank my colleague, Senator DORGAN, for offering this amendment with me. As long as my colleague from Oregon represents that tradition of populism, this is Senator DORGAN. It is who he is. Frankly, I think it is all about democracy and all about the market.

Also, I ask unanimous consent that Senators JOHNSON and FEINGOLD be added as cosponsors to this amendment.

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

Mr. WELLSTONE. I say to my colleague from Oregon and others, that as much respect as I have for the Minnesota Star Tribune, I am not all that troubled that sometimes we disagree and that there is an editorial that is in opposition to this amendment because, frankly, this amendment comes from the countryside. This comes from the heartland. This comes from the heart of our farm and rural communities. That is where this amendment comes from. I say that to all Senators, Democrats and Republicans alike.

I also say to my colleague from Oregon, actually this is all about the market. This has nothing to do with Russia or whatever country he mentioned. Quite to the contrary, this is all about putting some free enterprise back into our economy. This is about putting free enterprise back into the free enterprise system. This is about the Sherman Act and the Clayton Act and Senator Estes Kefauver and a great tradition of antitrust action. That is what this is about.

This is about making sure we have competition. This is making sure that our producers—the one, if you will, free enterprise sector in this food industry—have a chance to survive. That is what this is about. This is as old fashioned and pro-American and a part of the history of our country as you can get, from Thomas Jefferson to Andrew Jackson, right up to now.

Let me be clear about that. This is a very modest amendment. What it says is that until we develop some kind of comprehensive solution to the problem of extreme concentration in our agricultural markets, and anticompetitive practices of the few large conglomerates that have muscled their way to the dinner table, and are driving our producers out, we ought to take a ''timeout'' on these mergers and acquisitions—not of small businesses but of large agribusinesses.

This timeout could last as long as 18 months but no longer. It could also be terminated well short of 18 months by passage of some legislation, which is what I hope we will be serious about, to deal with this problem of concentration.

This is a historic debate and a historic vote because, you know what, we are going to have to deal with the whole question of monopoly power and whether or not we need to have more competition and free enterprise in our free enterprise system in a lot of sectors of this economy. That is what Viacom buying up CBS is all about. That is what the proposed merger of Exxon and Mobil is all about. That is what the rapid consolidations and mergers in all these sectors of the economy, where you have a few firms that dominate, I think to the detriment of our consumers and our small businesses, is all about.

If we pass this timeout, we are still going to need to revisit this problem of concentration within the next 18 months. We have to do so and pass legislation. What we cannot do is pass this legislation today. So what we want to do is put a hold on these colossal agribusiness mergers that are occurring on an almost daily basis. What we are saying is, let's pass legislation that puts some competition back into the food industry, that gives our family farmers, our producers a chance. But until we do that, let's take a timeout so we can put a stop to some of these colossal agribusiness mergers that are taking place at a breathtaking pace every single day.

This amendment also is intended to create an incentive for the Congress to develop a more comprehensive solution on an expedited basis.

Last week, if my colleagues need any evidence, the Wall Street Journal reported that Novartis and Monsanto, two of the largest agribusiness giants, may be merging. The Journal accurately states:

> . . . the industry landscape seems to be changing every day.

In fact, the ground is constantly shifting beneath our feet, and soon it is going to be too late to do anything about it. That is exactly why we need a timeout. These mergers build momentum for more mergers, and these large companies are all saying that we have no other choice, given what is going on right now, but to merge and get bigger and bigger and bigger. Just imagine what the effect of a merger between Monsanto and Novartis would mean. It would obviously put more pressure on more firms to join in on one of these emerging handful of food chain clusters that are poised to control our agricultural markets.

This timeout we are proposing today is intended to lessen those pressures and to arrest this trend before it is too late. That is what this is all about. This amendment is all about whether or not our producers are going to have a chance. This is an amendment that is all about whether or not rural communities are going to be able to make it. This amendment is all about whether or not farmers are going to be able to get a decent price. When you are at an auction and you are trying to sell something and you only have three buyers, you are not going to get much of a price. That is exactly what is happening in agriculture today.

This is all about competition. This is all about America. This is all about Jeffersonian tradition and whether or not Senators are on the side of family farmers or whether they are on the side of these large conglomerates. We have horizontal concentration taking place. Whether we are looking at the beef packers or at pork or grain or whether we are looking at every single sector, we have four companies that control 50, 60, 70 percent of the market. That is not competition. Economics 101: It is oligopoly, at best, when you have four firms that control over 50 percent of the market.

The scarier thing is the vertical integration. When one firm expands its control over various stages of food production, from the development of the animal or plant gene to production of fertilizer and chemical inputs, to actual production, to processing, to marketing and distribution to the supermarket shelf, is that the brave new world of agriculture we want to see? That is exactly the trend we are experiencing today.

I quote an April 1999 report by the Minnesota Land Stewardship Project. I think it is right on the mark:

> Packers' practice of acquiring captive supplies through contracts and direct ownership is reducing the number of opportunities for small- and medium-sized farmers to sell their hogs;

As a matter of fact, our hog producers are facing extinction, and these packers are in hog heaven. We want to know, who is making the money? How can it be that these corporate agribusinesses are making record profits while our producers are going under?

The Land Stewardship Project goes on to say:

> With fewer buyers and more captive supply, there is less competition for independent

farmers' hogs and insufficient market information regarding price; and lower prices result.

Leland Swensen, president of the National Farmers Union, recently testified:

The increasing level of market concentration, with the resulting lack of competition in the marketplace, is one of the top concerns of farmers and ranchers. At most farm and ranch meetings, market concentration ranks as either the first or second priority of issues of concern. Farmers and ranchers believe that lack of competition is a key factor in the low commodity prices they are receiving. So our corporate agribusinesses grow fat, and our farmers are facing lean times.

I wasn't born yesterday. I understand what has been going on since we introduced this amendment. I know the folks who have been making the calls. We are up against some of the largest agribusinesses, some of the largest multinational corporations, some of the largest conglomerates you could ever be up against.

Let us talk about this very practical and modest proposal.

The PRESIDING OFFICER (Mr. GRAMS). As requested by the Senator, he has used his first 10 minutes.

Mr. WELLSTONE. I thank the Chair.

First, the standard we use is the standard that now exists under the Clayton Act, which is whether or not a merger may be substantially to lessen competition or tend to create a monopoly. Second, we are talking about the largest mergers in which both parties have annual net revenues over $100 million. This is not small business—both parties with annual revenues over $100 million.

Third, some of my colleagues were concerned about the possibility of facing financial insolvency. We address the problem. In this amendment is language which makes it clear that the Attorney General would have the authority to waive this moratorium in extraordinary circumstances, such as financial insolvency or similar financial distress. We have another waiver authority which goes to the Secretary of Agriculture.

Some colleagues said, what about mergers and acquisitions that actually are procompetitive? What we are going to do is to say, under modification, that USDA could waive the moratorium for deals that don't increase concentration to levels that are determined to be detrimental to family farmers. This moratorium or timeout won't even take effect for 18 months because presumably we are going to act earlier.

We have to do something about this merger mania. We have to do something about getting some competition back into the food industry. We have to do something that is on the side of family farmers. This timeout, with all of the provisions we have which make it so reasonable—and we are still in negotiation with our colleague from Iowa, who I know cares fiercely about this—ought to lead to an amendment that should generate widespread support.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendment by the Senator from Minnesota that would impose an 18-month moratorium on mergers in the food processing industry. While I oppose this amendment, I understand Senator WELLSTONE's motivation in offering it. I share his concern over the rapid vertical and horizontal integration in the food processing industry and the effect this trend may have had on family farmers.

The livestock industry for beef cattle and hogs has experienced low prices for too long. In fact, the price for live hogs recently reached its lowest level since the Great Depression. Family farms are the backbone of our rural communities, yet family farms are failing. Farmers now receive 36 percent less for their products than they did 15 years ago. Mr. President, there are not many other honest, hardworking Americans who can say that their salaries have gone down by 36 percent over the last decade. Some farmers have complained that the concentration within the industry has restricted their choice of buyers for their products.

Many factors have contributed to the troubles farmers have faced recently—consolidation within the food processing industry may not be the sole cause of these troubles, though I recognize it could well be a cause. The recent rate of consolidation, however, is a concern to me, and for this reason I recently pledged a full and comprehensive review of this matter by the full Senate Judiciary Committee. We need to look at the entire spectrum of the food industry to explore the extent to which consolidation within the industry is adversely affecting family farmers. We also need to examine whether existing antitrust statutes are being adequately enforced and whether any changes to federal law are warranted.

While I sympathize with the amendment offered by Senator WELLSTONE, I am afraid that it does nothing to shed further light on the matter. Not only does the amendment fail to address the heart of the matter, it may even do more harm than good for our farmers. We cannot possibly understand all of the implications of placing an 18-month moratorium on agribusiness mergers. It is very likely, Mr. President, that smaller food processing plants will rely on mergers with larger processors if they are to survive. Placing a moratorium on mergers could actually cause smaller firms to go out of business. In such a case, this amendment would surely stop a merger, but putting a smaller firm out of business is a less desirable outcome than allowing mergers to go forward. Many of these smaller processors are actually owned by farmers.

We cannot afford to lose our family farms in this country, and I think everyone recognizes that. Let us deal with this issue pragmatically. Let us get to the bottom of this problem. I urge my colleagues to vote against this amendment. We should first allow the Judiciary Committee to fully examine these issues and prudently determine what effect, if any, consolidation in the industry has on the plight of the family farmer. The type of market interference proposed by this amendment is simply wrong and I urge my colleagues to reject it.

Mr. President, I would like to make some additional remarks regarding concentration in the food processing industry. I have been as concerned about concentration in the food processing industry as any Member of this body. My concern over the concentration in the food processing industry led me to break the logjam on the Livestock Concentration Report Act in the 104th Congress and get it through the Senate Judiciary Committee and the full Senate.

My concern over concentration in the processing industry led me to introduce the Interstate Distribution of State-Inspected Meat Act of 1997 in the 105th Congress. This bill would have helped to shore up and enhance competition in the meatpacking industry.

My concern over this issue led me to pass an amendment in the fiscal year 1999 Agriculture appropriations bill that required the USDA to produce a proposal with regard to the interstate distribution issue. I am also considering legislation, along with Senator DASCHLE, to codify the USDA's proposal, which goes even further toward shoring up competition in the meatpacking industry.

Finally, I have recently unveiled my plan for the Judiciary Committee to provide a full and comprehensive review of the concentration issue. So far, we have had some excellent studies on this issue. Here is just a small sampling of the many studies already completed with regard to consolidation in the food processing industry:

(1) A GAO Report entitled: ''Packers and Stockyards Administration: Oversight of Livestock Market Competitiveness Needs to Be Enhanced'' (October 1991).

(2) ''Concentration in Agriculture: A Report of the USDA Advisory Committee on Agricultural Concentration'' (June 1996).

(3) A USDA report entitled: ''Concentration in the Red Meat Packing Industry'' (February 1996).

(4) A GAO report entitled: ''Packers and Stockyards Program: USDA's Response to Studies on Concentration in the Livestock Industry'' (April 1997).

(5) A report of the USDA Officer of Inspector General entitled: ''Grain Inspection, Packers and Stockyards Administration: Evaluation of Agency Efforts to Monitor and Investigate Anticompetitive Practices in the Meatpacking Industry'' (February 1997).

I believe the next step is not another study. The next step is to examine whether existing antitrust statutes are being adequately enforced and whether

any changes to Federal law are warranted to help remedy the situation. I suggest that a moratorium on mergers has the potential for causing more harm than good. A moratorium is not an issue that has been studied, and frankly, the unintended consequences could be that some processors are forced to go out of business due to the ban on mergers. This would have exactly the opposite effect that we are hoping for. I might add, that farmers from my State who have been very concerned about the concentration issue have also expressed their opposition to the Wellstone amendment, for this reason.

Mr. KOHL. Mr. President, I rise today to support the amendment offered by my friend Senator WELLSTONE. Let me explain both why I support this amendment and why my support is somewhat qualified.

On the one hand, I agree that agricultural concentration is a problem which increasingly undermines the viability of family farms and negatively affects the well-being of our agricultural communities. On our Antitrust Subcommittee, we have watched with growing concern the wave of agricultural mergers and joint ventures in agriculture that have reduced the marketing options available to producers, and which may ultimately reduce—or may already have reduced—the prices they receive from the marketplace. While these merging corporations often contend that the mergers will result in better service for farmers and cost-savings for consumers, it's unclear whether that is true. And farmers face continued pressures from giant conglomerates against whom they have little bargaining power.

But, on the other hand, I am concerned that a blanket ban against all agricultural mergers would prevent those mergers that are pro-competitive as well as those that are undesirable. In addition, singling out a particular industry for merger moratoria, I fear, will lead to other calls for similar ''carve-outs.''

Perhaps a better way to address the problem of consolidation in the agricultural industry is do what the administration has already promised. The Antitrust Division of the Justice Department has given me a commitment that it will appoint a Special Counsel for agricultural antitrust issues—and it should do so expeditiously. This official will help ensure that agribusiness mergers no longer are a poor stepsister to mergers in the computer, telecom, finance, and media industries.

Mr. President, in moving a measure such as this one, we need to take care that we do not harm the very people we are trying to help. But until we see real signs that the administration is prepared to seriously scrutinize concentration in the agricultural industry, this approach is preferable to no action at all.

Mr. BINGAMAN. Mr. President, I will vote against the Wellstone-Dorgan agribusiness merger moratorium because I believe the solution to this problem is not a temporary moratorium. Instead, the Department of Justice should enforce the anti-trust laws that now exist to prevent the problems arising from industry concentration. That's why, last February, I signed a letter to the President, along with 22 of my colleagues, urging the administration to conduct a full-scale detailed examination of the impacts of market concentration on our nation's family farmers and ranchers. We requested that the study be completed within six months and the findings reported to Congress. We have yet to receive that study. I will continue to press the Department of Justice to exercise particular diligence in reviewing proposed mergers or acquisitions involving major agribusiness firms.

Our family farmers and ranchers need and deserve our full support. I have worked hard to provide emergency funding in times of natural disaster, and to address the economic disasters created by trade and world economic conditions. I am working to reform the federal crop insurance program to address the needs of specialty crop producers. And I will continue to advocate for full adherence to existing anti-trust laws, and the procedures for investigating market concentration in agriculture.

Mr. HUTCHINSON. Mr. President, I rise today in opposition to Senator WELLSTONE's amendment. I know that my friend and colleague from Minnesota is proposing this amendment with the welfare of America's family farmer in mind. I, too, think of America's family farmer, but I have concerns that placing a moratorium on agribusiness mergers and acquisitions now may do more harm in my State than good. This is an important issue and I commend Senator HATCH's willingness to hold hearings on this matter in the Antitrust Subcommittee. We need to have the time to carefully consider how agribusiness mergers and acquisitions affect America's producers.

I am very proud of the farmers in my State. Arkansas ranks in the top 10 rice, chicken, catfish, turkey, cotton, sorghum, eggs, and soybean producing States in America. Despite their productivity, there are fewer this season than last season. An ailing national agriculture economy has pushed many farmers to the breaking point. I visited 27 counties in Arkansas over the August recess and saw the strain on their faces and heard the frustration in their voices. Their deep concern for the future of farming comes from knowing that agriculture is the lifeblood of my State's economy.

Arkansas is dominated by small farms and cooperatives, but Arkansas is also home to national processors like Tyson Foods. I do not believe that we should trade the interests of one for another. Instead, we must develop a balanced policy that will help small farmers and not penalize those companies which are helping drive my State's agriculture recovery. In many communities, these cooperatives and agribusinesses are the foundation of the farm economy in that area. Right now, many of those communities are still hurting. That is why I am more concerned about the overall survivability of the cooperatives and agribusinesses in Arkansas than the possibility that some of them may someday decide to merge with a larger entity. In reality, if an agribusiness in Arkansas is struggling to stay alive, and Senator WELLSTONE's moratorium on agribusiness mergers and acquisitions is imposed, that greatly limits an ailing business' ability to sell to survive. In other words, if the owners of an agribusiness have only two choices to survive—either sell or declare bankruptcy—and the option to sell is denied, then their going out of business doesn't help anyone.

While America's farmers are slowly recovering from low commodity prices, high production costs and poor trade, I believe now is not the time to destabilize agribusinesses in Arkansas. On the other hand, I know that producers in many farm states have serious concerns about the impact larger agribusinesses, especially the meat processing industry, have on their ability to recover from poor prices. Let me be clear, I do not advocate inaction, but I am concerned that producers and processors in my state, both large and small, may be unintentionally harmed by the Wellstone amendment.

Many meat processing agribusinesses in Arkansas provide stability for producers and have good working relationships with them. Because most of their producers work under contract, both the agribusinesses and producers suffer when prices are low. Tyson Foods, known for their poultry processing, is involved in raising hogs. As the price for hogs began to fall, Tyson felt the financial strain of production without the ability to process. In the mind of Tyson's contract pork producers, the company's situation had reached a critical level when they received letters telling them that sustained low hog prices were forcing Tyson to only offer 30-day contracts. Producers were left wondering how they would pay off debt and survive if Tyson could not renew their contracts. Recently, Smithfield announced that it will be taking over Tyson's Pork Group, effectively stabilizing the future of Tyson's contract producers. Unlike Tyson who only raised hogs, Smithfield has the capacity to both raise and process their livestock.

Clearly, if Senator WELLSTONE's moratorium on mergers and acquisitions was in pace at the time of the Smithfield acquistion of Tyson's Pork Group, contract producers would still be living under a cloud of uncertainty in an ailing hog market. With that in mind, I encourage my colleagues to vote against the Wellstone amendment so that Senator HATCH may be afforded

the time to thoroughly address the impact agribusiness mergers and acquisitions are having on the American family farmer.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides.

Mr. WELLSTONE. Mr. President, I yield 2 minutes to my colleague.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 2 minutes.

Mr. DORGAN. Mr. President, we only have 20 additional minutes to debate this. There will be a vote this morning.

I have always had the greatest respect for my colleague from Oregon. I think he is a really excellent Senator and a good thinker. On this issue, the purpose of our being here is about competition. I don't think anyone can dispute that family farmers have been squeezed by a system in which highly concentrated industries are taking more of the profits, saying we want more of the profits and we want to give family farmers less profits. That is not a sign of good competition; it happens because these industries have the economic power to do it.

I taught economics briefly. Some would suggest you are not fit for other work when you have done that. But I have gone on nonetheless. Economists will argue this both ways. I understand that. But there is a commonsense aspect to this.

Harry Truman used to say that nobody should be President who first doesn't know about hogs. The Senator from Minnesota talked about hogs and concentration in the hog industry. Hogs are just one. Beef, grains—in every single area, industries are more and more concentrated, choking the economic life out of the little guy, out of the little producer. Why? Because they can. They want to increase their profits, increase their size, and choke the life out of family farmers. Our point is, that is not free, fair, and open competition. That is not a marketplace that is working.

Mr. SMITH of Oregon. Will the Senator yield?

Mr. DORGAN. I will yield on the Senator's time.

Mr. SMITH of Oregon. Of course.

For the record, no one should be President who doesn't know something about green peas either.

In all seriousness, I understand what the Senator is saying. I think what the Wellstone amendment, hopefully, is doing—if it does not pass today, I hope it has the Justice Department going to work on this issue. In my view, what we don't need is more layers of second-guessing the marketplace from the Department of Agriculture.

We already have a system of antitrust laws. They need to enforce them, and there are serious problems of too heavy a concentration. I just simply tell you that I have seen, in my own experience, when these companies get too big, they create companies coming up behind them. It happens time and time again—for the little guy to become a big guy. It happens also on the farm, as a small family farm. Now you have huge corporate farms.

It is a process of the marketplace working. Usually, when we intervene in these ways, we do it incorrectly, bluntly, ineffectively, and we end up hurting the people we are trying to help. I believe we have laws that ought to be employed and, if they are employed, the concerns of the Senators from the Great Plains will be addressed, and they should be addressed.

Mr. DORGAN. This little guy/big guy notion of economics reminds me of the old parable that the lion and lamb may lie down together but the lamb isn't going to get much sleep. That is also true in economics. It is certainly true in this economy. The little interests are disappearing. That is true of agriculture. Family farmers are having the life choked out of them by the concentration in industries which they have the muscle to say: We want more of our food dollar coming from that bread, and we want you to have less. That is what they are saying to family farmers.

Mr. WELLSTONE. Will the Senator yield?

Mr. SMITH of Oregon. Yes.

Mr. WELLSTONE. I ask unanimous consent that I have 5 minutes at the very end to summarize this because we may make some changes.

The PRESIDING OFFICER. We will watch the time.

Mr. WELLSTONE. May I have 5 minutes at the end? Otherwise, my time will burn off.

Mr. SMITH of Oregon. Mr. President, the leadership has suggested to me they want an up-or-down vote on this. If there are amendments that the Senator has, he would very much like those to be a part of the hearing that Senator HATCH already announced will be occurring in the next session of this Congress.

Mr. WELLSTONE. I would like that. I don't want to have all my time burned up. I would like to have 5 minutes at the end.

Mr. DORGAN. Mr. President, in my concluding 30 seconds, I will say that the Jeffersonian notion of how this system ought to work is broad-based economic ownership. That is what Thomas Jefferson envisioned—broad-based economic ownership in this country which not only guarantees economic freedom but political freedom as well.

The point is, the concentration that is occurring is unhealthy, especially in agriculture, because it is choking the life out of family farmers. We are talking simply about a timeout here.

When I talked about Harry Truman's description of hogs, incidentally, that would have lost its luster had he said that nobody should become President without first knowing about green peas. He was talking about hogs because he was talking about broad-based economic ownership on America's family farms. He had it just right. That is what we are trying to get back to with this amendment.

The PRESIDING OFFICER. The Senator from Minnesota has 4 minutes 59 seconds remaining on his time.

Who yields time?

If no one yields time, it will have to be subtracted from both sides of the debate.

Mr. WELLSTONE. Mr. President, the unanimous consent I am asking for is whether or not, if the other side is not going to use the time, I could reserve for the end when we run out of time the final 4 minutes 59 seconds to summarize this because I am waiting for Senator GRASSLEY. We have been involved in negotiations. I would like to summarize where we are.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SMITH of Oregon. Mr. President, I want to say, in a larger sense, if we can single out agribusiness in this way for sort of super-antitrust treatment, if you will, we can single out any industry. I have noticed, in my 3 years as a Senator, we have sort of a merry-go-round of unpopular businesses in this country and we pick them off one at a time. I am very concerned about this process of intervening in a marketplace that works because there are winners and losers in the marketplace. Agriculture is a very difficult industry. I don't know the profits of these big food processors. I, frankly, don't know most of these kinds of industries. Most of the food processors I think of may actually have revenues of $100 million. But that is sales; that doesn't mean profit. They may have losses of $110 million. I don't know. I don't see their books.

Mr. WELLSTONE. Will the Senator yield?

Mr. SMITH of Oregon. Yes, I am happy to yield.

Mr. WELLSTONE. First of all, let me be clear again. I want to tell the Senator that there are two very important, if you will, safety valves. One has to do with the very point he just made. If, in fact, a business says, look, we will be insolvent if we don't do this acquisition or merger, then they will get a waiver to do that. I want to make that clear, as to what this is and is not. That might get you support. I think there are provisions in here that are important.

Second, this is just a timeout; that is all this is. This comes from some pretty solid empirical evidence about the wave of mergers. And, again, three or four firms dominate well over 50 percent of the market and its effect on producers.

Finally, I do believe that, again, if USDA uses this criterion, it can also be a second safety valve that says, look, in this particular case, this acquisition or merger would be procompetitive given the situation. That would be another way.

So we are trying to deal with the most extreme of circumstances. This is

eminently reasonable. It is a cooling off; it is a message from the Senate that we care about what is going on out there. We want to have more free enterprise built into the system. This is pro-free enterprise, pro-competition. We don't have the competition now.

Mr. SMITH of Oregon. Will the Senator yield?

Mr. WELLSTONE. Yes, I will.

Mr. SMITH of Oregon. Mr. President, I appreciate the chance to talk so the American people can hear this. The problem we are talking about is that, for agriculture, we are not going to create just an antitrust division that ought to be going to work every day evaluating these things, but now we are going to create a whole new role for USDA to make judgments about the marketplace. I don't trust Government to make those judgments about the marketplace; I really don't. I think we mess it up more than we help it. So I really don't think that satisfies my concern.

Mr. WELLSTONE. If the Senator will yield again, let me be clear about this on two issues. First of all, if it weren't for the wave of mergers and this breathtaking consolidation of power—and then we look at the Sherman Act and the Clayton Act and wonder what is going on here—we would not even be talking about a timeout. That is the only reason we are doing this. I don't think anybody can deny the reality of what happened.

Second, the USDA would only be involved if a company said: Listen, we would like to get a waiver from this timeout period. It is only if a company makes the request or a company says: Look, we would like to get a waiver from this timeout period. We are big, but we need to be involved in this acquisition or merger and it will actually be procompetitive. We are just trying to give a company a place to go.

So, with all due respect, it is not the kind of Government involvement my colleague fears. There does come a point in time in the rich history of our country where public power is there. Where is Teddy Roosevelt when we need him today? That is all this is, a cooling-off period to give us incentive, I say to my colleague from Oregon, to write some laws and do something that will put the competition back in place, so our producers have a chance.

Mr. SMITH of Oregon. Mr. President, if the Senator will yield, I am all for the rules Teddy Roosevelt created. If they were enforced, we would not need to develop more Government.

I guess I would understand the Senator's amendment more if he didn't exempt agricultural cooperatives. I don't understand that. It is a different forum of how you do agribusiness. It is farmer-owned. But, frankly, it is unfair to other farmers who do not process for nonfarmer cooperatives. I just think if it is good for the goose, it is good for the gander. But it is not in this amendment. It is unfair, and it isn't right. Treat them all the same or, frankly, let's defeat this amendment. I sincerely hope the Senate will not interfere in the marketplace as proposed by this amendment. Allow the Judiciary Committee to go forward and hold its hearings, and let's ask the antitrust department and Justice Department to go to work and enforce the laws we already have.

Mr. LEAHY. Will the Senator yield for a unanimous consent request?

Mr. WELLSTONE. Yes.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to proceed for 3 minutes, not to come out of the time that has been established for this bill, realizing that would make the vote 3 minutes later—just to let people know where we are on the bill.

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

Mr. LEAHY. Mr. President, just so that colleagues on both sides will know, last week, and again yesterday for that matter, we made more progress on this bill.

We have been able to clear 27 amendments to improve the Bankruptcy Reform Act. Those are amendments offered by both Republicans and Democrats.

Senator TORRICELLI, Senator HARRY REID, and I have been working in good faith with Senator GRASSLEY and Senator HATCH to clear amendments. We have been able to do that, and we will try to clear even more.

I am pleased, on a personal point, that the majority accepted my amendment regarding the mandate to file tax returns under the bill. That will save $24 million over the next 5 years. But there are a lot of amendments similar to this that have improved it.

Senator TORRICELLI and I are working together with the deputy Democratic leader, and we are preparing to enter a unanimous consent request to limit the remaining Democratic amendments to 27 amendments. Fifteen of these have already been offered to the bill and are the pending business. All 27 were filed by November 5. Most of these are going to have very short time agreements. Many will be accepted. From a total of 320 amendments that were filed by both Republicans and Democrats on November 5, the managers of the bill on both sides have boiled down the remaining Democratic and Republican amendments to about 35—from 320 to 35.

Many of them are going to be acceptable either with modifications or in the present form. The remaining ones are critical to the debate on this bill.

Remember that for the first time in our Nation's history this bill would restrict the rights of Americans to file for bankruptcy based on the debtor's income. If we are going to adopt a means-tested bankruptcy law, we should have a full and fair debate on that. The American people would ask for nothing more.

The credit card industry is going to get billions out of this and should have to bear some responsibilities for its lax lending practices. We have heard a lot of stories about 5-year-olds getting credit cards in the mail with a multi-thousand-dollar limit.

Then we have the Truth in Lending Act on here.

I would like to get as close to a fair and balanced bill as we passed last year.

But we have come to the floor to offer amendments. We had only 4 hours of debate on Monday, and a disrupted day yesterday with caucuses and other things. But we have moved very quickly on this. We have disposed of 35 amendments with only 8 rollcalls.

I urge Senators to move forward. The leaders are trying to move forward.

I thank my colleagues for allowing me to break in to bring people up to date.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I send a modification to my amendment to the desk and ask unanimous consent that the amendment be modified. I will explain the two provisions.

The PRESIDING OFFICER. It takes unanimous consent.

Is there objection?

Mr. SMITH of Oregon. Reserving the right to object, I certainly don't mind the Senator offering an explanation of the amendment. But I have been asked by the majority leader and Senator HATCH to object.

The PRESIDING OFFICER. Objection is heard.

Mr. WELLSTONE. Mr. President, I would appreciate it before we have this vote. My colleagues were with Senator LOTT when I was very involved in the unanimous consent agreement as to which amendments were going to come up and how we were going to deal with nonrelevant amendments.

Senator DASCHLE asked Senator LOTT. I was right out here on the floor. In fact, I had made the request that if, in fact, we weren't changing the meaning or the scope of our amendment, but we were going to make a correction, we would be able to do that. Senator LOTT said if this didn't change the meaning of the amendment, or the scope of it, then, of course, that would be all right.

This is not a different amendment. This is in violation, or I would never have agreed to this unanimous consent agreement. All we are doing is listening to colleagues who have said there should be $10 million to $100 million on both parties. We think that would make a big difference from the point of view of small businesses, and at least give businesses another place where they can go if they believe their merger or acquisition is not procompetitive.

Those are the two changes. I cannot believe that now I am being told I can't do this. This was a part of the unanimous consent agreement. I was on the floor. I will get the CONGRESSIONAL RECORD out of the exchange.

Mr. SMITH of Oregon. If the Senator will yield, I was not a part of that

agreement. I know what I have been told by the majority leader and by Senator HATCH. Whether the scope is narrowed or not, the principle is the same. If there is an invasion of the free enterprise system, it potentially penalizes all the farmers who rely upon the stock-owned companies in advantage of a few others.

I think that is the wrong way to do it. We have some laws. I think they need to be enforced. But this is too blunt of an instrument. If you want to help farmers, this is not the way to do it. If you want to help farmers, you go after the regulations that are strangling them. You open up the international markets. And, yes, you enforce antitrust laws. But you don't create a regulation that interferes in a very blunt fashion with the free enterprise system.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me try this again. My colleague can object to the amendment. But that is a different issue. That is a different issue. I now come to the floor with a modification. When we came up with this original unanimous consent agreement, the majority leader made it crystal clear in an exchange with the minority leader—I was out here on the floor—if we wanted to have a technical correction in our bill and it was not changing the scope or meaning, that it would, of course, be all right. Now you are denying me my right to make that modification. Why are you afraid of a modification? I am just a little bit outraged by this. I was here. I was on the floor. I know what was discussed. I know what the majority leader said.

I also believe if my colleagues want to have an up-or-down vote, fine. But you ought to give me the right to make a modification to my amendment that I think would make this a stronger and a better amendment.

I want to send the amendment to the desk again. Did I send it? Do you already have it?

I appeal to the Senator to please not object to my unanimous consent request to modify my amendment with what I have sent to the desk.

The PRESIDING OFFICER. A modification is not in order without unanimous consent.

Objection has been heard.

Mr. WELLSTONE. I ask unanimous consent that I be allowed to modify my amendment, which is exactly what we agreed to in terms of how we deal with these amendments.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH of Oregon. I object.

Mr. WELLSTONE. Mr. President, my colleagues are afraid to have a vote and an honest debate on what we are talking about, and this is a violation of the agreement that we made when we talked about how to proceed.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I am in no way questioning what the Senator was saying. I wasn't a party to the agreement he was talking about. What I am objecting to is the principle, whether it is a little or a lot. What I am saying is we have the laws to fix these kinds of problems. The Justice Department ought to go to work, and we ought not to be intervening in the agricultural marketplace in this way.

If you want to help farmers, help them with their water rights, help them with their labor problems, help them with closed international markets, help them with subsidies, and help them with a whole range of things we do in great abundance around here. But, frankly, get off their air hose when it comes to regulation. They are being strangled by regulation. This is not the way to help farmers; therefore, I object on my own basis—not on the basis of Senator LOTT or any other leader.

The PRESIDING OFFICER. Under regular order, the amendment cannot be modified without unanimous consent.

Mr. DORGAN. Mr. President, might I ask the Senator for 1 minute for the purpose of making an inquiry?

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I understand the point made by the Senator from Oregon.

First of all, I was not here during the discussion on the floor. So I am not someone who can describe what happened during that discussion. But if the Senator from Minnesota is correct—and he may well be—that, in fact, the majority leader made representations, I think he would not want to abridge them at this point. I think it is a matter of finding the record; the majority leader has always acted in good faith to honor an agreement he made on the floor.

Before denying the opportunity to the Senator from Minnesota, we ought to get that record and find out to what the majority leader agreed. I am certain what he agreed to then he would agree to today. If he agreed to allow a modification, the Senator from Minnesota should be allowed to pursue that modification.

I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I don't want to deny the Senator from Minnesota his chance to modify his amendment on the basis of an agreement he had with the leader. I don't want to not pursue an issue this important today.

The PRESIDING OFFICER. Will the Senator suspend?

The Senator from North Dakota made a point of order that a quorum is not present.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SMITH of Oregon. I ask unanimous consent that the order for the quorum call be rescinded.

Mr. WELLSTONE. I object.

The PRESIDING OFFICER. The objection is heard. The clerk will continue to call the roll.

The legislative clerk continued the call of the roll.

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

Mr. WELLSTONE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

The legislative assistant continued the call of the roll.

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

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

Mr. WELLSTONE. Mr. President, parliamentary inquiry: I want to find out from the Chair whether or not I can amend, provide direction to my amendment without requiring unanimous consent; whether I have a right to do that.

The PRESIDING OFFICER. Under the Senate rules, the Senator cannot do that.

Mr. WELLSTONE. Mr. President, I have how much time left?

The PRESIDING OFFICER. The Senator has 4 minutes 45 seconds.

Mr. WELLSTONE. Mr. President, I have said it all, along with Senator DORGAN, about the why of this amendment and how important it is for our producers, how important it is to take a timeout so we can have some competition, how important it is to farmers and rural communities. Given the ruling of the Chair, I want to be crystal clear as to what has now happened.

I wanted to come to the floor of the Senate—it was my understanding I would be able to do so, but I have been told I would not be able to do so—and improve upon this amendment in the spirit of compromise.

Some colleagues are concerned about this timeout and they said: Why don't we have companies with $100 million. And the other threshold for an acquisition merger would be $100 million as well. They would be more comfortable with that. I wanted to provide this direction to my amendment to improve upon it. I wanted to compromise.

I was also told by some colleagues they are a little worried that during this cooling off period, maybe some of the acquisitions and mergers would be procompetitive. I worked very hard to have some very specific language which would enable such a company to go to USDA and say: Listen, this would be procompetitive. And USDA, based upon clear criteria, would say: You are right.

I come to the floor of the Senate today as a Senator from the State of Minnesota to try to modify my amendment. It is very clear what the modification would be. Based upon discussions with other Senators, in the spirit of compromise, so we can at least move

this forward and provide a message to our producers that we care, so that some Senators who may now have to vote against this because of their concerns would be able to support it so we can actually adopt something that will make a difference, I am told I do not have the right to modify my amendment.

Also—this is my final point because I cannot help but be a little bit angry about this—the majority leader came to me last week when Senators wanted to leave. We were scheduled to have a debate, and we were scheduled to have a vote. The idea was, to enable people to leave, we would hold this over, and I said yes. It is not as if I have waited to the last minute. We could have had negotiations then. We have just come back to this.

I must say to my colleague from Oregon and others, I am skeptical about this. It is pretty rare that a Senator cannot come to the floor and modify his amendment. Whatever the procedural ruling is, it seems to me it is crystal clear what is going on. I wanted to modify it. I wanted to compromise. I wanted to make an amendment that would generate more support, maybe even adopt it, and I have been denied the opportunity to do so. That is very unfortunate.

It is about time my colleagues gave some serious thought to being on the side of some of the interests in our country that do not have all the money and are not so well connected and such big investors and do not have such power. When my colleagues start with that, think about the producers and the people who live in our rural communities because right now we are seeing merger mania. We are seeing a lack of competition. We need to go back, I guess, to Teddy Roosevelt politics. It is a shame I have been denied the right to provide direction to my amendment or a modification to my amendment which would have been a good compromise.

How much time do I have?

The PRESIDING OFFICER. The Senator has 25 seconds remaining.

Mr. WELLSTONE. Mr. President, other than I do not have strong feelings about any of it, I will not take the last 25 seconds. I feel too strongly to say anything more in the last 25 seconds. It is rare that a Senator cannot modify his amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2752. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

The result was announced—yeas 27, nays 71, as follows:

[Rollcall Vote No. 366 Leg.]

YEAS—27

Akaka	Feingold	Kohl
Baucus	Grassley	Lautenberg
Boxer	Harkin	Leahy
Bryan	Hollings	Levin
Byrd	Inouye	Moynihan
Conrad	Johnson	Reid
Daschle	Kennedy	Rockefeller
Dodd	Kerrey	Sarbanes
Dorgan	Kerry	Wellstone

NAYS—71

Abraham	Enzi	Mikulski
Allard	Feinstein	Murkowski
Ashcroft	Fitzgerald	Murray
Bayh	Frist	Nickles
Bennett	Gorton	Reed
Biden	Graham	Robb
Bingaman	Gramm	Roberts
Bond	Grams	Roth
Breaux	Gregg	Santorum
Brownback	Hagel	Schumer
Bunning	Hatch	Sessions
Burns	Helms	Shelby
Campbell	Hutchinson	Smith (NH)
Chafee, L.	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Cochran	Jeffords	Specter
Collins	Kyl	Stevens
Coverdell	Landrieu	Thomas
Craig	Lieberman	Thompson
Crapo	Lincoln	Thurmond
DeWine	Lott	Torricelli
Domenici	Lugar	Warner
Durbin	Mack	Wyden
Edwards	McConnell	

NOT VOTING—2

McCain	Voinovich

The amendment (No. 2752) was rejected.

AMENDMENT NO. 2663

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 2663.

Mr. MOYNIHAN. Mr. President, this amendment retains existing bankruptcy law for low-income persons. A feature of the law as it now exists and which is perfectly sensible is the presumption that people who incur debt shortly before declaring bankruptcy have acted fraudulently. Clearly, this can be the case, is often the case, and is proven so.

However, the bill presently before the Senate extends the time (from 60 days to 90 days for consumer debts, for instance) in which this presumption of fraudulent activity takes place, and it changes the dollar amounts. We propose to keep the law as it is for low-income persons—people below the median income level, who already live hand-to-mouth, who often find themselves in a bind, with no intent to defraud, and keep borrowing until they are in bankruptcy situations. They won't have lawyers and can't defend against presumptions.

We simply keep the existing law. Deal with true fraud and important bankruptcies as the bill proposes to do but leave the small and hapless folk to their small and hapless fortunes.

The administration supports this measure, as does my friend, the senior Senator from Vermont, Mr. LEAHY, and his associate in these matters, Ms. LANDRIEU of Louisiana.

Mr. HATCH. Mr. President, in its current form, the bankruptcy reform bill attempts to resolve a major area of bankruptcy abuse, known as ''load up.'' In plain terms, load up occurs when a debtor goes on a spending spree shortly before filing for bankruptcy.

Under S. 625, limits are placed on a debtor's ability to buy luxury goods and take out large cash advances on the eve of bankruptcy. The bill accomplishes this by creating a rebuttable presumption that certain debts are not dischargeable. Specifically, the bill provides that debts of more than $250 per credit card for luxury goods, that are incurred within 3 months of bankruptcy, and cash advances of more than $750, incurred within 70 days of bankruptcy, are presumed to be fraudulent and are non-dischargeable.

These provisions, while an improvement over current law, are by no means a solution to the load up problem. Debtors still essentially are free to take out a cash advance of $750 and buy luxury goods valued at $250 on each of their credit cards before even the presumption of nondischargeability kicks in. It also is important to note that under the bill, luxury goods specifically exclude ''goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''

Many have complained that these provisions do not go far enough to close the load up loophole. The amendment by the Senator from New York, in contrast, undermines the bill's modest anti-load up provisions by applying them only to those with income above the national median. Simply stated, the amendment would create an unjustified double standard, with those who fall under the national median income being permitted to load up on luxury goods and cash advances before filing for bankruptcy, as permitted by current law.

If we seriously intend to reform our bankruptcy laws and eliminate fraud in the system, we cannot let this major loophole continue without any reasonable limits.

Mr. GRASSLEY. Mr. President, I oppose this amendment because it sets up a double standard which lets below median-income bankrupts load up on debt on the eve of bankruptcy and then get those debts wiped away without judicial scrutiny. I know the Senator from New York is well-intentioned, but this amendment is a very bad idea.

Last night, the Senator from New York, in proposing his amendment, correctly noted that there is no evidence whatever that below median-income debtors could ever pay a significant amount of their debts. We have taken care of the problem the Senator from New York has raised by totally exempting below median-income debtors from the means test. I think that is fair and reasonable. It is a fact of life. It means the poor won't be forced into repayment plans they could never complete.

However, this amendment raises an entirely different question. This amendment isn't about whether the poor should be given a pass in terms of being forced to repay their debts. This amendment says people below the median income can purchase over $1,000 in luxury goods, such as Gucci loafers, and get over $1,000 in cash advances just minutes before declaring bankruptcy and they won't have to justify their debts to a bankruptcy judge.

This is not good bankruptcy policy. Anybody who loads up on debt on the eve of bankruptcy should have to justify their debts. When it comes to suspicious and perhaps fraudulent behavior, we should treat everyone the same, below median income or above median income. Anybody who loads up on debt right before filing for bankruptcy should have to explain themselves; otherwise, we open the door to an obvious abuse.

Last week, we defeated the Dodd amendment which contained very similar provisions. I ask my colleagues to defeat this amendment.

Mr. MOYNIHAN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. MOYNIHAN. Is it in order for me to offer a second-degree amendment that would preclude any purchase of Gucci loafers?

The PRESIDING OFFICER. It would be in order.

Mr. MOYNIHAN. I so move.

The PRESIDING OFFICER. Would the Senator send the amendment to the desk?

Mr. MOYNIHAN. I made my point.

I withdraw my request.

Mr. GRASSLEY. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment No. 2663. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 367 Leg.]

YEAS—54

Abraham	Coverdell	Hagel
Allard	Craig	Hatch
Ashcroft	Crapo	Helms
Bennett	DeWine	Hutchinson
Biden	Domenici	Hutchison
Bond	Enzi	Inhofe
Brownback	Frist	Jeffords
Bunning	Gorton	Johnson
Burns	Gramm	Kyl
Campbell	Grams	Lott
Cochran	Grassley	Lugar
Collins	Gregg	Mack
McConnell	Santorum	Stevens
Murkowski	Sessions	Thomas
Nickles	Shelby	Thompson
Robb	Smith (NH)	Thurmond
Roberts	Smith (OR)	Torricelli
Roth	Specter	Warner

NAYS—43

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Breaux	Hollings	Reed
Bryan	Inouye	Reid
Byrd	Kennedy	Rockefeller
Chafee, L.	Kerrey	Sarbanes
Cleland	Kerry	Schumer
Conrad	Kohl	Snowe
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Dorgan	Leahy	
Durbin	Levin	

ANSWERED "PRESENT"—1

Fitzgerald

NOT VOTING—2

McCain Voinovich

The motion was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CHANGE OF VOTE

Mr. L. CHAFEE. Mr. President, on rollcall No. 367, I voted "aye." It was my intention to vote "no." Therefore, I ask unanimous consent that I be permitted to change my vote. It would in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

AMENDMENT NOS. 1695, AS MODIFIED; 2520; 2746, AS MODIFIED; AND 2522, AS MODIFIED, EN BLOC

Mr. GRASSLEY. Mr. President, I ask unanimous consent on the consideration of these amendments: 1695, as modified; 2520; 2746, as modified; 2522, as modified. I send the modifications to the desk and ask for their immediate consideration, that they be adopted, and the motions to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, is 2520 the McConnell amendment?

Mr. GRASSLEY. Yes.

Mr. REID. No objection.

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

The amendments (Nos. 1695, as modified; 2520; 2746, as modified; and 2522, as modified) were agreed to as follows:

AMENDMENT NO. 1695, AS MODIFIED

(Purpose: To increase bankruptcy filing fees, increase funds for the United States Trustee System Fund, and for other purposes)

On page 124, between lines 14 and 15, insert the following:

SEC. 322. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2) by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4) by striking "one-half" and inserting "100 percent".

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking "pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931" and inserting "under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title".

AMENDMENT NO. 2520

(Purpose: To amend section 326 of title 11, United States Code, to provide for compensation of trustees in certain cases under chapter 7 of that title)

At the appropriate place in title III, insert the following:

SEC. 3___. COMPENSATION OF TRUSTEES IN CERTAIN CASES UNDER CHAPTER 7 OF TITLE 11, UNITED STATES CODE.

Section 326 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a case that has been converted under section 706, or after a case has been converted or dismissed under section 707 or the debtor has been denied a discharge under section 727—

"(1) the court may allow reasonable compensation under section 330 for the trustee's services rendered, payable after the trustee renders services; and

"(2) any allowance made by a court under paragraph (1) shall not be subject to the limitations under subsection (a).".

AMENDMENT NO. 2746, AS MODIFIED

(Purpose: To change the definition of family farmer)

At the appropriate place in the bill, insert the following:

SEC. . DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A) by—

(A) striking '$1,500,000'' and inserting ''3,000,000''; and

(B) striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii) by

striking ''$1,500,000'' and inserting ''$3,000,000''.

AMENDMENT NO. 2522, AS MODIFIED

(Purpose: To provide for the expenses of long term care)

On page 7, line 15, strike ''(ii)'' and insert ''(ii)(I)''

On page 7, between lines 21 and 22, insert the following:

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonably and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Glen Powell be given floor privileges for the duration of the day.

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as if in morning business.

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

RECESS APPOINTMENTS

Mr. INHOFE. Mr. President, I wish to have a brief word about the issue of recess appointments.

For quite some number of years, Presidents—Democrats and Republicans—have, in my opinion, violated the Constitution by making recess appointments. The Constitution is very explicit when it says that recess appointments can only be made in the event the vacancy occurs during the recess. There is a reason for this, historically.

Back in the days when we were on horses and we had legislative sessions that might have lasted 1, 2, or 3 months, we found ourselves in recess more than we were in session. Therefore, on occasion it would be necessary for the Secretary of State, who may have died in office—or when vacancies had occurred while we were in recess—to have to reappoint somebody. So we did. It made sense. But since that time—over the last several years—that privilege has been abused. As I say, this is not just an abuse that takes place by Republican or Democrat Presidents; it is both of them equally.

Consequently, the Constitution, which says that the Senate has the prerogative of advice and consent, has been violated. It was put there for checks and balances. It was put there for a very good reason. That reason is just as legitimate today as it was when our Founding Fathers put it in there; that is, the Senate should advise and consent to these appointments. It means we should actually be in on the discussion as well as consenting to the decision the President has made by virtue of his nomination.

In 1985, President Reagan was making a number of recess appointments that, in my opinion, and in the opinion of most of the Democrats and Republicans, was not in keeping with the Constitution. And certainly the majority leader at that time—who was Senator BOB BYRD from West Virginia, the very distinguished Senator—made a request of the President not to make recess appointments. He extracted from him a commitment in writing that he would not make recess appointments and, if it should become necessary because of extraordinary circumstances to make recess appointments, that he would have to give the list to the majority leader—who was, of course, BOB BYRD—in sufficient time in advance that they could prepare for it either by agreeing in advance to the confirmation of that appointment or by not going into recess and staying in pro forma so the recess appointments could not take place.

In order to add some leverage to this, the majority leader, Senator BYRD, said he would hold up all Presidential appointments until such time as President Reagan would give him a letter agreeing to those conditions. The President did give him a letter. President Reagan gave him a letter.

I will quote for you from within this letter. This was on October 18, 1985. He said:

. . . prior to any recess breaks, the White House would inform the Majority Leader and [the Minority Leader] of any recess appointment which might be contemplated during such recess. They would do so in advance sufficiently to allow the leadership on both sides to perhaps take action to fill whatever vacancies that might be imperative during such a break.

This is exactly what we talked about. This is the reason President Reagan agreed to this. He gave a letter to Senator BYRD. Senator BYRD was satisfied.

Along came a recess last May or June, and the President did in fact appoint someone he had nominated long before the recess occurred—in fact, not just months but even more than a year before that—and who had not complied with the necessary information in order to come up for confirmation. In that case, President Clinton did in fact violate the intent of the appointment process in the advice and consent provision found in the Constitution.

I wrote a letter to President Bill Clinton. My letter said exactly the same thing the letter said from BOB BYRD to President Reagan in 1985. It was worded the same way President Reagan's letter was worded. It said: Unless you will give us a letter, I am going to personally put a hold on all recess appointments.

The President started appointing people. And I put a hold on all of them—it didn't make any difference; I put a hold on all nonmilitary appointments—until finally, I remember one time somebody said: Well, we have a really serious problem because we can't get confirmation on the President's nominee for Secretary of the Treasury. This could have a dramatic adverse effect on the economy. The value of the dollar could go down. All these things came into the picture. What are you going to do about that? I said: I am not going to do anything, but you had better tell the President about that because it is serious. Finally, he agreed to it.

Mr. President, I ask unanimous consent that all of these documents be printed in the RECORD immediately following my remarks.

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

(See Exhibit 1.)

Mr. INHOFE. The letter finally came on June 15, 1999. I will read one sentence out of that letter.

I share your opinion that the understanding reached in 1985 between President Reagan and Senator BYRD cited in your letter remains a fair and constructive framework which my Administration will follow.

Once again, what is he following? He is saying, prior to any recess, the White House will inform the majority leader and the minority leader of any recess appointments which might be contemplated during such recess? Would they do so in advance sufficiently to allow leadership on both sides to perhaps take action to fill whatever vacancies might be imperative during such break? He agreed to it.

I have not seen such a document, but I think in anticipation of the recess we are going in, it is my understanding that the President merely sent a list of some 150 nominees he has. Again, I didn't see it. It was never officially received by the majority leader. It was sent back to the White House.

If he thinks this is a loophole in the commitment he made, it certainly is not a loophole.

Anticipating that this President—who quite often does things he doesn't say he is going to do and who quite often says things that aren't true—is going to in fact have recess appointments, we wrote a letter. It is not just on my letterhead signed by me, but also I believe there are 16 other Senators saying that if you make recess appointments during the upcoming recess, which violates the spirit of your agreement, we will respond by placing holds on all judicial nominees.

The result would be a complete breakdown in cooperation between our two branches of government on this issue which could prevent the confirmation of any such nominees next year.

I want to make sure there is no misunderstanding and that we don't go into a recess with the President not understanding that we are very serious about that. It is not just me putting a hold on all judicial nominees for the remaining year of his term of service, but 16 other Senators have agreed to do that.

It would be very easy for the President to just go ahead and comply with that agreement he has in his letter of June 15, 1999, rather than feeling compelled to make judicial appointments during this recess.

I want to serve notice to make it very clear.

I received a letter from the President. He did not honor me with a personal letter. It came from John Podesta, Chief of Staff to the President. Without reading the whole letter, because it is rather lengthy, it says that they might not comply with this.

I want to make sure it is abundantly clear without any doubt in anyone's mind in the White House—I will refer back to this document I am talking about right now—that in the event the President makes recess appointments, we will put holds on all judicial nominations for the remainder of his term. It is very fair for me to stand here and eliminate any doubt in the President's mind of what we will do.

EXHIBIT I

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, June 10, 1999.

Hon. WILLIAM JEFFERSON CLINTON,
The White House, Washington, DC.

DEAR MR. PRESIDENT: I appreciate our conversation this morning, and our mutual desire to come to an understanding about recess appointments. We have often worked together to help promote the smooth operation of the government, and I believe that we can once again come to an agreement.

As you know, the recent recess appointment of the U.S. Ambassador to Luxembourg has caused great concern to many members of the Senate. I believe that it would be constructive for us to reach an understanding in principle on how we will now proceed to ensure that we avoid similar sparring between the Executive Branch and the Senate in the future.

I agree that we will use the understanding reached between President Reagan and Senator Byrd in 1985, cited by your Chief of Staff today. That understanding, described in the CONGRESSIONAL RECORD of October 18, 1985, states ". . . prior to any recess breaks, the White House would inform the Majority Leader and [the Minority Leader] of any recess appointment which might be contemplated during such recess. They would do so in advance sufficiently to allow the leadership on both sides to perhaps take action to fill whatever vacancies that might be imperative during such a break."

I believe that this is both a reasonable and a constructive framework. Following this precedent will help us to proceed in a cooperative and expeditious manner on future nominees.

Mr. President, I appreciate your stated desire to work with me on this issue, and I look forward to hearing from you soon.

Sincerely,

TRENT LOTT.

THE WHITE HOUSE,
Washington, June 15, 1999.

Hon. TRENT LOTT,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: I was pleased to learn from your letter of June 10 that you agree with my Chief of staff on the matter of recess appointments. As Mr. Podesta indicated in his letter to you, my Administration has made it a practice to notify Senate leaders in advance of our intentions in this regard, and this precedent will continue to be observed.

I share your opinion that the understanding reached in 1985 between President Reagan and Senator Byrd cited in your letter remains a fair and constructive framework, which my Administration will follow. I also appreciate your view that our nominees merit expeditious consideration through bipartisan cooperation among Senators; I sincerely hope that this spirit will prevail in the days to come.

Sincerely,

BILL CLINTON.

U.S. SENATE,
Washington, DC, November 10, 1999.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We write to urge your compliance with the spirit of our recent agreement regarding recess appointments and to inform you that there will be serious consequences if you act otherwise.

If you do make recess appointments during the upcoming recess which violate the spirit of our agreement, then we will respond by placing holds on all judicial nominees. The result would be a complete breakdown in cooperation between our two branches of government on this issue which could prevent the confirmation of any such nominees next year.

We do not want this to happen. We urge you to cooperate in good faith with the Majority Leader concerning all contemplated recess appointments.

Sincerely,

Jesse Helms, Wayne Allard, Michael Crapo, Michael B. Enzi, Bob Smith, George Voinovich, Pete B. Domenici, James M. Inhofe, Phil Gramm, Mitch McConnell, Craig Thomas, Rod Grams, Tim Hutchinson, Conrad Burns, Chuck Grassley, Richard Shelby.

THE WHITE HOUSE,
Washington, November 12, 1999.

Senator JAMES INHOFE,
Senate Office Building,
Washington, DC.

DEAR SENATOR INHOFE: Thank you for your recent letter of November 10, 1999 on the need for cooperation between the Legislative and Executive branches and the President's right to recess appoint as defined by the Constitution.

We appreciate and thank the Senate, especially the Majority and Minority Leaders, for the 84 confirmations from Wednesday November 10, which includes eight republican nominees recommended by the Majority Leader. These confirmations reduce the number of nominees awaiting confirmation to 153 for this year. While nominees wait an average of six months to be confirmed, we thank you for confirming 62% of nominees this year.

We look forward to working with you on the 153 remaining nominees and new nominations this session and next session. They are important to the public, because they include nominations critical to the safety of our citizens and the integrity of our criminal justice system (US Marshals, US Attorneys and judges).

Compared with previous administrations, the President has used his authority to make recess appointments infrequently. President Reagan made 239 recess appointments. During President Bush's four-year term, 78 persons were recess appointed. We have made only 59 in 7 years, fewer than President Bush in four years. Several of our recess appointees have been republican nominees, done with the cooperation of the Senate leadership.

Because of the importance of filling these positions and pursuant to an agreement with the Majority Leader, we continue to notify the Majority and Minority Leaders of any effort the President may make a appoint temporarily a person into a vacancy, while awaiting confirmation by the Senate.

We will continue to meet with the Majority Leader's Office to accomplish our goal of confirming and appointing these nominees. We want to cultivate a cooperative relationship with you, and ask for your continued help in expeditiously confirming nominees so important to the US public.

Sincerely,

JOHN PODESTA,
Chief of Staff to the President.

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. Acting in the capacity of the Senator from Montana, I ask unanimous consent the order for the quorum call be rescinded.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:27 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GREGG].

The PRESIDING OFFICER. The Chair, in my capacity as a Senator from the State of New Hampshire, suggests the absence of a quorum. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

BANKRUPTCY REFORM ACT OF 1999—Continued

Mr. LEAHY. Mr. President, I should note just on the bankruptcy bill, we are making more progress. This morning we were able to clear four more amendments. I understand there is a total of 31 amendments that been accepted to improve the Bankruptcy Reform Act. These are amendments that have been offered on both sides of the aisle.

I commend the distinguished deputy Democratic leader, the Senator from Nevada, Mr. REID, for his help. He has

been, as I described him in the caucus, indefatigable in his efforts to move this through. He and I and the Senator from New Jersey, Mr. TORRICELLI, and the Senator from Iowa, Mr. GRASSLEY, and the Senator from Utah, Mr. HATCH, have all worked to clear amendments or to set rollcalls on those we cannot clear.

I have urged Members to have short time agreements, and they have agreed to that. I think we have gone from some 300 or more potential amendments down to only a dozen or so, if that, that are remaining.

When you are dealing with a piece of legislation as complex as this, as important as this, when we are only 2 to 3 weeks before the end of this session—when we are only 2 to 3 weeks before the end of this session—I was hoping somebody would jump up and disagree on that ''2 to 3 weeks'' bit—or possibly a few days before the end of this session, it shows how well we have done.

But as I said earlier, before he came on the floor, I commend the Senator from Nevada, who has worked so hard to bring down those numbers on the amendments.

Frankly, I would like to see us wrap this up. I would like to go to Vermont.

Mr. REID. Will the Senator yield?

Mr. LEAHY. Yes, of course.

Mr. REID. I just talked to someone coming out of the conference. They said: What about this bankruptcy bill? I said: It is up to the majority whether or not we have a bankruptcy bill this year. We have worked very hard these past few days on these amendments. We need time on the floor to begin to offer some of these amendments.

As the Senator knows, we have maybe 8 or 9 amendments total out of 320, and we could have a bill. And the contentious amendments—on one that is causing us not to move forward, the Senator from New York, Mr. SCHUMER, has agreed to a half hour. That is all he wants. I just cannot imagine, if this bill is as important as I think it is and, as I have heard, the majority believes it is, why we cannot get a bill.

Does the Senator from Vermont understand why we are not moving forward?

Mr. LEAHY. I am at a loss to understand why we cannot.

I say to my friend from Nevada, yesterday morning—and I normally speak at about an octave higher than this; I am coming out of a bout of bronchitis—I came back to be here at 10 o'clock because we were going to be on the bill. Instead, we had morning business, I believe, until about 4 o'clock in the afternoon. That is 6 hours. That is what it would have taken to finish the bill, especially after the work of the Senator from Nevada, and others, in clearing out so many of the Republican and Democratic amendments to get them accepted or voted on.

I understand we are waiting for the other body to get the appropriations bill over here. I would think between now and normal suppertime today we could finish this bill, if people want to. We are willing to move on our side. We are willing to have our amendments come up.

I see the distinguished Senator from California on the floor. She has waited some time. She has been here several days waiting with an amendment. She has indicated she is willing to go ahead with a relatively short period of time. The Senator from New York, Mr. SCHUMER, has said the same. We are ready to go, and I wish we would.

As I stated earlier, I would have liked very much to get this done. I would actually like very much to finish all the items we have. I wish we could have finished a couple weeks ago. I want to go to Vermont. I want to be with my family. It was snowing there yesterday, as I am sure it was in parts of the State of the distinguished Presiding Officer. I see the distinguished Senator from Maine on the floor. I expect it did in her State.

Mr. REID. It was 81 degrees in Las Vegas yesterday.

Mr. LEAHY. Eighty-one degrees in Las Vegas. How about snow in the mountains?

Mr. REID. Oh, there was snow in the mountains.

Mr. LEAHY. The Senator from Nevada has the good fortune as I do: We both represent two magnificent and beautiful States. He has the ability, however, in his State to go far greater ranges in climate, in temperature, over a distance of 100 miles or so than just about anywhere else in the country. We sometimes do those ranges in temperature and climate in one afternoon in Vermont, but we are not always happy about it.

I would like to see us get moving and get out of here. I see the distinguished Senator from California, who has asked me to yield to her. I am prepared to do that, but I also note that we will not start on any matter until the distinguished floor leader on the other side is on the floor. So I am at a bit of a quandary. I wanted to yield to the distinguished Senator from California with her amendment, but the distinguished floor leader on the Republican side is not here.

So I ask that the Senator from California withhold a bit. I see the Senator from—I may be a traffic cop here. I see my good friend and neighbor from New England, the Senator from Maine.

I ask, could she indicate to me just about how much time she may need?

Ms. COLLINS. It was my understanding that there was an agreement that at 2:15—and we are a little late in getting here—Senator SCHUMER and I were going to be able to introduce a bill as in morning business. We would need approximately 15 minutes, I would guess.

Mr. LEAHY. Then I ask, Mr. President, unanimous consent that after the distinguished Senator from Maine and the distinguished Senator from New York have been heard, it would then be in order to go to the distinguished Senator from California, Mrs. FEINSTEIN, so she could go forward with her amendment.

Ms. COLLINS. Reserving the right to object, I believe that—Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I ask unanimous consent the Senator from Maine and the Senator from New York be recognized, and then the Senator from Wisconsin, Mr. KOHL, and the Senator from North Carolina, Mr. EDWARDS, be recognized for 5 minutes each after the Senator from Maine and the Senator from New York, and then the floor go to the Senator from California—now that I see the Senator from Iowa on the floor—so she could then go back to the bankruptcy bill.

Mr. REID. Reserving the right to object, it would be 25 minutes: 15 minutes and 5 for each of the two Senators as in morning business.

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

The Senator from Maine.

(The remarks of Ms. COLLINS and Mr. SCHUMER pertaining to the introduction of the legislation are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

MAKING FURTHER CONTINUING APPROPRIATIONS

Ms. COLLINS. Mr. President, it is my understanding that, under the previous order, the Senator from North Carolina will speak for 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin has 5 minutes, and the Senator from North Carolina has 5 minutes.

Ms. COLLINS. Will the Senator withhold for a unanimous consent request?

Mr. EDWARDS. Yes.

Ms. COLLINS. Mr. President, I ask unanimous consent the Senate proceed to the consideration of H.J. Res. 80, the continuing resolution, and that Senators KOHL and EDWARDS be recognized for up to 5 minutes each, and at the conclusion of their remarks, the resolution be read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, I ask unanimous consent that, in addition to the 5 minutes, I be granted an additional 3 minutes.

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

The Senator from North Carolina is recognized for 8 minutes.

Mr. EDWARDS. Mr. President, I have spoken before on the floor about the devastation created by Hurricane Floyd in my State of North Carolina. Let me update and speak briefly on that subject, particularly since we are in the process of a continuing resolution right now.

Everybody knows, because they have seen the pictures on television, what happened to my families in North Carolina as a result of Hurricane Floyd. We have two huge issues that have to be addressed before this Congress adjourns. One is housing. We have people in eastern North Carolina who don't have homes and have no prospect of having homes any time in the foreseeable future. We have to address this housing situation in North Carolina before we adjourn.

Second is our farmers. Our farmers were already in desperate straits long before Hurricane Floyd came through, and they have been totally devastated as a result of Hurricane Floyd. We have to address the needs of our farmers in eastern North Carolina before we leave Washington and before the Congress adjourns.

Let me say, first, that we have, in the last 24 hours, made progress on both fronts. First, on the issue of housing, we have, at least in principle, reached agreement that FEMA will have an additional $215 million of authority—money already appropriated—for housing buyouts. Based on the information we presently have, that should get us well into next year in the process of participating in the housing buyouts and helping all of our folks who desperately need help. That is good progress, a move in the right direction. There is more work that needs to be done. But at least in terms of getting us through the winter, I think we have probably done what we need to do in terms of housing.

On the issue of our farmers and agriculture, there is at least in principle an agreement for approximately $554 million of additional agricultural relief.

My concern has been and continues to be whether that money, No. 1, will go to North Carolina and North Carolina's farmers; and, No. 2, whether it addresses the very specific needs that our farmers have.

We are now in the process of working with everyone involved in these budget negotiations to ensure that both of those problems are addressed:

No. 1, to make sure that a substantial chunk of that money goes to North Carolina, and that additional money, to the extent it is needed for very specific purposes, can be appropriated and allocated to North Carolina's farmers to deal with the devastation created by Hurricane Floyd;

No. 2, to make sure at least a portion of the money that has already been appropriated goes to address the very specific needs our farmers have.

It is absolutely critical that before the Senate adjourns and before this Congress adjourns and leaves Washington these two problems be addressed.

I said it before; I will say it again. Our government serves no purpose if we are not available to meet the needs of our citizens who have been devastated by disasters—in this case, Hurricane Floyd. These are people who have worked their entire lives—in the case of our farmers, they have farmed the land for generations. They have paid their taxes. They have been good citizens. They have always lived up to their end of the bargain.

What they say to us now is: What is their government— because this is their government—going to do to deal with their needs in this time of greatest need in the wake of Hurricane Floyd and disasters created by Hurricane Floyd?

We have a responsibility to these people. We need to make sure their needs at least have been addressed through the winter. When we come back in the spring—we will be back in the spring, I assure my colleagues—we will be talking to our colleagues again about what additional needs we have because we will have additional long-term needs. This problem is not going to be solved in a month. It is not going to be solved in 3 months. This will take a period of years. When Congress comes back in the spring, there will be many additional needs that will have to be addressed.

But at a bare minimum, we need to ensure this Congress does not adjourn and people do not go home until we have made sure we have at least addressed the housing needs which will get us through the winter—I think we have made real progress in that direction—and, second, that we have gotten our farmers back up on their feet so they can be back in business in the spring in order for them to continue their farming operation. Those two problems have to be addressed before we leave.

Let me make clear what I have made clear before, which is my people are in trouble. They are hurting. They need help. Senator HELMS and I have worked together very diligently to try to get them the help they need in this time of crisis.

I want to make it clear once again that I intend to use whatever tool is available to me to ensure that my people get the help they need and the help they deserve.

This Congress and this Senate cannot go home and cannot leave Washington until we ensure that our people in North Carolina have a home to go to.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise to explain briefly why I have held all legislation—including appropriations bills. It revolves around the issue of dairy pricing policies and dairy compacts. One is a national milk pricing system. I will explain that first and explain my concerns about what is happening.

There is a national milk pricing policy which has been in effect for about 60 years. It was set up in a way that said the further away you live from Wisconsin, if you are a dairy farmer, the more you get for your milk. The government set that policy up to encourage the formation of a national dairy industry because transportation—particularly refrigeration—was not available at that time. They said the further you live from Wisconsin, the more you get for your milk. That was 60 years ago. That kind of policy no longer makes any sense.

In lieu of and in consideration of that, the Secretary of Agriculture and the USDA have come up with a new pricing system which does not eliminate the differential. It simply reduces it. Ninety-seven percent of the farmers in our country voted for it. It was set to be implemented on October 1st.

Now we find out that the Republicans are apparently intending to go back to the old pricing system. That is a disaster for our country. It certainly is a disaster for Midwestern farmers, and it doesn't reflect the reality of our present-day system.

Again, farmers in the Midwest and from Wisconsin are not asking for any advantage. They simply want to have the same opportunities for marketing their product in a competitive way as dairy farmers all over the country. It seems to me that is a reasonable request.

That is why we are so distressed at the impending outcome of what is going on in the House and will be here before the Senate very shortly.

The other one is the Northeast Dairy Compact. The Northeast Dairy Compact seeks to set arbitrarily, without consideration for market activities, a price for their dairy farmers to sell their milk to processors. That price is generally higher than market prices. It makes it very difficult, if not impossible, for anybody else in other parts of the country to market their milk or their milk products in the Northeast Dairy Compact States—the New England States—because when the prices are arbitrarily decided, the processors are then obviously likely to buy their milk from the local farmer rather than to buy it from somebody in another State.

In effect, it excludes the opportunity to market your product—in this case milk—in the New England States. That is not only a disaster for us in the Midwest; it clearly is terrible national economic policy.

If it is allowed again to be renewed at this time—it expired in October—we would be endorsing a national policy which for the first time in the history of our country excludes products from being sold without interference in all 50 States. We have never done that before. The genius and the success of the

American system is based on our ability—no matter where we live in this country—to manufacture and sell products and services anywhere else in this country without restrictions.

The Northeast Dairy Compact says, no; we are not going to do that anymore.

If we allow the Northeast to do that, then for what reason would we not allow other sections of the country to set up their own milk cartels, and for that matter, cartels on other products? If we allow it for the Northeast Dairy Compact, then I say unequivocally there is no justification for not allowing it elsewhere, not only on milk but on other products.

I ask my fellow Senators: Is this the way to run a country economically? Would any of us think we would endorse that kind of policy where States and regions can decide for themselves not to allow other products into those States or regions?

It doesn't make any sense. It is not the way we built the country.

We should not renew, therefore, the Northeast Dairy Compact at this time.

It was born 3 years ago in a back-room deal. There was no vote on the floor of the Senate. It was presented as part of a very large farm package. It was voted on in an affirmative way, but not by itself because it was part of a farm package 3 years ago. It is intended to be renewed again this year as part of a back-room deal without debate on the floor. It was debated twice all by itself. It lost on a straight up-and-down vote 3 or 4 years ago. The Northeast Dairy Compact lost on a cloture vote just several months ago.

I am very concerned about both things: The milk marketing pricing system, and the Northeast Dairy Compact. I am concerned enough to have a hold on all other legislation.

I hope very much that my fellow Senators can see the wisdom of my decision and support me in this effort not only to do what is right for Middle-Western dairy farmers but to do what is right for the people who live and work all over this country.

I thank the Chair. I yield the floor.

Mr. FEINGOLD. Mr. President, I ask unanimous consent I be allowed to speak for 10 minutes on the subject of the dairy issue.

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

Mr. FEINGOLD. Mr. President, I thank my senior colleague, Senator KOHL, for his efforts to fight for Wisconsin dairy farmers. We have worked long and hard together on this. We are determined to see this through.

For 60 years, dairy farmers across America have been steadily driven out of business and disadvantaged by the current Federal dairy policy. It is hard to believe this, but in 1950 Wisconsin had over 143,000 dairy farms; after nearly 50 years of the current dairy policy, Wisconsin is left with only 23,000 dairy farms. Let me repeat that: from 143,000 to 23,000 during this time period.

Why would anyone seek to revive a dairy policy that has destroyed over 110,000 dairy farms in a single State? That is more than five out of six farms in the last half century. This devastation has not been limited to Wisconsin. Since 1950, America has lost over 3 million dairy farms, and this trend is accelerating. Since 1958, America has lost over half of its dairy producers.

Day after day, season after season, we are losing dairy farms at an alarming rate. While the operations disappear, we are seeing the emergence of larger dairy farms. The trend toward large dairy operations is mirrored in States throughout the Nation. The economic losses associated with the reduction of small farms goes well beyond the impact of individual farm families who have been forced off the land. It is much broader than that.

The loss of these farms has devastated rural communities where small, family-owned dairy farms are the key to economic stability.

As Senator KOHL has alluded to during the consideration of the 1996 farm bill, Congress did seek to make changes in the unjust Federal pricing system by phasing out the milk price support program and to finally reduce the inequities between the regions.

Unfortunately, that is not what happened at all. It didn't work. Because of the back-door politicking during the eleventh hour of the conference committee, America's dairy farmers were stuck with the devastatingly harmful Northeast Dairy Compact. Although it is painful and difficult for everyone, we in the Upper Midwest cannot stand for that or any change that further disadvantages our dairy farms—the ones who are left, not the tens of thousands who are gone but the less than 25,000 who remain. We are determined to keep them in business.

The Northeast Dairy Compact accentuates the current system's equities by authorizing six Northeastern States to establish a minimum price for fluid milk, higher even than those established under the Federal milk marketing order, which are already pretty high and, frankly, much higher than our folks get. The compact not only allows the six States to set artificially high prices for producers but permits them to block the entry of lower-priced milk from competing States. Further distorting the market are subsidies given to processors in these six States to export their higher-priced milk to noncompact States.

Despite what some argue, the Northeastern Dairy Compact has not even helped small Northeastern farmers. Since the Northeast first implemented the compact in 1997, small dairy farms in the Northeast, which are supposed to have been helped, have gone out of business at a rate of 41 percent higher than they had in the previous 2 years. It is not even working for the limited purposes it was supposed to serve.

Compacts often amount to a transfer of wealth to large farms by affording large farms a per farm subsidy that is actually 20 times greater than the meager subsidy given to small farmers.

As my senior colleague has indicated, we need to support the moderate reforms of the USDA and reject the harmful dairy rider and let our dairy farmers get a fair price for their milk. I know as we go through the coming days this may mean substantial delays. We all want to go home to our States as early as possible. However, Senator KOHL and I are determined to do our best to fight for the remaining Wisconsin dairy farmers. Some of those steps may be necessary in order to achieve that goal.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the joint resolution is considered read the third time and passed, and the motion to reconsider is laid upon the table.

The joint resolution (H.J. Res. 80) was considered read the third time and passed.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

BANKRUPTCY REFORM ACT OF 1999—Continued

AMENDMENT NO. 2756

(Purpose: To discourage indiscriminate extensions of credit and resulting consumer insolvency, and for other purposes)

Mrs. FEINSTEIN. Mr. President, I ask to call up amendment No. 2756.

Mr. GRASSLEY. Reserving the right to object, is there a unanimous consent agreement before the Senate?

The PRESIDING OFFICER (Mr. CRAPO). There is a unanimous consent agreement permitting the Senator from California to offer an amendment at this time.

Mr. GRASSLEY. I withdraw my reservation.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative assistant read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. JEFFORDS, proposes an amendment numbered 2756.

Mrs. FEINSTEIN. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. ENCOURAGING CREDITWORTHINESS.

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

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers

are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

Mrs. FEINSTEIN. This is submitted on behalf of Senator JEFFORDS of Vermont and myself. This is the same amendment that passed the Senate last year by voice vote. It is an important amendment, which is why I wish to do it today and ask for a rollcall vote.

Last year it was deleted in conference. I believe it will suffer the same fate today if it were simply accepted. I note that the managers have agreed to accept the amendment. I particularly want the Senator from Iowa to know that I am very grateful for that accommodation. However, I run the risk in allowing it to be accepted that it is again expunged in conference.

This amendment requires the Federal Reserve Board to investigate the practice of issuing credit cards indiscriminately and inappropriately and to take necessary action to ensure that consumer credit is not extended recklessly or in a manner that encourages practices which cause consumer bankruptcies.

One part of the amendment, a brief paragraph, is a sense of the Senate that finds that certain lenders may offer credit to consumers indiscriminately and don't take steps to ensure that consumers have the capacity to repay the resulting debt, possibly encouraging consumers to even accumulate additional debt. We all know that to be true. The amendment then goes on to say that the resulting consumer debt may increasingly be a major contributing factor to consumer bankruptcies.

This amendment would authorize the Federal Reserve Board to conduct a study of industry practices of soliciting and extending credit indiscriminately without taking those steps that are prudent to ensure consumers are capable of repaying that debt. Within 1 year of enactment, the Federal Reserve Board would make a public report on its findings regarding the credit industry's indiscriminate solicitation and extension of credit.

The amendment then would allow the Federal Reserve Board to issue regulations that would require additional disclosures to consumers and to take any other actions, consistent with its statutory authority, that the Board finds necessary to ensure responsible industry-wide practices and to prevent resulting consumer debt and insolvency.

Why this amendment? Why is this amendment needed? This amendment directly addresses one of the major causes of personal bankruptcies: bad consumer credit card debt. The typical family filing for bankruptcy in 1998 owed more than 1½ times its annual income in short-term, high-interest debt. This means that the average family in bankruptcy, with a median income of just over $17,500, had $28,955 in credit card and other short-term, high-interest debt—almost double the income of debt.

Studies by the Congressional Budget Office, the FDIC, and independent economists all link the rise in personal bankruptcies directly to the rise in consumer debt. As consumer debt has risen to an all-time high, so have consumer bankruptcies. Any meaningful bankruptcy reform I think must address irresponsible actions of certain segments of the credit card industry because, after all, this is the major problem that is exacerbating bankruptcy and increasing the number of filings.

Last year, the credit card industry sent out a record 3.45 billion unsolicited offers. That is 30 solicitations for credit cards to every household in America. The number of solicitations jumped 15 percent from the last time I did this amendment to this time I am doing this amendment. So instead of slowing down irresponsible offers of credit to people who cannot possibly repay that credit, they have sped it up.

There are over 1 billion credit cards in circulation, a dozen credit cards for every household in this country. Three-quarters of all households have at least one credit card. Credit card debt has doubled between 1993 and 1997, to $422 billion from just over $200 billion.

During this 2-year debate on this bankruptcy bill, which I support, my staff has contacted numerous credit card issuers. The overwhelming majority of these companies do not check the income of the consumers being solicited. In other words, credit card issuers have no idea whether persons to whom they issued credit cards have the means to pay their bill each month.

One of my constituents from Lakewood, CA, wrote, and this really describes this aptly:

What really bugs me about this is that credit card companies send out these solicitations for their plastic cards, and then when they get burned, they start crying foul. They want all kinds of laws passed to protect them from taking hits when it's their own practices that caused the problem.

There is a real element of truth in this. This amendment will not affect any responsible lender. It will not affect the vast majority of the credit card industry who responsibly check consumer credit history before issuing or preapproving credit cards.

Representatives of large credit card issuers have assured me and my staff that they do not provide credit cards to consumers without a thorough credit check. However, I note that major credit cards, such as Visa or MasterCard, do not require banks who issue their cards to check credit history. That is a bona fide area at which an investigation and a study should take a look. Is this a good practice, not to check the bank who issues your card under your auspices and see that they also check the creditworthiness of the individual?

This amendment would affect lenders who fail to even inquire into the consumer's ability to pay or those who specifically target consumers who cannot repay the balances. It was news to me that there is a whole category of companies out there who actually go after people who are overcome with credit card debt and offer them more credit cards to repay that debt. A growing segment of the credit industry, known as subprime lenders, increasingly searches for risk borrowers who they know will make inappropriately low minimum monthly payments and carry large balances from month to month and have to pay extraordinarily high interest rates.

This kind of lending has become the fastest growing, most profitable subset of consumer lending. Although losses are substantial, interest rates of 18 percent to 40 percent on credit card debt make this lending profitable. Many of these often relatively unsophisticated borrowers do not realize that minimum monthly payments just put them deeper in a hole which, in many cases, leads to bankruptcy.

I have somebody close to me who is in that situation and has been in that situation from 1991 to the present day with six or eight credit cards, does not have the income to repay them, and all this individual has had is mounting interest payments and can never get to the principal of the debt. No matter how this individual responds within his or her capabilities, he or she cannot possibly pay off the debt. I even stepped in and made an offer to the credit card companies to repay the debt with a modicum of interest attached to it for this individual and was turned down. They said they made an offer to settle and they rejected the offer, they withdrew the offer of settlement.

Industry analysts estimate that using a typical minimum monthly payment rate on a credit card in order to pay off a $2,500 balance—that is a balance of just $2,500—assuming the consumer never uses the card to charge

anything else ever again, would take 34 years to pay off the balance. That is the situation in which people find themselves.

It is my belief that this is irresponsible. What we are asking is the Federal Reserve do a study, an investigation to see if they agree this is irresponsible.

So this is the core concept.

Oh, let me make one other point. On the situation I just indicated to you, that somebody who had that balance of $2,500 never used the card to charge anything else again, it would take 34 years to pay off that balance. Total payments would exceed 300 percent of the principal.

So what I have found out is, there are people who are needy, who succumb to these credit cards, who engage in not just one credit card with $10,000, but five or six or seven or eight, and maybe have an income of $17,000 or $15,000 a year. They make these purchases, they get into trouble, and they can never pay off their debt. So, yes, bankruptcy looms as the only alternative.

To tighten up their obligations to pay back the debt—which I am in agreement of doing—and yet not evaluate whether these policies of lending are as responsible as they should be is absolutely wrong.

So for the second time in 2 years, I offer this amendment and I ask for the yeas and nays in the hopes that the amendment will be agreed to and will remain in the bill in conference.

The PRESIDING OFFICER. Is the Senator requesting the yeas and nays at this time?

Mrs. FEINSTEIN. I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENTS NOS. 2655, AS MODIFIED; 2764, AS MODIFIED; AND 2661, AS MODIFIED

Mr. GRASSLEY. Mr. President, I would like to ask unanimous consent on some amendments that have been agreed to.

I ask unanimous consent that the following amendments, as modified where noted, be considered agreed to, en bloc, and the motions to reconsider be laid upon the table, en bloc. The amendments are as follows: No. 2655, as modified; No. 2764, as modified; and No. 2661, as modified. I send the modifications to the desk.

Mr. SCHUMER addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Reserving the right to object.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SCHUMER. I thank the Senator. The Senator from Iowa knows I reserve that right but will not ultimately object. But I do want to point out to my colleagues that the amendments to be accepted by unanimous consent, which deal with the ''teaser'' issue, which deal with disclosure on credit cards, in my judgment, do not go very far and need to go much further. I suggest to my colleagues that the amendment Mr. SANTORUM of Pennsylvania and I have offered would go much further on what would do the job.

Let me be very clear. I have been working on credit card disclosure for over 10 years. A while ago, about 7 or 8 years ago, we passed something we thought required the credit card companies to disclose, in large numerical print, how much the annual interest rate was. That is really the key issue when you decide what credit card to take. Many of the credit card companies use ''teaser'' rates. They say 2 percent or 3 percent for a couple of months and then raise it to 10 or 11 or 15 percent.

So we drafted an amendment. But at the request of the industry, we were not very specific. They said: You don't have to specify how large the print should be or what should be in the box; just do it. It became law. The box was known as the Schumer box.

Let me show you what it is in current law. This credit card shown on this chart is governed by that law. The only large print and the only number you see is ''3.9 percent.'' That is what is called the ''teaser'' rate. It is only offered for a few months.

When it is time to pay your regular annual fee—in this case, 9.9 percent—in the box is just a lot of legal gobbledygook, and you can hardly see what the number is. To understand it is the 9.9 percent or the 19.99 percent which governs, you probably have to have a degree from Harvard Law School.

What the Grassley-Torricelli amendment does is allow this kind of deception to continue. It makes some improvements, but it does not make the real improvement of disclosure. I have talked to leaders of the credit card industry. They say: Don't cap us. Don't limit us. We are not against disclosure. Then when we come up with a proposal, Mr. SANTORUM and I, that simply says they have to show the amount in 24-point type—and here is what it says: ''Long-term annual percentage rate of purchases,'' and the amount—we get opposition.

Many of those who are close to the credit card industry have told me the industry has told them they are against it. They say they are for disclosure, but they really are not.

I do not have to oppose this amendment because we have a better alternative. The alternative is this. If you really believe in disclosure, the Santorum-Schumer amendment is the way to go.

What is shown on this chart is deceptive. In all due respect to my good friend from Iowa, who I know cares strongly about this issue, his amendment will not change that one drop. They will have in big letters the ''teaser'' rate and in hardly intelligible language what the real interest rate is.

I would normally object to this unanimous consent request. But because there is an alternative to make real disclosure, and because we have already debated, and because I know it is our right to get a vote on that amendment, I will not object.

But I want my colleagues to understand one thing: We are not doing much, if anything, for the cause of real disclosure, for the cause of letting consumers see the interest rate they are paying before they buy the credit card, unless we pass the Schumer-Santorum amendment.

So I withdraw my objection to this amendment. I know it is offered in good faith. But please let my colleagues understand that if you want real disclosure—no more, just disclosure, Adam Smith economics—the only way to get it is not by an amendment that allows the industry to continue deceptive practices but, rather, by the Schumer-Santorum amendment which says, in no uncertain terms, ''9.99 percent''—whatever the interest rate is—24-point type, in large letters.

I thank the Senator from Iowa for his courtesy. I withdraw any objection to the unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. Before the Chair rules, I think the Senator from Nevada wishes to make a statement.

Mr. REID. Mr. President, we appreciate the cooperation of all Members, especially the Senator from New York, who is always so involved in what goes on on the floor but also always so willing to work toward a resolution.

It is my understanding that at this time the Senator is not intending to offer amendment No. 2765 which has been filed.

Mr. SCHUMER. That is correct.

Mr. REID. I also say to my friend, before the unanimous consent agreement is entered, we have a number of amendments that perhaps at some later time—I understand there are going to be some votes around 4 o'clock. We can include, for example, the amendment of the Senator from California which is now pending. And there may be some others—for example, the one from the Senator from New York, No. 2761, which he filed and debated last week. So I would like the manager of the bill to take a look at those and see if we can get some definite times set.

No objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The unanimous consent request is agreed to.

The amendments (Nos. 2655, as modified; 2764, as modified; and 2661, as modified) were agreed to, as follows:

AMENDMENT NO. 2655, AS MODIFIED

(Purpose: To provide for enhanced consumer credit protection, and for other purposes)

At the end of the bill, add the following new title:

TITLE—CONSUMER CREDIT DISCLOSURE

SEC. ___01. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15

U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously, in typeface no smaller than the largest typeface used to make other clear and conspicuous disclosures required under this subsection: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.'.

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously, in typeface no smaller than the largest typeface used to make other clear and conspicuous disclosures required under this subsection: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.'.

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously, in typeface no smaller than the largest typeface used to make other clear and conspicuous disclosures under this subsection: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraphs (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor who is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the consumer's outstanding balance is not subject to the requirements of subparagraphs (A) and (B).

(b) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section. Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under this subsection shall not take effect until the later of 18 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine whether consumers have adequate information about borrowing activities that may result in financial problems.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the minimum payment under open end credit plans;

(D) consumers are aware that making only minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. ___02. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISOR.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Federal Internal Revenue Code) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

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

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.''; and

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

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of subsectons (a) and (b) of this section. Such regulations shall not take effect until the later of 12 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

SEC. ___03. DISCLOSURES RELATED TO ''INTRODUCTORY RATES''.

(a) Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation, for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state the following in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)) or, if the first listing is not the most prominent listing, then closely proximate to the most prominent listing of the temporary annual percentage rate, in each document and in no smaller type size than the smaller of the type size in which the proximate temporary annual percentage rate appears or a 12-point type size, the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state the following in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)) or, if the first listing is not the most prominent listing, then closely proximate to the most prominent listing of the temporary annual percentage rate, in each document and in no smaller type size than the smaller of the type size in which the proximate temporary annual percentage rate appears or a 12-point type size, the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(D) DEFINITIONS.—In this paragraph—

''(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

''(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127 of the Truth in Lending Act, as amended by subsection (a) of this section. Any provision set forth in subsection (a) and such regulations shall not take effect until the later of 12 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

SEC. ___04. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the disclosures described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(b) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127 of the Truth in Lending Act, as amended by subsection (a) of this section. Any provision set forth in subsection (a) and such regulations shall not take effect until the later of 12 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

SEC. ___05. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date the following shall be stated clearly and conspicuously on the billing statement:

''(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(b) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127 of the Truth in Lending Act, as amended by subsection (a) of this section. Any provision set forth in subsection (a) and such regulations shall not take effect until the later of 12 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

SEC. ___06. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127 of the Truth in Lending Act, as amended by subsection (a) of this section. Any provision set forth in subsection (a) and such regulations shall not take effect until the later of 12 months after the date of enactment of this Act or 12 months after the publication of such regulations by the Board.

SEC. ___07. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. ___08. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit referred to in paragraph (1) is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

AMENDMENT NO. 2764, AS MODIFIED

(Purpose: To provide for greater accuracy in certain means testing)

On page 7, strike line 24 through page 8, line 3, and insert the following:

''(I) the sum of—

''(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

''(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by

''(II) 60.

AMENDMENT NO. 2661, AS MODIFIED

(Purpose: To establish parameters for presuming that filing of a case under chapter 7 of title 11, United States Code, does not constitute an abuse of that chapter)

On page 12, between line 10 and 11, insert the following:

''In any case in which a motion to dismiss or convert or a statement is required to be filed by this subsection, the U.S. Trustee or Bankruptcy Administrator may decline to file a motion to dismiss or convert pursuant to 704(b)(2) or if

''(iA) the product of the debtor's current monthly income multiplied by 12—

''(I)(aa) exceeds 100 percent, but does not exceed 150 percent of the national or applicable State median household income reported for a household of equal size, whichever is greater; or

''(bb) in the case of a household of 1 person, exceeds 100 percent but does not exceed 150 percent of the national or applicable State median household income reported for 1 earner, whichever is greater; and

''(II) the product of the debtor's current monthly income (reduced by the amounts determined under clause (ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service and clauses (iii) and (iv) multiplied by 60 is less than the greater of—

''(aa) 25 percent of the debtor's nonpriority unsecured claims in the case;

''(bb) $15,000.''

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

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

AMENDMENT NO. 2762

Mr. GRASSLEY. Mr. President, I ask unanimous consent that we now move to consideration of the amendment by the Senator from New York that we call the safe harbor amendment, and I ask unanimous consent that there be 10 minutes, 5 minutes for the Senator from New York——

Mr. SCHUMER. Could we have 10 minutes on each side?

Mr. GRASSLEY. OK, 10 minutes on this side and 10 minutes to be controlled by the Senator from New York.

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

Mr. SCHUMER. Just to make sure, no second-degree amendments prior to the vote on this amendment?

Mr. GRASSLEY. We have no objection to that.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New York is recognized for 10 minutes.

Mr. SCHUMER. Mr. President, the Senator from Illinois, Mr. DURBIN, and I are offering an amendment to do some commonsense housecleaning with respect to the means test safe harbor now in the bill and, more significantly, to restore something that was unfortunately taken out of the bill by the managers' amendment: true protection for low- and moderate-income bankruptcy filers from coercive predator litigation tactics involving section 707(b) of the bankruptcy code.

First the housecleaning: The managers' amendment included a provision stating that the bill's means test could not be used to remove low- and moderate-income debtors from chapter 7. That was undoubtedly a big step forward for this bill, and I congratulate the managers for having taken that step.

Now that the means test no longer applies to low- and moderate-income bankruptcy filers, it makes no sense for these individuals to have to file means test calculations based on their income and expenses along with the other papers they must file upon declaring bankruptcy. Likewise, it makes no sense for U.S. trustees to have to do means test calculations with respect to low- and moderate-income bankruptcy filers who, I repeat, cannot be means tested out of chapter 7. This imposes unnecessary burdens on debtors and wastes taxpayer dollars by leaving these requirements in place.

Our amendment would fix the problem by deleting these requirements only in cases involving low- and moderate-income bankruptcy filers. These filers would still have to document their income and expenses. They just wouldn't have to do means test calculations anymore, which are no longer required.

Now for the more important issue, the issue of protecting low- and moderate-income bankruptcy filers from any coercive creditor litigation tactics under 707(b). Sad to say, this only became an issue 2 days or so ago. The bill formerly had a provision preventing creditors from bringing any motion under 707(b) against low- and moderate-income bankruptcy filers. That included motions under the means test, motions alleging that the debtor filed for chapter 7 in bad faith, and motions alleging that the totality of the circumstances of the debtor's financial situation demonstrated abuse. Bankruptcy trustees could bring these motions against low- and moderate-income debtors, and appropriately so, just not creditors.

According to the report language for this bill, the ban on predator motions existed to protect low-income filers; in other words, no motion, no prospect for creditor coercion. Last year's Senate

bill had the same protection for low- and moderate-income filers. And even this year's House bill, which many consider more stringent than the Senate bill, had this protection. Yet at this late stage in the game, the managers' amendment deleted much of this bill's so-called safe harbor against creditor 707(b) motions. It continues to protect low- and moderate-income bankruptcy filers from motions under the means test but now, for the first time, leaves these debtors vulnerable to creditor motions alleging debtor bad faith or that the totality of the circumstances demonstrated debtor abuse.

This chart illustrates the problem. Under the House's bill, safe harbor creditors can bring means test or totality of circumstances motions only against above-median-income debtors. Under the Senate bill, as modified by the managers' amendment, motions against all debtors, even those with income below median income for a household of similar size, can be brought by creditors.

What is the big deal about leaving low- and moderate-income debtors vulnerable to creditor motions based on these grounds? The big deal is what some aggressive creditors will do with these motions. These creditors will use these motions and threats to bully poorer debtors into giving up their bankruptcy rights altogether, whether that means staying away from bankruptcy altogether, giving up their bankruptcy claims, or agreeing that certain of their debts simply won't be reduced or eliminated by virtue of bankruptcy.

This should trouble all of us. Debtors who can't afford to litigate with their creditors will just bow to creditors' demands.

Now, if I sound alarmist, I do so because the record is filled with examples of aggressive creditors using the motions and leverage they currently have under the bankruptcy code to coerce low- and moderate-income debtors into giving up their bankruptcy rights in some form.

In a review of a bankruptcy court case for the Western District of Oklahoma, the judge described that creditor's practice as follows:

> A review of the practices of [creditor's] attorneys . . . indicated that in 1996 the firm filed 45 complaints seeking exceptions to discharges on behalf of creditors having debts arising from credit card agreements; that 100 such complaints were filed in 1997. . . .
>
> The firm's pattern of conduct appears as little more than the use of this court and the bankruptcy code to coerce from these debtors reaffirmation of their unsecured credit card debt or some portion of it.

I could go on with other examples, but I will not to save the time of my colleagues.

Here's a bankruptcy judge from the Western District of Missouri describing the litigation practices of AT&T Universal Card Services: The [fraud] complaints, filed by AT&T, were filed solely to extract a settlement from debtors. Once AT&T realized that the case would not settle and that is would actually be required to offer evidence to support the allegations in the complaints, it moved to dismiss.

A woman from California described her experience.

> . . . on the day we went to the bankruptcy hearing, we were approached by a woman from [a retail creditor]. She explained to me who she was. At the time, I was due to give birth in two weeks. The woman told us we needed either to pay our bill in full or return items such as a sofa, washing machine, and vacuum. We weren't going to the hearing because we had money, and we couldn't afford to replace these items, which we needed. We explained these things and found an attorney. The woman then said we could keep the items if we signed a paper saying we would continue making payments. . . . We signed, of course.

There is absolutely nothing illegal about making certain types of threats today. There is not enough in this bill to stop most threats of this nature from being made—and succeeding—tomorrow.

If you still think I am thrusting at windmills, let me direct your attention to a real-life letter from a creditor's attorney to a debtor's attorney. The words speak for themselves.

> We have reason to believe that your client may have committed fraud in the use of the above-referenced credit relationship. . . .
>
> Be assured that our company is aware of the deadline for filing an objection to dischargeability and has calendared this date.

The problem is unequal bargaining power. It simply pays for the creditor to put a debtor in the position of having to burn through several thousand dollars in attorney's fees fighting over a $100 TV set.

I want to be clear about something. I am not arguing that low- and moderate-income debtors should be exempt from motions to remove them from chapter 7 for filing in bad faith or filing for chapter 7 abusively in light of the totality of their financial circumstances. All I am saying is that when it comes to a debtor with $20,000 in yearly income, leave it to the bankruptcy trustees to bring these motions. Leave it to the numerous other provisions of this bill that graft new antifraud language onto the bankruptcy code to remedy the problem. Just don't leave these debtors and their families vulnerable to the small, but not insignificant, number of wolves among the creditor population.

I was leafing through Congress Daily one day last month, and I ran into this advertisement run by the supporters of bankruptcy reform. The ad features Mel from Mel's Auto Repairs, expressing concern: ''wealthy customers getting a free ride in bankruptcy,'' ''wealthy filers,'' ''higher-income filers,'' ''wealthy Americans today . . . erasing their debts while continuing to live an affluent lifestyle.'' The theme of ''bankruptcy abuse by the wealthy'' pervades the whole ad.

Mel is right. Wealthy persons do abuse the bankruptcy system, and too often. And it needs to be stopped. But surely, subjecting low- and moderate-income debtors to new and potent creditor motions has nothing to do with cracking down on wealthy deadbeats. The rhetoric of this ad doesn't match the reality of this bill—particularly its provision subjecting a single debtor with $20,000 in income, a married debtor with a household income of $30,000, or a debtor with a spouse and two kids with a household income of $40,000, to the threat of coercive creditor litigation tactics involving 707(b) of the bankruptcy code.

I urge colleagues to vote in favor of this amendment and to simply restore this bill to what it used to be and to where the House bill is.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, first of all, I thank the Senator from New York for his cooperation with us on a couple of amendments he has worked out with us and has withdrawn so we could get closer to completion of work on this particular amendment.

In the case of his amendment just now offered, and my opposition to it, I want to say we have taken into consideration some of the complaints he has made—not about our bill, but complaints he would have made about some of the people writing legislation in this area, that they would go too far. But I think his amendment goes too far because it would have the effect of letting bankrupts below the national median income file for bankruptcy and do it in bad faith. That would make the small businesses and honest Americans who stand to lose out—they will be told they can't do anything about it. What we want is opportunity in our legal system, in the bankruptcy system, in the courts there, to be able to make a judgment, if there is bad faith used, to do something about it—most importantly, to discourage that sort of activity.

So I think this amendment gets us back to the point where we are now under existing law—inviting abuse of the bankruptcy code.

Under our bill, which we have been debating for the last several days on the floor of the Senate, and particularly as modified by the managers' amendment now, people below the national median income are not subject to motions by anybody under the means test. But there is another part of this bill that says the bankruptcy cases can be dismissed if the debtor filed for bankruptcy in bad faith. At this point, the creditors are allowed to file motions asking a bankruptcy judge to dismiss a case if it is filed in bad faith. That is the way our litigation system works and should continue to work.

In an effort to go the extra mile, however, I accepted an amendment, by Senator REED of Rhode Island and Senator SESSIONS, to put new safeguards in place to prevent creditors using any power they have to file bad faith motions as a tactic to force a debtor to

give up his or her rights. That should not be allowed. The Reed Sessions amendment corrects that. The projections in the Reed Sessions amendment were also developed in close consultation with the White House.

Our bill further provides that if a motion to dismiss is filed and the judge dismisses it, the judge can assess penalties against a creditor who filed the motion if the motion wasn't substantially justified. So we want to make sure that creditors who would abuse some of their power in court would not—if it was not substantially justified, if their position was not substantially justified, then action should be taken against them, and that is entirely fair as well. So we have a fair system with tough penalties for creditor abuses.

Now, the amendment of Senator from New York will return to the system we have today. Under current law, creditors can't file motions when a chapter 7 case is abusive or improper. And every observer acknowledges that the current system doesn't work at all in terms of catching abuse; hence, a major part of this bill is to correct this situation.

We went to great length in our committee report on this bankruptcy bill to discuss this point in very much detail. So this amendment should be defeated because it prevents the provisions prohibiting bad faith bankruptcy from being enforced. That is like saying to deadbeats it is not OK to file for bankruptcy in bad faith, but we are not going to do anything about it if you do. And, of course, that is exactly the wrong signal we want to send. We want to make sure that people who go into bankruptcy are people who have a legitimate reason for being there and that they aren't taking advantage of bankruptcy to somehow help themselves, and in bad faith is part of that process.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Iowa has 5 minutes remaining, and the Senator from New York used all the time allowed.

Mr. GRASSLEY. I yield the remainder of my time.

Mr. SCHUMER. Mr. President, may I ask unanimous consent for 1 minute to respond?

Mr. GRASSLEY. Then I will reserve my time, if I may.

The PRESIDING OFFICER. The Senator from Iowa reserves his time.

Does the Senator object to the unanimous-consent request?

Mr. GRASSLEY. I do not object.

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

Mr. SCHUMER. I thank my colleague. I wish to answer.

The bill's provisions purporting to prevent and ameliorate coercive creditor litigation tactics will not be able to undo the damage done by giving creditors the right to bring 707(b) ''totality of the circumstances'' and ''bad faith'' motions against low- and moderate-income debtors.

Section 102 of the bill says a court may award a debtor costs and attorney's fees if a court rules against the creditor's 707(b) motion and that motion was not ''substantially justified.'' This provision will not deter coercive creditor litigation tactics. It doesn't cover coercive threats to bring 707(b) motions, which are often sufficient to force a debtor to give up his or her bankruptcy rights.

Finally, this sanctions provision contains an exception which precludes any award against a creditor that holds a claim of under $1,000, no matter how wealthy the creditor is.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the issue that the Senator from New York just brought up of threats being used is exactly what the Reed-Sessions amendment deals with. I suggest this was also very much a point that was raised by people at the White House that we have been discussing—the whole issue of bankruptcy over a long period of time.

This was also worked out because this was a major concern. They did not want this abuse. They did not want the issue of threats. We agree with them, as we had to work it out with Senators SESSIONS and REED because the bill, as they saw it, was not adequate enough in this area.

As people vote on this amendment, I hope they will consider that we have been trying to respond in a very legitimate and strong way against the use of threats.

Mr. SCHUMER. Will the Senator yield for a question?

Mr. GRASSLEY. The answer is yes.

Mr. SCHUMER. I thank the Senator for his careful deliberation and his yielding.

It is my understanding that section 203 of the bill deemed it a violation of the automatic stay for a creditor to engage in any communication other than a recitation of the creditor's rights, and this would deal with threat. This provision would be stricken from the bill by the Reed-Sessions amendment. So the Reed-Sessions amendment didn't deal with the problem, but it actually took out the basic protection that a low-income debtor would have against threat.

Is that not correct?

Mr. GRASSLEY. If you threaten somebody during reaffirmation, the Sessions-Reed amendment is set aside.

I yield the remainder of my time.

I ask unanimous consent that the Senator from Louisiana be granted 5 minutes to speak as if in morning business.

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

Ms. LANDRIEU. I thank the Senator.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 5 minutes.

INTERIOR BILL NEGOTIATIONS

Ms. LANDRIEU. Thank you, Mr. President.

I know the underlying amendment we have just debated is quite important, and the bankruptcy bill we are debating is one of the things we have to reconcile in order to wrap up our business and do the work for the American people. But I come to the floor just for a few moments this afternoon to speak on another subject because I would like to do my part to help us bring this session to a positive close.

I was one of the Senators who placed a hold on some of the business before the Senate. I felt compelled to do so because of some actions the administration was taking in the negotiations process on the Interior bill. I believe I had to try to stop, or reverse, or change it. With other things that have taken place, I believe we have been somewhat successful. I want to speak about that for a moment.

As you are aware, Mr. President, about 2 years ago a great coalition of people came together from different perspectives in this country—different parties, different areas of this Nation—to begin to speak about the great need in America and the great desire on the part of the American people, from Louisiana, California, New York, and all places in between, to try to find a permanent way to fund very important environmental projects—the purchase of land, the expansion of parks, the creation of green space, the preservation of green space, the restoration of wetlands, the commitment to historic preservation, the expansion of our urban parks, the ability of all families, not just families who can afford to fly in jets or take long automobile vacations, but for families who live in the U.S., to be able to enjoy the beauty of nature; for us as a Nation as we move into this next century to take this opportunity to try to find a permanent way to fund some of these programs so they won't be subject to the whims and wishes of Washington, something that is fiscally conservative in terms of our balanced budget.

We tried to look for funding that would be appropriate to dedicate in this way. We found a source of funding. That is where the funding is—offshore oil and gas revenues that were the subject of an earlier debate today. As the prices go up, it helps some parts of our Nation; it is a challenge for other parts. But it brings more tax revenues into the Federal coffers.

For 50 years, we have been drilling off the shores of Louisiana, Texas, Mississippi, and the gulf coast. We have brought over $120 billion to the Federal Treasury by depleting one important resource for our Nation. That money has gone to the general fund. It has been spent on a variety of projects—not reinvested but just spent in operating budgets.

Many of us think a more fiscally conservative approach, and a more sound and responsible approach, would be to

take a portion of those revenues produced by basically the gulf coast States and reinvest a portion, if you will, or share a portion of those revenues, with States and counties and parishes, as in Louisiana and communities around the Nation, to help in all the ways I have just expressed in all of our land acquisition, land improvements, expansion of our parks, and wildlife conservation programs.

Two years ago, a great coalition came together. On one side, we had the National Chamber of Commerce; on the other side, we had a variety of environmental groups; we had elected officials, both at the Federal level and State level. As I said, it was a bipartisan coalition that came together to back a bill, which was introduced on the House side and in the Senate, known as CARA, the Conservation and Reinvestment Act, to do just that.

This bill has picked up tremendous support in the last 2 years. It is pending before our Senate Energy Committee with Senator MURKOWSKI and me as the lead sponsors, with many Members of this body. The great news is that just last week in the House, under the great leadership of DON YOUNG from Alaska and GEORGE MILLER from California, the ranking member, this bill passed out very similar to ours on a 37–12 vote to try to help bring us to a bipartisan consensus.

I am hopeful, as we wrap up this session and as we begin to get ready for the next session of Congress, that we are now in a very good position to be able to take some final actions in moving that bill through committee, onto the floor, and into a conference where the final details can be worked out because if we are going to have any permanency of funding from this source, it is going to have to be something that is shared with the States that produce the money in the first place.

Louisiana produces about 70 percent of our offshore oil and gas revenues. We have great needs as a coastal State, along with States such as New York that just got hit very hard by Hurricane Floyd, causing tremendous damage. There are great coastal needs in our States to fully fund the land and water conservation and wildlife conservation programs.

I am very hopeful as we position ourselves for next year, that we are in a position to grab this opportunity supported by this grand coalition and do something very positive for America's environment.

I am pleased to say I will be prepared to release my hold on the foreign operations bill in an attempt to do my part to move to reconciliation because we have effectively stopped the administration's efforts to permanently allocate funding but in a way that will not cover all of the things as I outlined. We want to make sure this investment in the Nation is not just about Federal land acquisition, although that is a very important piece of this. We want to make sure it is balanced, with the opportunity for Governors and local officials to purchase land at the local level. We want to make sure it is truly a partnership. We want to make sure the coastal impact assistance is there as well as funding for historical preservation, urban parks, and wildlife programs.

While we didn't reach every goal we set out, we have raised this issue. We have built a strong coalition. We have raised this issue and we have stopped the permanent allocation of these funds until the whole package can be dealt with. We have made a very positive step.

On behalf of the great coalition, I ask unanimous consent to have printed in the RECORD a letter to the President, signed by 14 Senators, along with a letter to Members of Congress from 865 organizations, business and government agencies, that are funding this effort.

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

U.S. SENATE,
Washington, DC, November 15, 1999.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: With your leadership we have a historic opportunity to pass legislation in this Congress that will permanently reinvest a portion of offshore oil and gas revenues in coastal conservation and impact assistance programs, the Land and Water Conservation Fund, wildlife conservation, historic treasures and outdoor recreation. Recently, forty of the nation's governors sent a letter to Congress encouraging us to seize this historic opportunity. This effort has been endorsed by almost every environmental organization in the country as well as a broad array of business interests including the United States Chamber of Commerce.

There is strong bi-partisan support *now* for a proposal that: will provide a fair share of funding to all coastal states, including producing states; is free of harmful environmental impacts to coastal and ocean resources; does not unduly hinder land acquisition but acknowledges Congress' role in making these decisions and reflects a true partnership among federal, state and local governments.

There is also strong support for using these OCS revenues to reinvest in the renewable resource of wildlife conservation through the currently authorized Pittman-Robertson program. This new influx of funding will nearly double the Federal funds available for wildlife conservation and education programs. We would like to ensure that wildlife programs are kept among the priorities when negotiating for monies from OCS revenues.

A historic conservation initiative is within our grasp. With budget negotiations currently underway, we urge you to push forward for a compromise which reflects the points outlined above. It will be an accomplishment we can all celebrate and a real legacy for future generations.

Sincerely,

Mary L. Landrieu, Max Cleland, Blanche L. Lincoln, Evan Bayh, John F. Kerry, Tim Johnson, Charles Robb, John Breaux, Robert J. Kerrey, Barbara A. Mikulski, Ron Wyden, Herb Kohl, Ernest F. Hollings, Judd Gregg.

NOVEMBER 1, 1999.

U.S. CONGRESS,
Washington, DC.

DEAR MEMBER OF CONGRESS: As the twentieth century draws to a close, Congress has a rare opportunity to pass landmark legislation that would establish a permanent and significant source of conservation funding. A number of promising legislative proposals would take revenues from non-renewable offshore oil and gas resources and reinvest them in the protection of renewable resources such as our wildlife, public lands, coasts, oceans, historic and cultural treasures, and recreation. Securing this funding would allow us to build upon the pioneering conservation tradition that Teddy Roosevelt initiated at the beginning of the century.

The vast majority of Americans recognize the duty we have to protect and conserve our rich cultural and natural legacies for future generations. A diverse array of interest, including sportsmen and women, conservationists, historic preservationists, park and recreation enthusiasts, urban advocates, the faith community, business interests, state and local governments, and others, support conservation funding legislation because they recognize it is essential to fulfill this obligation.

We call upon you and your colleagues to seize this unprecedented opportunity. Pass legislation that would make a substantial and reliable investment in the conservation of our nation's wildlife; public lands; coastal and marine resources; historic and cultural treasures; state, local and urban parks and recreation programs; and open space. Design a bill that provides significant conservation benefits, is free of harmful environmental impacts to our coastal and ocean resources, and does not unduly hinder land acquisition programs.

An historic conservation funding bill is within our grasp. It will be an accomplishment that all can celebrate. We look to Congress to make this legislation a reality.

Sincerely,

Ms. LANDRIEU. I will read one paragraph from this petition. Let us grab the opportunity now, to:

> Pass legislation that would make a substantial and reliable investment in the conservation of our Nation's wildlife; public lands; coastal and marine resources; historic and cultural treasures; State, local and urban parks, and recreation programs; and open spaces. [Let us] design a bill that provides significant conservation benefits, is free of harmful environmental impacts to our coastal and ocean resources and does not unduly hinder land acquisition programs.

I believe we can meet these goals as we negotiate the detail and compromise in the next session.

The Presiding Officer, being from the State of Alabama, has been a great leader in this effort. I look forward to working with the Senator next year. I am pleased to tell our leader I will be removing my hold on foreign ops because we have made some progress on this, and I look forward to working harder to make this a reality for the people of America the next time we meet.

I yield my remaining time.

Mr. REID. Before the Senator from Louisiana leaves the floor, I want to express to her the appreciation of the entire minority caucus. There is no Member of the Senate who is more astute, works harder, and has a better understanding of the issues that face the Senate, which was well demonstrated by her work on this issue about which she feels fervently. We are grateful at this late date the Senator

has been willing to work with members to release the hold.

BANKRUPTCY REFORM ACT OF 1999—CONTINUED

Mr. KENNEDY. Mr. President, I understand we are back on the bankruptcy legislation; is that correct?

The PRESIDING OFFICER (Mr. SESSIONS). The Schumer amendment has not been disposed of.

Mr. KENNEDY. With the understanding of the Senator from New York, I ask unanimous consent we temporarily lay aside that amendment.

Mr. GRASSLEY. Reserving the right to object, and I will not object, I previously talked to the Senator from Massachusetts about time agreement on his amendment. I prefer to forego a time agreement and have him proceed accordingly. I have no objection.

The PRESIDING OFFICER. Without objection, the Senator from Massachusetts is recognized.

AMENDMENT NO. 2652

(Purpose: To amend the definition of current monthly income to exclude social security benefits)

Mr. KENNEDY. I call up amendment numbered 2652.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 2652.

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

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

The amendment is as follows:

On page 11, line 2, insert before the first semicolon ‘‘, but excludes benefits received under the Social Security Act’’.

Mr. KENNEDY. Mr. President, this is a rather simple amendment. The amendment I have offered will protect a debtor's Social Security benefits during bankruptcy. This amendment is very important to older Americans. I hope my colleagues will support it as our House colleagues supported it last year.

As currently written, the means test in the pending bill will require debtors to use their Social Security benefits to repay creditors. My amendment excludes Social Security benefits from the definition of ‘‘current monthly income’’ and ensures that those benefits will never be used to repay credit card debt and other debt.

This amendment is particularly important to seniors. Between 1991 and 1999 the numbers of people over 65 who filed bankruptcy grew by 120 percent. If we look over the figures from 1991 to 1999 by age of petitioner, we see the growth of those that are going through bankruptcy primarily have increased in the older citizen age group. This is primarily a result of the downsizing, dismissing older workers and because of health care costs—primarily they have been dropped from health insurance. As the various statistics show, increasing numbers of individuals have been impacted because of the prescription drugs.

Debtors filing a medical reason for bankruptcy, as the chart shows, reflects the fact we have gotten a significant increase in the number of older people who have gone into bankruptcy. The debtors who file as medical reasons for bankruptcy, we find, increases dramatically for older workers primarily because of health care costs more than any other factor.

We believe very strongly those individuals, most of whom are dependent upon Social Security as virtually their only income ought to have those funds protected so they will be able to live in peace with some degree of security and some degree of dignity.

This is sufficiently important. One can ask, why are we doing this now rather than before? The reason it was not necessary before is because the Social Security effectively was protected with a series of protections that were included in the existing bankruptcy law which have not been included in this legislation. Therefore, without this kind of an amendment, they would be eligible for creditors. We think protecting our senior citizens, those on Social Security, as a matter of both public policy and the fact of the importance of their contributions, obviously, in terms of society, should be protected during their senior years.

Today, many Americans work long and hard into the senior years. A growing percentage of the population is over the age of 85 and predominantly female. We see over the period of the next 10 years our elderly population will double and the increase in the percentage of women is going to increase significantly, as well. Others may be able to find alternative employment but at substantially lower wages or without health and other benefits that become increasingly important with age.

In spite of all of the efforts to slow down the discrimination against elderly, in too many circumstances in our country today, the elderly are discriminated against in terms of employment.

Older Americans sometimes resort to short-term, high-interest credit when faced with unemployment because they assume their unemployment will be temporary. They hope their use of credit or credit card debt will serve as a bridge to cover the necessities until they start receiving paychecks again. Due to their age, however, many of these individuals never earn a salary comparable to the pay they lost. They find themselves unable to deal with the new debt they have incurred. When they have nowhere else to turn, they sometimes turn to the safety value of bankruptcy.

Older Americans are also more frequent victims of predatory lending practices. Sometimes, bankruptcy is the most viable avenue for an elderly person to address the financial consequences of being victimized by unscrupulous lenders. It is unfortunate that Senator DURBIN's amendment to address that problem was defeated last week.

Studies of the problems facing older Americans tell us the same sad story. In one study, one in ten older Americans reported that they filed for bankruptcy after unsuccessfully attempting to negotiate with their creditors. In some cases, their creditors threatened them with seizure of property, or placed harassing collection calls. Some of these senior citizens explained that they have been the victims of credit scams, and they were seeking relief in the bankruptcy courts.

For example, a 70-year-old woman filed for bankruptcy after her son discovered that she has allowed herself to become involved in a number of dubious financial transactions, including buying more than six different expensive and duplicative life insurance policies and spending several thousand dollars on sweepstakes contests. At the time of her bankruptcy, she had mortgaged her previously mortgage-free home for more than $74,000 to try and pay off her debts. She was in danger of losing the home she shared with her husband who was in failing health.

The bottom line is that bankruptcy shouldn't be made more difficult for those who are depending on Social Security for their livelihood.

Social Security was developed to ensure that seniors can live their golden years in dignity. If we allow Social Security income to be considered while determining whether someone is eligible for bankruptcy, a portion of those benefits could be used in a manner inconsistent with Congress' intent.

Some of my colleagues oppose this amendment because they argue that wealthy seniors would be the beneficiaries. But, practically speaking, wealthy debtors rarely use Chapter 7—they've more likely to file under Chapter 11 of the bankruptcy code.

For very high income individuals, like Ross Perot, social security represents a very small percentage of their total income. Indeed, the maximum social security retirement benefit for a new 65-year-old retiree in 1997 was $16,000. For the Ross Perot in this country, $16,000 is a rounding error. His income is so high that including or excluding $6,000 changes his income by only a tiny percentage. But for the poor widow who gets 90 percent of her income from social security it makes a big difference.

Rich debtors who file in Chapter 7 would be caught by the means test, whether or not the courts include Social Security income as part of the debtor's ‘‘current monthly income.’’

It is important to realize that even though we do tax individuals on higher Social Security, 75 percent of our seniors pay no tax on Social Security because they are below $25,000 in income.

this is the group about which we are talking.

For two-thirds of American seniors, Social Security income represents more than 50 percent of the their total income, and for 42 percent of seniors, it represents three-quarters of their total income. That is basically what we are talking about. We will hear: We can't accept this because it will create some loophole for our seniors.

We have to realize that for 42 percent of all seniors, Social Security represents three-quarters of their total income. Furthermore, 95 percent of all workers never reach the maximum Social Security benefit. That means only 5 percent of workers earn more than $72,000, and the average person is well below that income level. The myth of the wealthy senior using this amendment to avoid their obligations is just that—it is a myth.

The purpose of Social Security is to guarantee there is a financial foundation provided for all senior citizens to ensure their basic needs—food, shelter, clothing, and medicines—are met. For two-thirds of senior citizens, Social Security provides more than half of their income, and Social Security benefits are hardly enough, in many cases, to meet these basic needs of seniors. Certainly, they cannot survive on less.

If we are serious about providing financial security and personal dignity for the elderly, we must protect their Social Security benefits from claims in bankruptcy. Otherwise, we run the risk of vulnerable senior citizens being left with virtually nothing. In many cases, these are the people who are not healthy enough to return to work, who certainly lack the physical stamina to work the extra hours or get a second job. Social Security benefits are all they have—all they ever will have—and these few dollars are essential to their financial survival. There is a higher concern here than recovering every last dollar for creditors. It is guaranteeing the elderly some measure of financial security in their declining years.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I appreciate very much the amendment offered by the Senator from Massachusetts. Also, for the benefit of everyone in the Chamber and within the sound of my voice, on this bill we have moved along significantly from 300-plus amendments down to fewer than 10 amendments.

I hope we can continue working on this bill. I do not see any reason why we cannot finish this legislation tonight. We have a few amendments. I have heard it being rumored that we are going out early tonight. If the majority wants a bankruptcy bill, they can have a bankruptcy bill. The minority is not holding up the bankruptcy bill. We have, as I indicated, fewer than 10 amendments. A number of those Senators have agreed to time limits.

It is a situation where, with all the work that has been done for years by the manager of the bill—not a matter of weeks but for years—the goal is in sight, and we should move forward and pass this much-needed legislation. I repeat, the problem is not with the minority. We are willing to work as late tonight as possible. We were willing to work yesterday. I hope we can move forward on these amendments.

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.

Mr. DASCHLE. Mr. President, I come to the floor for a moment to commend both Senator GRASSLEY, the manager on the Republican side, and our very distinguished assistant Democratic leader. We started the consideration of this bill several days ago. As I understand it, 20 amendments were filed. We are now down to fewer than 10 amendments.

As I understand it, there is a potential time agreement on virtually every amendment. Virtually every Senator has expressed their interest in bringing this bill to a conclusion and are prepared to accept time limits.

I further understand the majority is giving some consideration now to going out early tonight after we have had a couple votes. I hope that isn't the case because I would like to see if we could finish this bill either tonight or tomorrow. There is no reason why we cannot finish it and move on to other matters. There are a number of other matters pending.

So I speak for a lot of our colleagues in expressing our gratitude to the distinguished assistant Democratic leader for his effort yet again. He has done this on so many bills, but on this bill in particular he has really done an extraordinary job of not only working to accommodate Senators but also to manage the legislation on our side, along with Senators LEAHY and TORRICELLI, and, of course, the chairman of the subcommittee, Senator GRASSLEY, for his work in working with Senators who wish to offer amendments.

I know some of these amendments have been accepted, and some of these amendments will require rollcalls. The point is, let's get the work done. Let's finish either tonight or tomorrow, but let's finish the bill.

There was a time when I feared we would not finish this legislation this year. Maybe that is the only silver lining for those of us who would like to bring this matter to closure: That we will have the opportunity to finish this legislation.

Many members still have amendments. Some of these amendments that are yet to be offered may tell the story with regard to Democratic support. There are some good amendments that are still pending. Senator KENNEDY has a very good amendment that needs to be addressed. I hope we can do that and move on the other Democratic amendments that I know Senator SCHUMER and others have indicated they are prepared to offer.

So we are getting down now to the final few amendments. I hope we will just keep the heat on, and finish up this critical legislation many of us have worked so long and so hard to enact.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I have two unanimous consent requests.

AMENDMENT NO. 2659, AS MODIFIED

Mr. GRASSLEY. Mr. President, the first unanimous consent is on an amendment, as modified. It is amendment No. 2659. I send the modification to the desk and ask unanimous consent it be considered agreed to, and the motion to reconsider be laid upon the table.

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

The amendment (No. 2659), as modified, was agreed to, as follows:

On page 18, line 5 insert ''(including a briefing conducted by telephone or on the Internet)'' after ''briefing''.

On page 19, line 15, strike ''petition'' and insert ''petition, except that the count, for cause, may order an additional 15 days.''

Mr. GRASSLEY. Mr. President, I ask unanimous consent that at 4:30 we proceed to two stacked votes on the pending Feinstein amendment and the Schumer amendment, and do it in that order, with 4 minutes equally divided in the usual form between the two votes, and that no amendments be in order prior to the votes. Maybe I ought to correct this. I think we should say there would be 2 minutes divided on the Feinstein amendment and then 2 minutes before we vote on the Schumer amendment—or 4.

Mr. DASCHLE. Reserving the right to object, I want to be sure. Is it amendment No. 2761? Is that the Schumer amendment referred to by the Senator from Iowa?

Mr. GRASSLEY. Amendment No. 2762.

Mr. DASCHLE. Amendment No. 2762.

Mr. GRASSLEY. So let me once again state this: I ask unanimous consent that at 4:30 we proceed to two stacked votes on the pending Feinstein amendment, with 4 minutes equally divided to discuss the Feinstein amendment, and then at the end of that vote have 4 minutes equally divided to discuss the Schumer amendment, and then immediately proceed to a vote on or in relation to the Schumer amendment, and that no amendments be in order prior to the votes.

Mr. REID. Reserving the right to object, could I ask the manager of the bill about why we can't vote on amendment No. 2761, also a Schumer amendment?

Mr. GRASSLEY. Which amendment is that?

Mr. REID. The Schumer-Santorum amendment.

Mr. GRASSLEY. We have an objection from the Banking Committee on that one at this point. And also, for the benefit of Senator KENNEDY, who has been very patient, I have one Senator I have to consult before we go to a final decision on that amendment. But I think we can take care of this when we are over here voting, if you would let us proceed to these. And then I will work with you to get to the bottom of that at the time of that vote. Is that OK?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. 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.

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

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

Mrs. FEINSTEIN. Mr. President, to sum up my amendment, what this bankruptcy bill is all about is encouraging debtor responsibility—in other words, to the extent that an individual possibly can, they should repay their debt. That is one side of it.

I think to the extent the credit industry can be responsible, you need to have a balance between the two. Right now, there is not a balance between the two. I think we all know of people who have a number of credit cards who do not have the income even to pay back the minimum debt or the minimum monthly payment plus interest over a period of time.

Let me give an example. If you have a $1,500 debt and your minimum monthly payment is $25 and you have no late fees, no new purchases, at 19.8-percent interest, it takes 282 months to pay that debt off. I know people in this situation who shouldn't have credit cards, who should have been checked out, who have six, who are going into bankruptcy because they didn't understand this simple concept.

What the amendment before you would do is ask the Federal Reserve to do a study of lending practices in this area and make public their findings, and also have the ability to set new regulations if they believe those regulations are warranted.

This amendment was passed a year ago by a voice vote. It was removed in conference. The amendment would be accepted. My concern is that it would again be deleted in conference. Therefore, I have asked for the yeas and nays. I am hopeful this Senate will go on record as supporting this study by the Federal Reserve.

I thank the Chair and yield the floor.

Mr. GRASSLEY. Mr. President, I yield back the remainder of the time we have on this side.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to amendment No. 2756. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 16, as follows:

[Rollcall Vote No. 368 Leg.]

YEAS—82

Abraham	Feingold	McConnell
Akaka	Feinstein	Mikulski
Baucus	Frist	Moynihan
Bayh	Gorton	Murkowski
Bennett	Graham	Murray
Biden	Grams	Nickles
Bingaman	Grassley	Reed
Bond	Gregg	Reid
Boxer	Harkin	Robb
Breaux	Hatch	Roberts
Bryan	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Hutchison	Santorum
Campbell	Inouye	Sarbanes
Chafee, L.	Jeffords	Schumer
Cleland	Johnson	Sessions
Cochran	Kennedy	Shelby
Collins	Kerrey	Smith (OR)
Conrad	Kerry	Snowe
Craig	Kohl	Stevens
Crapo	Kyl	Thurmond
Daschle	Landrieu	Torricelli
DeWine	Lautenberg	Voinovich
Dodd	Leahy	Warner
Domenici	Levin	Wellstone
Dorgan	Lieberman	Wyden
Durbin	Lincoln	
Edwards	Lugar	

NAYS—16

Allard	Gramm	Smith (NH)
Ashcroft	Hagel	Specter
Brownback	Hutchinson	Thomas
Bunning	Inhofe	Thompson
Coverdell	Lott	
Enzi	Mack	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

McCain

The amendment (No. 2756) was agreed to.

Mr. LEAHY. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, 4 minutes are now evenly divided on the Schumer amendment No. 2716.

Mr. GRASSLEY. I suggest the absence of a quorum because we can work something out and maybe avoid a vote.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2652

Mr. GRASSLEY. I wish to make it clear, what I am going to ask unanimous consent on now is unrelated to what we are trying to work out on the Schumer amendment.

Mr. President, the managers have agreed to accept Senator KENNEDY's amendment, so I ask unanimous consent that amendment No. 2652 be accepted.

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

The amendment (No. 2652) was agreed to.

Mr. LEAHY. I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that we proceed, then, to 2 minutes of debate on that side, 2 minutes on this side, and then we go to a vote.

The PRESIDING OFFICER. That is the regular order. Who yields time?

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the yeas and nays be vitiated on the amendment.

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

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

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

Mr. GRASSLEY. Mr. President, there will be no more rollcalls today. We hope to continue debating some amendments, and they will be stacked to be taken at a time determined by the leader tomorrow.

Mr. LEAHY. Mr. President, again, I reiterate what I said before: The Senator from Iowa and I, the Senator from New Jersey, Mr. TORRICELLI, and Senator HATCH have all been working very hard. We have gone from 300 some odd amendments down to only a half dozen or so remaining. I will continue to work with my friend from Iowa to try to clear whatever we can.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that any votes ordered today be stacked for a time to be determined by the leader.

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

Mr. LEAHY. Mr. President, I know my good friend from Alabama is here

as manager on his side. I know we have no further rollcalls on this. I see my friend from Wisconsin on the floor. I am wondering if we can get some of the debate out of the way, and I wonder if we might yield to the Senator from Wisconsin and let him begin debate on his amendment.

Mr. REID. Will the Senator yield for a question?

Mr. LEAHY. Yes.

Mr. REID. I say to my friend from Vermont that in looking over these amendments, which have gone from 320 to now probably 7 or 8, a handful of amendments, the Senator understands that the movement of this bankruptcy bill is not being slowed down on this side of the aisle. Our Members have been very cooperative. Would he agree to that?

Mr. LEAHY. Yes. The Senator from Nevada has cleared out an awful lot of them. I think we have cleared 300-some-odd down to half a dozen or so. We could, for example, vote tonight without further debate on the Schumer-Santorum amendment, No. 2761. We could stagger them in the morning. I came in at 10 yesterday morning to be prepared to manage the bill on this side, and, for whatever reason, we stayed in morning business until 4 in the afternoon. What I am trying to do here—and I know the Senator from Alabama is on the floor, too—if there are things we can take care of on the bill tonight, let's do it.

Mr. REID. If the Senator will yield, Senator WELLSTONE has two amendments he will offer first thing in the morning. Senator FEINGOLD has one amendment that has already been offered. He wants to debate it some more, and he said he would do that tonight. We also have Senator FEINGOLD who has one other amendment he wishes to offer at a subsequent time. We also have a Dodd amendment that, I think with the managers' bill, we have worked out, and it has been agreed to by the chairman of the Judiciary Committee and the manager. Senator SARBANES has an amendment he wishes to offer. Senator HARKIN has an amendment he said he may offer tonight. We are basically finished.

The two things that are holding this up—and we should not play around with it anymore—are an amendment by the Senator from New York dealing with clinics, on which he has agreed to a half-hour time limit, and we have the Senator from Michigan, Mr. LEVIN, who has agreed to 17 minutes on an amendment relating to gun manufacturers.

I say to my friend, in short, we have almost nothing left. So it would seem to me we should move forward as rapidly as possible and finish this bill.

Mr. SESSIONS. Mr. President, on the order, I think it would be appropriate for Senator FEINGOLD to proceed at this time. Further, I think we will proceed without unanimous consent after that. Senator GRASSLEY will be back, and we can decide what to do then.

I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Paul Barger have the privilege of the floor for this day.

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

AMENDMENT NO. 2748

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I call for the regular order with respect to amendment No. 2748.

I wish to speak on the landlord-tenant amendment I offered last week and, in particular, take a few minutes to respond to some of the arguments made against it by the Senator from Alabama. This amendment is designed to lessen the harsh consequences of section 311 of the bill with respect to tenants while at the same time protecting the legitimate financial interests of landlords.

Just to review, current law provides for an automatic stay of eviction proceedings upon the filing of a bankruptcy case. Landlords may apply for relief at that stage so the eviction can proceed. But it is a process that often takes a few months.

Section 311 of Senate bill 625, the bill we are considering, eliminates the stay in all landlord-tenant cases so that an eviction can proceed immediately. In essence, my amendment would allow tenants to remain in their apartments while trying to sort out the difficult consequences of bankruptcy if, and only if, they are willing to pay the rent that comes due after they file for bankruptcy. If the tenant fails to pay the rent, the stay can be lifted 15 days after the landlord provides notice to the court that the rent has not been paid. If the reason for eviction is drug use or property damage, the stay can also be lifted after 15 days.

Finally, if the lease has actually expired by its terms—in other words, if there is no more time on the lease and the landlord plans to move into the property—then, again, after 15 days notice the eviction can proceed. This 15-day notice period does not apply if the tenant has filed for bankruptcy previously. In other words, in cases of repeat filings, the stay never takes effect, just as under section 311 in this bill.

So we are all clear on why this whole issue came up in the first place, the main abuse that has been alleged is in Los Angeles County, where unscrupulous bankruptcy petition preparers advertise filing bankruptcy as a way to live rent free. Under my amendment, first of all, you could never live rent free. The debtor must pay rent after filing for bankruptcy. If the debtor misses a rent payment, the stay will be lifted 15 days later. Second of all, the automatic stay does not take effect if the tenant is a repeat filer. So we take care of this problem of the repeat filer, which is exactly what the Senator from Alabama and others portrayed in committee as the reason this provision is needed.

So my amendment gets at the abuse, and it protects the rights and economic interests of the landlord. What it eliminates, though, is the punitive aspect of this amendment and the possibility that tenants who are willing and able to pay rent once they get a little breathing room from their other creditors will instead be put out on the street.

I am, frankly, disappointed that my colleague from Alabama insists on the harsh aspects of section 311 when my amendment would get at the problem he has identified just as well.

The Senator from Alabama argued yesterday that somehow my amendment changes current law and moves us in the direction of litigation and delay. On the contrary, my amendment leaves intact the current law that allows landlords to get relief from the automatic stay. Let me be very clear about that. My amendment does not eliminate the ability of landlords to apply for relief from the stay under current law. The law now gives debtors some breathing room in legal proceedings, including eviction proceedings. But landlords can apply for relief from the stay. It is not an abuse of the law to take advantage of the automatic stay to get your affairs in order. Some tenants use that time to work out a payment schedule for their back rent so they can avoid eviction. Most landlords don't want to throw people out on the street. They just want to be paid. My amendment requires that they be paid once bankruptcy is filed, or the eviction can proceed immediately. But even if the rent is paid while the bankruptcy case is pending, if a landlord can still seek relief from stay under the normal procedures and press forward with the eviction.

I frankly think that most landlords will be happy to let a tenant stay as long as the rent is being paid. Who knows, if the bankruptcy is successful, especially if it is a Chapter 13, the tenant may be able to pay the past due rent. That certainly is not going to happen if the tenant is evicted. But if the landlord really doesn't want the tenant to stay, the landlord can seek relief. So my amendment doesn't allow a tenant to stay in the apartment indefinitely by resuming payment of rent. By no means does this amendment permit a tenant to stay in an apartment indefinitely without a lease.

And any suggestion to the contrary is just wrong. It doesn't do that at all. It just covers the few months after the bankruptcy petition is filed when the debtor is most vulnerable and the debtor is most in need of a roof over his or her head.

Now let me address one of the frequent refrains of the Senator from Alabama when he talks about this provision. He seems to be very offended by the idea that people are staying in

their apartments after the term of their lease has expired. Those who are familiar with landlord-tenant law know that this is commonplace in the rental market. Many, many leases are for a term of one year but convert to a month to month lease when the year is up. The contract essentially remains in force, but the term has expired. There is nothing wrong with that. It is perfectly legitimate. Typically, the conversion to month-to-month tenancy is provided for in standard lease language.

This is not an abuse. It is the way many leases proceed in this country on a day-to-day basis.

Furthermore, the language of section 311 doesn't lift the stay when the term of a lease has expired but rather in cases where ''a rental agreement has terminated under the lease agreement or applicable state law.'' Well, most rental agreements ''terminate'' when a rent payment is missed. So section 311 applies in all landlord-tenant cases, not just those where the lease term has expired.

I want to remind my colleagues that both the bill we passed last year, and the conference report had a form of the protection that my amendment provides for debtors. Section 311 of the bill that we are working on now is harsher on tenant debtor than the conference report from last year and than the House bill that passed earlier this year.

Now let me respond to what I think is the core of Senator SESSIONS' objection to my amendment. He said last week that the automatic stay is always lifted, that the tenant never wins. So why not just get rid of the stay. It's just a waste of time and money for the landlord.

Mr. President, I have a letter here from a debtor's attorney named Henry Sommer. Mr. Sommer is an expert in consumer bankruptcy cases. He is the author of the widely used treatise Consumer Bankruptcy Law and Practice, which is published by the National Consumer Law Center. He indicates in his letter that has represented thousands of low-income consumer debtors over the past 25 years. I ask unanimous consent that Mr. Sommer's letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, Mr. Sommers heard the remarks of the Senator from Alabama last week in opposition to my amendment. He writes:

> The statement was made that landlords always prevail in automatic stay motions. This is not correct. In my personal experience, I doubt that landlords have prevailed in even 20% of the cases. in most of the other cases, the family paid the rent and the motion was either withdrawn or denied.

Mr. Sommers goes on to state:

> The more important point is that in most cases no motion is brought by the landlord. The automatic say does what it is intended to do. In these cases, the family that was facing eviction cures the rent arrears and remains in its apartment. The landlord is made whole, and the family is permitted the time necessary to reorganize its finances.

Mr. Sommers also discusses my amendment.

> To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney.

That's a crucial point, Mr. President, because one of the concerns expressed by the Senator from Alabama is the expense and inconvenience of the relief from stay process for landlords under current law. Mr. Sommers concludes:

> Your amendment would make it impossible to obtain significant delay simply by filing a bankruptcy petition, as can occur today. But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

That is really the crucial point Mr. President. We are talking about real people here. People who are very vulnerable. The Senator from Alabama argued yesterday that a landlord may have another tenant lined up to move into an apartment. And he said that if my amendment were adopted, and I'm quoting here, ''that tenant's life may be disrupted if the landlord can't deliver the premises.'' Well, Mr. President, what about the life of the current tenant, very possibly a single mother with children? For months she's been trying to make ends meet, but the child support she is owned by her ex-husband has not been coming. She misses a few rent payments as she tries to make sure her children are fed and their home is heated. The landlord starts eviction proceedings. And she is forced to file for bankruptcy.

Now once the bankruptcy is filed, and her other creditors are temporarily at bay, she can pay her rent. On time and in full. What about disruption to her life if we put her and her children out on the street? Do we not care about that? If the landlord is not economically harmed, why wouldn't we allow her to stay in her apartment for a few months more? Why can't we maintain the breathing room that the automatic stay under current law provides? What is so terrible about that?

Mr. President, this is the situation I am concerned about. I want to respond in a reasonable way to the abuses that section 311 is supposedly designed to address. But I don't want to cause undue hardship to people who are able to pay their rent while their bankruptcy case is pending.

In the spirit of compromise, I have proposed a few other changes to the amendment to the Senator from Alabama, in response to some of the concerns he and his staff have raised. We are trying to listen very carefully to the points that the Senator from Alabama is making. First, I am willing to have the stay lifted not only in cases where the lease has expired and the landlord wants to move into the property, but also in cases where the landlord wants to let a member of his or her immediate family to occupy the premises. I will expand the language in my amendment to cover that situation.

I will also expand the language to cover a situation where the lease has expired and the landlord has entered into a signed and enforceable agreement with another tenant before the bankruptcy petition is filed. That is the situation that the Senator from Alabama has suggested creates an unbearable hardship for the new tenant. So if a new lease has been made before the debtor files for bankruptcy, the landlord can apply for expedited relief from the stay.

Finally, Mr. President, it has been suggested that some debtors will try to game the system by filing for bankruptcy the day after a rent payment is due, thus giving themselves almost a free month in the apartment before my amendment would apply. I am willing to try to stop this kind of abuse by requiring debtors to pay any rent that comes due up to 10 days before the filing of the petition.

Mr. President, I am trying to be reasonable. I am going to make these changes in a second degree amendment and I hope the Senator from Alabama will accept the amendment. I want my colleagues to understand that this amendment is designed to address the abuses that the Senator from Alabama has identified, but do it in a much more reasonable way, so that we can protect some very vulnerable people from being thrown out on the streets at a very difficult time in their lives.

AMENDMENT NO. 2779 TO AMENDMENT NO. 2748

Mr. FEINGOLD. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

> The Senator from Wisconsin (Mr. FEINGOLD) proposes an amendment numbered 2779 to amendment No. 2748.

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

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

The amendment is as follows:

> On page 1, line 5, strike all after ''(23)'' and insert the following:
>
> under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property—
>
> ''(A) on which the debtor resides as a tenant under a rental agreement; and
>
> ''(B) with respect to which—
>
> ''(i) the debtor fails to make a rent payment that initially becomes due under the rental agreement or applicable State law after the date of filing of the petition or within the 10 days prior to the filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification to the debtor; or
>
> ''(ii) the debtor's lease has expired according to its terms and (a) the lessor or a member of the lessor's immediate family intends to personally occupy that property, or (b)

the lessor has entered into an enforceable lease agreement with another tenant prior to the filing of the petition, if the lessor files with the court a certification of such facts and serves a copy of the certification to the debtor;

''(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property, if during the 1-year period preceding the filing of the petition, the debtor—

''(A) commenced another case under this title; and

''(B) failed to make a rent payment that initially became due under an applicable rental agreement or State law after the date of filing of the petition for that other case; or

''(25) under subsection (a)(3), of an eviction action based on endangerment of property or the use of an illegal drug, if the lessor files with the court a certification that the debtor has endangered property or used an illegal drug and serves a copy of the certification to the debtor.''; and

(4) by adding at the end of the flush material at the end of the subsection the following: ''With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in that paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under that paragraph, unless the debtor takes such action as may be necessary to address the subject of the certification or the court orders that the exception to the automatic stay shall not become effective or provides for a later date of applicability.''.

Mr. FEINGOLD. Mr. President, this second-degree amendment incorporates the modifications I just described. I hope it will be acceptable to the managers of the bill. I have actually shared these ideas and changes with the managers and with the Senator from Alabama.

If not, I urge my colleagues to support it.

I yield the floor.

Exhibit I

LAW OFFICES,
MILLER, FRANK & MILLER,
Philadelphia, PA, November 10, 1999.

Senator RUSS FEINGOLD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINGOLD: I listened to some of the debate concerning your amendment that would moderate some of the landlord-tenant provisions of S. 625. I am writing to let you know that some of the statements made in opposition to your amendment are not in my experience accurate. (I have represented thousands of low-income consumer debtors over the last 25 years and also spend time educating and consulting with other bankruptcy lawyers around the country.)

The statement was made that landlords always prevail in automatic stay motions. This is not correct. In my personal experience, I doubt that landlords have prevailed in even 20% of the cases. In most of the other cases, the family paid the rent due and the motion was either withdrawn or denied.

Overall, more than 20% of landlord stay motions probably are granted, because no one denies that in a few cities there have been widespread abuses (spurred by non-attorney petition preparers, not by attorneys) and when landlords have gone to court they have prevailed in almost all such cases. However, even in these places the problem was being solved even without legislation. I noticed that the figures given for Los Angeles county (where the abuses were worst) were from 1996. It is my understanding that changes in state law and in bankruptcy court procedures have significantly reduced the abuses since then.

The more important point is that in most cases, no motion is brought by the landlord. The automatic stay does what it was intended to do. In these cases, the family that was facing eviction cures the rent arrears and remains in its apartment. The landlord is made whole, and the family is permitted the time necessary to reorganize its finances. Thus, even if it is true that in most cases where landlords seek relief from the stay, such relief is granted (no data is actually kept on the results of such motions), in the large majority of bankruptcy cases tenants catch up on their rent arrears, the landlord is satisfied, no motion for relief from the stay is brought, and the family remains in its home.

To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney. Your amendment would make it impossible to obtain any significant delay simply by filing a bankruptcy petition, as can occur today. But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

Please contact me if you need further information about tenants in bankruptcy.

Very truly yours,

HENRY J. SOMMER.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the work of the Senator from Wisconsin. I know he cares deeply about this issue. He has made some changes in the previous amendment that make the bill more palatable. However, it still runs afoul of common sense and efficient operation of the bankruptcy system. Furthermore, it will allow abuse of the system in a way that is unjustified and unprecedented in terms of any other creditor of a person who goes into bankruptcy.

We are asking a landlord for certain periods of time to extend free rent, when the grocer is not required to give free groceries and the gas station is not required to give free gas.

Let me make a few points about this matter. It is a subject of great abuse in the United States. That is why we are here. The bankruptcy law was last amended in any significant fashion in 1978. Since that time, we have found that a large bankruptcy bar has developed. This has been very good in many ways, but also this skilled, experienced and specialized bar has learned how to utilize the Federal bankruptcy laws to maximize benefits for their clients, as they believe it is their duty to do. In the process, they have created abuses of innocent creditors and landlords, among others.

That is not what we are about. Our responsibility, as a Congress, is not to blame the lawyers, is not to blame the tenants who take advantage of these things. The responsibility of Congress is to pass laws that are not easily abused and that end in just results.

One of the most abused sections of the bankruptcy law has been the landlord-tenant situation. First, eviction procedures are set forth in the laws of all 50 States. One cannot simply throw somebody out of their apartment. One has to file an eviction notice, go to the State court, prove the case, and eventually get the tenant out. Many believe that process is far too prolonged and far too costly. That is what the law is. In many instances, it is good because it provides tenants opportunities to get their affairs together.

With the current bankruptcy law, tenants have responded to ads in newspapers and fliers passed out in neighborhoods and throughout the communities. Those ads say: Up to 7 months free rent. Call us; we will take care of you. We guarantee you 2 to 7 months of delays in payment of your rent and guarantee you will not be evicted under those circumstances.

How can that happen? Say a person is behind in his rent and also behind in other payments, and people have filed lawsuits against him, and he or she has gone to the lawyer to ask what to do, and the lawyer files for bankruptcy. Maybe the lease the person had with the landlord has already expired. Maybe it requires him to pay his rent monthly, and it has been 4 or 5 months since the rent has been paid, and the landlord has already commenced eviction actions against the tenant. When that happens, the matter normally goes forward in State court.

Under normal State laws for removal of someone who does not pay their rent, when a bankruptcy court is involved, the eviction case is stayed; an automatic stay is issued. The landlord cannot proceed with that eviction until the stay is lifted in the bankruptcy court. Once that happens, the landlord can go back to State court and continue with his lawful eviction actions.

This has caused quite a bit of gaming of the system. For example, I will share with Members some statistics from California. The Los Angeles County Sheriffs Department estimates that 3,886 residents filed for bankruptcy in 1996 simply to prevent the execution of valid court-ordered evictions. The sheriff has the responsibility of actually evicting the tenant. The Sheriffs Department of Los Angeles said these 3,886 bankruptcy petitions represent over 7 percent of all the eviction cases handled by the department and that losses have been estimated at nearly $6 million per year in that county. Some people routinely flaunt that automatic stay provision—lawyers do—that advertises that persons may live rent free by filing bankruptcy.

One bankruptcy flier sent out said for a fee the lawyers will use more moves than Magic Johnson to prolong the eviction process.

This is not good. A judge in California has dealt with this matter over and over again, and in an opinion, this

is what Judge Zurzolo in the Central District of California had to say about the evictions and how he believes how meritless they are. This is from his written opinion:

> . . . the bankruptcy courts . . . are flooded with chapter 7 and chapter 13 cases filed solely for the purpose of delaying unlawful detainer evictions. Inevitably and swiftly following this in bankruptcy court, the filing of these cases, is the filing of a motion for relief of stay by the landlord.

After the bankruptcy is filed and the eviction notice is stopped, the landlord has to go into bankruptcy court with his lawyer and file for relief from stay and say: Look, I have not been paid rent for many months; the tenant is in violation of the lease; there is no asset of which the bankruptcy court has jurisdiction. Bankruptcy judge, allow me to proceed with my eviction.

Or the landlord will say: The lease has expired. The tenant has been here a year. In month 14, the lease expired. He did not extend the lease. I want to remove him.

This is what the judge continues to say in his opinion:

> These relief from stay motions are rarely contested and are never lost. Bankruptcy courts in our district hear dozens of these stay motions weekly, none of which involves any justiciable controversies of fact or law.

I don't know about the individual who says he represented a lot of cases and said he won some of the motions, but I don't believe they ought to be winning them under the law if the lease has expired, and that is what our amendment says. If the lease has expired, there cannot be an asset of the bankruptcy estate, and if there is no asset for the bankruptcy court to take jurisdiction over, it has no ability to issue any stay orders to protect or stop any litigation that is ongoing.

That couldn't be the case. If the lease is behind and the payments have been so far delayed that the lease has been violated and, likewise, the tenant has no property interests, there is no asset before the bankruptcy court over which the bankruptcy court has jurisdiction. The bankruptcy court essentially has jurisdiction only over the assets, to make sure when a person cannot pay his debts, all the assets are brought into the pot and the people who should receive the money from the estate get it in proper order.

We are talking about monumental abuse. This is a loophole that has been expanded over and over again. We are seeing record numbers of filings. Many people are filing bankruptcy solely for this protection.

Senator FEINGOLD's amendment, which he has worked hard to improve, is better than before, but is still unacceptable and still creates an unjust situation. For example, if a debtor owes rent and files for bankruptcy, he can wait until after his rent is due and then file it and have 15 days before his first rent payment is due. Then he could make that payment and not make any more payments and remain on this property—maybe even when the lease has expired he can stay there—and not pay the next month's rent.

This is the problem I have been talking about. He has 2, 3, 4 months now. His lawyer is advising him how to do this. His lawyer is going to advise him, first of all: Pay me. Pay your lawyer and do not pay your other debts until you have to. The debtor will do that. Then the landlord has to get a lawyer to file a certificate of failure to pay rent, and once that has been approved by the court, after a further delay of 15 days, then he has to go back to State court, now months behind schedule, and pick up again his legitimate eviction notice.

Bankruptcy court ought not be for that purpose. If the people of the United States want to provide individuals without assets a place to live, then we ought to do so. In fact, we do that. We have low-rent housing for people with low income or rent-free housing for people who cannot afford it. We have benefits for people who do not have housing. But why should an American citizen, a landlord, be required to provide to a tenant, who has violated his lease, an asset rent free that we in the U.S. Congress are not willing to fund? If it is so easy and it costs so little, why don't we pay for it? Why don't we tax American people to pay for other people's rent? We are doing that to a degree right now.

I do not believe that is a legitimate approach to the matter. It is not common sense. It is not what American law is about. When you are in a Federal court, in a bankruptcy court, or a State court, if you have a lease, that is a contract, and if you violate that lease, then you lose the benefit of the contract.

This is so basic and fundamental that I do not know how we in this Congress can think we can pass a law that makes American citizens responsible for someone to have a place to live when they are not paying for it.

We have a number of different provisions in State law that allow tenants rights to hold on and refinance and maybe keep the place in which they live. That is all right. I want to continue that. If people want to change that, go to your State court, change your eviction laws in your State, and take it to your State legislature.

Let's not make the bankruptcy law become a policy of social engineering to decide who should get special benefits and who should pay for those benefits. In effect, it is a tax. The landlord who loses this money is a person who is taxed. Indeed, we may have landlords going bankrupt if tenants do not pay rent.

Two-thirds of rental residences in America today are four units or less. That means we have an awful large number of our grandparents and brothers-in-law who may have a duplex or garage apartment and are renting them to people, and all of a sudden, somebody does not pay. They cannot get the tenants out. The landlords are not receiving any money. Two, 3 months go by, and finally the landlord files for eviction. Boom, the tenant files for bankruptcy. Then, the landlord has to hire a lawyer to go to bankruptcy court, and that is another 2, 3 extra months delay. The landlord is without rent for 2, 3 months, and they still do not have their property back.

This is an abuse of bankruptcy law, and this legislation is designed to fix it. This bill does not change substantive landlord tenant law. Rather, it is a change in that if certain circumstances exist, the landlord does not have to hire a lawyer to go to Federal bankruptcy court to get relief.

It says there is an exemption from the automatic stay if the eviction proceeding was started prior to the filing of the bankruptcy. If the landlord had already filed for eviction before the individual files for bankruptcy, the eviction process can continue as it would have normally.

In addition, the bill says the automatic stay does not apply if an eviction proceeding was based on the fact that the lease had already been terminated. It was a year's lease, and you are in month 13, 14, 15, 16 and no payments have been received and the landlord wants to lease to another tenant. It is the landlord's property. The tenant has no property rights. His lease has expired, for heaven's sake.

I say to Senator FEINGOLD, I respect his concern for these matters. States do provide protections for persons who have difficulty paying their rent.

Also, many landlords all over America try to work with their tenants. They do not want to change tenants if they are happy with a tenant. If they can help work out the tenant's payments, for previous months, that is a courtesy extended by small landlords, two-thirds of whom have four units or less. Those courtesies can turn sour in a hurry if, after months of working with a tenant, the tenant becomes further and further behind in rent. Boom, a bankruptcy petition is filed; boom, they are stayed from eviction; months go by and the landlord has to hire a lawyer and great cost is incurred. This is an abuse of the system, and I must oppose this amendment.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am disappointed in the response of the Senator from Alabama. His comments to the effect that the only thing we should be considering is State laws having to do with leases and contracts almost suggests to me he does not believe there is any role for Federal bankruptcy law.

Bankruptcy law is contemplated in the U.S. Constitution. It certainly was not understood there would be no role at all for Federal bankruptcy law to have an impact on people's lives in our States, whether it be Alabama or Wisconsin. The automatic stay is an integral part of the federal bankruptcy

laws and its purpose is not just to protect the property of the estate but also to provide some breathing room for the debtor.

I will be the first to concede to the Senator from Alabama that one of the concerns in bankruptcy has to be making sure creditors get paid as much as possible and as efficiently as possible. That is legitimate. And a second important concern is to make sure people do not abuse the bankruptcy system.

But the concern the Senator from Alabama refuses to address, refuses to discuss, is that the bankruptcy law is supposed to help people get back on their feet. I will tell you that one lousy way to help people get back on their feet is to kick them out of their apartments, when it serves no financial interest of the landlord for that to happen.

The Senator from Alabama simply refuses to address the example I gave of a single woman with children, who is not getting her child support, who wants to and is prepared to pay her rent and is simply running into trouble and is ready to pay it again after she files for bankruptcy and has a stay against her other creditors. In the world that the Senator from Alabama portrays, this person loses out. This is deeply troubling to me.

What more can you do than listen to a colleague give hypothetical after hypothetical after hypothetical about what might be wrong with the amendment and try to specifically address those concerns? That is exactly what I have done in making the changes contained in my second degree amendment.

So, yes, efficiency in preventing abuses is an important principle. Let me review: The Senator from Alabama, both in committee and on the floor, has attempted to suggest that all kinds of abuses will still continue under the amendment that we have. The trouble is, the abuses he cites and the statistics he cites are all irrelevant to my amendment. My amendment will prevent the abuses.

He talks about the abuse of lawyers who do repeat filings, especially in Los Angeles County. We addressed that. Under our amendment, if you do multiple filings, you are out of luck; the stay is lifted automatically. Essentially, the provisions of the bill that the Senator from Alabama prefers apply in that situation.

In committee he argued against my amendment by saying: What happens if a landlord wants to move back into his own place? All right. We took care of that. We address that concern in the amendment. But then he says: What happens if his brother wants to move into the place? Well, we took care of that concern in this second degree amendment that I just offered.

Here is another example, because instead of admitting that we have actually dealt with some of these hypotheticals, he says: What happens if the landlord has a signed agreement for a new lease prior to the filing of the bankruptcy? We addressed that concern too, but that still isn't good enough.

But I tell you what frustrates me the most. The Senator from Alabama keeps saying that people will live rent free. It is as if I have said nothing here on the floor at all. It is as if I have not said, time after time after time, that under my amendment a tenant cannot live rent free for 5 or 6 months, as the Senator has suggested. After filing for bankruptcy, if you do not pay your rent as it comes due, you are out of there under my amendment.

So what is all this talk about abuses, when in each and every hypothetical the Senator has proposed in committee or on the floor we have addressed his concern? We have addressed abuse. We have addressed the fact that the system has to be efficient.

But what has not been addressed and what this amendment is trying to deal with is what the Senator from Alabama simply ignores. He gives no hope; he gives no alternative to the person that I describe: the woman with children, who is not getting her child support, who is willing and able to pay her rent once she files for bankruptcy, but the Senator from Alabama would have her booted out of her apartment with her kids at the very moment when she is trying to get back on her feet.

So I urge the Senator from Alabama to actually review all of my attempts to try to address his concerns so that I can feel at least that this has been a process where he has raised concerns that he was worried about and we tried to deal with them. That is what we have been doing in debating and modifying this amendment.

I know on other issues we have been able to do that with the Senator, and I appreciate that. But I urge him, surely there has to be a better answer than just ''tough luck'' for these individuals who I have described, who are not in a position where they are going to abuse the system, who cannot get month after month of free rent living, because that is exactly what we dealt to prevent in the amendment. We have specifically dealt with the problem of a person who tries to get more than 1 month of rent free.

The whole problem with this overall bill is sort of symbolized by this debate. There needs to be some balance. I have recognized, in that spirit, the call of the Senator from Alabama for more efficiency, the call of the Senator from Alabama for preventing abuses. But where is the balance? Where is the recognition that there are human beings with limited resources who may need the opportunity to stay in that apartment and pay the rent after the bankruptcy is filed?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I do thank the Senator from Wisconsin for accepting some changes because of my objections to his last amendment. As I indicated earlier, I think he did respond to a number of those. But I also think he fairly clearly made the arguments I made a few minutes ago. I made those the last time his amendment came up also; and those were not addressed. They still remain a fundamental flaw.

Mr. FEINGOLD. Will the Senator yield for a question?

Mr. SESSIONS. Yes.

Mr. FEINGOLD. What objection do you have?

Mr. SESSIONS. My concern is that there is fundamentally no legal basis for a stay in bankruptcy court of a lease that has expired or a lease that has been breached by lack of payment—since there is none, then the landlord ought not to have to hire a lawyer and go to bankruptcy court. So I continue to have that concern. But the Senator from Wisconsin has repeatedly said the tenant would be able to remain on the property, but only if they paid rent.

Let me give you a hypothetical.

On October 1, the tenant's rent is due. The tenant does not pay. On October 11, he files bankruptcy. On November 1, the rent is due; and it is not paid. On November 1, the landlord immediately files his notice in the bankruptcy court. And then 15 days are allowed to go by, presumably so the tenant could file some other complaint in bankruptcy court, some other delay or motion. And 15 days go by; and on November 16, the stay of the eviction proceedings is lifted. Then the landlord has to go back to the State court again to pursue his eviction notice, which has been stopped, which has probably fallen behind the 10,000 other cases in that State court system. And now the landlord has a hard time bringing it up.

So I would suggest to you, it is quite possible that the tenant could have 6 weeks rent free. I made the comment about ''rent free'' because I will show this advertisement right here in San Bernadino: ''7 months free rent.'' That is what is being advertised in the paper:

> No matter how far you are behind in your rent. We guarantee you can stay in your apt. or house for 2–7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall and get you more time.

Mr. FEINGOLD. Is the Senator aware that our amendment would prohibit what you are reading right there?

Mr. SESSIONS. It does not exactly, but it gives them at least a month and a half—if not 2 months, a month and a half.

Mr. FEINGOLD. Isn't it a fact——

Mr. SESSIONS. In addition, it still allows the abuse of forcing the landlord to go to two different courts to pursue a legitimate——

Mr. FEINGOLD. If I could follow up, under the scenario you described, isn't it true that you are talking about a maximum of 6 weeks, and not 6 months? Wouldn't you concede that?

Mr. SESSIONS. Under this scenario, it is clearly 6 weeks, if everything goes

perfectly for the landlord. It is guaranteed 6 weeks under these circumstances.

Mr. FEINGOLD. I would suggest to the Senator, you described the most egregious and extreme possibility under our amendment. And you were talking about 4 months, 5 months, 6 months. Not only is that not accurate, that is clearly not my intent.

My intent, as I have indicated time and again, is to try to make sure a person who is in this position has to pay that rent once they file for bankruptcy, and keep paying it or else they are out of luck. And the goal, just so it is clear to the Senator from Alabama, is obviously not to create that kind of scenario you described. If fact, you just made our case, that the maximum exposure there would probably be about 6 weeks, not 6 months, as you suggested.

Mr. SESSIONS. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. SESSIONS. Under most State eviction proceedings, a tenant who desires to stay on the property can maintain possession of that rental property 45 to 60 days. There are many rights and remedies for tenants. But at some point, the ability to stay without paying rent has to be ended. When you take that 45 to 60 days, and then file a bankruptcy petition, and then get another 6 weeks on top of that—and that is assuming everything goes smoothly, that the landlord can find a lawyer who will go to bankruptcy the first day he calls one, and who can get down there and file the proper petition or get his certificate filed. Maybe the landlord's lawyer does not understand how to file one of these certificates, and ends up billing him $250 or $300 for filing the darn thing, when, in fact, as the Senator, who is an excellent lawyer, knows, bankruptcy court has jurisdiction over property. It is the estate of the person who is filing. If there is no property, there is no estate, which is the case where the lease has expired, or the case where the lease has been breached by lack of payment. Then the bankruptcy court can't legitimately issue an order affecting that property. The bankruptcy judge can never issue an order under those circumstances. So why make somebody go to bankruptcy court to file these petitions if it will not do anything other than cost the landlord more money to delay the eviction and cost that person money?

If we in the Congress want to fund people who can't pay their rents and give them emergency funding, something like that, that is a matter to debate. I don't think we ought to tax private citizens to support individuals in this fashion when their contractual rights have been ended. We have to make sure our bankruptcy system is a good, tight, legal system and not a social service agency.

We give certain rights and benefits to debtors under bankruptcy law. We allow a person who has tremendous debts to walk in and wipe out every one of those debts. Unless their income is above the median income and they can pay back at least 25 percent of their debts, they can go in bankruptcy court and never pay anybody they owe. They do not have to pay their garage mechanic who fixed their automobile for them, not their brother-in-law who loaned their family money when they needed it, not their mother, not their credit card company, not their bank, not their doctor, not their hospital, just wipe them all out because we believe people ought not be crushed under a weight of debt.

I do not believe we would expect the gas station to give free gasoline to somebody who has filed bankruptcy. I don't believe we would expect the grocery store to give free groceries to somebody who filed bankruptcy. Neither should somebody who has violated his lease, is subject to eviction under the appropriate State law, be given free rent, even for a month and a half, perhaps more. That is what our concern is.

I understand the Senator's great passion for this circumstance, but I believe this would be a step backward. It would allow an abuse to continue which we need to eliminate. I hope the Members of this body will reject the amendment.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate the comments of the Senator from Alabama. Frankly, this isn't really about a great passion on this issue. All I am trying to achieve is some balance. I do think landlords should be paid their rent. I do think it is terrible when people abuse the system.

But in case after case where the Senator from Alabama has presented an abuse, we have tried to address it. What it all came down to, when I asked him what he still objected to, was that he fundamentally doesn't believe in the principle behind the bankruptcy system, which is giving people an opportunity to get back on their feet and providing a little breathing room in the case of the type of person I described.

I described a single woman with children who is not getting her child support, who is in danger of being booted out of that apartment. When the Senator responds, he talks about the people who game the system, people who have different debts all over the place and who can hire sophisticated attorneys. That is not who we are talking about.

In fact, I refer back to Mr. Sommer's summary of what my amendment would do. The amendment is actually perfectly tailored to the situation of the person who can't hire a lawyer or afford a lawyer. That is who we are talking about. We are talking about people who certainly are not sophisticated enough or able to game the bankruptcy system. They are not in that category at all. They are people who simply want to stay in their apartment. They have financial problems, but once they file for bankruptcy, they want to be able to start paying that rent again.

Let me read what Mr. Sommer said. He is not a person who works on bankruptcy. He is a distinguished author on bankruptcy law. He wrote to me:

> To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney.

Let me reiterate that. So much of the argument of the Senator from Alabama is premised on the idea that this is somehow a sweet deal for lawyers. What this expert says is that these provisions allow this kind of opportunity for a person who needs it without an attorney. He writes:

> Your amendment would make it impossible to obtain any significant delay simply by filing a bankruptcy petition, as can occur today.

This expert makes it very clear that this is a significant improvement over current bankruptcy law, of which the Senator from Alabama is critical. Even with my amendment, he says it is almost impossible to obtain any significant delay simply by filing a bankruptcy petition. He concedes that some of that could happen today, as the Senator from Alabama has pointed out.

Here is the last line, the critical piece that the Senator from Alabama simply won't address, when it comes to one of the purposes of Federal bankruptcy law. Mr. Sommer says:

> But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

That is all I am trying to do, to get some balance here so that an innocent family that is trying to get its act together and finances together doesn't get booted out of its apartment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the statements of the distinguished Senator from Wisconsin. I will offer for the record three advertisements that are not particularly unusual. One I read from earlier, how they can stop the sheriff and get you more time. Call us if you lost in court. Don't give up. Call us. We will give you more time.

In other words, if you have had your eviction proceedings that every other citizen gets, come down and file bankruptcy and we can get you more time, even though we can wipe out all your debts. A person can then begin to find another place to live, he has no other debt, no old debts to pay. He can afford to make the rent payments, and maybe a landlord will let him stay.

Here is another advertisement, from Los Angeles: Stop this eviction, from 1 to 6 months. I know under the Senator's amendment it might not take quite as long. He would cut that time down. But he said from 1 to 6. But

under his amendment I just went through, wouldn't the Senator agree, it is at least a month to 6 weeks?

Mr. FEINGOLD. Mr. President, I ask the Senator, didn't we come to the conclusion that we are talking 6 weeks and not 6 months? Would the Senator concede that is a big difference, 6 weeks versus 6 months?

Mr. SESSIONS. Not if you depend on the rent every month, as many people do who rent out their garage.

Mr. FEINGOLD. Isn't there a substantial difference between 6 weeks and 6 months of rent? I would say that is significant.

Mr. SESSIONS. It is significant if you don't get rent for 2 months or 1 month or 6 months, if you need it.

The Senator suggests these people are not trying to game the system. They are not sophisticated in all of this. They go to lawyers. They take advertisements like this. Those advertisements will still be there. They tell tenants how to do this. They are shocked when the lawyer says, don't pay any more on your credit card. Don't pay any more at the bank. Don't pay any more of your debts. Take your next paycheck, give it to me, and I will wipe out everything you owe.

I ask unanimous consent to have printed in the RECORD these three documents.

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

7 MONTHS FREE RENT

100% GUARANTEED IN WRITING

No matter how far you are behind in your rent. We guarantee you can stay in your apt. or house for 2–7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall and get you more time. If the Sheriff or Marshall has been to your home, don't panic CALL US! If you lost in court don't give up. Call us and we'll get you more time.

Call Now (213) * * * All counties (Orange, Riverside, San Bernardino, Ventura, etc.) are open 24 hours. Call us and we'll give you our toll-free number (800 * * *). If all lines are busy please call (213) * * * for the location nearest you.

TENANT ORGANIZATION, INC.

Dear Tenant, As you know your landlord has filed for your eviction. Chances are you'll have to move! How long until you are forced to move depends on you.

The TENANT ORGANIZATION can legally stop your eviction for up to 120 days at rock bottom prices. ALL WITHOUT HAVING TO PAY RENT OR APPEAR IN COURT!

We are not a foundation or a National bureau we are the only TENANT ORGANIZATION in Southern California. Our prices are the lowest with the best service and quality you can find. For example we will prepare and file a Chapter 7 or 13 Bankruptcy Petition for only $120. This is a Federal Restraining Order that will delay your eviction for an average of 2 months. That is not all! We have more moves when it comes to prolonging your eviction. more moves than MAGIC JOHNSON!

REMEMBER THE TENANT ORGANIZATION CAN HELP YOU EVEN IF:

You have lost in Court.

Attorneys or even Judges order you to move.

Legal Aid can't help you and says you must move.

Your situation seems hopeless, JUST CALL!

A very urgent warning! Beware of strangers showing up at your front door unexpected and uninvited offering a legal service for your money. Usually these con men and rip off artists will claim to be attorneys or sent by the court. If you are approached by any of these people report them to your local police department. Don't become their next victim!

QUALITY

NEED MORE TIME TO MOVE?

Public records indicate that you are being SUED in the Los Angeles Municipal Court as a party to an Unlawful Detainer Action.

California Law requires that you file an ANSWER to the Complaint Within 5 Days of being served by the Landlord or be forcibly evicted from the premises that you now occupy. For as little as $20.00 you can begin to:

STOP THIS EVICTION FROM 1 TO 6 MONTHS

Whether you appear in the Municipal Court or not, there are Federal Laws which will assist you in your efforts to stop this eviction. A Federal Court Restraining Order, which is automatic upon filing, will immediately stop the Municipal Court, all Marshall's or Sheriff's from continuing this eviction.

Prompt Action in this Matter is Necessary

Failure to respond to this most urgent matter may result in your Immediate Eviction.

For Assistance in filing your answer or obtaining an Automatic Restraining Order Call 24 hr. 7 days a week

Mr. SESSIONS. One of the things Senator GRASSLEY has done in the bill, and the Senator has mentioned, is to provide that you do not have to have an attorney in bankruptcy court for most of the actions that will take place. This is indeed a good step forward. You would not have to have an attorney in this landlord tenant situation. I would suggest that for the average small apartment owner who gets a notice that he is to stay his eviction procedures, and he has a lawyer who is doing the eviction procedures, he is going to ask his lawyer: What is this? What can you do to get this stay lifted? The landlord is going to hire a lawyer and end up spending several hundred dollars to get this matter taken care of, when ultimately, the procedure is such that there will be no legal basis for the filing of the complaint in the overwhelming number of cases.

I understand the Senator's concern. I believe this bill, as written, will provide all the protections the States have given to tenants. I believe we have a responsibility to see they have protections, that they can defend their interests in court before being thrown out of their apartments.

And, indeed, that is the law in every State in America today. But I do not believe we ought to allow those who file bankruptcy to have substantial benefits over those who don't file bankruptcy, who are managing somehow, in some way, on the same income, to pay their debts. I don't believe they should have a superior advantage. I don't believe landlords who are going to lose in this bankruptcy proceeding, no telling how many months rent, should be required to fund additional rents. If this body wants to pay them to allow people to stay, it is OK; otherwise, it is not.

I yield the floor.

SATELLITE TELEVISION SERVICE

Mrs. LINCOLN. Mr. President, I rise today on behalf of the 570,000 satellite viewers in the State of Arkansas who would like to watch local news broadcasts over their satellite dishes. Since I began serving in the Senate in January, I have received more phone calls, letters, and postcards regarding satellite television service than about Federal spending, crime, health care, or many of the other important issues we have debated this year.

Many constituents complained to me earlier this year after they lost some of their network signals due to a court order. Others have been worried they will lose part of their service by December 31. I have kept all of these constituents informed about developments with the bill that would let them keep their full satellite service.

When we passed the bill—which most people refer to as the Satellite Home Viewer Act—by unanimous consent in May, I told my constituents their problems would soon be resolved. Then, as the summer days got shorter and the leaves began to fall, I told them to just be patient. I said, ''It will be just a few more weeks,'' because members of the conference committee had begun to meet.

Now, as we rush to conclude the legislative session, my constituents, and millions of others across the country, are still waiting. I now share their anger with what they perceive as Washington interfering with their access to information and entertainment. I have been told there is only one Senator who is holding up the process of passing a bill that would permit satellite viewers to receive local network signals over their satellite dishes. This is especially frustrating considering the House of Representatives has overwhelmingly approved a bill by a vote of 411–8.

In my opinion, it is so unreal that those who stand in the way of this legislation would think that as we rush to finish the important task of funding the Federal Government, they can kill this bill in the 11th hour and no one will notice. I am here to bear witness that people will notice. As many as 50 million people will notice because that is how many people risk losing part of their satellite service if we do not complete action on the satellite bill before the end of this session.

The satellite TV conference report is the product of hard-fought and very extensive negotiation among conferees. The provision that one Senator has expressed concerns about is especially important for residents of rural States. The local broadcast signal provision in the satellite bill would create a loan

guarantee to bring local channels via satellite into small television markets. Without this loan guarantee, there is little chance that any corporation will make a business decision to launch a satellite that would enable it to beam local television signals into rural communities. Local broadcasters provide people with local news and vital details about storm warnings and school closings. People in rural communities need access to this information. They deserve no less.

It is important to note that this loan guarantee will not cost the taxpayers 1 cent because a credit risk premium would cover any losses from default on the federally backed private loan.

This rural provision should stay in the satellite bill, and we should vote on this bill in the light of day rather than sneaking a whittled-down version into an omnibus package.

I hold in my hand a letter signed by a bipartisan group of 24 Senators urging the majority leader to file cloture on and proceed to the satellite bill. After we delivered the letter, five additional Senators called my office seeking to sign it. I understand that another letter supporting the rural provision may be circulating as I speak.

Mr. President, I urge the majority leader to listen to the will of the people and to the majority of the Members of this body. Let us vote on this today.

Mr. LEAHY. Mr. President, if I could take a moment to comment, I compliment Senator LINCOLN for her comments. I totally agree with her. There was a long and difficult conference. It was the Intellectual Property Communication Omnibus Reform Act—a long and difficult conference. We had a lot of give and take. We had conferees from two Senate committees. It became a Rubik's Cube, where everybody had to give something. We got it through, and it passed. I believe my friend said the vote in the House was 411–8. In my little State, we have 70,000 homes with satellite dishes that will be left dark if we don't get this. There are 12 million nationwide.

I hope we can do this before we go out. The heavy lifting has already been done. It was done in the committee of conference. The distinguished Senator from Arkansas made very clear throughout that whole time the needs of her constituents, as have other Senators. I hope that whether they are sitting in a farmhouse in Vermont, a home in Arkansas, or anywhere else, if on New Year's Eve they want to watch the festivities by satellite, they can do that. I compliment the Senator.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

PRESCRIPTION DRUGS

Mr. WYDEN. Mr. President, I wanted to take a few minutes to talk, as I have on several occasions recently, about the issue of prescription drugs and the Nation's elderly. You certainly can't open up a major publication these days without reading about this issue.

The New York Times, on Sunday last, had an excellent article. Time magazine, which came out in the last couple of days, had a lengthy discussion of prescription drugs and seniors. These are all very captivating discussions, but almost all of them end with the author's judgment that nothing is going to get done in Congress about this critical issue. They go on and on for pages and, finally, the author winds around to the conclusion that this issue has been tied up in partisanship and the kind of bickering that you see so often in Washington, DC. There you have it. Case closed. Lots of arguing but no relief for the Nation's older people. Lots of politics but no results.

So what I have been trying to do, in an effort to break the gridlock on that issue, is to come to the floor of the Senate and talk specifically about a bipartisan piece of legislation, the Snowe-Wyden bill, which has received what amounts to a majority of Senators' support at this point because they have already voted for the funding plan that we envisage, and to talk about how the Senate could come forward with real relief for the Nation's older people and do it in a bipartisan way.

As part of the effort to break the gridlock, as this poster next to me indicates, I hope seniors will send to each of us copies of their prescription drug bills. As a result of seniors and their families being involved in this way, this will help to bring about a bipartisan effort in the Senate and actually win passage of the legislation and bring about relief for older people.

The Snowe-Wyden legislation is called the SPICE bill, the Senior Prescription Insurance Coverage Equity Act. It ought to be a subject Members of Congress know something about because the Snowe-Wyden bill is based on the Federal Employees Health Benefits Plan. It is not some alien, one-size-fits-all Federal price control regime but something that offers a lot of choice and alternatives and uses the forces of the marketplace to deliver good health care to Members of Congress and their families.

Senator SNOWE and I have essentially used that model for the approach that we want to take in delivering prescription drug benefits for the Nation's older people. Fifty-four Members of the Senate, as part of the budget resolution, said they would vote for a specific way to fund the legislation. What I have tried to do is come to the floor on a number of occasions recently and as a result of folks reading this poster and sending copies of their prescription drug bills to us individually in the Senate in Washington, DC, I hope to be able to show the need in our country is enormous and to help catalyze bipartisan action.

Tonight, in addition to reading briefly from some of the bills I have received in recent days, I am going to talk a little bit about how it is not going to be possible to solve this problem unless the approach the Senate devises, in addition to being bipartisan, addresses the question of affordable insurance. For example, this Time magazine article that came out today—a very interesting and very thoughtful piece and I commend the author for most of what is written—talks about the role of the Internet. It says there are going to be a variety of proposals debated on the floor of the Senate. But with the Internet, people are going to just try to go out and buy prescription drugs and it goes into various details about how seniors can buy prescriptions on line.

I was director of the Gray Panthers at home in Oregon for about 7 years before I was elected to the Congress. Suffice it to say, I can assure you that some of the most frail and vulnerable older people in our country are not going to be able to buy their prescriptions on line the way Time magazine envisages. But perhaps even more important, if an older person is spending more than half of his or her Social Security check on prescription medicine—and I have given example after example in recent days of older people in our country, at home in our States. I am very pleased my friend and colleague, Senator SMITH, is in the chair because he has talked often about the need for bipartisan action on this issue to help seniors.

I think both of us would agree that if you have an older person who is spending more than half of their monthly income on prescription drugs—more than half of their Social Security checks, for example, and a lot of them get nothing but Social Security—those folks are going to need decent insurance coverage. They need to be in a position to get insurance coverage that will pick up a significant hunk of their prescription drug costs.

The Time magazine article tells you all about buying drugs over the Internet. But a lot of those senior citizens with an income of $11,000 or $12,000 a year—a modest income—when they are spending more than half of their income on prescription drugs are not going to find an answer on the Internet. They are going to need decent insurance coverage.

The Snowe-Wyden legislation envisages—is a detailed plan, it is a specific plan, a bipartisan plan, S. 1480—and lays out a system that involves marketplace choices and competitive forces in the private sector. Seniors will be in a position to have real clout when it comes to purchasing private insurance.

I think what is so sad about the situation with respect to our older people and prescription drugs is they get hit by a double whammy. Medicare doesn't cover prescription medicine. That is the way the program began back in the middle 1960s.

Second, a lot of the big buyers, health maintenance organizations, or a plan, can go out and negotiate a discount. And the senior who walks into a

pharmacy in our home State in Coos Bay or Beaverton or Pendleton or some part of our home State, ends up, in effect, paying a premium because the big buyers are able to negotiate discounts.

It is critical that seniors be in a position to get more affordable private insurance for their prescription medicine.

Under the Snowe-Wyden legislation for seniors on a modest income, other than a copayment or deductible, the legislation would pick up the entire part of that senior's insurance premium that covers prescription drugs.

That is something that will help that frail older person. It is not going to be the Internet that is going to be a panacea for that older person but legislation that helps that elderly widow or retired gentleman afford private insurance coverage is something that will be of help to them. That is what the Snowe-Wyden legislation is all about.

Tonight, I want to read from a few letters I have received in the last couple of days. And I will continue in the days ahead as the Senate wraps up—we hope it won't be too many more days ahead—to bring these kinds of cases to the floor of the Senate in an effort to try to see the Senate come together in a bipartisan way and provide some relief for older people.

One elderly couple, for example, wrote me about their medical situation, reporting that both had recently had heart surgery and one of them, in addition, had a stroke. They are taking blood-thinner drugs. They are taking important cholesterol-lowering drugs—Lipitor—and drugs for lowering blood pressure. They are breaking that particular medicine in half because they cannot afford their prescriptions, and then they are taking a drug which serves as an antidepressant.

This couple has a combined income of around $1,500 a month. For the month of October alone, they spent $888 on just the drugs I mentioned. Over half of their monthly income is going for prescription medicine.

I don't believe there is going to be relief for that elderly couple over the Internet. They are not going to be able to deal with that financial predicament where they spend over half of their monthly income on prescription medicine through some ''www'' opportunity on the Internet. They are going to need decent insurance coverage.

That is what the bipartisan Snowe-Wyden legislation tries to provide.

The second case I would like to touch on tonight comes from our home State. An elderly woman wrote me to report that in recent days she spent more than $800 on her prescription medicine. She writes: ''I'm on a fixed income. It's just getting harder and harder. Medicare help with prescriptions is a real need.''

Finally, a third letter that I think sums up the kind of predicament that a lot of seniors in our State are facing comes from Beaverton where an elderly couple is trying to make ends meet essentially with just Social Security and a little bit of help from family.

When they are finished paying for their prescription drugs—this is an elderly couple in Beaverton, OR, in our home State—they have $107.40 left over to live for the month.

Just think about that. It is not an isolated kind of case. Think about what it has to be like for an older couple to have $107 left over for living after they have paid for their prescription medicine.

In the last sentence, this particular elderly woman just asked a question: ''Can you help?''

I think that really sums it up.

I think the American people want to see if the Senate, instead of the usual tired routine of bickering and arguing and inaction, will produce a bipartisan plan to provide real relief.

What I find so striking, and why I am so proud to have teamed up with the Republican Senator from Maine on this bipartisan issue, is that when I am asked at home—I had a town meeting a couple of days ago on the Oregon coast. And the President often has the same kind of community session. I was asked about whether the Nation can afford to cover prescription medicine.

My answer is, if you are reading these bills, that America cannot afford not to cover prescription medicine because these drugs, as in the case I described initially, are drugs that keep people well. They help people deal with blood pressure. They help people deal with cholesterol. These are drugs to help keep people healthy. If you keep them healthy, they don't land in the hospital where they rack up those huge charges for Part A of Medicare. I cited repeatedly these anticoagulant medicines.

Evidence shows that for perhaps $1,000 a year, seniors could get a comprehensive program of anticoagulant medicines that can help prevent strokes. We have seen again and again that if you can't get this kind of preventive medical help and you incur a stroke, it costs more than $100,000 to pick up the cost.

That is really the choice, it seems to me, for the Senate. I think the Presiding Officer of the Senate and I have shown in our home States that it is possible on a whole host of issues, frankly, issues that a lot of people think are more divisive than even prescription medicine, to come together in a bipartisan way. I am hopeful the Senate can show that as well. We have seen one poll after another demonstrating that the American people want Congress to provide real relief.

In the last couple of weeks, I have seen several polls which indicate that helping frail and vulnerable seniors with prescription drug coverage through Medicare is one of the top two or three concerns for this country.

Instead of these articles that we are seeing coming out of Time magazine and New York Times and others saying we probably won't be finished, and there won't be an effective answer, I would like to see the Senate show we can really follow through and produce for the older people of this country.

In the days left of this session—we all hope there won't be many more—until we get comprehensive bipartisan legislation that provides the elderly real relief, I intend to keep coming to the floor of the Senate to talk about this issue.

I hope folks who are listening tonight will send in copies of their prescription drug bills.

This poster says it all: ''Send in your prescription drug bills.'' Send them to each of us in the Senate in Washington D.C.

I can tell you the bills that are coming into my office—they are really coming in now as a result of our taking the opportunity to discuss this issue on the floor of the Senate—say that this is an urgent need.

There are people who write who are conservative. There are people who write who are liberals, Democrats, Republicans, and independents, and all across the political spectrum who say: Get the job done. We are not interested in the traditional bickering and fighting about who gets credit, whose turf is being invaded, and which particular parochial kind of issue is being placed ahead of the national wellbeing.

This Nation's seniors and this Nation's families want us to come together and deal with this issue.

I intend to come back on the floor of the Senate again and again until the Senate does.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

MORNING BUSINESS

Mr. SESSIONS. 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.

TRIBUTE TO KJAM IN CELEBRATION OF ITS 40TH YEAR OF BROADCASTING

Mr. DASCHLE. Mr. President, I would like to take this opportunity to acknowledge the 40th year of broadcasting for radio station KJAM-FM, serving Madison, South Dakota and area communities. KJAM Radio first aired on December 3rd, 1959, and this December 3rd, the staff and friends of the radio station will be celebrating this remarkable feat in radio broadcasting with a well-deserved anniversary party.

Small town, locally owned radio stations like KJAM are one of rural America's unique cultural contributions to our nation. They mirror the strong values of the small towns they serve. KJAM has served Madison well, and I would like to commend the employees

and supporters of KJAM for their dedication over these 40 years in bringing to the area local and regional news, weather, and broadcasts of events for Dakota State University and area high schools.

Beginning in January, KJAM will be managed by Three Eagles Communications, which I am sure will continue to enrich the lives of area residents with quality radio broadcasting.

I know my colleagues will join me in honoring John and JoLynn Goeman, the owners of KJAM, who have given so much to the Madison community. John Goeman is the only employee who has been with the station since its inception, and I know his listeners will be sad to hear his last greeting to radio listeners with the ''First Edition'' of the day's news. We all owe an enormous debt of gratitude to the Goemans and KJAM for making such an invaluable contribution to Madison and the entire state of South Dakota.

SENATE QUARTERLY MAIL COSTS

Mr. MCCONNELL. Mr. President, in accordance with section 318 of Public Law 101–520 as amended by Public Law 103–283, I am submitting the frank mail allocations made to each Senator from the appropriation for official mail expenses and a summary tabulation of Senate mass mail costs for the third and fourth quarter of FY99 and ask unanimous consent it be printed in the RECORD. The first and second quarters of FY99 cover the periods of April 1, 1999, through June 30, 1999, and July 1, 1999 though September 30, 1999. The official mail allocations are available for franked mail costs, as stipulated in Public Law 105–275, the Legislative Branch Appropriations Act of 1999.

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

Senators	FY 99 official mail allocation	Total pieces	Pieces per capita	Total cost	Cost per capita
SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING JUNE 30, 1999					
Abraham	$111,746	0	0	0.00	0
Akaka	34,648	0	0	0.00	0
Allard	63,266	0	0	0.00	0
Ashcroft	77,190	0	0	0.00	0
Baucus	33,857	700	0.00088	$942.35	$0.00118
Bayh	60,223	0	0	0.00	0
Bennett	40,959	0	0	0.00	0
Biden	31,559	0	0	0.00	0
Bingaman	41,646	0	0	0.00	0
Bond	77,190	0	0	0.00	0
Boxer	301,322	0	0	0.00	0
Breaux	66,514	0	0	0.00	0
Brownback	49,687	0	0	0.00	0
Bryan	41,258	0	0	0.00	0
Bumpers	13,218	0	0	0.00	0
Bunning	46,853	0	0	0.00	0
Burns	33,857	8,250	0.01033	6,859.62	0.00859
Byrd	43,560	0	0	0.00	0
Campbell	63,266	0	0	0.00	0
Chafee	34,037	0	0	0.00	0
Cleland	95,484	0	0	0.00	0
Coats	21,139	0	0	0.00	0
Cochran	50,337	0	0	0.00	0
Collins	37,775	0	0	0.00	0
Conrad	31,000	0	0	0.00	0
Coverdell	95,484	0	0	0.00	0
Craig	35,841	0	0	0.00	0
Crapo	27,070	0	0	0.00	0
D'Amato	183,036	0	0	0.00	0
Daschle	31,638	0	0	0.00	0
DeWine	132,302	0	0	0.00	0
Dodd	56,116	0	0	0.00	0
Domenici	41,646	0	0	0.00	0
Dorgan	31,000	1,480	0.00232	217.74	0.00034
Durbin	128,275	0	0	0.00	0
Edwards	76,489	0	0	0.00	0
Enzi	29,891	0	0	0.00	0
Faircloth	29,275	0	0	0.00	0
Feingold	72,089	0	0	0.00	0
Feinstein	301,322	0	0	0.00	0
Fitzgerald	97,925	1,500	0.00013	513.31	0.00005
Ford	16,343	0	0	0.00	0
Frist	76,208	0	0	0.00	0
Glenn	35,757	0	0	0.00	0
Gorton	78,087	0	0	0.00	0
Graham	182,107	2,134	0.00017	827.99	0.00006
Gramm	204,461	0	0	0.00	0
Grams	67,542	953	0.00022	777.11	0.00018
Grassley	52,115	0	0	0.00	0
Gregg	35,947	0	0	0.00	0
Hagel	40,350	0	0	0.00	0
Harkin	52,115	0	0	0.00	0
Hatch	40,959	0	0	0.00	0
Helms	100,311	0	0	0.00	0
Hollings	61,281	0	0	0.00	0
Hutchinson	50,285	0	0	0.00	0
Hutchison	204,461	0	0	0.00	0
Inhofe	58,788	0	0	0.00	0
Inouye	34,648	0	0	0.00	0
Jeffords	30,740	3,985	0.00708	2,040.32	0.00363
Johnson	31,638	36,973	0.05312	15,214.26	0.02186
Kempthorne	9,246	0	0	0.00	0
Kennedy	82,469	2,020	0.00034	471.62	0.00008
Kerrey	40,350	0	0	0.00	0
Kerry	82,469	1,052	0.00018	392.39	0.00007
Kohl	72,089	0	0	0.00	0
Kyl	68,434	0	0	0.00	0
Landrieu	66,514	0	0	0.00	0
Lautenberg	97,304	0	0	0.00	0
Leahy	30,740	3,858	0.00686	3,043.36	0.00541
Levin	111,476	5,267	0.00057	4,771.94	0.00051
Lieberman	56,116	0	0	0.00	0
Lincoln	38,142	220	0.00009	73.92	0.0003
Lott	50,337	0	0	0.00	0
Lugar	79,091	0	0	0.00	0
Mack	182,107	0	0	0.00	0
McCain	68,434	22,000	0.00600	16,742.24	0.00457
McConnell	61,650	0	0	0.00	0
Mikulski	71,555	0	0	0.00	0
Moseley-Braun	128,275	0	0	0.00	0
Moynihan	183,036	0	0	0.00	0
Murkowski	30,905	0	0	0.00	0
Murray	78,087	2,350	0.00048	525.66	0.00011
Nickles	58,788	0	0	0.00	0
Reed	34,037	0	0	0.00	0
Reid	41,258	0	0	0.00	0
Robb	87,385	0	0	0.00	0
Roberts	49,687	197,500	0.07972	25,398.47	0.01025
Rockefeller	43,560	0	0	0.00	0
Roth	31,559	0	0	0.00	0
Santorum	138,265	0	0	0.00	0
Sarbanes	71,555	0	0	0.00	0
Schumer	139,902	0	0	0.00	0
Sessions	67,265	0	0	0.00	0
Shelby	67,265	0	0	0.00	0
Smith, Gordon	56,383	0	0	0.00	0
Smith, Robert	35,947	0	0	0.00	0
Snowe	37,755	328	0.00027	264.69	0.00022
Specter	138,265	0	0	0.00	0
Stevens	30,905	0	0	0.00	0
Thomas	29,891	1,011	0.00223	812.35	0.00179
Thompson	76,208	0	0	0.00	0
Thurmond	61,281	0	0	0.00	0
Torricelli	97,304	1,260	0.00016	1,174.32	0.00015
voinovich	101,012	0	0	0.00	0
Warner	87,385	0	0	0.00	0
Wellstone	67,542	0	0	0.00	0
Wyden	56,383	0	0	0.00	0
SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1999					
Abraham	111,746	0	0	0.00	0
Akaka	34,648	0	0	0.00	0
Allard	63,266	0	0	0.00	0
Ashcroft	77,190	0	0	0.00	0
Baucus	33,857	0	0	0.00	0
Bayh	60,223	0	0	0.00	0
Bennett	40,959	0	0	0.00	0
Biden	31,559	0	0	0.00	0
Bingaman	41,646	0	0	0.00	0
Bond	77,190	0	0	0.00	0
Boxer	301,322	353,000	0.01185	50,824.78	0.00171
Breaux	66,514	0	0	0.00	0
Brownback	49,687	0	0	0.00	0
Bryan	41,258	22,500	0.01872	4,664.01	0.00388
Bumpers	13,218	0	0	000	0
Bunning	46,853	0	0	0.00	0
Burns	33,857	11,296	0.01414	8,929.76	0.01118
Byrd	43,560	0	0	0.00	0
Campbell	63,266	0	0	0.00	0
Chafee	34,037	0	0	0.00	o
Cleland	95,484	0	0	0.00	0
Coats	21,139	0	0	0.00	0
Cochran	50,337	0	0	0.00	0
Collins	37,775	0	0	0.00	0
Conrad	31,000	0	0	0.00	0
Coverdell	95,484	0	0	0.00	0
Craig	35,841	0	0	0.00	0
Crapo	27,070	0	0	0.00	0
D'Amato	183,036	0	0	0.00	0
Daschle	31,638	0	0	0.00	0
DeWine	132,302	0	0	0.00	0
Dodd	56,116	0	0	0.00	0
Domenici	41,646	0	0	0.00	0
Dorgan	31,000	4,571	0.00716	3,971.14	0.00622
Durbin	128,275	1,300	0.00011	1,043.44	0.00009
Edwards	76,489	6,806	0.00103	7,217.31	0.00109
Enzi	29,891	0	0	0.00	0
Faircloth	29,275	0	0	0.00	0
Feingold	72,089	0	0	0.00	0
Feinstein	301,322	0	0	0.00	0
Fitzgerald	97,925	0	0	0.00	0
Ford	16,343	0	0	0.00	0
Frist	76,208	0	0	0.00	0
Glenn	35,757	0	0	00.0	0
Gorton	78,087	320,000	0.06575	57,244.02	0.01176
Graham	182,107	0	0	0.00	0
Gramm	204,461	1,425	0.00008	315.15	0.00002
Grams	67,542	52,315	0.01196	43,346.34	0.00991
Grassley	52,115	270,000	0.09723	53,876.10	0.01940
Gregg	35,947	0	0	0.00	0
Hagel	40,350	0	0	0.00	0
Harkin	52,115	0	0	0.00	0
Hatch	40,959	0	0	0.00	0
Helms	100,311	0	0	0.00	0
Hollings	61,281	0	0	0.00	0
Hutchinson	50,285	0	0	0.00	0
Hutchison	204,461	0	0	0.00	0
Inhofe	58,788	0	0	0.00	0
Inouye	34,648	0	0	0.00	0
Jeffords	30,740	66,450	0.11808	10,678.95	0.01898
Johnson	31,638	264,900	0.38060	78,299.58	0.11250
Kempthorne	9,246	0	0	0.00	0
Kennedy	82,469	1,222	0.00020	420.50	0.00007
Kerrey	40,350	0	0	0.00	0
Kerry	82,469	712	0.00012	622.27	0.00010
Kohl	72,089	0	0	0.00	0
Kyl	68,434	0	0	0.00	0
Landrieu	66,514	0	0	0.00	0
Lautenberg	97,304	0	0	0.00	0
Leahy	30,740	5,500	0.00977	1,503.55	0.00267
Levin	111,476	2,000	0.00022	1,522.41	0.00016
Lieberman	56,116	0	0	0.00	0
Lincoln	38,142	0	0	0.00	0
Lott	50,337	0	0	0.00	0
Lugar	79,091	0	0	0.00	0
Mack	182,107	0	0	0.00	0
McCain	68,434	0	0	0.00	0
McConnell	61,650	0	0	0.00	0
Mikulski	71,555	0	0	0.00	0
Moseley-Braun	128,275	0	0	0.00	0
Moynihan	183,036	294,000	0.01634	57,400.05	0.00319
Murkowski	30,905	0	0	0.00	0
Murray	78,087	42,150	0.00866	7,361.16	0.00151
Nickles	58,788	1,833	0.00058	1,445.23	0.00046
Reed	34,037	1,150	0.00115	332.67	0.00033
Reid	41,258	22,500	0.01872	4,818.46	0.00401
Robb	87,385	0	0	0.00	0
Roberts	49,687	200,000	0.08072	27,570.98	0.01113
Rockefeller	43,560	122,500	0.06830	20,402.30	0.01138
Roth	31,559	0	0	0.00	0
Santorum	138,265	0	0	0.00	0
Sarbanes	71,555	0	0	0.00	0
Schumer	139,902	5,333	0.00030	4,587.20	0.00026
Sessions	67,265	0	0	0.00	0
Shelby	67,265	0	0	0.00	0
Smith, Gordon	56,383	0	0	0.00	0
Smith, Robert	35,947	0	0	0.00	0
Snowe	37,755	930	0.00076	855.21	0.00070
Specter	138,265	0	0	0.00	0
Stevens	30,905	0	0	0.00	0
Thomas	29,891	676	0.00149	599.57	0.00132
Thompson	76,208	0	0	0.00	0
Thurmond	61,281	0	0	0.00	0
Torricelli	97,304	100,000	0.01291	79,601.81	0.01027
Voinovich	101,012	3,000	0.00028	2,690.34	0.00025
Warner	87,385	0	0	0.00	0
Wellstone	67,542	0	0	0.00	0
Wyden	56,383	0	0	0.00	0

Other offices	Total pieces	Total cost
COMMITTEE MASS MAIL TOTALS FOR THE QUARTER ENDING SEPT. 30, 1999		
The Vice President	0	0.00
The President Pro-Tempore	0	0.00
The Majority Leader	0	0.00
The Minority Leader	0	0.00
The Assistant Majority Leader	0	0.00
The Assistant Minority Leader	0	0.00
Sec of Majority Conference	0	0.00
Sec of Minority Conference	0	0.00
Agriculture Committee	0	0.00
Appropriations Committee	0	0.00
Armed Services Committee	0	0.00
Banking Committee	0	0.00
Budget Committee	0	0.00
Commerce Committee	0	0.00
Energy Committee	0	0.00
Environment Committee	0	0.00
Finance Committee	0	0.00
Foreign Relations Committee	0	0.00
Governmental Affairs Committee	0	0.00
Judiciary Committee	0	0.00
Labor Committee	0	0.00
Rules Committee	0	0.00
Small Business Committee	0	0.00
Veterans Affairs Committee	0	0.00
Ethics Committee	0	0.00
Indian Affairs Committee	0	0.00
Intelligence Committee	0	0.00
Aging Committee	0	0.00
Joint Economic Committee	0	0.00
Joint Committee on Printing	0	0.00

Other offices	Total pieces	Total cost
JCMTE Congress Inaug	0	0.00
Democratic Policy Committee	0	0.00
Democratic Conference	0	0.00
Republican Policy Committee	0	0.00
Republican Conference	0	0.00
Legislative Counsel	0	0.00
Legal Counsel	0	0.00
Secretary of the Senate	0	0.00
Sergeant at Arms	0	0.00
Narcotics Caucus	0	0.00
SCMTE POW/MIA	0	0.00
Total	0	0.00

CRASH OF THE UNITED NATIONS WORLD FOOD PROGRAMME AIRCRAFT

Mr. DURBIN. Mr. President, on Friday, November 12, a United Nations World Food Programme airplane carrying 24 people crashed in northern Kosovo, killing all on board. The plane departed Rome bound for Pristina, Kosovo—the wreckage was found only 20 miles from its destination. The passengers, mainly humanitarian aid workers, were on a routine flight run by the World Food Programme.

The World Food Programme is the world's largest international food aid organization that provides food aid to 75 million people worldwide through development projects and emergency operations.

The WFP fights both the acute hunger that grips a family fleeing civil conflicts and the chronic hunger that slowly gnaws away a life. Hunger afflicts one out of every seven people on earth. 800 million people are malnourished. Starvation threatens at least another 50 million victims of man-made and natural disasters. In 1998, the WFP delivered 2.8 million tons of food to 80 countries. These projects are enormous undertakings, and are sometimes not without human costs.

The WFP has lost more employees than any other UN agency in work-related accidents, illnesses or attacks. Fifty-one people since 1988 have lost their lives while in service to those who would otherwise go hungry. Among the 24 people who died in the most recent tragedy were doctors, a civil engineer, aid workers, a volunteer chemist, police officers and non-governmental organization workers.

As we begin to plan our Thanksgiving meals, let us pause a moment to reflect on those who dedicate themselves to the eradication of starvation. Let us remember our dear friend and colleague, Congressman Mickey Leland, who died in a plane crash 10 years ago while leading a mission to an isolated refugee camp in Ethiopia.

And as we talk about the United Nations, let us not forget who the U.N. is made up of—humanitarian aid workers who devote their lives, often at great risk, to easing the suffering of others.

THE UNITED STATES BORDER PATROL

Mr. ABRAHAM. Mr. President, it is my pleasure to rise as a cosponsor of S. Con. Res. 74, a resolution which recognizes the United States Border Patrol's 75 years of service to this country.

These brave men and women serve, day in and day out, as both defenders and ambassadors of our nation. With professionalism, civility and a watchful eye, members of the United States Border Patrol watch out for illegal immigrants and the entry of illegal drugs.

It is a difficult task, Mr. President. But one that our Border Patrol Agents perform well. And these duties are not just difficult, Mr. President. Oftentimes they are dangerous as well. Particularly in this era of well-armed thugs and smugglers, Border Patrol Agents may find themselves outgunned as they protect our nation's borders. 86 Border Patrol Agents and Pilots have lost their lives in the line of duty—6 in 1998 alone.

We all owe our Border Patrol our thanks for their bravery and their willingness to put in long, hard hours in service to their country.

I would like to make special note, Mr. President, of the members of the Detroit Sector of the U.S. Border Patrol. These fine individuals perform with grace in the face of very difficult assignments. In the Detroit sector, fewer than 20 Border Patrol field agents are expected to be responsible for four large Midwestern states—Michigan, Ohio, Indiana, and Illinois, an area covering hundreds of miles of border. This small number of Border Patrol agents also must assist INS investigators in responding to local law enforcement requests in these four states.

I salute the good work of the United States Border Patrol, and especially thank the members of the Detroit Sector for their work above and beyond the call of duty.

PEDRO MARTINEZ WINS 1999 AMERICAN LEAGUE CY YOUNG AWARD

Mr. KENNEDY. Mr. President, all of us in Massachusetts know that Pedro Martinez, the great pitcher for the Boston Red Sox, is the class of the American League. Yesterday, the Baseball Writers' Association of America confirmed that judgment by unanimously selecting Pedro Martinez as the winner of the Cy Young Award for the American League for 1999.

Pedro's record this year was brilliant. His 23 victories, his earned run average of 2.07, and his 313 strikeouts led the league in all three of those categories, and his dramatic victory over the New York Yankees in the third game of the American League Championship Series last month was the crowning achievement in his extraordinary season.

All of us in Boston are proud of the Red Sox and proud of Pedro Martinez. I congratulate him on this well-deserved recognition, and I ask unanimous consent that a ''Red Sox News Flash'' about the award be printed in the RECORD.

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

RED SOX NEWS FLASH, NOV. 16, 1999

This afternoon Red Sox pitcher Pedro Martinez was selected the 1999 American League Cy Young award winner by the Baseball Writers' Association of America. The voting was unanimous, with Pedro finishing with 140 points, including all 28 first place votes.

Martinez led the American League in seven major pitching categories, including wins (23), ERA (2.07) and strikeouts (313), becoming the first Red Sox pitcher to lead the AL in those three categories since Cy Young in 1901. Martinez' 2.07 ERA was more than a run less than New York's David Cone, who ranked 2nd in ERA at 3.44. The right-hander also became the third pitcher to win the award in both leagues, joining Randy Johnson (1995 in AL & 1999 in NL) and Gaylord Perry (1972 in AL & 1978 in NL). He also becomes the fifth pitcher to win the award with two different clubs.

Pedro's 313 strikeouts in 1999 set a new Red Sox single season record. Martinez became the first American League pitcher with 300 or more strikeouts in a season since Randy Johnson in 1993 with Seattle (308) and he is one of 14 different pitchers to have struck out 300 or more batters in a season. He is the second pitcher in Major League History to achieve 300 or more strikeouts in both leagues (Randy Johnson is the other). Pedro is only the 9th player in Major League History to strike out 300 or more batters in a season more than once: joining Nolan Ryan (6x), Sandy Koufax (3x), Randy Johnson (3x, including '99), Sam McDowell (2x), Curt Schilling (2x), Walter Johnson (2x) and J.R. Richard (2x).

The Dominican Republic native tossed his 2nd career 1 hitter on September 10th at New York and set a career high with 17 strikeouts (tying the Major League season-high in 1999). Martinez became the first Red Sox pitcher to win 20 games since Roger Clemens in 1990 (21–6) and the first Sox pitcher other than Clemens since Dennis Eckersley in 1978. He also set a team record by striking out 10 or more batters 19 times in a season. He became the first right-handed pitcher to record 15 or more strikeouts 6 times in a season since Nolan Ryan in 1974. Pedro struck out the side 18 times in his 213.1 IP and has struck out 10 or more batters 54 times in his career, 27 times as a Red Sox.

Pedro Martinez becomes the third Red Sox pitcher to win the Cy Young award, joining Roger Clemens (1986, 1987 & 1991) and Jim Lonborg (1967). He is only the fifth AL Cy Young Award winner to be selected unanimously since 1967, when the award was first presented to a pitcher in both the American League and National League.

Previous AL Cy Young Award Winners:

1998 Roger Clemens, Toronto Blue Jays
1997 Roger Clemens, Toronto Blue Jays
1996 Pat Hentgen, Toronto Blue Jays
1995 Randy Johnson, Seattle Mariners
1994 David Cone, Kansas City Royals
1993 Jack McDowell, Chicago White Sox
1992 Dennis Eckersley, Oakland Athletics
1991 Roger Clemens, Boston Red Sox
1990 Bob Welch, Oakland Athletics
1989 Bret Saberhagen, Kansas City Royals
1988 Frank Viola, Minnesota Twins
1987 Roger Clemens, Boston Red Sox
1986 Roger Clemens, Boston Red Sox
1985 Bret Saberhagen, Kansas City Royals
1984 Guillermo (Willie) Hernandez, Detroit Tigers
1983 LaMarr Hoyt, Chicago White Sox
1982 Pete Vockovich, Milwaukee Brewers
1981 Rollie Fingers, Milwaukee Brewers
1980 Steve Stone, Baltimore Orioles
1979 Mike Flanagan, Baltimore Orioles

1978 Ron Guidry, New York Yankees
1977 Sparky Lyle, New York Yankees
1976 Jim Palmer, Baltimore Orioles
1975 Jim Palmer, Baltimore Orioles
1974 Jim (Catfish) Hunter, Oakland Athletics
1973 Jim Palmer, Baltimore Orioles
1972 Gaylord Perry, Cleveland Indians
1971 Vida Blue, Oakland Athletics
1970 Jim Perry, Minnesota Twins
1969 (tie) Mike Cuellar, Baltimore Orioles; Denny McLain, Detroit Tigers
1968 Denny McLain, Detroit Tigers
1967 Jim Lonborg, Boston Red Sox
1964 Dean Chance, Los Angeles Angels
1961 Whitey Ford, New York Yankees
1959 Early Wynn, Chicago White Sox
1958 Bob Turley, New York Yankees

Note: One award from 1956–66; NL pitchers won in 1956–57, 1960, 1962–63, 1965–66.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, November 16, 1999, the Federal debt stood at $5,689,775,697,887.62 (Five trillion, six hundred eighty-nine billion, seven hundred seventy-five million, six hundred ninety-seven thousand, eight hundred eighty-seven dollars and sixty-two cents).

One year ago, November 16, 1998, the Federal debt stood at $5,581,706,000,000 (Five trillion, five hundred eighty-one billion, seven hundred six million).

Five years ago, November 16, 1994, the Federal debt stood at $4,748,423,000,000 (Four trillion, seven hundred forty-eight billion, four hundred twenty-three million).

Ten years ago, November 16, 1989, the Federal debt stood at $2,918,690,000,000 (Two trillion, nine hundred eighteen billion, six hundred ninety million).

Fifteen years ago, November 16, 1984, the Federal debt stood at $1,627,271,000,000 (One trillion, six hundred twenty-seven billion, two hundred seventy-one million) which reflects a debt increase of more than $4 trillion—$4,062,504,697,887.62 (Four trillion, sixty-two billion, five hundred four million, six hundred ninety-seven thousand, eight hundred eighty-seven dollars and sixty-two cents) during the past 15 years.

UNDER THE INFLUENCE

Mr. LEVIN. Mr. President, in July, when the Senate debated the Commerce, Justice, State, and Judiciary fiscal year 2000 spending bill, an important amendment was adopted to the bill. That amendment, offered by my colleague Senator BOXER, would have made it illegal to sell or transfer firearms or ammunition to anyone under the influence of alcohol. Unfortunately, the House-Senate conference committee, in working out the differences between the two versions of this spending measure, removed the Senate-passed amendment from the final bill.

I do not understand how something so simple, so straightforward, could be deleted from the final bill. This amendment does nothing more than save lives and prevent injuries by prohibiting drunks from buying guns or ammunition. Under current law, it is illegal to sell firearms or ammunition to a purchaser under the influence of illicit drugs. This would simply close the loophole by making it illegal for someone under the influence of alcohol to purchase the same products.

It is unconscionable that House and Senate conferees deleted this commonsense provision from the bill. Unfortunately, this is just another example of how reasonable legislation is repeatedly stymied by the power of the NRA.

THE MICROSOFT RULING

Mr. HOLLINGS. Mr. President, two core principles guide our economy, competition and the rule of law. In the absence of competition there is no innovation or consumer choice. For over 100 years the anti-trust laws have served as an indispensable bullwark to ensure that unfettered competition does not result in monopoly power that stifles innovation and denies consumers a choice.

So it is curious that a veritable who's who of ''conservative'' politicians and think tanks unleashed a barrage of faxes attacking Federal Judge Thomas Penfield Jackson's decision in United States v. Microsoft.

Based on a voluminous record, Judge Jackson found that Microsoft had succeeded in ''stifling innovations that would benefit consumers, for the sole reason that they do not coincide with Microsoft's self-interest.''

The factual findings of the District Court held that ''Microsoft will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of its core products.''

According to the District Court, Microsoft ''foreclosed an opportunity for PC makers to make Windows PC systems less confusing and more user-friendly as consumers desired.''

The record included the testimony of numerous high tech entrepreneurs who felt the lash of Microsoft's monopolistic wrath. From IBM's inability to gain support for its OS2/Warp operating system to Apple's inability to effectively compete with Windows to threats to cut off Netscape's ''oxygen supply,'' Microsoft engaged in a pernicious pattern of anticompetitive behavior, openly flaunting the rule of law. Perhaps the most damning of all was the evasive testimony of Microsoft founder William Gates.

It is, frankly, a record that is quite embarrassing. But rather than show remorse, Microsoft has embarked on a vendetta to punish the outstanding group of Justice Department lawyers who bested its minions of high-payed lawyers and spin doctors.

So, Mr. President, let me take this opportunity to praise the Justice Department's Antitrust Division and its leader Joel Klein. It is well known that I had my doubts about Mr. Klein, but I am pleased to say, and not too proud to admit, that I misjudged him. He is doing an outstanding job.

In the long run, failure to promote competition and innovation will undermine our preeminence in the high tech arena.

THE CONSERVATION AND REINVESTMENT ACT OF 1999

Mrs. LINCOLN. Mr. President, I rise today to join the Senator from Louisiana in calling upon our colleagues in the Senate, as well as the Administration, to capitalize on the momentum provided by the House Resources Committee last week in passing the Conservation and Reinvestment Act of 1999. We must not let this opportunity slip away to enact what may well be the most significant conservation effort of the century.

As part of any discussion into utilizing revenues from Outer Continental Shelf oil drilling to fund conservation programs, I want to ensure that wildlife programs are kept among the priorities of the debate. Specifically, I want to comment upon the importance of funding for wildlife conservation, education, and restoration efforts as provided in both the House and Senate versions of the Conservation and Reinvestment Act of 1999. This funding would be administered as a permanent funding source through the successful Pittman-Robertson Act.

This program enjoys a great deal of support including a coalition of nearly 3,000 groups across the country known as the Teeming with Wildlife Coalition. Also, this funding would be provided without imposing new taxes. Funds will be allocated to all 50 states for wildlife conservation of non-game species, with the principal goal of preventing species from becoming endangered or listed under the Endangered Species Act.

In my home state of Arkansas, we have recognized the importance of funding conservation and management initiatives. The people of Arkansas were successful in passing a one-eighth cent sales tax to fund these types of programs. As I'm sure is true all across this country, people don't mind paying taxes for programs that promote good wildlife management and help keep species off of the Endangered Species List.

By taking steps now to prevent species from becoming endangered, we are not only able to conserve the significant cultural heritage of wildlife enjoyment for the people of this country, but also to avoid the substantial costs associated with recovery for endangered species. In fact, all 50 states would benefit as a result of the important link between these wildlife education-based initiatives and the benefits of wildlife-related tourism.

I look forward to working with my colleagues on the Senate Energy and Natural Resources Committee to make

this historic legislation a reality upon our return early next year.

FIRST YEAR IN THE SENATE

Mr. SCHUMER. Mr. President, as the first session of the 106th Congress comes to an end, I cannot help but think of what an interesting and exciting first year it has been for me in the United States Senate. The experience has been a wonderful one, to say the least. As my colleagues all well know from their first days in the Senate, setting up a Senate office is a daunting task, and setting one up right does not happen by accident. Many have helped make my transition from the House to the Senate a smooth one, and I would like to take a moment to stop and thank, in particular, the dedicated and loyal employees of the Architect of the Capitol, the Secretary of the Senate, and the Senate Sergeant at Arms who played an integral role in making sure that my staff and I could serve the citizens of New York as effectively as possible.

From the Architect of the Capitol's office, a special thanks goes to the following: Sherry Britton, Michael Cain, Edolphus Carpenter, Tim Chambers, Jerry Coates, David Cox, Darvin Davis, Andre DeVore, Reggie Donahue, Ed Fogle, Bob Garnett, Steve Howell, Donna Hupp, Lamont Jamison, JoAnn Martin, Dwight McBride, Alpha McGee, Richard Muriel, Randy Naylor, James Outlaw, Albert Price, Lindwood Simmons, Sally Tassler, Doug Whittington, Jr., Clarence Williams, Caroll Woods, and Greg Young.

Kim Brinkman, Timothy O'Keefe, John Trimble, and Timothy Wineman from the Office of Secretary of the Senate deserve special recognition.

And, from the Senate Sergeant at Arms office, I would like to point out: Roosevelt Allen, Sterret Carter, Robert Croson, Val Fisher, Denise Gresham, Kenneth Lloyd, Michael Lussier, Stacy Norris, Theresa Peel, Dan Templeton, Jeanne Tessieri, and James Wentz.

The professionalism that each of these individuals displayed should be a source of great pride to their bosses, and if I wore a hat, I would tip it to them. But, for now, I hope they will accept my thanks and praise for a job well done.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:02 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2541. An act to adjust the boundaries of the Gulf Islands National Seashore to include Cat Island, Mississippi.

H.R. 2818. An act to prohibit oil and gas drilling in Mosquito Creek Lake in Cortland, Ohio.

H.R. 2862. An act to direct the Secretary of the Interior to release reversionary interests held by the United States in certain parcels of land in Washington County, Utah, to facilitate an anticipated land exchange.

H.R. 2863. An act to clarify the legal effect on the United States of the acquisition of a parcel of land in the Red Cliffs Desert Reserve in the State of Utah.

H.R. 3063. An act to amend the Mineral Leasing Act to increase the maximum acreage of Federal leases for sodium that may be held by an entity in any one State, and for other purposes.

H.R. 3257. An act to amend the Congressional Budget Act of 1974 to assist the Congressional Budget Office with the scoring of State and local mandates.

H.R. 3257. An act to require the Secretary of the Treasury to mint coins in conjunction with the minting of coins by the Republic of Iceland in commemoration of the millennium of the discovery of the New World by Lief Ericson.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 165. Concurrent resolution expressing United States policy toward the Slovak Republic.

H. Con. Res. 206. Concurrent resolution expressing grave concern regarding armed conflict in the North Caucasus region of the Russian Federation which has resulted in civilian casualties and internally displaced persons, and urging all sides to pursue dialog for peaceful resolution of the conflict.

H. Con. Res. 211. Concurrent resolution expressing the strong support of the Congress for the recently concluded elections in the Republic of India and urging the President to travel to India.

H. Con. Res. 222. Concurrent resolution condemning the assassination of Armenian Prime Minister Vazgen Sargsian and other officials of the Armenian Government and expressing the sense of the Congress in mourning this tragic loss of the duly elected leadership of Armenia.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2116) to amend title 38, United States Code, to establish a program of extended care services for veterans and to make other improvements in health care programs of the Department of Veterans Affairs.

The message also reported that the House disagrees to the amendment of the Senate to the bill (H.R. 2112) to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and to provide for Federal jurisdiction of certain multiparty, multiform civil actions, and asks a conference with the Senate on the disagreeing votes of the two houses thereon; and appoints Mr. HYDE, Mr. SENSENBRENNER, Mr. COBLE, Mr. CONYERS, and Mr. BERMAN, as managers of the conference on the part of the House.

At 11:20 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 80. Joint resolution making further continuing appropriations for the fiscal year 2000, and for other purposes.

A message from the House of Representatives, received during the recess of the Senate, announced that the House has passed the following bills, without amendment:

S. 278. An act to direct the Secretary of the Interior to convey certain lands to the county of Rio Arriba, New Mexico.

S. 382. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes.

S. 1235. An act to amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training.

S. 1398. An act to clarify certain boundaries on maps relating to the Coastal Barrier Resources System.

The message also announced that the House has passed the following bill, with amendment, in which it requests the concurrence of the Senate:

S. 416. An act to direct the Secretary of Agriculture to convey the city of Sisters, Oregon, a certain parcel of land for use in connection with a sewage treatment facility.

At 3:33 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3381. An act to reauthorize the Overseas Private Investment Corporation and the Trade and Development Agency, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

At 4:33 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker had signed the following enrolled joint resolution:

H.J. Res. 80. Joint resolution making further continuing appropriations for the fiscal year 2000, and for other purposes.

The enrolled joint resolution was signed subsequently by the President pro tempore (Mr. THURMOND).

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–6181. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the export

to the People's Republic of China of an airport runway profiler containing an accelerometer; to the Committee on Foreign Relations.

EC–6182. A communication from the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Futures Trading Commission, transmitting jointly, a report entitled ''Over-the-Counter Derivatives Markets and the Commodity Exchange Act''; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6183. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Small Hog Operation Payment Program'' (RIN0560–AF70), received November 15, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6184. A communication from the Associate Administrator, Dairy Programs, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Central Arizona and New Mexico-West Texas Marketing Areas; Suspension of Certain Provisions of the Orders'' (Docket No. DA–99–05&09), received November 12, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6185. A communication from the Associate Administrator, Dairy Programs, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Texas and Eastern Colorado Marketing Areas; Suspension of Certain Provisions of the Orders'' (Docket No. DA–99–08&07), received November 12, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–6186. A communication from the Director, Civil Rights Center, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998'' (RIN1292–AA29), received November 16, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–6187. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Indirect Food Additives: Resinous and Polymeric Coatings'' (Docket No. 91F–0431), received November 9, 1999; to the Committee on Health, Education, Labor, and Pensions.

EC–6188. A communication from the Managing Director, Federal Housing Finance Board, transmitting, pursuant to law, the report of a rule entitled ''Availability of Unpublished Information'' (RIN3069–AA81), received November 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–6189. A communication from the Acting Executive Director, Emergency Steel Guarantee Loan Board, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Emergency Steel Guarantee Loan Program'' (RIN3004–ZA00), received November 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–6190. A communication from the Acting Executive Director, Emergency Oil and Gas Guaranteed Loan Board, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Emergency Oil and Gas Guaranteed Loan Program'' (RIN3003–ZA00), received November 9, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC–6191. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Public Financing of Presidential Primary and General Election Candidates'', received November 9, 1999; to the Committee on Rules and Administration.

EC–6192. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report relative to the Development of a Medical Support Incentive for the Child Support Enforcement program; to the Committee on Finance.

EC–6193. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Partnership Returns Required on Magnetic Media'' (RIN1545–AW14) (TD 8843), received November 10, 1999; to the Committee on Finance.

EC–6194. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Return of Partnership Income'' (RIN1545–AU99) (TD 8841), received November 10, 1999; to the Committee on Finance.

EC–6195. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Acquisition of an S Corporation by a Member of a Consolidated Group'' (RIN1545–AW32) (TD 8842), received November 9, 1999; to the Committee on Finance.

EC–6196. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report entitled ''Benefits and Costs of the Clean Air Act, 1990 to 2010''; to the Committee on Environment and Public Works.

EC–6197. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Tennessee-Tombigbee Waterway Mitigation Project, Alabama and Mississippi''; to the Committee on Environment and Public Works.

EC–6198. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting a report entitled ''Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances'' (FRL #6097–7); to the Committee on Environment and Public Works.

EC–6199. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination that State has Corrected Deficiencies; State of Arizona; Maricopa County'' (FRL #6468–8), received November 10, 1999; to the Committee on Environment and Public Works.

EC–6200. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Partial Withdrawal of Direct Final Rule for Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District'' (FRL #6462–9), received November 10, 1999; to the Committee on Environment and Public Works.

EC–6201. A communication from the Director, Office of Regulatory Management and Information, Office of Policy, Planning and Evaluation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont Negative Declaration'' (FRL #6474–1), received November 9, 1999; to the Committee on Environment and Public Works.

EC–6202. A communication from the Director, Office of White House Liaison, Department of Commerce, transmitting, pursuant to law, a report relative to the nomination of a Chief Financial Officer and Assistant Secretary for Administration; to the Committee on Commerce, Science, and Transportation.

EC–6203. A communication from the Chief, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Federal-State Joint Board on Universal Service'' (FCC 99–256) (CC Doc. 96–45), received November 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6204. A communication from the Chief, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Changes to the Board of Directors of NECA, Inc., Federal-State Joint Board on Universal Service'' (FCC 99–269) (CC Docs. 97–21 and 96–45), received November 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6205. A communication from the Chief, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Federal-State Joint Board on Universal Service'' (FCC 99–306) (CC Doc. 96–45), received November 10, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6206. A communication from the Special Assistant to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Biennial Review-Streamlining of Mass Media Applications, Rules, and Processes; Policies Regarding Minority and Female Ownership of Mass Media Facilities'' (FCC Docket Nos. 98–43 and 94–149) (FCC 99–267), received November 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6207. A communication from the Special Assistant to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Section 73.202(b), Table of FM Allotments; FM Broadcast Stations: Centerville, TX; Iowa Park, TX and Hunt, TX'' (MM Docket Nos. 99–257, 99–258 and 99–234), received November 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6208. A communication from the Special Assistant to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Section 73.202(b), Table of FM Allotments; FM Broadcast Stations: Marysville and Hilliard, OH'' (MM Docket Nos. 98–123, RM–9291), received November 8, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6209. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species Fisheries; Large Coastal Shark Species; Fishery Reopening; Fishing Season Notification'' (I.D. 052499C), received November 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6210. 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 ''Final Rule to Implement Amendment 16B to the Fishery Management Plan for the Reef Fish

Resources of the Gulf of Mexico'' (RIN0648–AL57), received November 5, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6211. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Mystic River, CT (CGD01–99–079)'' (RIN2115–AE47) (1999–0055), received November 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6212. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Housatonic River, CT (CGD01–99–085)'' (RIN2115–AE47) (1999–0056), received November 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6213. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Miles River, MD (CGD05–99–003)'' (RIN2115–AE47) (1999–0058), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6214. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Sassafras River, Georgetown, MD (CGD05–99–006)'' (RIN2115–AE47) (1999–0057), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6215. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Pequonnock River, CT (CGD01–99–086)'' (RIN2115–AE47) (1999–0063), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6216. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Hackensack River, Passaic River, NJ (CGD01–9076)'' (RIN2115–AE47) (1999–0062), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6217. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Kennebec River, ME (CGD01–98–174)'' (RIN2115–AE47) (1999–0061), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6218. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Illinois River, IL (CGD08–99–014)'' (RIN2115AE47) (1999–0060), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6219. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Niantic River, CT (CGD01–99–087)'' (RIN2115–AE47) (1999–0059), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6220. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Kennebec River, ME (CGD01–99–024)'' (RIN2115–AE47) (1999–0054), received November 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6221. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; SLR; City of Augusta, GA (CGD07-99-068)'' (RIN2115-AE46) (1999-0042), received November 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6222. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Sciame Construction Fireworks, East River, Manhattan, NY (CGD01-99-181)'' (RIN2115-AA97) (1999-0068), received November 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6223. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; All Coast Guard and Navy Vessels Involved in Evidence Transport, Narragansett Bay, Davisville, RI (CGD01-99-185)'' (RIN2115-AA97) (1999-0069), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6224. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Licensing and Manning for Officers of Towing Vessels (USCG-1999-6224)'' (RIN2115-AF23) (1999-0001), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6225. A communication from the Chief, Office of Regulations and Administrative Law, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Areas; Strait of Juan de Fuca and Adjacent Waters of Washington; Makah Whale Hunting (CGD-13-98-023)'' (RIN2115-AE84) (1999-0004), received November 15, 1999; to the Committee on Commerce, Science, and Transportation.

EC–6226. A communication from the Secretary of the Senate, transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period April 1, 1999 through September 30, 1999; ordered to lie on the table.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–372. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to tobacco subsidies and food-producing agricultural activities; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE RESOLUTION NO. 68

Whereas, For many years, even as our country has wrestled with the costly and harmful effects of tobacco use, Americans have provided financial support for tobacco farming through federal tobacco subsidies. These subsidies include money spent for tobacco crop insurance and price support, in addition to inspection and grading services. While changes in federal agricultural programs and law have significantly reduced money going to tobacco farming and related activities, federal dollars continue to be spent on an endeavor that is harmful to our citizens; and

Whereas, One of the greatest challenges facing humanity in any age is the production of food of sufficient quantity and quality to meet ever-rising needs. Investments in the process of raising crops are among the most important commitments we can make to future generations. Subsidies for food production, research, and marketing hold the potential to touch every citizen in a positive fashion; and

Whereas, With the recent settlement among the states and the tobacco industry, the enormity of the cost tobacco exacts on our society is clear. Any money going to support any aspect of this activity would be far better spent elsewhere; now therefore, be it

Resolved by the Senate, That we memorialize the Congress of the United States to end tobacco subsidies and to redirect this support to food-producing agricultural activities; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

REPORT OF COMMITTEE

The following report of committee was submitted:

By Mr. THOMPSON, from the Committee on Governmental Affairs:

Report to accompany the bill (S. 1877) to amend the Federal Report Elimination and Sunset Act of 1995 (Rept. No. 106–223).

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. ROTH for the Committee on Finance:

Deanna Tanner Okun, of Idaho, to be a Member of the United States International Trade Commission for a term expiring June 16, 2008.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HATCH for the Committee on the Judiciary:

Kermit Bye, of North Dakota, to be United States Circuit Judge for the Eighth Circuit.

Thomas L. Ambro, of Delaware, to be United States Circuit Judge for the Third Circuit.

George B. Daniels, of New York, to be United States District Judge for the Southern District of New York.

Joel A. Pisano, of New Jersey, to be United States District Judge for the District of New Jersey.

(The above nominations were reported with the recommendation that they be confirmed.)

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. CRAIG:

S. 1937. A bill to amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for sales of electricity by the Bonneville Power Administration to joint operating entities; to the Committee on Energy and Natural Resources.

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

S. 1938. A bill to provide for the return of fair and reasonable fees to the Federal Government for the use and occupancy of National Forest System land under the recreation residence program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HELMS:

S. 1939. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for dry cleaning equipment which uses reduced amounts of hazardous substances; to the Committee on Finance.

By Mr. LEAHY (for himself, Mr. BROWNBACK, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. JEFFORDS, and Mr. LAUTENBERG):

S. 1940. A bill to amend the Immigration and Nationality Act to reaffirm the United States' historic commitment to protecting refugees who are fleeing persecution or torture; to the Committee on the Judiciary.

By Mr. DODD (for himself and Mr. DEWINE):

S. 1941. A bill to amend the Federal Fire Prevention and Control Act of 1974 to authorize the Director of the Federal Emergency Management Agency to provide assistance to fire departments and fire prevention organizations for the purpose of protecting the public and firefighting personnel against fire and fire-related hazards; to the Committee on Commerce, Science, and Transportation.

By Mr. JEFFORDS:

S. 1942. A bill to amend the Older Americans Act of 1965 to establish grant programs to provide State pharmacy assistance programs and medication management programs; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MURRAY:

S. 1943. A bill to provide for an inexpensive book distribution program; to the Committee on Health, Education, Labor, and Pensions.

S. 1944. A bill to provide national challenge grants for innovation in the education of homeless children and youth; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BOND (for himself and Mr. JOHNSON):

S. 1945. A bill to amend title 23, United States Code, to require consideration under the congestion mitigation and air quality improvement program of the extent to which a proposed project or program reduces sulfur or atmospheric carbon emissions, to make renewable fuel projects eligible under that program, and for other purposes; to the Committee on Environment and Public Works.

By Mr. INHOFE (for himself, Ms. SNOWE, Mr. BAUCUS, Mr. WARNER, Mrs. FEINSTEIN, Mr. LIEBERMAN, Mr. WYDEN, Mr. DOMENICI, Mr. MOYNIHAN, Ms. COLLINS, Mr. LAUTENBERG, Mr. KERRY, and Mr. BENNETT):

S. 1946. A bill to amend the National Environmental Education Act to redesignate that Act as the ''John H. Chafee Environmental Education Act'', to establish the John H. Chafee Memorial Fellowship Program, to extend the programs under that Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 1947. A bill to provide for an assessment of the abuse of and trafficking in gamma hydroxybutyric acid and other controlled substances and drugs, and for other purposes; to the Committee on the Judiciary.

By Mr. LOTT:

S. 1948. A bill to amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite; to the Committee on the Judiciary.

By Mr. LEAHY:

S. 1949. A bill to promote economically sound modernization of electric power generation capacity in the United States, to establish requirements to improve the combustion heat rate efficiency of fossil fuel-fired electric utility generating units, to reduce emissions of mercury, carbon dioxide, nitrogen oxides, and sulfur dioxide, to require that all fossil fuel-fired electric utility generating units operating in the United States meet new source review requirements, to promote the use of clean coal technologies, and to promote alternative energy and clean energy sources such as solar, wind, biomass, and fuel cells; to the Committee on Finance.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 1950. A bill to amend the Mineral Leasing Act of 1920 to ensure the orderly development of coal, coalbed methane, natural gas, and oil in the Powder River Basin, Wyoming and Montana, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SCHUMER (for himself and Ms. COLLINS):

S. 1951. A bill to provide the Secretary of Energy with authority to draw down the Strategic Petroleum Reserve when oil and gas prices in the United States rise sharply because of anticompetitive activity, and to require the President, through the Secretary of Energy, to consult with Congress regarding the sale of oil from the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

By Mr. ABRAHAM:

S. 1952. A bill to amend the Internal Revenue Code of 1986 to provide a simplified method for determining a partner's share of items of a partnership which is a qualified investment club; to the Committee on Finance.

By Mr. KERREY:

S. 1953. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to authorize the establishment of a voluntary legal employment authentication program (LEAP) as a successor to the current pilot programs for employment eligibility confirmation; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself, Mr. THOMPSON, and Mr. KENNEDY):

S. 1954. A bill to establish a compensation program for employees of the Department of Energy, its contractors, subcontractors, and beryllium vendors, who sustained beryllium-related illness due to the performance of their duty; to establish a compensation program for certain workers at the Paducah, Kentucky, gaseous diffusion plant; to establish a pilot program for examining the possible relationship between workplace exposure to radiation and hazardous materials and illnesses or health conditions; and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. HUTCHISON (for herself, Mr. ABRAHAM, Mr. KYL, and Mr. GRAMM):

S. Con. Res. 74. A concurrent resolution recognizing the United States Border Patrol's 75 years of service since its founding; to the Committee on the Judiciary.

By Mr. DURBIN (for himself and Mr. CAMPBELL):

S. Con. Res. 75. A concurrent resolution expressing the strong opposition of Congress to the continued egregious violations of human rights and the lack of progress toward the establishment of democracy and the rule of law in Belarus and calling on President Alexander Lukashenka to engage in negotiations with the representatives of the opposition and to restore the constitutional rights of the Belarusian people; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 1938. A bill to provide for the return of fair and reasonable fees to the Federal Government for the use and occupancy of National Forest System land under the recreation residence program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

CABIN USER FEE FAIRNESS ACT OF 1999

Mr. CRAIG. Mr. President, I am introducing legislation today that will set a new course for the Forest Service in determining fees for forest lots on which families and individuals have been authorized to build cabins for seasonal recreation since the early part of this century. I am pleased to have Senators MIKE CRAPO, CRAIG THOMAS, and CONRAD BURNS joining me in sponsoring this legislation, which is a companion bill to H.R. 3327, introduced in the House of Representatives by Congressman GEORGE NETHERCUTT.

In 1915, under the Term Permit Act, Congress set up a program to give families the opportunity to recreate on our public lands through the so-called recreation residence program. Today, 15,000 of these forest cabins remain, providing generation after generation of families and their friends a respite from urban living and an opportunity to use our public lands.

These cabins stand in sharp contrast to many aspects of modern outdoor recreation, yet are an important aspect of the mix recreation opportunities for the American public. While many of us enjoy fast, off-road machines and watercraft or hiking to the backcountry with high-tech gear, others enjoy a relaxing weekend at their cabin in the woods with their family and friends.

The recreation residence programs allows families all across the country an opportunity to use our national forests. This quiet, somewhat uneventful

program continues to produce close bonds and remarkable memories for hundreds of thousands of Americans, but in order to secure the future of the cabin program, this Congress needs to reexamine the basis on which fees are now being determined.

Roughly 20 years ago, the Forest Service saw the need to modernize the regulations under which the cabin program is administered. Acknowledging that the competition for access and use of forest resources has increased dramatically since 1915, both the cabin owners and the agency wanted a formal understanding about the rights and obligations of using and maintaining these structures.

New rules that resulted nearly a decade later reaffirmed the cabins as a valid recreational use of forest land. At the same time, the new policy reflected numerous limitations on use that are felt to be appropriate in order to keep areas of the forest where cabins are located open for recreational use by other forest visitors. Commercial use of the cabins is prohibited, as is year-round occupancy by the owner. Owners are restricted in the size, shape, paint color and presence of other structures or installations on the cabin lot. The only portion of a lot that is controlled by the cabin owner is that portion of the lot that directly underlies the footprint of the cabin itself.

At some locations, the agency has determined a need to remove cabins for a variety of reasons related to ''higher public purposes'' and cabin owners wanted to be certain in the writing of new regulations that a fair process would guide any future decisions about cabin removal. At other locations, some cabins have been destroyed by fire, avalanche or falling trees, and a more reliable process of determining whether such cabins might be rebuilt or relocated was needed. It was determined, therefore, that this recreational program would be tied more closely to the forest planning process.

The question of an appropriate fee to be paid for the opportunity of constructing and maintaining a cabin in the woods was also addressed at that time. Although the agency's policies for administration of the cabin program have, overall, held up well over time, the portion dealing with periodic redetermination of fees proved in the last few years to be a failure.

A base fee was determined 20 years ago by an appraisal of sales of comparable undeveloped lots in the real estate market adjacent to the national forest where a cabin was located. The new policy called for reappraisal of the value of the lot 20 years later—a trigger that led to initiation of the reappraisal process in 1995.

In the meantime, according to the policy, annual adjustments to the base fee would be tracked by the Implicit Price Deflator (IPD), which proved to be a faulty mechanism for this purpose. Annual adjustments to the fee based on movements of the IPD failed entirely to keep track of the booming land values associated with recreation development.

As the results of actual reappraisals on the ground began reaching my office in 1997, it became clear that far more than the inoperative IPD was out of alignment in determining fees for the cabin owners.

At the Pettit Lake tract in Idaho's Sawtooth National Recreation Area, the new base fees skyrocketed into alarming five-digit amounts—so high that a single annual fee was nearly enough money to buy raw land outside the forest and construct a cabin. Meanwhile, the agency's appraisal methodology was resulting in new base fees in South Dakota, in Florida, and in some locations in Colorado that were actually lower than the previous fee.

Very generally speaking, the value of the use of the forest lot is approximately the same for any cabin owner, whether they are tucked into what has become in recent years the Sawtooth National Recreation Area of Idaho, or high in the Sierra Mountain range of California, or in the lowland forests of the southeastern States. Yet Idaho cabin owners are now expected to pay a new average fee of $9,221 each year, while cabin owners in Kentucky will be paying a new average fee of $140.

At the request of the chairman of the House Committee on Agriculture in 1998, the cabin owners named a coalition of leaders of their various national and State cabin owner associations to examine the methodology being used by the Forest Service to determine fees. It became obvious to these laymen that analysis of appraisal methodology and the determination of fees was beyond their grasp, and a prestigious consulting appraiser was retained to guide the cabin owners through their task. The report and recommendations of the coalition's consulting appraiser is available from my office for those who might wish to examine the details.

At the bottom line, it was learned that the Forest Service—contrary to its own policy—was appraising and affixing value to the lots being provided to cabin owners as if this land were fully developed, legally subdivided, fee simple residential land.

In other words, the agency has been capturing the values associated with a variety of structures and services that the homeowners themselves (not the agency) provide. The Forest Service, in setting fees on this basis, has been capturing incremental values assigned by a developer at various stages of development for risk, expectations of profit and other factors.

My goal is to see that the cabin program remains affordable for American families. Consistent with the recommendations of the coalition's consulting appraiser, the methodology for determining fees is directed toward the value of the use to the cabin owner—not what the market would bear, should the Forest Service decide to sell off its assets.

This is highly technical legislation. Its purpose is to send a clear set of instructions to appraisers in the field and a clear set of instructions to forest managers to respect the results of appraisals undertaken to place value on the raw land being offered cabin owners.

I intend to hold hearings on this legislation early in the next session. I urge each of my colleagues to be in contact with cabin owners in their State during the congressional recess. There are more than 15,000 families out there who fear that the long tradition of cabin-based forest recreation is nearing an end because the agencies fee mechanism has made the program unaffordable for all but the wealthy. These cabin owners and I would wholeheartedly welcome the support and cosponsorship of all Senators for this important legislation.

I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 1938

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

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Fair Cabin User Fee Act of 1999''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the recreation residence program is—

(A) a valid use of forest land and 1 of the multiple uses of the National Forest System; and

(B) an important component of the recreation program of the Forest Service;

(2) cabins located on forest land have provided a unique recreation experience to a large number of cabin owners, their families, and guests each year since Congress authorized the recreation residence program in 1915;

(3) tract associations, cabin owners, their extended families, guests, and others that regularly use and enjoy forest cabin tracts have contributed significantly toward efficient management of the program and the stewardship of forest land;

(4) cabin user fees have traditionally generated income to the Federal Government in amounts significantly greater than the Federal cost of administering the program;

(5) the rights and privileges granted to owners of cabins authorized under the program have steadily diminished while regulatory restrictions and fees charged under the program have steadily increased; and

(6) the current fee determination procedure has been shown to incorrectly reflect market value and value of use.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to ensure, to the maximum extent practicable, that the National Forest System recreation residence program is managed to preserve the opportunity for individual and family-oriented recreation at a reasonable cost; and

(2) to develop and implement a more efficient, cost-effective procedure for determining cabin user fees that better reflects the probable value of that use by the cabin owner, taking into consideration the limitations of the authorization and other relevant market factors.

SEC. 4. DEFINITIONS.

In this Act:

(1) AGENCY.—The term ''agency'' means the Forest Service.

(2) AUTHORIZATION.—The term ''authorization'' means a special use permit for the use and occupancy of National Forest System land by a cabin owner under the authority of the program.

(3) BASE CABIN USER FEE.—The term ''base cabin user fee'' means the initial fee for an authorization that results from the appraisal of a lot in accordance with sections 6 and 7.

(4) CABIN.—The term ''cabin'' means a privately built and owned structure authorized for use and occupancy on National Forest System land.

(5) CABIN USER FEE.—The term ''cabin user fee'' means a special use fee paid annually by a cabin owner to the Secretary in accordance with this Act.

(6) CABIN OWNER.—The term ''cabin owner'' means—

(A) a person authorized by the agency to use and to occupy a cabin on National Forest System land; and

(B) an heir or assign of such a person.

(7) CARETAKER CABIN.—The term ''caretaker cabin'' means a caretaker residence occupied in limited cases in which caretaker services are necessary to maintain the security of a tract.

(8) CENTER.—The term ''Center'' means the Federal Center for Dispute Resolution of the American Arbitration Association.

(9) CURRENT CABIN USER FEE.—The term ''current cabin user fee'' means the most recent cabin user fee that results from an annual adjustment to the base cabin user fee in accordance with section 8.

(10) LOT.—The term ''lot'' means a parcel of land of the National Forest System on which a cabin owner is authorized to build, use, occupy, and maintain a cabin and related improvements.

(11) PROGRAM.—The term ''program'' means the recreation residence program established under the Act of March 4, 1915 (38 Stat. 1101, chapter 144).

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(13) TRACT.—The term ''tract'' means an established location within a National Forest containing 1 or more cabins authorized in accordance with the program.

(14) TRACT ASSOCIATION.—The term ''tract association'' means a cabin owner association in which all cabin owners within a tract are eligible for membership.

SEC. 5. ADMINISTRATION OF RECREATION RESIDENCE PROGRAM.

(a) IN GENERAL.—The Secretary shall ensure, to the maximum extent practicable, that the basis and procedure for calculating cabin user fees results in a reasonable and fair fee for an authorization that reflects the probable value of the use and occupancy of a lot to the cabin owner in accordance with subsection (b).

(b) DETERMINATION OF VALUE.—The value of the use and occupancy of a lot referred to in subsection (a)—

(1) shall not be equivalent to a rental fee of the lot; and

(2) shall reflect regional economic influences, as determined by an appraisal of the value of use of the National Forest in which the lot is located.

SEC. 6. APPRAISALS.

(a) REQUIREMENTS FOR CONDUCTING APPRAISALS.—In implementing and conducting an appraisal process for determining cabin user fees, the Secretary shall—

(1) establish an appraisal process to determine the value of the fee simple estate of a typical lot or lots within a tract, with adjustments to reflect limitations arising from the authorization and special use permit;

(2) enter into a contract with an appropriate professional organization for the development of specific appraisal guidelines in accordance with subsection (b), subject to public comment and congressional review;

(3) require that an appraisal be performed by a State-certified general real estate appraiser, selected by the Secretary and licensed to practice in the State in which the lot is located;

(4) provide the appraiser with—

(A) appraisal guidelines developed in accordance with this Act; and

(B) a copy of the special use permit associated with the typical lot to be appraised, with an instruction to the appraiser to consider any prohibitions or limitations contained in the authorization;

(5) notwithstanding any other provision of law, require the appraiser to coordinate the assignment closely with affected parties by seeking advice, cooperation, and information from cabin owners and tract associations;

(6) require that the appraiser perform the appraisal in compliance with—

(A) the most current edition of the Uniform Standards of Professional Appraisal Practice on the date of the appraisal;

(B) the most current edition of the Uniform Appraisal Standards for Federal Land Acquisitions on the date of the appraisal; and

(C) the specific appraisal guidelines developed in accordance with this Act;

(7) require that the appraisal report be a self-contained report (as defined by the Uniform Standards of Professional Appraisal Practice);

(8) require that the appraisal report comply with the reporting guidelines established by the Uniform Appraisal Standards for Federal Land Acquisitions; and

(9) before accepting any appraisal, conduct a review of the appraisal to ensure that the guidelines made available to the appraiser have been followed and that the appraised values are properly supported.

(b) SPECIFIC APPRAISAL GUIDELINES.—In the development of specific appraisal guidelines in accordance with paragraph (a)(2), the instructions to an appraiser shall require, at a minimum, the following:

(1) APPRAISAL OF A TYPICAL LOT.—

(A) IN GENERAL.—In conducting an appraisal under this paragraph, the appraiser shall appraise a typical lot or lots within a tract that are selected by the cabin owners and the agency in a manner consistent with the policy of the program.

(B) APPRAISAL.—In appraising a typical lot or lots within a tract, the appraiser shall—

(i) consult with affected cabin owners; and

(ii) appraise the typical lot or lots selected for purposes of comparison with other lots or groups of lots in the tract having similar value characteristics (rather than appraising each individual lot).

(B) ESTIMATE OF MARKET VALUE OF TYPICAL LOT.—

(i) IN GENERAL.—The appraiser shall estimate the market value of a typical lot as a parcel of undeveloped, raw land that has been made available for use and occupancy by the cabin owner on a seasonal or periodic basis.

(ii) NO EQUIVALENCE TO LEGALLY SUBDIVIDED LOT.—The appraiser shall not appraise the typical lot as being equivalent to a legally subdivided lot.

(2) REQUIREMENT FOR ANALYSIS OF COMPARABLE SALES.—The appraisal shall be based on a prioritized analysis of 1 or more categories of sales of comparable land as follows:

(A) LARGER PARCELS.—Sales of larger, privately-owned, and preferably unimproved parcels of rural land, generally similar in size to the tract being examined, shall be given the most weight in the analysis.

(B) SMALLER PARCELS.—Sales of smaller, privately-owned, and preferably unimproved parcels of rural land that are not part of an established subdivision shall be given secondary weight in the analysis.

(C) MAPPED AND RECORDED PARCELS.—Sales of privately-owned parcels in a mapped and recorded rural subdivision shall be given the least weight in the analysis.

(3) EXCEPTION FOR CERTAIN SALES OF LAND.—In conducting an analysis under paragraph (2), the appraiser shall select sales of comparable land that are outside the area of influence of—

(A) land affected by urban growth boundaries;

(B) land for which a government or institution holds a conservation or recreational easement; or

(C) land designated for conservation or recreational purposes by Congress, a State, or a political subdivision of a State.

(4) ADJUSTMENTS FOR TYPICAL VALUE INFLUENCES.—

(A) IN GENERAL.—The appraiser shall consider and adjust the price of sales of comparable land for all typical value influences described in subparagraph (B).

(B) VALUE INFLUENCES.—The typical value influences referred to in subparagraph (A) include—

(i) differences in the locations of the parcels;

(ii) accessibility, including limitations on access attributable to—

(I) weather;

(II) the condition of roads or trails; or

(III) other factors;

(iii) the presence of marketable timber;

(iv) limitations on, or the absence of, services such as law enforcement, fire control, road maintenance, or snow plowing;

(v) the condition and regulatory compliance of any site improvements; and

(vi) any other typical value influences described in standard appraisal literature.

(5) ADJUSTMENTS FOR RESTRICTIONS ON USE.—In evaluating the sale of a comparable fee simple parcel, an adjustment to the sale price of the parcel shall be made to reflect the influence of prohibitions or limitations on use or benefits imposed by the agency that affect the value of the subject cabin lot, including—

(A) any prohibition against year-round use and occupancy or any other restriction that limits or reduces the type or amount of cabin use and occupancy;

(B) any limitation on the right of the cabin owner to sell, lease, or rent the cabin without restrictions imposed by the Secretary;

(C) any limitation on, or prohibition against, improvements to the lot, such as remodeling or enlargement of the cabin, construction of additional structures, landscaping, signs, fencing, clothes drying lines, mail boxes, swimming pools, or other recreational facilities; and

(D) any limitation on, or prohibition against, use of the lot for placement of amenities such as playground equipment, domestic livestock, recreational vehicles, or boats.

(6) ADJUSTMENTS TO SALES OF COMPARABLE PARCELS.—

(A) IN GENERAL.—

(i) UTILITIES PROVIDED BY AGENCY.—Only utilities (such as water, sewer, electricity, or telephone) or access roads or trails that are clearly established as of the date of the appraisal as having been provided and maintained by the agency at a lot shall be included in the appraisal.

(ii) FEATURES PROVIDED BY CABIN OWNER.—All cabin facilities, decks, docks, patios, and

other nonnatural features (including utilities or access)—

(I) shall be presumed to have been provided by, or funded by, the cabin owner; and

(II) shall be excluded from the appraisal by adjusting any comparable sales with the nonnatural features referred to in subparagraph (B)(ii).

(iii) WITHDRAWAL OF UTILITY OR ACCESS BY AGENCY.—If, during the term of an authorization, the agency makes a substantial and materially adverse change in the provision or maintenance of any utility or access, the cabin owner shall have the right to request and obtain a new determination of the base cabin user fee at the expense of the agency.

(B) ADJUSTMENT FOR IMPROVEMENTS.—

(i) IN GENERAL.—The appraiser shall consider and adjust the price of each sale of a comparable parcel for all nonnatural features referred to in subparagraph (A)(ii) that—

(I) are present at, or add value to, the parcel; but

(II) are not present at the lot being appraised or not included in the appraisal under subparagraph (A).

(ii) ADJUSTMENTS.—An adjustment to the price of a parcel sold under this subparagraph shall include allowances for matters such as—

(I) depreciated current replacement costs of installing nonnatural features referred to in clause (i) at the typical lot being appraised, including an allowance for entrepreneurial profit and overhead;

(II) likely construction difficulties for nonnatural features referred to in clause (i) at the lot being appraised; and

(III) the deduction in price that would be taken in the market as a risk allowance if—

(aa) a parcel does not have adequate access or adequate sewer or water systems; and

(bb) there is a risk of failure or material cost overruns in attempting to provide the systems referred to in item (aa).

(C) REAPPRAISAL FOR AND RECALCULATION OF BASE CABIN USER FEE.—Periodically, but not less often than once every 10 years, the Secretary shall recalculate the base cabin user fee (including conducting any reappraisal required to recalculate the base cabin user fee).

SEC. 7. CABIN USER FEES.

(a) IN GENERAL.—The Secretary shall establish the cabin user fee as the amount that is equal to 5 percent of the value of the lot, as determined in accordance with section 6, reflecting an adjustment to the market rate of return based solely on—

(1) the limited term of the authorization;

(2) the absence of significant property rights normally attached to fee simple ownership; and

(3) the public right of access to, and use of, any open portion of the lot on which the cabin or other enclosed improvements are not located.

(b) FEE FOR CARETAKER RESIDENCES.—The base cabin user fee for a lot on which a caretaker residence is located shall not be greater than the base cabin user fee charged for the authorized use of a similar typical lot in the tract.

(c) ANNUAL CABIN USER FEE IN THE EVENT OF DETERMINATION NOT TO REISSUE AUTHORIZATION.—If the Secretary determines that an authorization should not be reissued at the end of a term, the Secretary shall—

(1) establish as the new base cabin user fee for the remaining term of the authorization the amount charged as the cabin user fee in the year that was 10 years before the year in which the authorization expires; and

(2) calculate the current cabin user fee for each of the remaining 9 years of the term of the authorization by multiplying—

(i) 1/10 of the new base cabin user fee; by

(ii) the number of years remaining in the term of the authorization after the year for which the cabin user fee is being calculated.

(d) ANNUAL CABIN USER FEE IN EVENT OF CHANGED CONDITIONS.—If a review of a decision to convert a lot to an alternative public use indicates that the continuation of the authorization for use and occupancy of the cabin by the cabin owner is warranted, and the decision is subsequently reversed, the Secretary may require the cabin owner to pay any portion of annual cabin user fees, as calculated in accordance with subsection (d), that were forgone as a result of the expectation of termination of use and occupancy of the cabin by the cabin owner.

(e) TERMINATION OF FEE OBLIGATION IN LOSS RESULTING FROM ACTS OF GOD OR CATASTROPHIC EVENTS.—On a determination by the agency that, due to an act of God or a catastrophic event, a lot cannot be safely occupied and that the authorization for the lot should accordingly be terminated, the fee obligation of the cabin owner shall terminate effective on the date of the occurrence of the act or event.

SEC. 8. ANNUAL ADJUSTMENT OF CABIN USER FEE.

(a) IN GENERAL.—The Secretary shall adjust the cabin user fee annually, using a rolling 5-year average of a published price index in accordance with subsection (b) or (c) that reports changes in rural or similar land values in the State, county, or market area in which the lot is located.

(b) INITIAL INDEX.—

(1) IN GENERAL.—For the period of 10 years beginning on the date of enactment of this Act, the Secretary shall use changes in agricultural land prices in the appropriate State or county, as reported in the Index of Agricultural Land Prices published by the Department of Agriculture, to determine the annual adjustment to the cabin user fee in accordance with subsections (a) and (d).

(2) STATEWIDE CHANGES.—In determining the annual adjustment to the cabin user fee for an authorization located in a county in which agricultural land prices are influenced by the factors described in section 6(b)(3), the Secretary shall use average statewide changes in the State in which the lot is located.

(c) NEW INDEX.—

(1) IN GENERAL.—Not later than 10 years after the date of enactment of this Act, the Secretary may select and use an index other than the index described in subsection (b)(2) to adjust a cabin user fee if the Secretary determines that a different index better reflects change in the value of a lot over time.

(2) SELECTION PROCESS.—Before selecting a new index, the Secretary shall—

(A) solicit and consider comments from the public; and

(B) not later than 60 days before the date on which the Secretary makes a final index selection, submit any proposed selection of a new index to—

(i) the Committee on Resources of the House of Representatives; and

(ii) the Committee on Energy and Natural Resources of the Senate.

(d) LIMITATION.—In calculating an annual adjustment to the base cabin user fee, the Secretary shall—

(1) limit any annual fee adjustment to an amount that is not more than 5 percent per year when the change in agricultural land values exceeds 5 percent in any 1 year; and

(2) apply the amount of any adjustment that exceeds 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent.

SEC. 9. PAYMENT OF CABIN USER FEES.

(a) DUE DATE FOR PAYMENT OF FEES.—A cabin user fee shall be paid or prepaid annually by the cabin owner on a monthly, quarterly, annual, or other schedule, as determined by the Secretary.

(b) PAYMENT OF EQUAL OR LESSER FEE.—If, in accordance with section 7, the Secretary determines that the amount of a new base cabin user fee is equal to or less than the current base cabin user fee, the Secretary shall require payment of the new base cabin user fee by the cabin owner in accordance with subsection (a).

(c) PAYMENT OF GREATER FEE.—If, in accordance with section 7, the Secretary determines that the amount of a new base cabin user fee is greater than the current base cabin user fee, the Secretary shall—

(1) require full payment of the new base cabin user fee in the first year following completion of the fee determination procedure if the increase in the amount of the new base cabin user fee is not more than 100 percent of the most recently paid cabin user fee; or

(2) phase in the increase over the current cabin user fee in approximately equal increments over 3 years if the increase in the amount of the new base cabin user fee is greater than 100 percent of the most recently paid base cabin user fee.

(d) REQUIREMENT FOR PAYMENT DURING ARBITRATION, APPEAL, OR JUDICIAL REVIEW.—If arbitration, an appeal, or judicial review concerning a cabin user fee is brought in accordance with section 11 or 12, the Secretary shall—

(1) suspend annual payment by the cabin owner of any increase in the cabin user fee, pending completion of the arbitration, appeal, or judicial review; and

(2) make any adjustments, as necessary, that result from the findings of the arbitration, appeal, or judicial review by providing to the cabin owner—

(A)(i) a credit toward future cabin user fee payments; or

(ii) a refund for any overpayment of the cabin user fee; and

(B) a supplemental billing for any additional amount of the cabin user fee that is due.

SEC. 10. RIGHT OF SECOND APPRAISAL.

(a) RIGHT OF SECOND APPRAISAL.—On receipt of notice from the Secretary of the determination of a new base cabin user fee, the cabin owner—

(1) not later than 60 days after the date on which the notice is received, shall notify the Secretary of the intent of the cabin owner to obtain a second appraisal; and

(2) may obtain, within 1 year following the date of receipt of the notice under this subsection, at the expense of the cabin owner, a second appraisal of the typical lot on which the initial appraisal was conducted.

(b) CONDUCT OF SECOND APPRAISAL.—In conducting a second appraisal, the appraiser selected by the cabin owner shall—

(1) consider all relevant factors in accordance with this Act (including guidelines developed under section 6(a)(2)); and

(2) notify the Secretary of any material differences of fact or opinion between the initial appraisal conducted by the agency and the second appraisal.

(c) REQUEST FOR RECONSIDERATION OF BASE CABIN USER FEE.—A cabin owner shall submit to the Secretary any request for reconsideration of the base cabin user fee, based on the results of the second appraisal, not later than 60 days after the receipt of the report for a second appraisal.

(d) RECONSIDERATION OF BASE CABIN USER FEE.—On receipt of a request from the cabin owner under subsection (c) for reconsideration of a base cabin user fee, not later than 60 days after the date of receipt of the request, the Secretary shall—

(1) review the initial appraisal of the agency;

(2) review the results and commentary from the second appraisal;

(3) determine a new base cabin user fee in an amount that is—

(A) equal to the fee determined by the initial or the second appraisal; or

(B) within the range of values, if any, between the initial and second appraisals; and

(4) notify the cabin owner of the amount of the new base cabin fee.

SEC. 11. RIGHT OF ARBITRATION.

(a) IN GENERAL.—

(1) REQUEST FOR ARBITRATION.—Not later than 30 days after the receipt of notice of a new base cabin fee under section 10(d)(4), the tract association may request arbitration if a cabin owner in the tract and the Secretary are unable to reach agreement on the amount of the base cabin user fee determined in accordance with section 10.

(2) IDENTIFICATION OF THIRD-PARTY NEUTRALS.—If arbitration is requested under paragraph (1), the Secretary shall promptly request the Center to develop a list of the names of not fewer than 20 appraisers and 10 attorneys who possess appropriate training and experience in valuations of land and interest in land to serve as qualified third-party neutrals.

(b) ARBITRATION.—Not later than 30 days after the receipt of a request from the tract association for arbitration, the Secretary shall—

(1) notify the Center of the request; and

(2) request the Center to provide to the Secretary and the tract association, within 15 days—

(A) instructions related to arbitration procedures; and

(B) the list of qualified third-party neutrals described in subsection (a)(2).

(c) ARBITRATION PANEL.—

(1) IN GENERAL.—Not later than 15 days after the receipt of the list described in subsection (a)(2), the Secretary and the tract association may each recommend the names of 2 appraisers and 1 attorney from the list for consideration in the selection of an arbitration panel by the Center.

(2) AVAILABILITY OF LIST.—The Secretary and the tract association shall disclose to each other the names of third-party neutrals recommended under paragraph (1).

(3) OPTION TO ELIMINATE RECOMMENDED NEUTRALS.—The Secretary and the tract association may each peremptorily eliminate from consideration for the arbitration panel 1 third-party neutral recommended under paragraph (1).

(4) SELECTION BY CENTER.—From the third-party neutrals recommended to the Center under paragraph (1) that are not eliminated from consideration under paragraph (3), the Center shall select and retain an arbitration panel consisting of 2 appraisers and 1 attorney.

(5) NOTIFICATION OF ESTABLISHMENT.—Not later than 5 days after the selection of members of the arbitration panel, the Center shall notify the Secretary and the tract association of the establishment of the arbitration panel.

(d) ARBITRATION PROCEDURE.—

(1) SUBMISSION OF INFORMATION.—Not later than 30 days after notification by the Center of the establishment of the arbitration panel under subsection (c)(3), each party shall submit to the arbitration panel—

(A) the appraisal report of each party, including comments, if any, of material differences of fact or opinion related to the initial appraisal or the second appraisal;

(B) a copy of the authorization associated with any typical lot that was subject to appraisal;

(C) a copy of this Act; and

(D) a copy of appraisal guidelines developed in accordance with section 6(a)(2).

(2) HEARING OR FIELD INSPECTION.—On agreement of both parties, the arbitration may be conducted without a hearing or a field inspection.

(3) SCHEDULE FOR DECISION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 60 days after the receipt of all materials described in paragraph (1), the arbitration panel shall prepare and forward to the Secretary a written advisory decision on the appropriate amount of the base cabin user fee.

(B) EXTENSION.—If the arbitration panel or the parties to the arbitration determine that a hearing or field inspection is necessary, the date for submission of the advisory decision under subparagraph (A) shall be extended for—

(i) not more than 30 days; or

(ii) in the case of difficult or hazardous road or weather conditions, such an additional period of time as is necessary to complete the inspection.

(4) DETERMINATION OF RECOMMENDED BASE CABIN USER FEE.—The base cabin user fee recommended by the arbitration panel shall fall within the range of values, if any, between the initial and second appraisals submitted to the arbitration panel by the parties.

(e) ADOPTION OF RECOMMENDED BASE CABIN USER FEE.—

(1) IN GENERAL.—Not later than 45 days after the receipt of the recommendation by the arbitration panel, the Secretary shall make a determination to adopt or reject the recommended base cabin user fee.

(2) NOTICE TO TRACT ASSOCIATION.—Not later than 15 days after making the determination under paragraph (1), the Secretary shall provide notice of the determination to the tract association.

(f) NO ADMISSION OF FACT OR RECOMMENDATION.—Neither the fact that arbitration in accordance with this section has occurred, nor the recommendation of the arbitration panel, shall be admissible in any court or administrative proceeding.

(g) COSTS OF ARBITRATION.—

(1) FEES.—

(A) IN GENERAL.—In addition to amounts collected under paragraph (2), the Center may charge a reasonable fee to each party to an arbitration under this Act for the provision of arbitration services.

(B) TRANSFER.—Fees collected under this paragraph shall be transferred to the Secretary for use in the administration of the program without further Act of appropriation.

(2) COST SHARING.—The agency and the tract association shall each pay 50 percent of the costs incurred by the Center in establishing and administering an arbitration in accordance with this section, unless the arbitration panel recommends that either the agency or the tract association bear the entire cost of establishing and administering the arbitration.

(h) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS FOR INITIAL COSTS.—There is authorized to be appropriated to the agency for the initial costs of establishing and administering the program not to exceed $15,000.

(2) ARBITRATION FEES.—Any amounts exceeding the amount authorized by paragraph (1) that are required for the administration of the program shall be derived from arbitration fees charged under subsection (g)(1).

SEC. 12. RIGHT OF APPEAL AND JUDICIAL REVIEW.

(a) RIGHTS OF APPEAL.—Notwithstanding any action of a cabin owner to exercise rights in accordance with section 10 or 11, the Secretary shall by regulation grant the cabin owner the right to an administrative appeal of the determination of a new base cabin user fee.

(b) JUDICIAL REVIEW.—A cabin owner that is adversely affected by a final decision of the Secretary under this Act may commence a civil action in United States district court.

SEC. 13. CONSISTENCY WITH OTHER LAW AND RIGHTS.

(a) CONSISTENCY WITH RIGHTS OF THE UNITED STATES.—Nothing in this Act limits or restricts any right, title, or interest of the United States in or to any land or resource.

(b) SPECIAL RULE FOR ALASKA.—In determining a cabin user fee in the State of Alaska, the Secretary shall not establish or impose a cabin fee or a condition affecting a cabin fee that is inconsistent with the requirements under section 1303(d) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3193(d)).

SEC. 14. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations to implement this Act.

SEC. 15. TRANSITION PROVISIONS.

(a) IN GENERAL.—On enactment of this Act, the Secretary shall—

(1) suspend appraisal activities related to existing authorizations until new rules, policies, and procedures are promulgated in accordance with this Act; and

(2) temporarily charge an annual cabin user fee for each lot that is—

(A) an amount equal to the cabin user fee for the lot that was in effect on September 30, 1995, adjusted by application of the Implicit Price Deflator–Gross National Product Index, if no appraisal of the lot on which the cabin is located was completed after that date and before the date of enactment of this Act;

(B) an amount that is not more than 100 percent greater than the cabin user fee in effect on September 30, 1995, adjusted by application of the Implicit Price Deflator–Gross National Product Index prior to reappraisal, if an appraisal conducted after that date but before the date of enactment of this Act resulted in the increase; or

(C) the cabin user fee in effect on the date of enactment of this Act, if an appraisal conducted after September 30, 1995, including adjustments resulting from application of the Implicit Price Deflator–Gross National Product Index before the date of enactment of this Act, resulted a base cabin user fee that is not greater than the fee in effect before the appraisal.

(b) CONDUCT OF APPRAISALS UNDER NEW LAW.—On publication of new rules, policies, and procedures under this Act, the Secretary shall carry out any appraisals of lots and determinations of fees that were not completed between September 30, 1995, and the date of enactment of this Act.

(c) REQUEST FOR NEW APPRAISAL UNDER NEW LAW.—Not later than 2 years after the promulgation of final regulations and policies and the development of appraisal guidelines in accordance with section 6(a)(2), a cabin owner whose base cabin user fee was adjusted subject to an appraisal completed after September 30, 1995, but before the date of enactment of this Act, may request that the Secretary conduct a new appraisal and determine a new fee in accordance with this Act.

(d) CONDUCT OF NEW APPRAISAL.—On receiving a request under subsection (c), the Secretary shall conduct, and bear all costs incurred in conducting, a new appraisal and fee determination in accordance with this Act.

(e) ASSUMPTION OF NEW BASE CABIN USER FEE.—In the absence of a request under subsection (c) for a new appraisal and fee determination from a cabin owner whose cabin

user fee was determined as a result of an appraisal conducted after September 30, 1995, but before the date of enactment of this Act, the Secretary may consider the base cabin user fee resulting from the appraisal conducted between September 30, 1995, and the date of enactment of this Act to be the base cabin user fee that complies with the transition provisions of this Act.

(f) TRANSITIONAL CABIN USER FEE OBLIGATION.—

(1) IN GENERAL.—In determining the liability of the cabin owner for payment of fees for the period of time between the date of enactment of this Act and the determination of a base cabin user fee in accordance with this Act, the Secretary shall—

(A) require the cabin owner to remit any balance owed for any underpayment of an annual cabin user fee; or

(B) if an overpayment of a cabin user fee has occurred, credit the cabin owner, or an heir or assign of the cabin owner, toward future cabin user fee obligations.

(2) BILLING.—The agency shall bill a cabin owner for amounts determined to be owed under paragraph (1)(A) in approximately equal increments over 3 years.

By Mr. LEAHY (for himself, Mr. BROWNBACK, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. JEFFORDS, and Mr. LAUTENBERG):

S. 1940. A bill to amend the Immigration and Nationality Act to reaffirm the United States' historic commitment to protecting refugees who are fleeing persecution or torture; to the Committee on the Judiciary.

THE REFUGEE PROTECTION ACT

Mr. LEAHY. Mr. President, today Senators BROWNBACK, FEINGOLD, KENNEDY, KERRY, JEFFORDS, and I are introducing the Refugee Protection Act of 1999, a bill to limit and reform the expedited removal system currently operating in our ports of entry.

In 1996, I introduced an amendment that would have only authorized the use of expedited removal at times of immigration emergencies. The bill I introduce today—with the cosponsorship of two Republican and three Democratic Senators—is modeled on that proposal. That amendment passed the Senate with bipartisan support, but was omitted from the bill that was reported out of a partisan, closed conference. As a result, expedited removal took effect on April 1, 1997. America's historic reputation as a beacon for refugees has suffered as a consequence.

Expedited removal allows INS inspections officers summarily to remove aliens who arrive in the United States without travel documents, or even with facially valid travel documents that the officers merely suspect are fraudulent, unless the aliens utter the magic words ''political asylum'' upon their first meeting with American immigration authorities. This policy is fundamentally unwise and unfair, both in theory and in practice.

First, this policy ignores the fact that many deserving asylum applicants are forced to travel without papers. For example, victims of repressive governments often find themselves forced to flee their homelands at a moment's notice, without time or means to acquire proper documentation. Or a government may systematically strip refugees of their documentation, as we saw Serb soldiers do in Kosovo earlier this year.

Second, expedited removal places an undue burden on refugees, and places too much authority in the hands of low-level INS officers. Refugees typically arrive at our borders ragged and tired from their ordeals, and often with little or no knowledge of English. Our policy forces them to undergo a secondary inspection interview with a low-level INS officer who can deport them on the spot, subject only to a supervisor's approval. By law, anyone who indicates a fear of persecution or requests asylum during this interview is to be referred for an interview with an asylum officer. But no safeguards exist to guarantee that this happens, and the secondary inspection interviews take place behind closed doors with no witnesses. Indeed, this interview often becomes unduly confrontation and intimidating. As the Lawyers Committee for Human Rights has documented, refugees are detained for as long as 36 hours, are deprived of food and water, and are often shackled. If they are lucky, they will be provided with an interpreter who speaks their language. If they are unlucky, they will receive no interpreter at all, or an interpreter who works for the airline owned by the government that they claim is persecuting them. Such a system is a betrayal of our ideals, and is already producing a human cost.

Indeed, only a few years into this new regime, there are extraordinary troubling stories of bona fide refugees who were turned away unjustly at our borders. I will talk about two such refugees today.

''Dem'' (a pseudonym) was a 21-year-old ethnic Albanian student in Kosovo. In October 1998, Serbian police seized him and tortured him for 10 days, accusing him of terrorism and threatening to kill his family. Immediately after this experience, Dem fled Kosovo, without travel documents. He traveled through Albania to Italy, where he purchased a Slovenian passport. In January of this year, he flew via Mexico City to California, hoping to find refuge in the United States.

Dem's hopes were not realized. The INS referred him for a secondary inspection interview and provided for a Serbian translator to participate by telephone. Since Dem could speak only Albanian, the interpreter was useless. Instead of finding an interpreter who could speak Albanian, the INS officers simply closed Dem's case, handcuffed his hands behind his back and put him on a plane back to Mexico City. In other words, Dem—a victim of an ethnic conflict that was already front page news in America's newspapers—was removed from the United States without ever being asked in a language he could understand whether he was afraid to return to Kosovo. Luckily, Dem succeeded in a second attempt to enter the United States, has since been found to have a credible fear of persecution, and is now awaiting an asylum hearing. One can only wonder how many refugees in Dem's position never receive such a second chance.

While Dem was arriving in Los Angeles this January, a Tamil from Sri Lanka named Arumugam Thevakumar arrived at JFK Airport in New York seeking asylum. Mr. Thevakumar had escaped from Sri Lanka and its bloody civil war, but only after being persecuted by the army because he is a Tamil. When he had his secondary inspection interview, he told the interpreter that he was a refugee and sought asylum. The translator laughed and said that he was unable to translate Mr. Thevakumar's request into English. In addition to battling a language barrier and an uncooperative translator, Mr. Thevakumar's ability to convince the INS of his sincerity was further handicapped by the fact that he was handcuffed and shackled for significant portions of the interview.

Following his interview, Mr. Thevakumar was briefly detained and was allowed to telephone a cousin, who arranged for a lawyer. The lawyer contacted the INS to clarify that Mr. Thevakumar wanted to apply for asylum. But the INS sent Mr. Thevakumar back to Istanbul, where his flight to New York had originated, without affording him even the opportunity to show that he was deserving of asylum. Indeed, the INS faulted him for not making his intention to apply for asylum clear during his secondary inspection interview.

Mr. Thevakumar's ordeal did not end there. When he landed in Turkey, he was jailed for four days by immigration officials, who beat and interrogated him before handing him over to regular police. When he was finally released by the police, he was referred to a United Nations office in Ankara, halfway across the country from Istanbul. After 15 days of travel wearing clothes that were completely unsuitable for the Turkish winter, he finally arrived at the U.N. office and requested refugee status and asked not to be sent back to Sri Lanka. He is currently living in a Red Cross facility in Turkey.

These stories—just two of the many stories demonstrating the human cost of expedited removal—go a long way toward showing the inhumanity of the new immigration regime that Congress imposed in 1996. But refugees are not the only people affected by expedited removal. Human rights groups have also documented numerous cases where people traveling to the United States on business, with proper travel documents, have been removed based on the so-called ''sixth sense'' of a low-level INS officer who suspected that their facially valid documents were fraudulent. In other words, the damage done by expedited removal also threatens the increasingly international American economy—if businesspeople from

around the world are treated disrespectfully at our ports of entry, they are likely to take their business elsewhere.

But perhaps the most distressing part of expedited removal is that there is no way for us to know how many deserving refugees have been excluded. Because secondary inspection interviews are conducted in secret, we typically only learn about mistakes when refugees manage to make it back to the U.S. a second time, like Dem, or when they are deported to a third country they passed through on their way to the U.S., like Mr. Thevakumar. This uncertainty should lead us to be especially wary of continuing this failed experiment.

As I said, my bill would limit the use of expedited removal to times of immigration emergencies, defined as the arrival or imminent arrival of aliens that would substantially exceed the INS' ability to control our borders. The bill gives the Attorney General the discretion to declare an emergency migration situation, and the declaration is good for 90 days. During those 90 days, the INS would be authorized to use expedited removal. The Attorney General is given the power to extend the declaration for further periods of 90 days, in consultation with the House and Senate Judiciary Committees. s

This framework allows the government to take extraordinary steps when a true immigration emergency threatens our ability to patrol our borders. At the same time, it recognizes that expedited removal is an extraordinary step, and is not an appropriate measure under ordinary circumstances.

This bill also provides safeguards that will ensure that refugees are assured of some due process rights, even during immigration emergencies. First, aliens would be given the right to have an immigration judge review a removal order, and would have the right both to speak before the immigration judge on their own behalf and to be represented at the hearing at their own expense. To make these rights meaningful, immigration officers would be required to inform aliens of their rights before they are removed or withdraw their application to enter the country. This provision takes away from low-level INS officers the unilateral power to remove an alien from the United States.

Second, expedited removal will not apply to aliens who have fled from a country that engages in serious human rights violations. The Attorney General, in consultation with the Assistant Secretary of State for Democracy, Human Rights, and Labor, will develop and maintain a list of such countries. This will help ensure that even during an immigration emergency, we will provide added protection for many of our most vulnerable refugees.

Third, this bill reforms the procedures used to determine whether an applicant who seeks asylum has a credible fear of persecution. If an asylum officer determines that an applicant does not have a credible fear of persecution, the applicant will now have a right to a prompt review by an immigration judge. The applicant will have the right to appear at that review hearing and to be represented, at the applicant's expense. In addition to providing procedural guarantees, the bill also redefines ''credible fear of persecution'' as a claim for asylum that is not clearly fraudulent and is related to the criteria for granting asylum. In combination, these changes will make it easier for aliens requesting asylum in the United States to receive an appropriate asylum hearing before an immigrant judge.

Fourth, the bill clarifies that the Attorney General is not obligated to detain asylum applicants while their claims are pending. Asylum seekers are not criminals and they do not deserve to be imprisoned or detained against their will. There may be cases where detention is appropriate, and this bill allows for such cases, but I believe that that power should only be used in very rare cases. After all, these applicants have by definition demonstrated a credible fear of persecution. Moreover, detaining asylum applicants imposes a significant burden on the taxpayers, who of course must foot the bill for the detention. This bill also gives the Attorney General the ability to release an asylum applicant from detention pending a final determination of credible fear of persecution.

Finally, this Refugee Protection Act also addresses a few other problems that have arisen under the restrictive immigration laws Congress passed in 1996. First, it gives aliens the opportunity to demonstrate good cause for filing for asylum after the one-year time limit for claims has expired. By definition, worthy asylum applicants have arrived in the United States following traumatic experiences abroad. They often must spend their first months here learning the language and adjusting to a culture that in many cases is extraordinarily different from the one they know. Therefore, although I can understand the desire to have asylum seekers submit timely applications, we must apply the one-year rule with some discretion and common sense. Indeed, when the Senate passed the 1996 immigration law, it contained a broad ''good cause'' exception that did not survive to become part of the final legislation. The Senate should take up this issue again; we were right in 1996, and the need is still there today.

In a similar vein, the bill allows asylum applicants whose claims have been rejected to submit a second application where they can show good cause. No one wants to allow aliens to submit repeated applications and drain the resources of our INS officers and immigration courts. But there are exceptional cases where a second application is justified, beyond the ''changed circumstances'' exception that exists under current law. For example, extraordinarily worthy asylum applicants, unfamiliar with the United States and its legal system, might submit an application without the benefit of counsel and without an understanding of the legal requirements of a successful asylum claim. Such people deserve a second chance to demonstrate that they deserve to receive asylum.

In conclusion, I point out that even in 1996, a year in which immigration was as unpopular in this Capitol as I can remember, this body agreed that expedited removal was inappropriate for a country of our ideals and our historic commitment to human rights. And that agreement cut across party lines, as many of my Republican colleagues voted to implement expedited removal only in times of immigration emergencies. I urge them, as well as my fellow Democrats, to support this legislation and to work for its passage before the end of the 106th Congress.

Mr. BROWNBACK. Mr. President, I join my distinguished colleagues from Vermont, Senator LEAHY and Senator JEFFORDS, among others, to introduce this bill entitled The Refugee Protection Act of 1999, which restores fairness to our treatment of refugees who arrive at our shores seeking freedom from persecution and oppression. This bill should dramatically reduce incidences where refugees are wrongly returned to their countries to face imprisonment, torture, and even death.

It was about 400 years when the refugee Pilgrims arrived in this new land seeking religious liberty. Defined by such events since the earliest days of the Republic, America has provided asylum to those fleeing tyranny and seeking liberty. George Washington urged his fellow citizens ''to render this country more and more a safe and propitious asylum for the unfortunates of other countries.'' In his 1801 First Annual Message, President Thomas Jefferson asked, ''Shall oppressed humanity find no asylum on this globe?''

In 1996, Congress changed the procedures by which arriving asylum seekers ask for protection in the United States, which our legislation corrects. Previously, arriving asylum seekers presented their claims directly to an immigration judge at an evidentiary hearing. The applicant could present witnesses and documentation to support their claim. Decisions by the immigration judge were subject to administrative and judicial review.

The new 1996 law did away with these fundamental due process protections, and instead, granted lower level INS officers the power to make life and death decisions that previously were entrusted to professional immigration judges. This new, unfortunate system of ''expedited removal'' presently allows for the immediate deportation of individuals who arrive without valid travel documents, such as a passport and visa. It can even be used against an individual who has a facially valid visa that INS inspectors suspect was obtained under false pretenses. In short,

the process is so expedited and summary that it has resulted in the improper deportation of refugees fleeing persecution and torture. Simply put, our legislation restores the pre-1996 due process procedures, including a judicial review.

Last year, Congress addressed the problems of religious persecution which continues to be a serious problem worldwide. Enactment of the International Religious Freedom Act was the first time in the history of democracy that any country had adopted comprehensive, national legislation on religious liberty. That legislation ensures that religious liberty will be an important factor in our nation's foreign policy considerations. In the May 17, 1999 final report to the Secretary of State and to President of the United States, the Advisory Committee on Religious Freedom Abroad said:

> Putting an end to such (religious) persecution cannot be accomplished without providing meaningful protection to the victims of religious persecution. We must upgrade domestic procedures that identify and protect refugees and asylum seekers fleeing religious persecution. We must strengthen our overseas refugee processing mechanisms to reach those in need of rescue. . . And, here at home we must eliminate processes such as ''expedited removal'' that can make victims of those fleeing religious persecution rather than providing access to protection.

Consistent with this commitment to protect international religious liberty, we must also ensure that persons fleeing religious persecution are not wrongly turned away at our shores because of unfair procedures. This will be accomplished through this Act.

The Refugee Protection Act returns fairness to the system by limiting expedited removal procedures only to emergency situations. An ''emergency'' must be declared as such by the Attorney General, and typically involves large numbers of immigrants arriving en masse, so as to overwhelm the INS review system. In the event that ''expedited removal'' is employed, the Act requires an immigration judge to review the summary deportation order. Also, it permits claims for asylum to be filed beyond the one-year deadline created by the 1996 legislation, if there is good cause for the delay or when consideration of the claims is clearly in the interest of justice.

Our refugee asylum system reflects both the best and the worst policies, throughout our history as a nation. In 1939, more than 900 Jews aboard the SS *St. Louis*, who were within sight of Miami, were rejected and forced to return to Europe where they were murdered in concentration camps. Yet when World War II ended, the United States led the effort to establish universally recognized fundamental rights. As a result of this advocacy, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights on December 10, 1948 which recognized a right of asylum.

Over the next 30 years the United States provided refuge to numerous people fleeing communism, including to those involved in 'underground' democracy movements in Hungary, Cuba, and Southeast Asia. Yet it was not until 1980 that Congress enacted a comprehensive asylum system using the criteria of the 1951 Convention Relating to the Status of Refugees. The Convention defines a refugee as someone with a ''well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.'' Under the procedures of this Refugee Act of 1980, requests for asylum were decided by an immigration judge, thus providing a fundamental due process protection. Notably, this judicial review was stripped in the 1996 legislation, and is a flaw which our legislation seeks to correct.

Fair procedures are critically important in making life or death decisions, as asylum cases can be. At a June 24, 1999 hearing of the Senate Subcommittee on International Operations and Human Rights, Ms. Lavinia Limon, Director of the Office of Refugee Resettlement at the Department of Health and Human Services, noted:

> Once released, torture victims often attempt to flee to countries such as the United States to become invisible and safe, and to survive. But they retain the impact of torture: they are not able to speak of their experiences for fear officials will not believe them or understand them or will regard them as criminals. They often cannot express themselves effectively in asylum interviews because they cannot speak articulately of their experiences and they feel vulnerable to all officials. They have learned to fear government and the police and they do not trust any government officials and authorities to help them. They have been weakened and disabled psychologically from the torture. Many times the victims must flee alone, enduring long periods of separation from their families who might otherwise provide emotional support.

Today the need for proper asylum reviews is greater than ever. Worldwide, religious intolerance and ethnic strife turn religious leaders and ordinary citizens into desperate asylum seekers. According to Amnesty International, government-sanctioned torture is practiced in 125 countries.

This legislation helps those fleeing intolerable injustices in the name of religious freedom and democracy. Placing the decision squarely in the hands of an immigration judge does not impose an unreasonable or impossible burden on the government. Congress should enact the Refugee Protection Act because it restores the fundamental due process protections needed to ensure that legitimate asylum seekers are not wrongly turned away.

Mr. FEINGOLD. Mr. President, I rise today to join my distinguished colleagues, Senators LEAHY, BROWNBACK, and JEFFORDS, to introduce a bill that will reduce the likelihood that people fleeing genuine persecution in their homelands and seeking refuge in America will be unfairly returned to their countries.

Mr. President, as you know, our nation has been built by people who arrived on our shores from all over the world. Immigrants have enriched our nation economically, culturally, and in so many other invaluable ways. I don't think anyone can dispute that, of all the countries in the world, our nation has the deepest, richest commitment to welcoming all people who want to make a new home and a new life.

At the same time, Mr. President, our nation also has a deep tradition of welcoming those who are fleeing oppression in their native land. From the pilgrims who set foot in present day Massachusetts and Virginia, to the Kosovars who fled brutality in their homeland earlier this year, America has been a safe refuge for those fleeing persecution. Our nation's first president, George Washington, said: ''America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions.'' George Washington said those words in 1783. One hundred and one years later, France would present our country with a gift, a statue called ''Liberty Enlightening the World.'' In 1884, that title was a profound statement of our nation's past, our present and hope for the future. ''Liberty Enlightening the World'' later became known as the Statue of Liberty. The Statue of Liberty has these words inscribed on her:

> . . . Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door!

Unfortunately, Mr. President, our current asylum and immigration laws have nearly slammed the door shut on victims of persecution, even those who are sure to suffer if returned to their home countries. Current law originates with the passage in 1996 of the Illegal Immigration Reform and Immigrant Responsibility Act. That law was an attempt to combat illegal immigration. But in the process, Congress denied victims of persecution the protection that our nation historically has offered. The current system provides for the immediate deportation of individuals who arrive without travel documents precisely in order. Now, Mr. President, it's appropriate that we require these documents, but people who have fled torture and great brutality may not have proper documentation because of the circumstances under which they fled their homelands. As a result, genuine victims of persecution face the risk of being turned away at our borders and put on the next plane back to face imprisonment, torture or death. The 1996 law effectively empowers low level INS officers to summarily make the life and death decision as to whether to deport an asylum seeker. Prior to 1996, those decisions were made by an immigration judge. We must return a judicial role to the review of asylum claims.

As my colleagues who were here in 1995 and 1996 may recall, the 1996 law

was enacted in reaction to a flurry of concern that our border controls were too lax. The debate on the 1996 law was fueled by legitimate concern over criminals who managed to enter the country and commit acts of terrorism or other crimes. In response, the INS began a sensible tightening of the asylum process. In 1994 and 1995, the INS ceased issuing work authorizations at the border. Instead, asylum seekers had to wait until an adjudication of their case before receiving work authorization. As a result, claims for asylum dropped dramatically—those who were seeking work but did not have a legitimate fear of persecution were no longer claiming asylum. The INS reforms were effective. But the 1996 law went too far. In our rush to keep undesirable asylum applicants out, Congress created a system where those with bona fide asylum claims face the great risk of being immediately deported to face the wrath of oppressive home governments without a real chance to make their case.

Because an INS officer has the authority to deport refugees immediately, with no record keeping requirement, it has been difficult to determine exactly how many genuine refugees with a valid fear of persecution in their home countries have been turned away at our airports and borders as a result of the 1996 law. Organizations like the Lawyers Committee for Human Rights, however, have been able to collect some data on the extent of the problem.

One of the most troubling stories is the case of a 21-year-old Kosovar Albanian known as ''Dem.'' In October 1998, Serb police seized Dem at his home, beat him, and threatened to kill his family. This abuse occurred over a period of ten days. When the Serb police finally released Dem, he fled Kosovo. He eventually made his way to the United States in January of this year, landing in California via Mexico City. When he arrived, the INS arranged for a Serbian translator to assist by telephone with its questioning of Dem. But Dem, a Kosovar Albanian, could not speak Serbian. After the translator spoke with Dem, the translator said something to the INS officer. The INS officer promptly handcuffed and fingerprinted Dem and then put him on a plane back to Mexico City.

Fortunately, Dem was not returned to Kosovo. Dem tried re-entering the United States and on this second attempt, he was allowed to apply for asylum. But the facts supporting Dem's asylum claim had not changed. We must fix a system that produces such arbitrary results where people's lives, and American ideals, are at stake.

We don't know exactly how many victims of real persecution have been immediately deported, and we obviously don't know exactly what has happened to each victim since enactment of the 1996 law. What we do know is that an asylum seeker who is fleeing torture, abuse or death faces the risk of being kicked out of our country, without even obtaining a perfunctory hearing before an immigration judge.

The Refugee Protection Act of 1999 will return fairness and due process to the treatment of asylum seekers. For non-emergency migration situations, the bill would restore the pre-1996 law, when immigration judges were involved in the decision to deport someone who claimed asylum. The current process will continue to apply in emergency migration situations and would designate the Attorney General as the official with authority to determine when an emergency migration situation exists. The bill also would provide that an emergency cannot exist for more than 90 days, unless the Attorney General, after consultation with the Senate and House Judiciary Committees, determines that the emergency situation continues to exist.

Mr. President, this is a sensible bill that allows us to scrutinize those who come to our borders, but honors our best traditions and returns fairness and humanity to our treatment of those who are fleeing persecution. I urge my colleagues to join me and Senators LEAHY, BROWNBACK and JEFFORDS in fighting for basic human dignity, decency and justice. Let us lift the torch of ''Liberty Enlightening the World'' once again. Let us not reflexively turn away those whose very lives may depend on a fair hearing as they seek refuge in the United States.

By Mr. DODD (for himself and Mr. DEWINE):

S. 1941. A bill to amend the Federal Fire Prevention and Control Act of 1974 to authorize the Director of the Federal Emergency Management Agency to provide assistance to fire departments and fire prevention organizations for the purpose of protecting the public and firefighting personnel against fire and fire-related hazards; to the Committee on Commerce, Science, and Transportation.

FIREFIGHTER INVESTMENT AND RESPONSE ENHANCEMENT ACT

• Mr. DODD. Mr. President, I rise today with my colleague and friend, Senator DEWINE of Ohio, to introduce legislation that would represent our nation's first comprehensive commitment to fire safety. The Firefighter Investment and Response Enhancement Act (the FIRE bill), will, for the first time, provide volunteer and professional firefighters with the resources they need to protect the people and property of their towns and cities.

In communities throughout America, firefighters are almost always the first to respond to a call for help. They respond to a fire alarm. They are on the scene of traffic accidents and construction accidents. Emergency medical technicians, who often belong to fire departments, each day answer tens of thousands of calls for medical assistance. And, when a natural or manmade calamity strikes—from hurricanes to school shootings to bombings—firefighters are there without fail, restoring order and saving lives.

Given all that they do, it should surprise no one that, across the Nation, fire departments struggle to find resources to help keep our communities safe. As the demands placed on fire departments have grown in volume and magnitude, the ability of local residents to support them has been put to a severe test. As a result, towns and cities throughout the country are struggling mightily to provide the fire departments with the resources they require.

The FIRE Act will help localities meet that critical objective. It will provide grants to help localities hire more firefighters, train new and existing personnel to handle the volume and intensity of today's tragedies, and purchase badly needed equipment.

This legislation will also provide critical resources to communities to fund fire prevention and education programs so that they can anticipate disasters and respond appropriately. Such programs are critical means of preventing tragedies from occurring in the first place. Eight out of ten fire deaths occur in a place where people feel the safest—their homes. Tragically, our children and the elderly account for a disproportionate number of these deaths. Indeed, preschool children face a risk of death from fire that is more than twice the risk for all age groups combined. While we can and should ensure that the fire equipment and personnel are available to respond to these tragedies, our best defense remains education and prevention. Yet, it is a painful irony that when resources are scarce, education and prevention efforts are often the first to be put on the budgetary chopping block. The legislation Senator DEWINE and I are introducing will help ensure that no locality is put in the painful position of choosing between prevention and responding to emergencies.

This legislation will enable our fire departments to worry more about saving lives and less about finding dollars. It will enable communities to better prevent disasters, and better train firefighters.

I look forward to working with Senator DEWINE to successfully advance this legislation in the Senate. It is our shared hope that our colleagues will come to realize that this bill is one whose time has come. Our Nation's firefighters deserve the support that this bill will provide, and I hope that we will give it to them before the end of this Congress.•

• Mr. DEWINE. Mr. President, each day, we entrust our lives and the safety of our families, friends, and neighbors to the capable hands of the brave men and women in our local police and fire departments. These individuals have decided that they are willing to risk their lives and safety out of a dedication to their citizens and their commitment to public service.

In Congress, we have recognized the dangers inherent in police work by

dedicating federal resources to help local police departments. In fact, this year, Fiscal Year (FY) 1999, the federal government spent $11 billion on law enforcement initiatives, such as the COPS program, to help local law enforcement face the daily challenges of their communities. In contrast, though, the federal government spent only $32 million on fire prevention and training.

We ask local firefighters to risk no less than their lives every time they respond to a fire alarm. We ask them to risk their lives responding to the approximately two million reports of fire that they receive on an annual basis. We expect them to be willing to give their lives in exchange for the lives of our families, neighbors, and friends once every 71 seconds while responding to the 400,000 residential fires—fires which represent only about 22% of all fires reported. We count on them to protect our lives and the lives of our loved ones.

I believe the Federal Government needs to show a greater commitment to the fire services. So, today, along with my colleague and friend from Connecticut, Senator DODD, I rise to introduce the Firefighter Investment and Response Enhancement Act—or, FIRE bill. This bill is very simple. It authorizes, over five years, $5 billion in grants to local fire departments. These grants can be used for just about any purpose—training, equipment, hiring more firefighters, or education and prevention programs. A new office, established by this bill under the Federal Emergency Management Agency (FEMA), would be responsible for distributing grants to local departments based on a competitive process, involving needs assessment. To ensure that the funding is not spent solely on brand new state-of-the-art fire trucks, it mandates that no more than 25% of the grant funding can be used to purchase new fire vehicles. Finally, it requires that at least 10% of the funds are used for fire prevention programs.

Our bill is supported by the National Safe Kids Campaign, the International Association of Fire Fighters, International Association of Fire Chiefs, national Volunteer Fire Council, International Association of Arson Investigators, International Society of Fire Service Instructors, and the National Fire Protection Association. It is also a companion measure to legislation introduced in the House by Congressmen PASCRELL and WELDON, where almost 200 members of the House of Representatives have cosponsored it. I am proud to introduce this bill with my friend from Connecticut and look forward to working to ensure that the federal government increases its commitment to the men and women who make up our local fire departments. We owe it to them.●

By Mr. JEFFORDS:

S. 1942. A bill to amend the Older Americans Act of 1965 to establish grant programs to provide State pharmacy assistance programs and medication management programs; to the Committee on Health, Education, Labor, and Pensions.

PHARMACEUTICAL AID FOR OLDER AMERICANS ACT

Mr. JEFFORDS. Mr. President, there has been considerable attention rightfully paid by our colleagues this year to the issue of providing prescription drug coverage for our older American citizens. Estimates of the number of older Americans without some form of added coverage for prescription drugs vary between a low of 16.7 percent to 50 percent. About 7.7 million Medicare beneficiaries with annual incomes below 200 percent of poverty have no prescription drug coverage, despite some evidence indicating they are in poorer health than those beneficiaries with coverage. Those without added coverage for prescription benefits spend approximately 50 percent of their total income on out-of-pocket health care costs, and there are anecdotal reports that some elders forgo taking their prescribed medicines in order to have food to eat. Finally, there are econometric studies that conclude that a $1 increase in pharmaceutical expenditure is associated with a $3.65 reduction in hospital care expenditure.

The problems posed by the lack of prescription drug coverage for the neediest elders is compounded by the well-documented effects of inappropriate drug use among the elderly. In 1995, the General Accounting Office (GAO) found that inappropriate drug use among elders is acute and that elders were particularly susceptible to unintended, adverse drug events (ADEs), due in part to the natural aging process and also to the likelihood that they are taking multiple medications. One study of drug use by the elderly, done by the Vermont Program for Quality in Health Care, found that it was not uncommon for elders to be taking more than a dozen drugs at one time. In fact, the Vermont study actually documented one case in which ''a single individual received prescriptions for 71 different drugs in a single year, several of which probably should not have been taken in combination.''

The GAO report also cited studies showing that hospitalizations for elderly patients due to ADEs were six times greater than for the general population, with an estimated annual cost of $20 billion. However, a recent Journal of the American Medical Association article indicated that the level of ADEs could be reduced 66 percent, if a pharmacist participated in grand rounds. Clearly, more must be done to recognize the importance of medication management programs that ensure the quality of drug therapy, including patient evaluations, compliance assessments, and drug therapy reviews.

We are all aware that prescription drug costs continue to grow at an alarming rate. Seniors are being forced to spend greater and greater portions of their fixed incomes on prescription drugs which they need to live. Research and development of prescription drugs have come a long way since Medicare was originally enacted in 1965. Today, drugs are just as important as hospital visits, and in many cases more important, and it just doesn't make sense for Medicare to reimburse hospitals for surgery but not to provide coverage for the drugs that might prevent surgery. We need to modernize the Medicare program so that it does not go bankrupt in the next 10 to 15 years, and at the same time we must ensure that any Medicare reform proposal we consider includes a prescription drug benefit that helps all seniors.

Mr. President, I have already introduced two measures that will help our older citizens obtain the medicines they need and at prices they can afford. My first bill, S. 1462, the ''Personal Use Prescription Drug Importation Act of 1999,'' allows Americans of all ages to avail themselves of the lower prices for prescription medicines that are available in Canada. A second measure, S. 1725, the ''DrugGap Insurance for Seniors Act of 1999,'' would provide for a more comprehensive access to prescription drugs by Medicare beneficiaries through reform and modernization of the Medicare Supplemental, Medigap, program. Under this approach, all existing Medigap plans, and three new drug-only Medigap plans, would provide various levels of prescription drug benefits from which seniors could choose. And our neediest elders' needs would be supported through Federal contributions for the cost of their premiums.

During the 1st Session of the 106th Congress, no fewer than eight bills have been introduced in the Senate to provide a prescription drug benefit for Medicare beneficiaries—with most proposals estimated to cost between $5 billion and $40 billion per year. While I'm hopeful that we will all work hard to include a prescription drug benefit for Medicare beneficiaries, I am also concerned that at the end of the Congress we may not be successful. That is why I am introducing a measure today, the ''Pharmaceutical Aid to Older Americans Act,'' which will serve as a backstop for our neediest elders. This program builds on State pharmacy assistance programs that are already in place, and it encourages States to begin them where they don't already exist.

Fifteen States are cutting new and innovative paths for providing prescription drug coverage for their neediest citizens. Most of these programs are for elder citizens (more than half also cover people with disabilities), and cover a wide variety of drugs—though some are limited to certain drugs or conditions, some require cost sharing for prescription medicines, and some have annual enrollment fees or monthly premiums. As of 1997, these programs aided over 700,000 people. The

Pharmaceutical Aid to Older Americans Act is designed to assist States in their efforts to provide medicines and appropriate pharmacy counseling benefits for their neediest elders.

This Act will strengthen the Older Americans Act by authorizing two discretionary grant programs, subject to appropriations, to fund State-based pharmaceutical assistance and medication management programs. Under this measure, States would develop models that work best for them and would have the latitude to design and implement innovative approaches for providing benefits to their neediest elders. States awarded grant money would agree to: match Federal funds with 30 percent new or existing State funds or in-kind contributions and not supplant current State expenditures with Federal funds. In-kind contributions counting toward the match requirement could include assistance from pharmaceutical companies and organization- and community-based pharmacies, thereby making this approach a truly public-private partnership.

Each application for pharmaceutical assistance funds must include a medication management program that ensures the quality of drug therapies through patient evaluations, compliance assessments, and drug therapy reviews. Federal funds could be used to provide drug coverage benefits only to eligible beneficiaries, defined as Medicare beneficiaries with incomes up to 200 percent of poverty but without any other coverage for prescription drug benefits (States could expand eligibility with State resources). All senior citizens could utilize the medication management portion of the program.

This is not government control of drug prices or price-fixing. The States can purchase pharmaceuticals from any willing seller, including pharmaceutical manufacturers, pharmaceutical distributors, wholesalers, pharmacy benefit management firms (PBMs), and chain or local pharmacies, without any Federal requirement for wholesale prices or Medicaid-based rebates. In some instances, it's likely that States may be able to negotiate better purchasing prices than any of those set by some artificial, imposed ceiling. Finally, for those States that choose not to provide pharmaceutical benefits, the Act authorizes grants to States to create or support stand-alone Medication Management Programs that will involve the States in collaborative efforts with community, chain-based, and institutional pharmacists to implement medication management programs.

As I mentioned earlier, Mr. President, I am fully committed to providing a prescription benefit for all our elders as we move forward on comprehensive reform of the Medicare program. I am equally committed to seeing that the Older Americans Act is reauthorized this Congress, and I will work diligently to get these jobs accomplished. However, if the latter effort succeeds and the former doesn't, then the Pharmaceutical Assistance for Older Americans Act will be in place to provide much-needed medicines for our neediest elders. I'm very pleased Mr. President, that this measure has received endorsement of two of the key advocacy organizations associated with the Older Americans Act, the National Association of Area Agencies on Aging and the National Association of State Units on Aging. Note that these guardians of the aged support this measure, like me, if and only if we are unsuccessful in passing a prescription drug benefit for the Medicare program.

Mr. President, I ask unanimous consent that the bill and the text of these letters and this measure be printed in the RECORD.

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

S. 1942

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pharmaceutical Aid to Older Americans Act''.

SEC. 2. AMENDMENT TO OLDER AMERICANS ACT OF 1965.

Part B of title IV of the Older Americans Act of 1965 (42 U.S.C. 3034 et seq.) is amended by adding at the end the following:

''SEC. 429K. GRANTS FOR STATE PHARMACY ASSISTANCE PROGRAMS.

''(a) PROGRAM AUTHORIZED.—The Assistant Secretary may award grants to States to provide and administer State pharmacy assistance programs.

''(b) PREFERENCE.—In awarding grants under subsection (a), the Assistant Secretary shall give preference to States that propose to develop and implement State pharmacy assistance programs, or to provide assistance to State pharmacy assistance programs in existence on the date of enactment of this section, that provide services for underserved populations or for populations residing in rural areas.

''(c) USE OF FUNDS.—A State that receives a grant under subsection (a) shall use funds made available through the grant to—

''(1) develop and implement a State pharmacy assistance program, or to provide assistance to a State pharmacy assistance program in existence on the date of enactment of this section; and

''(2) prepare and submit an evaluation to the Assistant Secretary on the implementation of, or provision of, or assistance to a program described in paragraph (1).

''(d) APPLICATION.—To be eligible to receive a grant under subsection (a), a State shall submit to the Assistant Secretary an application at such time, in such manner, and containing such information as the Assistant Secretary may require, including—

''(1) a description of a State pharmacy assistance program that such State plans to develop and implement, including information on the anticipated number of individuals to be served, eligibility criteria of individuals to be served, such as the age and income level of such individuals, drugs to be covered by the program, and performance measures to be used to evaluate the program; or

''(2) a description of a State pharmacy assistance program in existence on the date of enactment of this section that such State plans to assist with funds received under subsection (a), including information on the number of individuals served, eligibility criteria of individuals served, such as the age and income level of such individuals, drugs covered by the program, and performance measures used to evaluate the program.

''(e) MINIMUM AMOUNT.—In awarding grants under subsection (a), from the amount appropriated under subsection (l)(1) for each fiscal year, the Assistant Secretary shall award, to each eligible State, an amount that is not less than $250,000.

''(f) DURATION OF GRANT.—In awarding grants under subsection (a), the Assistant Secretary shall award such grants for periods of 2 years.

''(g) MATCHING REQUIREMENT.—The Assistant Secretary shall not award a grant to a State under subsection (a) unless that State agrees that, with respect to the costs to be incurred by the State in carrying out the program for which the grant was awarded, the State will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than 30 percent of Federal funds provided under the grant.

''(h) SUPPLEMENT NOT SUPPLANT.—Funds made available under this section shall be used to supplement, and not supplant, any other Federal, State, or local funds expended by a State to provide the services for programs described in this section.

''(i) EVALUATIONS AND REPORT.—

''(1) PROGRAM EVALUATIONS.—Not later than 6 months after the end of the period for which the grant is awarded under subsection (a), the State shall prepare an evaluation of the effectiveness of programs carried out with funds received under this section. Not later than 6 months after the end of such period, the State shall submit to the Assistant Secretary a report containing the results of the evaluation, in such form and containing such information as the Assistant Secretary may require.

''(2) REPORT TO CONGRESS.—Not later than 36 months after the date of enactment of this section, the Assistant Secretary shall prepare and submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that describes the effectiveness of the programs carried out with funds received under this section.

''(j) SUNSET PROVISION.—This section shall not apply beginning on the date of enactment of legislation that provides comprehensive health care coverage for prescription drugs under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for all medicare beneficiaries.

''(k) DEFINITIONS.—In this section:

''(1) MEDICATION MANAGEMENT.—The term 'medication management program' means a program of services for older individuals, including pharmacy counseling, medicine screening, or patient and health care provider education programs, that—

''(A) provides information and counseling on the prescription drug purchases that are currently the most economical, and safe and effective;

''(B) provides services to minimize unnecessary or inappropriate use of prescription drugs; and

''(C) provides services to minimize adverse events due to unintended prescription drug-to-drug interactions.

''(2) STATE PHARMACY ASSISTANCE PROGRAMS.—The term 'State pharmacy assistance program' means a program that provides coverage for prescription drugs and medication management programs for individuals who—

''(A) are not less than 65 years of age;

''(B) are not eligible for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(C) are from families with incomes at or below 200 percent of the poverty line; and

''(D) have no coverage for prescription drugs other than coverage provided by a State pharmacy assistance program.

''(l) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.

''(2) RESERVATION.—From the amount appropriated under paragraph (1), for each fiscal year, the Assistant Secretary shall reserve not less than 33.3 percent of such amount to enable States to assist State pharmacy assistance programs in existence on the date of enactment of this section.

''SEC. 429L. GRANTS FOR MEDICATION MANAGEMENT PROGRAMS.

''(a) PROGRAM AUTHORIZED.—The Assistant Secretary may award grants to State agencies to assist such agencies or area agencies on aging in providing and administering medication management programs.

''(b) USE OF FUNDS.—A State agency or area agency on aging that receives funds through a grant awarded under subsection (a) shall use such funds to—

''(1) develop and implement a medication management program, or to provide assistance to a medication management program in existence on the date of enactment of this section; and

''(2) prepare an evaluation on the implementation of or provision of assistance to a program described in paragraph (1), and, in the case of an area agency on aging, submit the evaluation to the appropriate State agency.

''(c) APPLICATION.—To be eligible to receive a grant under subsection (a), a State agency shall submit to the Assistant Secretary an application at such time, in such manner, and containing such information as the Assistant Secretary may require.

''(d) MINIMUM AMOUNT.—In awarding grants under subsection (a), from the amount appropriated under subsection (j) for each fiscal year, the Assistant Secretary shall award, to each eligible State agency, an amount that is not less than $50,000.

''(e) DURATION OF GRANT.—In awarding grants under subsection (a), the Assistant Secretary shall award such grants for a period of 2 years.

''(f) MATCHING REQUIREMENT.—The Assistant Secretary shall not award a grant to a State agency under subsection (a) unless that State agency agrees that, with respect to the costs to be incurred in carrying out programs for which the grant was awarded, the State agency will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than 30 percent of Federal funds provided under the grant.

''(g) SUPPLEMENT NOT SUPPLANT.—Funds made available under this section shall be used to supplement, and not supplant, any other Federal, State, or local funds expended by a State agency or area agency on aging to provide the services for programs described in this section.

''(h) REPORTS.—

''(1) REPORT TO ASSISTANT SECRETARY.—Not later than 24 months after receipt of a grant under subsection (a), a State agency shall prepare and submit to the Assistant Secretary a report on the medication management programs carried out by the State agency or area agencies on aging in the State in such form and containing such information as the Assistant Secretary may require, including an analysis of the effectiveness of the programs. Such report shall in part be based on evaluations submitted under subsection (b)(2).

''(2) REPORT TO CONGRESS.—Not later than 36 months after grants have been awarded under subsection (a), the Assistant Secretary shall prepare and submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that describes the effectiveness of the programs carried out with funds received under this section.

''(i) MEDICATION MANAGEMENT PROGRAMS.—In this section, the term 'medication management program' means a program of services for older individuals, including pharmacy counseling, medicine screening, or patient and health care provider education programs, that—

''(1) provides information and counseling on the prescription drug purchases that are currently the most economical, and safe and effective;

''(2) provides services to minimize unnecessary or inappropriate use of prescription drugs; and

''(3) provides services to minimize adverse events due to unintended prescription drug-to-drug interactions.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.''.

NATIONAL ASSOCIATION OF AREA AGENCIES ON AGING,
Washington, DC, November 9, 1999.

Hon. JAMES JEFFORDS,
Chair, Committee on Health, Education, Labor & Pensions, U.S. Senate, Washington, DC.

DEAR SENATOR JEFFORDS: The National Association of Area Agencies on Aging (N4A) is pleased that you are introducing the Pharmaceutical Aid to Older Americans Act. We believe implementation of this Act could be an ideal interim measure until a Medicare prescription drug benefit is enacted.

As you know, a fast-growing aging population coupled with escalating pharmaceutical costs makes the lack of prescription drug coverage one of the most pressing problems facing our nation's older Americans. The proposed State Pharmacy Assistance Program would allow states with existing benefit programs to expand services and provide a strong incentive for other states to implement a prescription drug program.

Your legislative measure also goes far in addressing drug misuse, which is another escalating and dangerous problem. The proposed Medication Management Program would provide states with a financial base to implement a statewide information, education and counseling program that would significantly benefit the health and welfare of older adults.

While N4A supports your proposal in concept, we have some specific questions about the implementation of these programs and concerns about the roles and responsibilities of Area Agencies on Aging (AAAs) and Title IV Native American grantees. We welcome the opportunity to meet with you in the near future to address these concerns.

Again, we applaud your efforts and look forward to working with you next session as you further define the proposal and shepherd it through the legislative process.

Sincerely,

JANICE JACKSON,
Executive Director.

NATIONAL ASSOCIATION OF STATE UNITS ON AGING,
Washington, DC, November 10, 1999.

SEAN DONOHUE,
U.S. Senate, Committee on Health, Education, Labor, and Pensions, Washington, DC.

DEAR SEAN: Dan Quirk and I reviewed the draft you sent last week outlining Senator Jeffords' proposed Pharmaceutical Aid to Older Americans Act. Overall, the proposal to provide grants to states to support the development or expansion of pharmaceutical assistance programs and medication management programs is a good one, and using the existing infrastructure of the Older Americans Act makes good sense. The aging network is well suited to develop and administer these types of programs. Your proposal was well developed and thoughtful.

Both programs would provide valuable assistance to older people who do not have any other prescription drug coverage available. The requirement for a 30-percent state match seems high, but allowing contributions to be ''in-kind'' will help states in that regard. The income eligibility level of 200-percent of the federal poverty level may conflict with the eligibility levels set by states in existing programs, though I haven't done an analysis of this yet. As with other programs under the Older Americans Act, if state-funded programs already exist that provide the same services, and eligibility or cost sharing requirements are at odds with the federal program, it requires states essentially to manage two different funding streams for the same program or set of services. As always, giving states the flexibility to blend federal funds with state funds to develop one program would decrease administrative expenses for the states and allow the money saved to be used for direct services.

NASUA continues to support overall reform of the Medicare program that would provide a comprehensive prescription drug benefit to beneficiaries. In the meantime, state-funded programs that are being developed and which would be supported under this proposal continue to fill in the gaps for people with no coverage for prescription drugs. This proposal would strengthen the existing infrastructure, and perhaps could serve to support a prescription program under Medicare whenever it may be implemented in the future.

We hope this proposal will generate some further interest in reauthorizing the Older Americans Act as soon as possible, hopefully before the end of the 106th Congress. We were very disappointed that reauthorization was stalled over long-standing disagreements over the Title V program.

If there is anything NASUA can do to support Senator Jeffords proposal and reauthorization, please let me know.

Thanks for the opportunity to review the Pharmaceutical Aid to Older Americans Act.

Sincerely,

KATHLEEN C. KONKA,
Policy Associate.

By Mrs. MURRAY:

S. 1943. A bill to provide for an inexpensive book distribution program; to the Committee on Health, Education, Labor, and Pensions.

FIRST BOOK DISTRIBUTION PROGRAM ACT

• Mrs. MURRAY. Mrs. MURRAY. Mr. President, today I introduce legislation on another topic I will be discussing with Chairman JEFFORDS as we move forward with reauthorization of the Elementary and Secondary Education Act in the Senate Health, Education, Labor, and Pensions Committee.

I am introducing legislation today to fund an innovative book distribution

program targeted at giving low-income students their own ''first book.''

The ''First Book'' program is a non-profit private organization that has been tremendously successful gathering and distibuting new children's books to needy children throughout the nation. Key to the success of ''First Book'' are local boards called ''First Book Local Advisory Boards.'' Under my legislation, which would provide $5 million a year federal investment to such boards, will help them leverage millions more in funds from other sources. ''First Book'' has been successful because it is locally-driven, and reflects private industry initiative. ''First Book'' provides new books, which the program purchases from publishers at discount rates, to disadvantaged children and families primarily through tutoring, mentoring, and family literacy programs.

This bill builds on successful efforts underway in communities across the country. It takes what has been a successful but very targeted program, and will increase its reach and effect into many more American communities. ''First Book'' makes a very real difference for disadvantaged children and their families, and with this investment, it will make a difference for thousands more.●

By Mrs. MURRAY:

S. 1944. A bill to provide national challenge grants for innovation in the education of homeless children and youth; to the Committee on Health, Education, Labor, and Pensions.

STUART MCKINNEY HOMELESS EDUCATION IMPROVEMENT ACT

● Mrs. MURRAY. Mr. President, today I introduce legislation on another topic I will be discussing with Chairman JEFFORDS as we move forward with reauthorization of the Elementary and Secondary Education Act in the Senate Health, Education, Labor, and Pensions Committee.

The bill deals with an improvement I hope we can make in the Stuart McKinney Homeless Education program. While the McKinney program is relatively small, my hope is that we can greatly improve its effectiveness by recognizing and funding innovative approaches for serving homeless students.

Chairman JEFFORDS and others have recognized that keeping a homeless child in their school district of origin is vital to their success. Children, especially homeless children, need continuity in their lives. Yet as a nation, we have not yet focused on funding the innovative practices that will show how this can be done and done effectively.

In addition, there are chronic problems facing homeless children, such as the problems of trying to reach out to unaccompanied homeless youth, those young people who do not have parents or guardians with them in their homeless situation. Homeless preschoolers present another whole range of issues that many schools struggle to overcome.

My legislation will provide $2 million each year in national competitive challenge grants for innovation in the education of homeless children and youth. We follow this same approach in education technology and other areas, and challenge grants are remarkably successful in sparking innovation and dissemination of new methods of instruction.

Homeless students face many challenges, and schools face challenges in serving them. Creating a small challenge grant for homeless education is one necessary step we can take to help schools help these students succeed and achieve.●

By Mr. LOTT:

S. 1948. A bill to amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite; to the Committee on the Judiciary.

INTELLECTUAL PROPERTY AND COMMUNICATIONS OMNIBUS REFORM ACT OF 1999

Mr. LOTT: Mr. President, I ask unanimous consent that the following section-by-section analysis be printed in the RECORD.

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

S. 1948—SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This Act may be cited as the ''Intellectual Property and Communications Omnibus Reform Act of 1999.''

TITLE I—SATELLITE HOME VIEWER IMPROVEMENT ACT OF 1999

When Congress passed the Satellite Home Viewer Act in 1988, few Americans were familiar with satellite television. They typically resided in rural areas of the country where the only means of receiving television programming was through use of a large, backyard C-band satellite dish. Congress recognized the importance of providing these people with access to broadcast programming, and created a compulsory copyright license in the Satellite Home Viewer Act that enabled satellite carriers to easily license the copyrights to the broadcast programming that they retransmitted to their subscribers.

The 1988 Act fostered a boom in the satellite television industry. Coupled with the development of high-powered satellite service, or DSS, which delivers programming to a satellite dish as small as 18 inches in diameter, the satellite industry now serves homes nationwide with a wide range of high quality programming. Satellite is no longer primarily a rural service, for it offers an attractive alternative to other providers of multichannel video programming; in particular, cable television. Because satellite can provide direct competition with the cable industry, it is in the public interest to ensure that satellite operates under a copyright framework that permits it to be an effective competitor.

The compulsory copyright license created by the 1988 Act was limited to a five year period to enable Congress to consider its effectiveness and renew it where necessary. The license was renewed in 1994 for an additional five years, and amendments made that were intended to increase the enforcement of the network territorial restrictions of the compulsory license. Two-year transitional provisions were created to enable local network broadcasters to challenge satellite subscribers' receipt of satellite network service where the local network broadcaster had reason to believe that these subscribers received an adequate off-the-air signal from the broadcaster. The transitional provisions were minimally effective and caused much consumer confusion and anger regarding receipt of television network stations.

The satellite license is slated to expire at the end of this year, requiring Congress to again consider the copyright licensing regime for satellite retransmissions of over-the-air television broadcast stations. In passing this legislation, the Conference Committee was guided by several principles. First, the Conference Committee believes that promotion of competition in the marketplace for delivery of multichannel video programming is an effective policy to reduce costs to consumers. To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry. At the same time, the practical differences between the two industries must be recognized and accounted for.

Second, the Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local markets of those stations.

Third, perhaps most importantly, the Conference Committee is aware that in creating compulsory licenses, it is acting in derogation of the exclusive property rights granted by the Copyright Act to copyright holders, and that it therefore needs to act as narrowly as possible to minimize the effects of the government's intrusion on the broader market in which the affected property rights and industries operate. In this context, the broadcast television market has developed in such a way that copyright licensing practices in this area take into account the national network structure, which grants exclusive territorial rights to programming in a local market to local stations either directly or through affiliation agreements. The licenses granted in this legislation attempt to hew as closely to those arrangements as possible. For example, these arrangements are mirrored in the section 122 ''local-to-local'' license, which grants satellite carriers the right to retransmit local stations within the station's local market, and does not require a separate copyright payment because the works have already been licensed and paid for with respect to viewers in those local markets. By contrast, allowing the importation of distant or out-of-market network stations in derogation of the local stations' exclusive right—bought and paid for in market-negotiated arrangements—to show the works in question undermines those market arrangements. Therefore, the specific goal of the 119 license, which is to allow for a life-line network television service to those homes beyond the reach of their local television stations, must be met by only allowing distant network service to those homes which cannot receive the local network television stations. Hence, the ''unserved household'' limitation that has been in the license since its inception. The Committee is mindful and respectful of the

interrelationship between the communications policy of ''localism'' outlined above and property rights considerations in copyright law, and seeks a proper balance between the two.

Finally, although the legislation promotes satellite retransmissions of local stations, the Conference Committee recognizes the continued need to monitor the effects of distant signal importation by satellite. To that end, the compulsory license for retransmission of distant signals is extended for a period of five years, to afford Congress the opportunity to evaluate the effectiveness and continuing need for that license at the end of the five-year period.

Section 1001. Short Title

This title may be cited as the ''Satellite Home Viewer Improvement Act.''

Section 1002. Limitations on Exclusive Rights; Secondary Transmissions by Satellite Carriers Within Local Markets

The House and the Senate provisions were in most respects highly similar. The conference substitute generally follows the House approach, with the differences described here.

Section 1002 of this Act creates a new statutory license, with no sunset provision, as a new section 122 of the Copyright Act of 1976. The new license authorizes the retransmission of television broadcast stations by satellite carriers to subscribers located within the local markets of those stations.

Creation of a new statutory license for retransmission of local signals is necessary because the current section 119 license is limited to the retransmission of distance signals by satellite. The section 122 license allows satellite carriers for the first time to provide their subscribers with the television signals they want most: their local stations. A carrier may retransmit the signal of a network station (or superstation) to all subscribers who reside within the local market of that station, without regard to whether the subscriber resides in an ''unserved household.'' The term ''local market'' is defined in Section 119(j)(2), and generally refers to a station's Designated Market Area as defined by Nielsen.

Because the section 122 license is permanent, subscribers may obtain their local television stations without fear that their local broadcast service may be turned off at a future date. In addition, satellite carriers may deliver local stations to commercial establishments as well as homes, as the cable industry does under its license. These amendments create parity and enhanced competition between the satellite and cable industries in the provision of local television broadcast stations.

For a satellite carrier to be eligible for this license, this Act, following the House approach, provides both in new section 122(a) and in new section 122(d) that a carrier may use the new local-to-local license only if it is in full compliance with all applicable rules and regulations of the Federal Communications Commission, including any requirements that the Commission may adopt by regulation concerning carriage of stations or programming exclusivity. These provisions are modeled on similar provisions in section 111, the terrestrial compulsory license. Failure to fully comply with Commission rules with respect to retransmission of one or more stations in the local market precludes the carrier from making use of the section 122 license. Put another way, the statutory license overrides the normal copyright scheme only to the extent that carriers strictly comply with the limits Congress has put on that license.

Because terrestrial systems, such as cable, as a general rule do not pay any copyright royalty for local retransmissions of broadcast stations, the section 122 license does not require payment of any copyright royalty by satellite carriers for transmissions made in compliance with the requirements of section 122. By contrast, the section 119 statutory license for distant signals does require payment of royalties. In addition, the section 122 statutory license contains no ''unserved household'' limitation, while the section 119 license does contain that limitation.

Satellite carriers are liable for copyright infringement, and subject to the full remedies of the Copyright Act, if they violate one or more of the following requirements of the section 122 license. First, satellite carriers may not in any way willfully alter the programming contained on a local broadcast station.

Second, satellite carriers may not use the section 122 license to retransmit a television broadcast station to a subscriber located outside the local market of the station. Retransmission of a station to a subscriber located outside the station's local market is covered by section 119, and is permitted only when all conditions of that license are satisfied. Accordingly, satellite carriers are required to provide local broadcasters with accurate lists of the street addresses of their local-to-local subscribers so that broadcasters may verify that satellite carriers are making proper use of the license. The subscriber information supplied to broadcasters is for verification purposes only, and may not be used by broadcasters for any other reason. Any knowing provision of false information by a satellite carrier would, under section 122(d), bar use of the Section 122 license by the carrier engaging in such practices. The section 122 license contains remedial provisions parallel to those of Section 119, including a ''pattern or practice'' provision that requires termination of the Section 122 statutory license as to a particular satellite carrier if it engages in certain abuses of the license.

Under this provision, just as in the statutory licenses codified in sections 111 and 119, a violation may be proven by showing willful activity, or simple delivery of the secondary transmission over a certain period of time. In addition to termination of service on a nationwide or local or regional basis, statutory damages are available up to $250,000 for each 6–month period during which the pattern or practice of violations was carried out. Satellite carriers have the burden of proving that they are not improperly making use of the section 122 license to serve subscribers outside the local markets of the television broadcast stations they are providing. The penalties created under this section parallel those under Section 119, and are to deter satellite carriers from providing signals to subscribers in violation of the licenses.

The section 122 license is limited in geographic scope to service to locations in the United States, including any commonwealth, territory or possession of the United States. In addition, section 122(j) makes clear that local retransmission of television broadcast stations to subscribers is governed solely by the section 122 license, and that no provision of the section 111 cable compulsory license should be interpreted to allow satellite carriers to make local retransmissions of television broadcast stations under that license. Likewise, no provision of the section 119 license (or any other law) should be interpreted as authorizing local-to-local retransmissions. As with all statutory licenses, these explicit limitations are consistent with the general rule that, because statutory licenses are in derogation of the exclusive rights granted under the Copyright Act, they should be interpreted narrowly.

Section 1002(a) of this Act contains new standing provisions. Adopting the approach of the House bill, section 122(f)(1) of the Copyright Act is parallel to section 119(e), and ensures that local stations, in addition to any other parties that qualify under other standing provisions of the Act, will have the ability to sue for violations of section 122. New section 122(f)(2) of the Copyright Act enables a local television station that is not being carried by a satellite carrier in violation of the license to file a copyright infringement lawsuit in federal court to enforce its rights.

Section 1003. Extension of Effect of Amendments to Section 119 of Title 17, United States Code

As in both the House bill and the Senate amendment, this Act extends the section 119 satellite statutory license for a period of five years by changing the expiration date of the legislation from December 31, 1999, to December 31, 2004. The procedural and remedial provisions of section 119, which have already been interpreted by the courts, are being extended without change. Should the section 119 license be allowed to expire in 2004, it shall do so at midnight on December 31, 2004, so that the license will cover the entire second accounting period of 2004.

The advent of digital terrestrial broadcasting will necessitate additional review and reform of the distant signal statutory license. And responsibility to oversee the development of the nascent local station satellite service may also require for review of the distant signal statutory license in the future. For each of these reasons, this Act establishes a period for review in 5 years.

Although the section 119 regime is largely being extended in its current form, certain sections of the Act may have a near-term effect on pending copyright infringement lawsuits brought by broadcasters against satellite carriers. These changes are prospective only; Congress does not intend to change the legality of any conduct that occurred prior to the date of enactment. Congress does intend, however, to benefit consumers where possible and consistent with existing copyright law and principles.

This Act attempts to strike a balance among a variety of public policy goals. While increasing the number of potential subscribers to distant network signals, this Act clarifies that satellite carriers may carry up to, but no more than, two stations affiliated with the same network. The original purpose of the Satellite Home Viewer Act was to ensure that all Americans could receive network programming and other television services provided they could not receive those services over-the-air or in any other way. This bill reflects the desire of the Conference to meet this requirement and consumers' expectations to receive the traditional level of satellite service that has built up over the years, while avoiding an erosion of the programming market affected by the statutory licenses.

Section 1004. Computation of Royalty Fees for Satellite Carriers

Like both the House bill and the Senate amendment, this Act reduces the royalty fees currently paid by satellite carriers for the retransmission of network and superstations by 45 percent and 30 percent, respectively. These are reductions of the 27–cent royalty fees made effective by the Librarian of Congress on January 1, 1998. The reductions take effect on July 1, 1999, which is the beginning of the second accounting period for 1999, and apply to all accounting periods for the five-year extension of the section 119 license. The Committee has drafted this provision such that, if the section 119 license is renewed after 2004, the 45 percent and 30 percent reductions of the 27–cent fee will remain in effect, unless altered by legislative amendment.

In addition, section 119(c) of title 17, United States Code, is amended to clarify that in royalty distribution proceedings conducted under section 802 of the Copyright Act, the Public Broadcasting Service may act as agent for all public television copyright claimants and all Public Broadcasting Service member stations.

Section 1005. Distant Signal Eligibility for Consumers

The Senate bill contained provisions retaining the existing Grade B intensity standard in the definition of ''unserved household.'' The House agreed to the Senate provisions with amendments, which extend the ''unserved household'' definition of section 119 of title 17 intact in certain respects and amend it in other respects. Consistent with the approach of the Senate amendment, the central feature of the existing definition of ''unserved household''—inability to receive, through use of a conventional outdoor rooftop receiving antenna, a signal of Grade B intensity from a primary network station—remains intact. The legislation directs the FCC, however, to examine the definition of ''Grade B intensity,'' reflecting the dBu levels long set by the Federal Communications Commission in 47 C.F.R. §73.683(a), and issue a rulemaking within 6 months after enactment to evaluate the standard and, if appropriate, make recommendations to Congress about how to modify the analog standard, and make a further recommendation about what an appropriate standard would be for digital signals. In this fashion, the Congress will have the best input and recommendations from the Commission, allowing the Commission wide latitude in its inquiry and recommendations, but reserve for itself the final decision-making authority over the scope of the copyright licenses in question, in light of all relevant factors.

The amended definition of ''unserved household'' makes other consumer-friendly changes. It will eliminate the requirement that a cable subscriber wait 90 days to be eligible for satellite delivery of distant network signals. After enactment, cable subscribers will be eligible to receive distant network signals by satellite, upon choosing to do so, if they satisfy the other requirements of section 119.

In addition, this Act adds three new categories to the definition of ''unserved household'' in section 119(d)(10): (a) certain subscribers to network programming who are not predicted to receive a signal of Grade A intensity from any station of the relevant network, (b) operators of recreational vehicles and commercial trucks who have complied with certain documentation requirements, and (c) certain C-band subscribers to network programming. This Act also confirms in new section 119(d)(10)(B) what has long been understood by the parties and accepted by the courts, namely that a subscriber may receive distant network service if all network stations affiliated with the relevant network that are predicted to serve that subscriber give their written consent.

Section 1005(a)(2) of the bill creates a new section 119(a)(2)(B)(i) of the Copyright Act to prohibit a satellite carrier from delivering more than two distant TV stations affiliated with a single network in a single day to a particular customer. This clarifies that a satellite carrier provides a signal of a television station throughout the broadcast day, rather than switching between stations throughout a day to pick the best programming among different signals.

Section 1005(a)(2) of this Act creates a new section 119(a)(2)(B)(ii)(I) of the Copyright Act to confirm that courts should rely on the FCC's ILLR model to presumptively determine whether a household is capable of receiving a signal of Grade B intensity. The conferees understand that the parties to copyright infringement litigation under the Satellite Home Viewer Act have agreed on detailed procedures for implementing the current version of ILLR, and nothing in this Act requires any change in those procedures. In the future, when the FCC amends the ILLR model to make it more accurate pursuant to section 339(c)(3) of the Communications Act of 1934, the amended model should be used in place of the current version of ILLR. The new language also confirms in new section 119(a)(2)(B)(ii)(II) that the ultimate determination of eligibility to receive network signals shall be a signal intensity test pursuant to 47 C.F.R. §73.686(d), as reflected in new section 339(c)(5) of the Communications Act of 1934. Again, the conferees understand that existing Satellite Home Viewer Act court orders already incorporate this FCC-approved measurement method, and nothing in this Act requires any change in such orders. Such a signal intensity test may be conducted by any party to resolve a customer's eligibility in litigation under section 119.

Section 1005(a)(2) of this Act creates a new section 119(a)(2)(B)(iii) of the Copyright Act to permit continued delivery by means of C-band transmissions of network stations to C-band dish owners who received signals of the pertinent network on October 31, 1999, or were recently required to have such service terminated pursuant to court orders or settlements under section 119. This provision does not authorize satellite delivery of network stations to such persons by any technology other than C-band.

Section 1005(b) also adds a new provision (E) to section 119(a)(5). The purpose of this provision is to allow certain longstanding superstations to continue to be delivered to satellite customers without regard to the ''unserved household'' limitation, even if the station now technically qualifies as a ''network station'' under the 15–hour-per-week definition of the Act. This exception will cease to apply if such a station in the future becomes affiliated with one of the four networks (ABC, CBS, Fox, and NBC) that qualified as networks as of January 1, 1995.

Section 1005(c) of this Act adds a new section 119(e) of the Copyright Act. This provision contains a moratorium on terminations of network stations to certain otherwise ineligible recent subscribers to network programming whose service has been (or soon would have been) terminated and allows them to continue to be eligible for distant signal services. The subscribers affected are those predicted by the current version of the ILLR model to receive a signal of less than Grade A intensity from any network station of the relevant network defined in section 73.683(a) of Commission regulations (47 C.F.R. 73.683(a)) as in effect January 1, 1999. As the statutory language reflects, recent court orders and settlements between the satellite and broadcasting industries have required (or will in the near future require) significant numbers of terminations of network stations to ineligible subscribers in this category. Although the conferees strongly condemn lawbreaking by satellite carriers, and intend for satellite carriers to be subject to all other available legal remedies for any infringements in which the carriers have engaged, the conferees have concluded that the public interest will be served by the grandfathering of this limited category of subscribers whose service would otherwise be terminated.

The decision by the conferees to direct this limited grandfathering should not be understood as condoning unlawful conduct by satellite carriers, but rather reflects the concern of the conference for those subscribers who would otherwise be punished for the actions of the satellite carriers. Note that in the previous 18 months, court decisions have required the termination of some distant network signals to some subscribers. However, the Conferees are aware that in some cases satellite carriers terminated distant network service that was not subject to the original lawsuit. The Conferees intend that affected subscribers remain eligible for such service.

The words ''shall remain eligible'' in section 119(e) refer to eligibility to receive stations affiliated with the same network from the same satellite carrier through use of the same transmission technology at the same location; in other words, grandfathered status is not transferable to a different carrier or a different type of dish or at a new address. The provisions of new section 119(e) are incorporated by reference in the definition of ''unserved household'' as new section 119(d)(10)(C).

Section 1005(d) of this Act creates a new section 119(a)(11), which contains provisions governing delivery of network stations to recreational vehicles and commercial trucks. This provision is, in turn, incorporated in the definition of ''unserved household'' in new section 119(d)(10)(D). The purpose of these amendments is to allow the operators of recreational vehicles and commercial trucks to use satellite dishes permanently attached to those vehicles to receive, on television sets located inside those vehicles, distant network signals pursuant to section 119. To prevent abuse of this provision, the exception for recreational vehicles and commercial trucks is limited to persons who have strictly complied with the documentation requirements set forth in section 119(a)(11). Among other things, the exception will only become available as to a particular recreational vehicle or commercial truck after the satellite carrier has provided all affected networks with all documentation set forth in section 119(a). The exception will apply only for reception in that particular recreational vehicle or truck, and does not authorize any delivery of network stations to any fixed dwelling.

Section 1006. Public Broadcasting Service Satellite Feed

The conference agreement follows the Senate bill with an amendment that applies the network copyright royalty rate to the Public Broadcasting Service the satellite feed. The conference agreement grants satellite carriers a section 119 compulsory license to retransmit a national satellite feed distributed and designated by PBS. The license would apply to educational and informational programming to which PBS currently holds broadcast rights. The license, which would extend to all households in the United States, would sunset on January 1, 2002, the date when local-to-local must-carry obligations become effective. Under the conference agreement, PBS will designate the national satellite feed for purposes of this section.

Section 1007. Application of Federal Communications Commission Regulations

The section 119 license is amended to clarify that satellite carriers must comply with all rules, regulations, and authorizations of the Federal Communications Commission in order to obtain the benefits of the section 119 license. As provided in the House bill, this would include any programming exclusivity provisions or carriage requirements that the Commission may adopt. Violations of such rules, regulations or authorizations would render a carrier ineligible for the copyright statutory license with respect to that retransmission.

Section 1008. Rules for Satellite Carriers Retransmitting Television Broadcast Signals

The Senate agrees to the House bill provisions regarding carriage of television broadcast signals, with certain amendments, as discussed below. Section 108 creates new sections 338 and 339 of the Communications Act of 1934. Section 338 addresses carriage of local television signals, while section 339 addresses distant television signals.

New section 338 requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals in local markets in which the satellite carriers carry at least one signal pursuant to section 122 of title 17, United States Code. The conference report added the cross-reference to section 122 to the House provision to indicate the relationship between the benefits of the statutory license and the carriage requirements imposed by this Act. Thus, the conference report provides that, as of January 1, 2002, royalty-free copyright licenses for satellite carriers to retransmit broadcast signals to viewers in the broadcasters' service areas will be available only on a market-by-market basis.

The procedural provisions applicable to section 338 (concerning costs, avoidance of duplication, channel positioning, compensation for carriage, and complaints by broadcast stations) are generally parallel to those applicable to cable systems. Within one year after enactment, the Federal Communications Commission is to issue implementing regulations which are to impose obligations comparable to those imposed on cable systems under paragraphs (3) and (4) of section 614(b) and paragraphs (1) and (2) of section 615(g), such as the requirement to carry a station's entire signal without additions or deletions. The obligation to carry local stations on contiguous channels is illustrative of the general requirement to ensure that satellite carriers position local stations in a way that is convenient and practically accessible for consumers. By directing the FCC to promulgate these must-carry rules, the conferees do not take any position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems.

To make use of the local license, satellite carriers must provide the local broadcast station signal as part of their satellite service, in a manner consistent with paragraphs (b), (c), (d), and (e), FCC regulations, and retransmission consent requirements. Until January 1, 2002, satellite carriers are granted a royalty-free copyright license to retransmit broadcast signals on a station-by-station basis, consistent with retransmission consent requirements. The transition period is intended to provide the satellite industry with a transitional period to begin providing local-into-local satellite service to communities throughout the country.

The conferees believe that the must-carry provisions of this Act neither implicate nor violate the First Amendment. Rather than requiring carriage of stations in the manner of cable's mandated duty, this Act allows a satellite carrier to choose whether to incur the must-carry obligation in a particular market in exchange for the benefits of the local statutory license. It does not deprive any programmers of potential access to carriage by satellite carriers. Satellite carriers remain free to carry any programming for which they are able to acquire the property rights. The provisions of this Act allow carriers an easier and more inexpensive way to obtain the right to use the property of copyright holders when they retransmit signals from all of a market's broadcast stations to subscribers in that market. The choice whether to retransmit those signals is made by carriers, not by the Congress. The proposed licenses are a matter of legislative grace, in the nature of subsidies to satellite carriers, and reviewable under the rational basis standard.[1]

In addition, the conferees are confident that the proposed license provisions would pass constitutional muster even if subjected to the O'Brien standard applied to the cable must-carry requirement.[2] The proposed provisions are intended to preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources. The Supreme Court has found both to be substantial interests, unrelated to the suppression of free expression.[3] Providing the proposed license on a market-by-market basis furthers both goals by preventing satellite carriers from choosing to carry only certain stations and effectively preventing many other local broadcasters from reaching potential viewers in their service areas. The Conference Committee is concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage.[4]

The proposed licenses place satellite carrier in a comparable position to cable systems, competing for the same customers. Applying a must-carry rule in markets which satellite carriers choose to serve benefits consumers and enhances competition with cable by allowing consumers the same range of choice in local programming they receive through cable service. The conferees expect that, by January 1, 2002, satellite carriers' market share will have increased and that the Congress' interest in maintaining free over-the-air television will be undermined if local broadcasters are prevented from reaching viewers by either cable or satellite distribution systems. The Congress' preference for must-carry obligations has already been proven effective, as attested by the appearance of several emerging networks, which often serve underserved market segments. There are no narrower alternatives that would achieve the Congress' goals. Although the conferees expect that subscribers who receive no broadcast signals at all from their satellite service may install antennas or subscribe to cable service in addition to satellite service, the Conference Committee is less sanguine that subscribers who receive network signals and hundreds of other programming choices from their satellite carrier will undertake such trouble and expense to obtain over-the-air signals from independent broadcast stations. National feeds would also be counterproductive because they siphon potential viewers from local over-the-air affiliates. In sum, the Conference Committee finds that trading the benefits of the copyright license for the must carry requirement is a fair and reasonable way of helping viewers have access to all local programming while benefitting satellite carriers and their customers.

Section 338(c) contains a limited exception to the general must-carry requirements, stating that a satellite carrier need not carry two local affiliates of the same network that substantially duplicate each others' programming, unless the duplicating stations are licensed to communities in different states. The latter provisions address unique and limited cases, including WMUR (Manchester, New Hampshire) / WCVB (Boston, Massachusetts) and WPTZ (Plattsburg, New York)/ WNNE (White River Junction, Vermont), in which mandatory carriage of both duplicating local stations upon request assures that satellite subscribers will not be precluded from receiving the network affiliate that is licensed to the state in which they reside.

Because of unique technical challenges on satellite technology and constraints on the use of satellite spectrum, satellite carriers may initially be limited in their ability to deliver must carry signals into multiple markets. New compression technologies, such as video streaming, may help overcome these barriers however, and, if deployed, could enable satellite carriers to deliver must-carry signals into many more markets than they could otherwise. Accordingly, the conferees urge the FCC, pursuant to its obligations under section 338, or in any other related proceedings, to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations, consistent with existing authority.

* * * * *

New section 339 of the Communications Act contains provisions concerning carriage of distant television stations by satellite carriers. Section 339(a)(1) limits satellite carriers to providing a subscriber with no more than two stations affiliated with a given television network from outside the local market. In addition, a satellite carrier that provides two distant signals to eligible households may also provide the local television signals pursuant to section 122 of title 17 if the subscriber offers local-to-local service in the subscriber's market. This provision furthers the congressional policy of localism and diversity of broadcast programming, which provides locally-relevant news, weather, and information, but also allows consumers in unserved households to enjoy network programming obtained via distant signals. Under new section 339(a)(2), which is based on the Senate amendment, the knowing and willful provision of distant television signals in violation of these restrictions is subject to a forfeiture penalty under section 503 of the Communications Act of $50,000 per violation or for each day of a continuing violation.

New section 339(b)(1)(A) requires the Commission to commence within 45 days of enactment, and complete within one year after the date of enactment, a rulemaking to develop regulations to apply network nonduplication, syndicated exclusivity and sports blackout rules to the transmission of nationally distributed superstations by satellite carriers. New section 339(b)(1)(B) requires the Commission to promulgate regulations on the same schedule with regard to the application of sports blackout rules to network stations. These regulations under subparagraph (B) are to be imposed ''to the extent technically feasible and not economically prohibitive'' with respect to the affected parties. The burden of showing that conforming to rules similar to cable would be ''economically prohibitive'' is a heavy one. It would entail a very serious economic threat to the health of the carrier. Without that showing, the rules should be as similar as possible to that applicable to cable services.

Section 339(c) of the Communications Act of 1934 addresses the three distinct areas discussed by the Commission in its Report & Order in Docket No. 98–201: (i) the definition of ''Grade B intensity,'' which is the substantive standard for determining eligibility to receive distant network stations by satellite, (ii) prediction of whether a signal of Grade B intensity from a particular station is present at a particular household, and (iii) measurement of whether a signal of Grade B intensity from a particular station is present

See footnotes at end of Analysis.

at a particular household. Section 339(c) addresses each of these topics.

New section 339(c) addresses evaluation and possible recommendations for modification by the Commission of the definition of Grade B intensity, which is incorporated into the definition of ''unserved household'' in section 119 of the Copyright Act. Under section 339(c), the Commission is to complete a rulemaking within 1 year after enactment to evaluate, and if appropriate to recommend modifications to the Grade B intensity standard for analog signals set forth in 47 C.F.R. §73.683(a), for purposes of determining eligibility for distant signal satellite service. In addition, the Commission is to recommend a signal standard for digital signals to prepare Congress to update the statutory license for digital television broadcasting. The Committee intends that this report would reflect the FCC's best recommendations in light of all relevant considerations, and be based on whatever factors and information the Commission deems relevant to determining whether the signal intensity standard should be modified and in what way. As discussed above, the two-part process allows the Commission to recommend modifications leaving to Congress the decision-making power on modifications of the copyright licenses at issue.

Section 339(c)(3) addresses requests to local television stations by consumers for waivers of the eligibility requirements under section 119 of title 17, United States Code. If a satellite carrier is barred from delivering distant network signals to a particular customer because the ILLR model predicts the customer to be served by one or more television stations affiliated with the relevant network, the consumer may submit to those stations, through his or her satellite carrier, a written request for a waiver. The statutory phrase ''station asserting that the retransmission is prohibited'' refers to a station that is predicted by the ILLR model to serve the household. Each such station must accept or reject the waiver request within 30 days after receiving the request from the satellite carrier. If a relevant network station grants the requested waiver, or fails to act on the waiver within 30 days, the viewer shall be deemed unserved with respect to the local network station in question.

Section 339(c)(4) addresses the ILLR predictive model developed by the Commission in Docket No. 98–201. The provision requires the Commission to attempt to increase its accuracy further by taking into account not only terrain, as the ILLR model does now, but also land cover variations such as buildings and vegetation. If the Commission discovers other practical ways to improve the accuracy of the ILLR model still further, it shall implement those methods as well. The linchpin of whether particular proposed refinements to the ILLR model result in greater accuracy is whether the revised model's predictions are closer to the results of actual field testing in terms of predicting whether households are served by a local affiliate of the relevant network.

The ILLR model of predicting subscribers' eligibility will be of particular use in rural areas. To make the ILLR more accurate and more useful to this group of Americans, the Conference Committee believes the Commission should be particularly careful to ensure that the ILLR is accurate in areas that use star routes, postal routes, or other addressing systems that may not indicate clearly the location of the actual dwelling of a potential subscriber. The Commission should to ensure the model accurately predicts the signal strength at the viewers' actual location.

New section 339(c)(5) addresses the third area discussed in the Commission's Report & Order in Docket No. 98–201, namely signal intensity testing. This provision permits satellite carriers and broadcasters to carry out signal intensity measurements, using the procedures set forth by the Commission in 47 C.F.R. §73.686(d), to determine whether particular households are unserved. Unless the parties otherwise agree, any such tests shall be conducted on a ''loser pays'' basis, with the network station bearing the costs of tests showing the household to be unserved, and the satellite carrier bearing the costs of tests showing the household to be served. If the satellite carrier and station is unable to agree on a qualified individual to perform the test, the Commission is to designate an independent and neutral entity by rule. The Commission is to promulgate rules that avoid any undue burdens being imposed on any party.

Section 1009. Retransmission Consent

Section 1009 amends the provisions of section 325 of the Communications Act governing retransmission consent. As revised, section 325(b)(1) bars multichannel video programming distributors from retransmitting the signals of television broadcast stations, or any part thereof, without the express authority of the originating station. Section 325(b)(2) contains several exceptions to this general prohibition, including noncommercial stations, certain superstations, and, until the end of 2004, retransmission of not more than two distant signals by satellite carriers to unserved households outside of the local market of the retransmitted stations, and (E) for six months to the retransmission of local stations pursuant to the statutory license in section 122 of the title 17.

Section 1009 also amends section 325(b) of the Communications Act to require the Commission to issue regulations concerning the exercise by television broadcast stations of the right to grant retransmission consent. The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor or refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The FCC may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

Section 1009 of the bill adds a new subsection (e) to section 325 of the Communications Act. New subsection 325(e) creates a set of expedited enforcement procedures for the alleged retransmission of a television broadcast station in its own local market without the station's consent. The purpose of these expedited procedure is to ensure that delays in obtaining relief from violations do not make the right to retransmission consent an empty one. The new provision requires 45–day processing of local-to-local retransmission consent complaints at the Commission, followed by expedited enforcement of any Commission orders in the United States District Court for the Eastern District of Virginia. In addition, a television broadcast station that has been retransmitted in its local market without its consent will be entitled to statutory damages of $25,000 per violation in an action in federal district court. Such damages will be awarded only if the television broadcast station agrees to contribute any statutory damage award above $1,000 to the United States Treasury for public purposes. The expedited enforcement provision contains a sunset which prevents the filing of any complaint with the Commission or any action in federal district court to enforce any Commission order under this section after December 31, 2001. The conferees believe that these procedural provisions, which provide ample due process protections while ensuring speedy enforcement, will ensure that retransmission consent will be respected by all parties and promote a smoothly functioning marketplace.

Section 1010. Severability

Section 1010 of the Act provides that if any provision of section 325(b) of the Communications Act as amended by this Act is declared unconstitutional, the remaining provisions of that section will stand.

Section 1011. Technical Amendments

Section 1011 of this Act makes technical and conforming amendments to sections 101, 111, 119, 501, and 510 of the Copyright Act. Apart from these technical amendments, this legislation makes no changes to section 111 of the Copyright Act. In particular, nothing in this legislation makes any changes concerning entitlement or eligibility for the statutory licenses under sections 111 and 119, nor specifically to the definitions of ''cable system'' under section 111(f), and ''satellite carrier'' under section 119(d)(6). Certain technical amendments to these definitions that were included in the Conference Report to the Intellectual Property and Communications Omnibus Reform Act (IPCORA) of 1999 are not included in this legislation. Congress intends that neither the courts nor the Copyright Office give any legal significance either to the inclusion of the amendments in the IPCORA conference report or their omission in this legislation. These statutory definitions are to be interpreted in the same way after enactment of this legislation as they were interpreted prior to enactment of this legislation.

Section 1011(b) makes a technical and clarifying change to the definition of a ''work made for hire'' in section 101 of the Copyright Act. Sound recordings have been registered in the Copyright Office as works made for hire since being protected in their own right. This clarifying amendment shall not be deemed to imply that any sound recording or any other work would not otherwise qualify as a work made for hire in the absence of the amendment made by this subsection.

Section 1012. Effective dates.

Under section 1012 of this Act, sections 1001, 1003, 1005, and 1007 through 1011 shall be effective on the date of enactment. The amendments made by sections 1002, 1004, and 1006 shall be effective as of July 1, 1999.

TITLE II—RURAL LOCAL TELEVISION SIGNALS

Section 2001. Short Title

This title may be referred to as the ''Rural Local Broadcast Signal Act.''

Section 2002. Local Television Service in Unserved and Underserved Markets

To encourage the FCC to approve needed licenses (or other authorizations to use spectrum) to provide local TV service in rural areas, the Commission is required to make determinations regarding needed licenses within one year of enactment.

However, the FCC shall ensure that no license or authorization provided under this section will cause ''harmful interference'' to the primary users of the spectrum or to public safety use. Subparagraph (2), states that the Commission shall not license under subsection (a) any facility that causes harmful interference to existing primary users of spectrum or to public safety use. The Commission typically categorizes a licensed service as primary or secondary. Under Commission rules, a secondary service cannot be authorized to operate in the same band as a

primary user of that band unless the proposed secondary user conclusively demonstrates that the proposed secondary use will not cause harmful interference to the primary service. The Commission is to define ''harmful interference'' pursuant to the definition at 47 C.F.R. section 2.1 and in accordance with Commission rules and policies.

For purposes of section 2005(b)(3) the FCC may consider a compression, reformatting or other technology to be unreasonable if the technology is incompatible with other applicable FCC regulation or policy under the Communications Act of 1934, as amended.

The Commission also may not restrict any entity granted a license or other authorization under this section, except as otherwise specified, from using any reasonable compression, reformatting, or other technology.

TITLE III—TRADEMARK CYBERPIRACY PREVENTION

Section 3001. Short Title; References

This section provides that the Act may be cited as the ''Anticybersquatting Consumer Protection Act'' and that any references within the bill to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes,'' approved July 5, 1946 (15 U.S.C. 1051 et seq.), also commonly referred to as the Lanham Act.

Sec. 3002. Cyberpiracy Prevention

Subsection (a). In General. This subsection amends the Trademark Act to provide an explicit trademark remedy for cybersquatting under a new section 43(d). Under paragraph (1)(A) of the new section 43(d), actionable conduct would include the registration, trafficking in, or use of a domain name that is identical or confusingly similar to, or dilutive of, the mark of another, including a personal name that is protected as a mark under section 43 of the Lanham Act, provided that the mark was distinctive (i.e., enjoyed trademark status) at the time the domain name was registered, or in the case of trademark dilution, was famous at the time the domain name was registered. The bill is carefully and narrowly tailored, however, to extend only to cases where the plaintiff can demonstrate that the defendant registered, trafficked in, or used the offending domain name with bad-faith intent to profit from the goodwill of a mark belonging to someone else. Thus, the bill does not extend to innocent domain name registrations by those who are unaware of another's use of the name, or even to someone who is aware of the trademark status of the name but registers a domain name containing the mark for any reason other than with bad faith intent to profit from the goodwill associated with that mark.

The phrase ''including a personal name which is protected as a mark under this section'' addresses situations in which a person's name is protected under section 43 of the Lanham Act and is used as a domain name. The Lanham Act prohibits the use of false designations of origin and false or misleading representations. Protection under 43 of the Lanham Act has been applied by the courts to personal names which function as marks, such as service marks, when such marks are infringed. Infringement may occur when the endorsement of products or services in interstate commerce is falsely implied through the use of a personal name, or otherwise, without regard to the goods or services of the parties. This protection also applies to domain names on the Internet, where falsely implied endorsements and other types of infringement can cause greater harm to the owner and confusion to a consumer in a shorter amount of time than is the case with traditional media. The protection offered by section 43 to a personal name which functions as a mark, as applied to domain names, is subject to the same fair use and first amendment protections as have been applied traditionally under trademark law, and is not intended to expand or limit any rights to publicity recognized by States under State law.

Paragraph (1)(B)(i) of the new section 43(d) sets forth a number of nonexclusive, nonexhaustive factors to assist a court in determining whether the required bad-faith element exists in any given case. These factors are designed to balance the property interests of trademark owners with the legitimate interests of Internet users and others who seek to make lawful uses of others' marks, including for purposes such as comparative advertising, comment, criticism, parody, news reporting, fair use, etc. The bill suggests a total of nine factors a court may wish to consider. The first four suggest circumstances that may tend to indicate an absence of bad-faith intent to profit from the goodwill of a mark, and the next four suggest circumstances that may tend to indicate that such bad-faith intent exits. The last factor may suggest either bad-faith or an absence thereof depending on the circumstances.

First, under paragraph (1)(B)(i)(I), a court may consider whether the domain name registrant has trademark or any other intellectual property rights in the name. This factor recognizes, as does trademark law in general, that there may be concurring uses of the same name that are noninfringing, such as the use of the ''Delta'' mark for both air travel and sink faucets. Similarly, the registration of the domain name ''deltaforce.com'' by a movie studio would not tend to indicate a bad faith intent on the part of the registrant to trade on Delta Airlines or Delta Faucets' trademarks.

Second, under paragraph (1)(B)(i)(II), a court may consider the extent to which the domain name is the same as the registrant's own legal name or a nickname by which that person is commonly identified. This factor recognizes, again as does the concept of fair use in trademark law, that a person should be able to be identified by their own name, whether in their business or on a web site. Similarly, a person may bear a legitimate nickname that is identical or similar to a well-known trademark, such as in the well-publicized case of the parents who registered the domain name ''pokey.org'' for their young son who goes by that name, and these individuals should not be deterred by this bill from using their name online. This factor is not intended to suggest that domain name registrants may evade the application of this act by merely adopting Exxon, Ford, or other well-known marks as their nicknames. It merely provides a court with the appropriate discretion to determine whether or not the fact that a person bears a nickname similar to a mark at issue is an indication of an absence of bad-faith on the part of the registrant.

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

Fourth, under paragraph (1)(B)(i)(IV), a court may consider the person's bona fide noncommercial or fair use of the mark in a web site that is accessible under the domain name at issue. This factor is intended to balance the interests of trademark owners with the interests of those who would make lawful noncommercial or fair uses of others' marks online, such as in comparative advertising, comment, criticism, parody, news reporting, etc. Under the bill, the mere fact that the domain name is used for purposes of comparative advertising, comment, criticism, parody, news reporting, etc., would not alone establish a lack of bad-faith intent. The fact that a person uses a mark in a site in such a lawful manner may be an appropriate indication that the person's registration or use of the domain name lacked the required element of bad-faith. This factor is not intended to create a loophole that otherwise might swallow the bill, however, by allowing a domain name registrant to evade application of the Act by merely putting up a noninfringing site under an infringing domain name. For example, in the well know case of Panavision Int'l v. Toeppen, 141 F.3d 1316 (9th Cir. 1998), a well known cybersquatter had registered a host of domain names mirroring famous trademarks, including names for Panavision, Delta Airlines, Neiman Marcus, Eddie Bauer, Lufthansa, and more than 100 other marks, and had attempted to sell them to the mark owners for amounts in the range of $10,000 to $15,000 each. His use of the ''panavision.com'' and ''panaflex.com'' domain names was seemingly more innocuous, however, as they served as addresses for sites that merely displayed pictures of Pana Illinois and the word ''Hello'' respectively. This bill would not allow a person to evade the holding of that case—which found that Mr. Toeppen had made a commercial use of the Panavision marks and that such uses were, in fact, diluting under the Federal Trademark Dilution Act—merely by posting noninfringing uses of the trademark on a site accessible under the offending domain name, as Mr. Toeppen did. Similarly, the bill does not affect existing trademark law to the extent it has addressed the interplay between First Amendment protections and the rights of trademark owners. Rather, the bill gives courts the flexibility to weigh appropriate factors in determining whether the name was registered or used in bad faith, and it recognizes that one such factor may be the use the domain name registrant makes of the mark.

Fifth, under paragraph (1)(B)(i)(V), a court may consider whether, in registering or using the domain name, the registrant intended to divert consumers away from the trademark owner's website to a website that could harm the goodwill of the mark, either for purposes of commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site. This factor recognizes that one of the main reasons cybersquatters use other people's trademarks is to divert Internet users to their own sites by creating confusion as to the source, sponsorship, affiliation, or endorsement of the site. This is done for a number of reasons, including to pass off inferior goods under the name of a well-known mark holder, to defraud consumers into providing personally identifiable information, such as credit card numbers, to attract ''eyeballs'' to sites that price online advertising according to the number of ''hits'' the site receives, or even just to harm the value of the mark. Under this provision,

a court may give appropriate weight to evidence that a domain name registrant intended to confuse or deceive the public in this manner when making a determination of bad-faith intent.

Sixth, under paragraph (1)(B)(i)(VI), a court may consider a domain name registrant's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain, where the registrant has not used, and did not have any intent to use, the domain name in the bona fide offering of any goods or services. A court may also consider a person's prior conduct indicating a pattern of such conduct. This factor is consistent with the court cases, like the Panavision case mentioned above, where courts have found a defendant's offer to sell the domain name to the legitimate mark owner as being indicative of the defendant's intent to trade on the value of a trademark owner's marks by engaging in the business of registering those marks and selling them to the rightful trademark owners. It does not suggest that a court should consider the mere offer to sell a domain name to a mark owner or the failure to use a name in the bona fide offering of goods or services as sufficient to indicate bad faith. Indeed, there are cases in which a person registers a name in anticipation of a business venture that simply never pans out. And someone who has a legitimate registration of a domain name that mirrors someone else's domain name, such as a trademark owner that is a lawful concurrent user of that name with another trademark owner, may, in fact, wish to sell that name to the other trademark owner. This bill does not imply that these facts are an indication of bad-faith. It merely provides a court with the necessary discretion to recognize the evidence of bad-faith when it is present. In practice, the offer to sell domain names for exorbitant amounts to the rightful mark owner has been one of the most common threads in abusive domain name registrations. Finally, by using the financial gain standard, this paragraph allows a court to examine the motives of the seller.

Seventh, under paragraph (1)(B)(i)(VII), a court may consider the registrant's intentional provision of material and misleading false contact information in an application for the domain name registration, the person's intentional failure to maintain accurate contact information, and the person's prior conduct indicating a pattern of such conduct. Falsification of contact information with the intent to evade identification and service of process by trademark owners is also a common thread in cases of cybersquatting. This factor recognizes that fact, while still recognizing that there may be circumstances in which the provision of false information may be due to other factors, such as mistake or, as some have suggested in the case of political dissidents, for purposes of anonymity. This bill balances those factors by limiting consideration to the person's contact information, and even then requiring that the provision of false information be material and misleading. As with the other factors, this factor is nonexclusive and a court is called upon to make a determination based on the facts presented whether or not the provision of false information does, in fact, indicate bad-faith.

Eight, under paragraph (1)(B)(i)(VIII), a court may consider the domain name registrant's acquisition of multiple domain names which the person knows are identical or confusingly similar to, or dilutive of, others' marks. This factor recognizes the increasingly common cybersquatting practice known as ''warehousing'', in which a cybersquatter registers multiple domain names—sometimes hundreds, even thousands—that mirror the trademarks of others. By sitting on these marks and not making the first move to offer to sell them to the mark owner, these cybersquatters have been largely successful in evading the case law developed under the Federal Trademark Dilution Act. This bill does not suggest that the mere registration of multiple domain names is an indication of bad faith, but it allows a court to weigh the fact that a person has registered multiple domain names that infringe or dilute the trademarks of others as part of its consideration of whether the requisite bad-faith intent exists.

Lastly, under paragraph (1)(B)(i)(IX), a court may consider the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c)(1) of section 43 of the Trademark Act of 1946. The more distinctive or famous a mark has become, the more likely the owner of that mark is deserving of the relief available under this act. At the same time, the fact that a mark is not well-known may also suggest a lack of bad-faith.

Paragraph (1)(B)(ii) underscores the bad-faith requirement by making clear that bad-faith shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

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

Paragraph (1)(D) clarifies that a prohibited ''use'' of a domain name under the bill applies only to a use by the domain name registrant or that registrant's authorized licensee.

Paragraph (1)(E) defines what means to ''traffic in'' a domain name. Under this Act, ''traffics in'' refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

Paragraph (2)(A) provides for in rem jurisdiction, which allows a mark owner to seek the forfeiture, cancellation, or transfer of an infringing domain name by filing an in rem action against the name itself, where the mark owner has satisfied the court that it has exercised due diligence in trying to locate the owner of the domain name but is unable to do so, or where the mark owner is otherwise unable to obtain in personam jurisdiction over such person. As indicated above, a significant problem faced by trademark owners in the fight against cybersquatting is the fact that many cybersquatters register domain names under aliases or otherwise provide false information in their registration applications in order to avoid identification and service of process by the mark owner. This bill will alleviate this difficulty, while protecting the notions of fair play and substantial justice, by enabling a mark owner to seek an injunction against the infringing property in those cases where, after due diligence, a mark owner is unable to proceed against the domain name registrant because the registrant has provided false contact information and is otherwise not to be found, or where a court is unable to assert personal jurisdiction over such person, provided the mark owner can show that the domain name itself violates substantive federal trademark law (i.e., that the domain name violates the rights of the registrant of a mark registered in the Patent and Trademark Office, or section 43(a) or (c) of the Trademark Act). Under the bill, a mark owner will be deemed to have exercised due diligence in trying to find a defendant if the mark owner sends notice of the alleged violation and intent to proceed to the domain name registrant at the postal and e-mail address provided by the registrant to the registrar and publishes notice of the action as the court may direct promptly after filing the action. Such acts are deemed to constitute service of process by paragraph (2)(B).

The concept of in rem jurisdiction has been with us since well before the Supreme Court's landmark decision in Pennoyer v. Neff, 95 U.S. 714 (1877). Although more recent decisions have called into question the viability of quasi in rem ''attachment'' jurisdiction, see Shaffer v. Heitner, 433 U.S. 186 (1977), the Court has expressly acknowledged the propriety of true in rem proceedings (or even type I quasi in rem proceedings[5]) where ''claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant.'' Id. at 207–08. The Act clarifies the availability of in rem jurisdiction in appropriate cases involving claims by trademark holders against cyberpirates. In so doing, the Act reinforces the view that in rem jurisdiction has continuing constitutional vitality, see R.M.S. Titanic, Inc. v. Haver, 171 F.3d 943, 957–58 (4th Cir. 1999) (''In rem actions only require that a party seeking an interest in a res bring the res into the custody of the court and provide reasonable, public notice of its intention to enable others to appear in the action to claim an interest in the res.''); Chapman v. Vande Bunte, 604 F. Supp. 714, 716–17 (E.D. N.C. 1985) (''In a true in rem proceeding, in order to subject property to a judgment in rem, due process requires only that the property itself have certain minimum contacts with the territory of the forum.'').

By authorizing in rem jurisdiction, the Act also attempts to respond to the problems faced by trademark holders in attempting to effect personal service of process on cyberpirates. In an effort to avoid being held accountable for their infringement or dilution of famous trademarks, cyberpirates often have registered domain names under fictitious names and addresses or have used offshore addresses or companies to register domain names. Even when they actually do receive notice of a trademark holder's claim, cyberpirates often either refuse to acknowledge demands from a trademark holder altogether, or simply respond to an initial demand and then ignore all further efforts by the trademark holder to secure the cyberpirate's compliance. The in rem provisions of the Act accordingly contemplate that a trademark holder may initiate in rem proceedings in cases where domain name registrants are not subject to personal jurisdiction or cannot reasonably be found by the trademark holder.

Paragraph (2)(C) provides that in an in rem proceeding, a domain name shall be deemed to have its situs in the judicial district in which (1) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located, or (2) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

Paragraph (2)(D) limits the relief available in such an in rem action to an injunction ordering the forfeiture, cancellation, or transfer of the domain name. Upon receipt of a written notification of the complaint, the domain name registrar, registry, or other authority is required to deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court, and may not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court. Such domain

name registrar, registry, or other authority is immune from injunctive or monetary relief in such an action, except in the case of bad faith or reckless disregard, which would include a willful failure to comply with any such court order.

Paragraph (3) makes clear that the new civil action created by this Act and the in rem action established therein, and any remedies available under such actions, shall be in addition to any other civil action or remedy otherwise applicable. This paragraph thus makes clear that the creation of a new section 43(d) in the Trademark Act does not in any way limit the application of current provisions of trademark, unfair competition and false advertising, or dilution law, or other remedies under counterfeiting or other statutes, to cybersquatting cases.

Paragraph (4) makes clear that the in rem jurisdiction established by the bill is in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

Subsection (b). Cyberpiracy Protection for Individuals

Subsection (b) prohibits the registration of a domain name that is the name of another living person, or a name that is substantially and confusingly similar thereto, without such person's permission, if the registrant's specific intent is to profit from the domain name by selling it for financial gain to such person or a third party. While the provision is broad enough to apply to the registration of full names (e.g., johndoe.com), appellations (e.g., doe.com), and variations thereon (e.g. john-doe.com or jondoe.com), the provision is still very narrow in that it requires a showing that the registrant of the domain name registered that name with a specific intent to profit from the name by selling it to that person or to a third party for financial gain. This section authorizes the court to grant injunctive relief, including ordering the forfeiture or cancellation of the domain name or the transfer of the domain name to the plaintiff. Although the subsection does not authorize a court to grant monetary damages, the court may award costs and attorneys' fees to the prevailing party in appropriate cases.

This subsection does not prohibit the registration of a domain name in good faith by an owner or licensee of a copyrighted work, such as an audiovisual work, a sound recording, a book, or other work of authorship, where the personal name is used in, affiliated with, or related to that work, where the person's intent in registering the domain is not to sell the domain name other than in conjunction with the lawful exploitation of the work, and where such registration is not prohibited by a contract between the domain name registered and the named person. This limited exemption recognizes the First Amendment issues that may arise in such cases and defers to existing bodies of law that have developed under State and Federal law to address such uses of personal names in conjunction with works of expression. Such an exemption is not intended to provide a loophole for those whose specific intent is to profit from another's name by selling the domain name to that person or a third party other than in conjunction with the bona fide exploitation of a legitimate work of authorship. For example, the registration of a domain name containing a personal name by the author of a screenplay that bears the same name, with the intent to sell the domain name in conjunction with the sale or license of the screenplay to a production studio would not be barred by this subsection, although other provisions of State or Federal law may apply. On the other hand, the exemption for good faith registrations of domain names tied to legitimate works of authorship would not exempt a person who registers a personal name as a domain name with the intent to sell the domain name by itself, or in conjunction with a work of authorship (e.g., a copyrighted web page) where the real object of the sale is the domain name, rather than the copyrighted work.

In sum, this subsection is a narrow provision intended to curtail one form of ''cybersquatting''—the act of registering someone else's name as a domain name for the purpose of demanding remuneration from the person in exchange for the domain name. Neither this section nor any other section in this bill is intended to create a right of publicity of any kind with respect to domain names. Nor is it intended to create any new property rights, intellectual or otherwise, in a domain name that is the name of a person. This subsection applies prospectively only, affecting only those domain names registered on or after the date of enactment of this Act.

Sec. 3003. Damages and Remedies

This section applies traditional trademark remedies, including injunctive relief, recovery of defendant's profits, actual damages, and costs, to cybersquatting cases under the new section 43(d) of the Trademark Act. The bill also amends section 35 of the Trademark Act to provide for statutory damages in cybersquatting cases, in an amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just.

Sec. 3004. Limitation on Liability

This section amends section 32(2) of the Trademark Act to extend the Trademark Act's existing limitations on liability to the cybersquatting context. This section also creates a new subparagraph (D) in section 32(2) to encourage domain name registrars and registries to work with trademark owners to prevent cybersquatting through a limited exemption from liability for domain name registrars and registries that suspend, cancel, or transfer domain names pursuant to a court order or in the implementation of a reasonable policy prohibiting cybersquatting. Under this exemption, a registrar, registry, or other domain name registration authority that suspends, cancels, or transfers a domain name pursuant to a court order or a reasonable policy prohibiting cybersquatting will not be held liable for monetary damages, and will be not be subject to injunctive relief provided that the registrar, registry, or other registration authority has deposited control of the domain name with a court in which an action has been filed regarding the disposition of the domain name, it has not transferred, suspended, or otherwise modified the domain name during the pendency of the action, other than in response to a court order, and it has not willfully failed to comply with any such court order. Thus, the exemption will allow a domain name registrar, registry, or other registration authority to avoid being joined in a civil action regarding the disposition of a domain name that has been taken down pursuant to a dispute resolution policy, provided the court has obtained control over the name from the registrar, registry, or other registration authority, but such registrar, registry, or other registration authority would not be immune from suit for injunctive relief where no such action has been filed or where the registrar, registry, or other registration authority has transferred, suspended, or otherwise modified the domain name during the pendency of the action or wilfully failed to comply with a court order.

This section also protects the rights of domain name registrants against overreaching trademark owners. Under a new subparagraph (D)(iv) in section 32(2), a trademark owner who knowingly and materially misrepresents to the domain name registrar or registry that a domain name is infringing shall be liable to the domain name registrant for damages resulting from the suspension, cancellation, or transfer of the domain name. In addition, the court may grant injunctive relief to the domain name registrant by ordering the reactivation of the domain name or the transfer of the domain name back to the domain name registrant. In creating a new subparagraph (D)(iii) of section 32(2), this section codifies current case law limiting the secondary liability of domain name registrars and registries for the act of registration of a domain name, absent bad-faith on the part of the registrar and registry.

Finally, subparagraph (D)(v) provides additional protections for domain name holders by allowing a domain name registrant whose name has been suspended, disabled, or transferred to file a civil action to establish that the registration or use of the domain name by such registrant is not a violation of the Lanham Act. In such cases, a court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.

Sec. 3005. Definitions

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

Sec. 3006. Study on Abusive Domain Name Registrations Involving Personal Names

This section directs the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, to conduct a study and report to Congress with recommendations on guidelines and procedures for resolving disputes involving the registration or use of domain names that include personal names of others or names that are confusingly similar thereto. This section further directs the Secretary of Commerce to collaborate with the Internet Corporation for Assigned Names and Numbers (ICANN) to develop guidelines and procedures for resolving disputes involving the registration or use of domain names that include personal names of others or names that are confusingly similar thereto.

Sec. 3007. Historic Preservation

This section provides a limited immunity from suit under trademark law for historic buildings that are on or eligible for inclusion on the National Register of Historic Places, or that are designated as an individual landmark or as a contributing building in a historic district.

Sec. 3008. Savings Clause

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

Sec. 3009. Effective Date

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

TITLE VI—INVENTOR PROTECTION

Sec. 4001. Short Title

This title may be cited as the ''American Inventors Protection Act of 1999.''

Sec. 4002. Table of Contents

Section 4002 enumerates the table of contents of this title.

SUBTITLE A—INVENTORS' RIGHTS

Subtitle A creates a new section 297 in chapter 29 of title 35 of the United States Code, designed to curb the deceptive practices of certain invention promotion companies. Many of these companies advertise on television and in magazines that inventors may call a toll-free number for assistance in marketing their inventions. They are sent an invention evaluation form, which they are asked to complete to allow the promoter to provide expert analysis of the market potential of their inventions. The inventors return the form with descriptions of the inventions, which become the basis for contacts by salespeople at the promotion companies. The next step is usually a ''professional''-appearing product research report which contains nothing more than boilerplate information stating that the invention has outstanding market potential and fills an important need in the field. The promotion companies attempt to convince the inventor to buy their marketing services, normally on a sliding scale in which the promoter will ask for a front-end payment of up to $10,000 and a percentage of resulting profits, or a reduced front-end payment of $6,000 or $8,000 with commensurately larger royalties on profits. Once paid under such a scenario, a promoter will typically and only forward information to a list of companies that never respond.

This subtitle addresses these problems by (1) requiring an invention promoter to disclose certain materially relevant information to a customer in writing prior to entering into a contract for invention promotion services; (2) establishing a federal cause of action for inventors who are injured by material false of fraudulent statements or representations, or any omission of material fact, by an invention promoter, or by the invention promoter's failure to make the required written disclosures; and (3) requiring the Director of the United States Patent and Trademark Office to make publicly available complaints received involving invention promoters, along with the response to such complaints, if any, from the invention promoters.

Sec. 4101. Short title

This subtitle may be cited as the ''Inventors'' Rights Act of 1999.''

Sec. 4102. Integrity in invention promotion services

This section adds a new section 297 to in chapter 29 of title 35, United States Code, intended to promote integrity in invention promotion services. Legitimate invention assistance and development organizations can be of great assistance to novice inventors by providing information on how to protect an invention, how to develop it, how to obtain financing to manufacture it, or how to license or sell the invention. While many invention developers are legitimate, the unscrupulous ones take advantage of untutored inventors, asking for large sums of money up front for which they provide no real service in return. This new section provides a much needed safeguard to assist independent inventors in avoiding becoming victims of the predatory practices of unscrupulous invention promoters.

New section 297(a) of title 35 requires an invention promoter to disclose certain materially relevant information to a customer in writing prior to entering into a contract for invention promotion services. Such information includes: (1) The number of inventions evaluated by the invention promoter and stating the number of those evaluated positively and the number negatively; (2) The number of customers who have contracted for services with the invention promoter in the prior five years; (3) The number of customers known by the invention promoter to have received a net financial profit as a direct result of the invention promoter's services; (4) The number of customers known by the invention promoter to have received license agreements for their inventions as a direct result of the invention promoter's services; and (5) the names and addresses of all previous invention promotion companies with which the invention promoter or its officers have collectively or individually been affiliated in the previous 10 years to enable the customer to evaluate the reputations of these companies.

New section 297(b) of title 35 establishes a civil cause of action against any invention promoter who injures a customer through any material false or fraudulent statement, representation, or omission of material fact by the invention promoter, or any person acting on behalf of the invention promoter, or through failure of the invention promoter to make all the disclosures required under subsection (a). In such a civil action, the customer may recover, in addition to reasonable costs and attorneys' fees, the amount of actual damages incurred by the customer or, at the customer's election, statutory damages up to $5,000, as the court considers just. Subsection (b)(2) authorizes the court to increase damages to an amount not to exceed three times the amount awarded as statutory or actual damages in a case where the customer demonstrates, and the court finds, that the invention promoter intentionally misrepresented or omitted a material fact to such customer, or failed to make the required disclosures under subsection (a), for the purpose of deceiving the customer. In determining the amount of increased damages, courts may take into account whether regulatory sanctions or other corrective action has been taken as a result of previous complaints against the invention promoter.

New section 297(c) defines the terms used in the section. These definitions are carefully crafted to cover true invention promoters without casting the net too broadly. Paragraph (3) excepts from the definition of ''invention promoter'' departments and agencies of the Federal, state, and local governments; any nonprofit, charitable, scientific, or educational organizations qualified under applicable State laws or described under §170(b)(1)(A) of the Internal Revenue Code of 1986; persons or entities involved in evaluating the commercial potential of, or offering to license or sell, a utility patent or a previously filed nonprovisional utility patent application; any party participating in a transaction involving the sale of the stock or assets of a business; or any party who directly engages in the business of retail sales or distribution of products. Paragraph (4) defines the term ''invention promotion services'' to mean the procurement or attempted procurement for a customer of a firm, corporation, or other entity to develop and market products or services that include the customer's invention.

New section 297(d) requires the Director of the USPTO to make publicly available all complaints submitted to the USPTO regarding invention promoters, together with any responses by invention promoters to those complaints. The Director is required to notify the invention promoter of a complaint and provide a reasonable opportunity to reply prior to making such complaint public. Section 297(d)(2) authorizes the Director to request from Federal and State agencies copies of any complaints relating to invention promotion services they have received and to include those complaints in the records maintained by the USPTO regarding invention promotion services. It is anticipated that the Director will use appropriate discretion in making such complaints available to the public for a reasonably sufficient, yet limited, length of time, such as a period of three years from the date of receipt, and that the Director will consult with the Federal Trade Commission to determine whether the disclosure requirements of the FTC and section 297(a) can be coordinated.

Sec. 4103. Effective date

This section provides that the effective date of section 297 will be 60 days after the date of enactment of this Act.

SUBTITLE B—PATENT AND TRADEMARK FEE FAIRNESS

Subtitle B provides patent and trademark fee reform, by lowering patent fees, by directing the Director of the USPTO to study alternative fee structures to encourage full participation in our patent system by all inventors, large and small, and by strengthening the prohibition against the use of trademark fees for non-trademark uses.

Sec. 4201. Short title

This subtitle may be cited as the ''Patent and Trademark Fee Fairness Act of 1999.''

Sec. 4202. Adjustment of patent fees.

This section reduces patent filing an reissue fees by $50, and reduces patent maintenance fees by $110. This would mark only the second time in history that patent fees have been reduced. Because trademark fees have not been increased since 1993 and because of the application of accounting based cost principles and systems, patent fee income has been partially offsetting the cost of trademark operations. This section will restore fairness to patent and trademark fees by reducing patent fees to better reflect the cost of services.

Sec. 4203. Adjustment of trademark fees.

This section will allow the Director of the USPTO to adjust trademark fees in fiscal year 2000 without regard to fluctuations in the Consumer Price Index in order to better align those fees with the costs of services.

Sec. 4204. Study on alternative fee structures

This section directs the Director of the USPTO to conduct a study and report to the Judiciary Committees of the House and Senate within one year on alternative fee structures that could be adopted by the USPTO to encourage maximum participation in the patent system by the American inventor community.

Sec. 4205. Patent and Trademark Office funding

Pursuant to section 42(c) of the Patent Act, fees available to the Commissioner under section 31 of the Trademark Act of 1946[6] may be used only for the processing of trademark registrations and for other trademark-related activities, and to cover a proportionate share of the administrative costs of the USPTO. In an effort to more tightly ''fence'' trademark funds for trademark purposes, section 4205 amends this language such that all (trademark) fees available to the Commissioner shall be used for trademark registration and other trademark-related purposes. In other words, the Commissioner may exercise no discretion when spending funds; they must be earmarked for trademark purposes.

SUBTITLE C—FIRST INVENTOR DEFENSE

Subtitle C strikes an equitable balance between the interests of U.S. inventors who have invented and commercialized business methods and processes, many of which until recently were thought not to be patentable, and U.S. or foreign inventors who later patent the methods and processes. The subtitle creates a defense for inventors who have reduced an invention to practice in the U.S. at

least one year before the patent filing date of another, typically later, inventor and commercially used the invention in the U.S. before the filing date. A party entitled to the defense must not have derived the invention from the patent owner. The bill protects the patent owner by providing that the establishment of the defense by such an inventor or entrepreneur does not invalidate the patent.

The subtitle clarifies the interface between two key branches of intellectual property law—patents and trade secrets. Patent law serves the public interest by encouraging innovation and investment in new technology, and may be thought of as providing a right to exclude other parties from an invention in return for the inventor making a public disclosure of the invention. Trade secret law, however, also serves the public interest by protecting investments in new technology. Trade secrets have taken on a new importance with an increase in the ability to patent all business methods and processes. It would be administratively and economically impossible to expect any inventor to apply for a patent on all methods and processes now deemed patentable. In order to protect inventors and to encourage proper disclosure, this subtitle focuses on methods for doing and conducting business, including methods used in connection with internal commercial operations as well as those used in connection with the sale or transfer of useful end results—whether in the form of physical products, or in the form of services, or in the form of some other useful results; for example, results produced through the manipulation of data or other inputs to produce a useful result.

The earlier-inventor defense is important to many small and large businesses, including financial services, software companies, and manufacturing firms—any business that relies on innovative business processes and methods. The 1998 opinion by the U.S. Court of Appeals for the Federal Circuit in State Street Bank and Trust Co. v. Signature Financial Group,[7] which held that methods of doing business are patentable, has added to the urgency of the issue. As the Court noted, the reference to the business method exception had been improperly applied to a wide variety of processes, blurring the essential question of whether the invention produced a ''useful, concrete, and tangible result.'' In the wake of State Street, thousands of methods and processes used internally are now being patented. In the past, many businesses that developed and used such methods and processes thought secrecy was the only protection available. Under established law, any of these inventions which have been in commercial use—public or secret—for more than one year cannot now be the subject of a valid U.S. patent.

Sec. 4301. Short title

This subtitle may be cited as the ''First Inventor Defense Act of 1999.''

Sec. 4302. Defense to patent infringement based on earlier inventor

In establishing the defense, subsection (a) of section 4302 creates a new section 273 of the Patent Act, which in subsection (a) sets forth the following definitions:

(1) ''Commercially used and commercial use'' mean use of any method in the United States so long as the use is in connection with an internal commercial use or an actual sale or transfer of a useful end result;

(2) ''Commercial use as applied to a nonprofit research laboratory and nonprofit entities such as a university, research center, or hospital intended to benefit the public'' means that such entities may assert the defense only based on continued use by and in the entities themselves, but that the defense is inapplicable to subsequent commercialization or use outside the entities;

(3) ''Method'' means any method for doing or conducting an entity's business; and (4) ''Effective filing date'' means the earlier of the actual filing date of the application for the patent or the filing date of any earlier US, foreign, or international application to which the subject matter at issue is entitled under the Patent Act.

To be ''commercially used'' or in ''commercial use'' for purposes of subsection (a), the use must be in connection with either an internal commercial use or an actual arm's-length sale or other arm's-length commercial transfer of a useful end result. The method that is the subject matter of the defense may be an internal method for doing business, such as an internal human resources management process, or a method for conducting business such as a preliminary or intermediate manufacturing procedure, which contributes to the effectiveness of the business by producing a useful end result for the internal operation of the business or for external sale. Commercial use does not require the subject matter at issue to be accessible to or otherwise known to the public.

Subject matter that must undergo a premarketing regulatory review period during which safety or efficacy is established before commercial marketing or use is considered to be commercially used and in commercial use during the regulatory review period.

The issue of whether an invention is a method is to be determined based on its underlying nature and not on the technicality of the form of the claims in the patent. For example, a method for doing or conducting business that has been claimed in a patent as a programmed machine, as in the State Street case, is a method for purposes of section 273 if the invention could have as easily been claimed as a method. Form should not rule substance.

Subsection (b)(1) of section 273 establishes a general defense against infringement under section 271 of the Patent Act. Specifically, a person will not be held liable with respect to any subject matter that would otherwise infringe one or more claims to a method in another party's patent if the person:

(1) Acting in good faith, actually reduced the subject matter to practice at least one year before the effective filing date of the patent; and

(2) Commercially used the subject matter before the effective filing date of the patent.

The first inventor defense is not limited to methods in any particular industry such as the financial services industry, but applies to any industry which relies on trade secrecy for protecting methods for doing or conducting the operations of their business.

Subsection (b)(2) states that the sale or other lawful disposition of a useful end result produced by a patented method, by a person entitled to assert a section 273 defense, exhausts the patent owner's rights with respect to that end result to the same extent such rights would have been exhausted had the sale or other disposition been made by the patent owner. For example, if a purchaser would have had the right to resell a product or other end result if bought from the patent owner, the purchaser will have the same right if the product is purchased from a person entitled to a section 273 defense.

Subsection (b)(3) creates limitations and qualifications on the use of the defense. First, a person may not assert the defense unless the invention for which the defense is asserted is for a commercial use of a method as defined in section 273(a)(1) and (3). Second, a person may not assert the defense if the subject matter was derived from the patent owner or persons in privity with the patent owner. Third, subsection (b)(3) makes clear that the application of the defense does not create a general license under all claims of the patent in question—it extends only to the specific subject matter claimed in the patent with respect to which the person can assert the defense. At the same time, however, the defense does extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements that do not infringe additional, specifically-claimed subject matter.

Subsection (b)(4) requires that the person asserting the defense has the burden of proof in establishing it by clear and convincing evidence. Subsection (b)(5) establishes that the person who abandons the commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing the defense with respect to actions taken after the date of abandonment. Such a person can rely only on the date when commercial use of the subject matter was resumed.

Subsection (b)(6) notes that the defense may only be asserted by the person who performed the acts necessary to establish the defense, and, except for transfer to the patent owner, the right to assert the defense cannot be licensed, assigned, or transferred to a third party except as an ancillary and subordinate part of a good-faith assignment or transfer for other reasons of the entire enterprise or line of business to which the defense relates.

When the defense has been transferred along with the enterprise or line of business to which it relates as permitted by subsection (b)(6), subsection (b)(7) limits the sites for which the defense may be asserted. Specifically, when the enterprise or line of business to which the defense relates has been transferred, the defense may be asserted only for uses at those sites where the subject matter was used before the later of the patent filing date or the date of transfer of the enterprise or line of business.

Subsection (b)(8) states that a person who fails to demonstrate a reasonable basis for asserting the defense may be held liable for attorneys' fees under section 285 of the Patent Act.

Subsection (b)(9) specifies that the successful assertion of the defense does not mean that the affected patent is invalid. Paragraph (9) eliminates a point of uncertainty under current law, and strikes a balance between the rights of an inventor who obtains a patent after another inventor has taken the steps to qualify for a prior use defense. The bill provides that the commercial use of a method in operating a business before the patentee's filing date, by an individual or entity that can establish a section 273 defense, does not invalidate the patent. For example, under current law, although the matter has seldom been litigated, a party who commercially used an invention in secrecy before the patent filing date and who also invented the subject matter before the patent owner's invention may argue that the patent is invalid under section 102 (g) of the Patent Act. Arguably, commercial use of an invention in secrecy is not suppression or concealment of the invention within the meaning of section 102(g), and therefore the party's earlier invention could invalidate the patent.[8]

Sec. 4303. Effective date and applicability

The effective date for subtitle C is the date of enactment, except that the title does not apply to any infringement action pending on the date of enactment or to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before the date of enactment.

SUBTITLE D—PATENT TERM GUARANTEE

Subtitle D amends the provisions in the Patent Act that compensate patent applicants for certain reductions in patent term that are not the fault of the applicant. The provisions that were initially included in the term adjustment provisions of patent bills in the 105th Congress only provided adjustments for up to 10 years for secrecy orders, interferences, and successful appeals. Not only are these adjustments too short in some cases, but no adjustments were provided for administrative delays caused by the USPTO that were beyond the control of the applicant. Accordingly, subtitle D removes the 10–year caps from the existing provisions, adds a new provision to compensate applicants fully for USPTO-caused administrative delays, and, for good measure, includes a new provision guaranteeing diligent applicants at least a 17–year term by extending the term of any patent not granted within three years of filing. Thus, no patent applicant diligently seeking to obtain a patent will receive a term of less than the 17 years as provided under the pre-GATT[9] standard; in fact, most will receive considerably more. Only those who purposely manipulate the system to delay the issuance of their patents will be penalized under subtitle D, a result that the Conferees believe entirely appropriate.

Sec. 4401. Short title

This subtitle may be cited as the ''Patent Term Guarantee Act of 1999.''

Sec.4402. Patent term guarantee authority

Section 4402 amends section 154(b) of the Patent Act covering term. First, new subsection (b)(1)(A)(i)-(iv) guarantees day-for-day restoration of term lost as a result of delay created by the USPTO when the agency fails to:

(1) Make a notification of the rejection of any claim for a patent or any objection or argument under §132, or give or mail a written notice of allowance under §151, within 14 months after the date on which a non-provisional application was actually filed in the USPTO;

(2) Respond to a reply under §132, or to an appeal taken under §134, within four months after the date on which the reply was filed or the appeal was taken;

(3) Act on an application within four months after the date of a decision by the Board of Patent Appeals and Interferences under §134 or §135 or a decision by a Federal court under §§141, 145, or 146 in a case in which allowable claims remain in the application; or (4) Issue a patent within four months after the date on which the issue fee was paid under §151 and all outstanding requirements were satisfied.

Further, subject to certain limitations, infra, section 154(b)(1)(B) guarantees a total application pendency of no more than three years. Specifically, day-for-day restoration of term is granted if the USPTO has not issued a patent within three years after ''the actual date of the application in the United States.'' This language was intentionally selected to exclude the filing date of an application under the Patent Cooperation Treaty (PCT).[10] Otherwise, an applicant could obtain up to a 30–month extension of a U.S. patent merely by filing under PCT, rather than directly in the USPTO, gaining an unfair advantage in contrast to strictly domestic applicants. Any periods of time

(1) consumed in the continued examination of the application under §132(b) of the Patent Act as added by section 4403 of this Act;

(2) lost due to an interference under section135(a), a secrecy order under section 181, or appellate review by the Board of Patent Appeals and Interferences or by a Federal court (irrespective of the outcome); and

(3) incurred at the request of an applicant in excess of the three months to respond to a notice from the Office permitted by section 154(b)(2)(C)(ii) unless excused by a showing by the applicant under section 154(b)(3)(C) that in spite of all due care the applicant could not respond within three months

shall not be considered a delay by the USPTO and shall not be counted for purposes of determining whether the patent issued within three years from the actual filing date.

Day-for-day restoration is also granted under new section 154(b)(1)(C) for delays resulting from interferences,[11] secrecy orders,[12] and appeals by the Board of Patent Appeals and Interferences or a Federal court in which a patent was issued as a result of a decision reversing an adverse determination of patentability.

Section 4402 imposes limitations on restoration of term. In general, pursuant to new §154(b)(2)(A)-(C) of the bill, total adjustments granted for restorations under (b)(1) are reduced as follows:

(1) To the extent that there are multiple grounds for extending the term of a patent that may exist simultaneously (e.g., delay due to a secrecy order under section 181 and administrative delay under section 154(b)(1)(A)), the term should not be extended for each ground of delay but only for the actual number of days that the issuance of a patent was delayed;

(2) The term of any patent which has been disclaimed beyond a date certain may not receive an adjustment beyond the expiration date specified in the disclaimer; and

(3) Adjustments shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application, based on regulations developed by the Director, and an applicant shall be deemed to have failed to engage in such reasonable efforts for any periods of time in excess of three months that are taken to respond to a notice from the Office making any rejection or other request;

New section 154(b)(3) sets forth the procedures for the adjustment of patent terms. Paragraph (3)(A) empowers the Director to establish regulations by which term extensions are determined and contested. Paragraph (3)(B) requires the Director to send a notice of any determination with the notice of allowance and to give the applicant one opportunity to request reconsideration of the determination. Paragraph (3)(C) requires the Director to reinstate any time the applicant takes to respond to a notice from the Office in excess of three months that was deducted from any patent term extension that would otherwise have been granted if the applicant can show that he or she was, in spite of all due care, unable to respond within three months. In no case shall more than an additional three months be reinstated for each response. Paragraph (3)(D) requires the Director to grant the patent after completion of determining any patent term extension irrespective of whether the applicant appeals.

New section 154(b)(4) regulates appeals of term adjustment determinations made by the Director. Paragraph (4)(A) requires a dissatisfied applicant to seek remedy in the District Court for the District of Columbia under the Administrative Procedures Act[13] within 180 days after the grant of the patent. The Director shall alter the term of the patent to reflect any final judgment. Paragraph (4)(B) precludes a third party from challenging the determination of a patent term prior to patent grant.

Section 4402(b) makes certain conforming amendments to section 282 of the Patent Act and the appellate jurisdiction of the U.S. Court of Appeals for the Federal Circuit.[14]

Sec. 4403. Continued examination of patent applications

Section 4403 amends section 132 of the Patent Act to permit an applicant to request that an examiner continue the examination of an application following a notice of ''final'' rejection by the examiner. New section 132(b) authorizes the Director to prescribe regulations for the continued examination of an application notwithstanding a final rejection, at the request of the applicant. The Director may also establish appropriate fees for continued examination proceedings, and shall provide a 50% fee reduction for small entities which qualify for such treatment under section 41(h)(1) of the Patent Act.

Section 4404. Technical clarification

Section 4404 of the bill coordinates technical term adjustment provisions set forth in section 154(b) with those in section 156(a) of the Patent Act.

Section 4405. Effective date

The effective date for the amendments in section 4402 and 4404 is six months after the date of enactment and, with the exception of design applications (the terms of which are not measured from filing), applies to any application filed on or after such date. The amendments made by section 4403 take effect six months after date of enactment to allow the USPTO to prepare implementing regulations an apply to all national and international (PCT) applications filed on or after June 8, 1995.

SUBTITLE E—DOMESTIC PUBLICATION OF PATENT APPLICATIONS PUBLISHED ABROAD

Subtitle E provides for the publication of pending patent applications which have a corresponding foreign counterpart. Any pending U.S. application filed only in the United States (e.g., one that does not have a foreign counterpart) will not be published if the applicant so requests. Thus, an applicant wishing to maintain her application in confidence may do so merely by filing only in the United States and requesting that the USPTO not publish the application. For those applicants who do file abroad or who voluntarily publish their applications, provisional rights will be available for assertion against any third party who uses the claimed invention between publication and grant provided that substantially similar claims are contained in both the published application and granted patent. This change will ensure that American inventors will be able to see the technology that our foreign competition is seeking to patent much earlier than is possible today.

Sec. 4501. Short title

This subtitle may be cited as the ''Domestic Publication of Foreign Filed Patent Applications Act of 1999.''

Sec. 4502. Publication

As provided in subsection (a) of section 4502, amended section 122(a) of the Patent Act continues the general rule that patent applications will be maintained in confidence. Paragraph (1)(A) of new subsection (b) of section 122 creates a new exception to this general rule by requiring publication of certain applications promptly after the expiration of an 18–month period following the earliest claimed U.S. or foreign filing date. The Director is authorized by subparagraph (B) to determine what information concerning published applications shall be made available to the public, and, under subparagraph (C) any decision made in this regard is final and not subject to review.

Subsection (b)(2) enumerates exceptions to the general rule requiring publication. Subparagraph (A) precludes publication of any

application that is: (1) no longer pending at the 18th month from filing; (2) the subject of a secrecy order until the secrecy order is rescinded; (3) a provisional application;[15] or (4) a design patent application.[16]

Pursuant to subparagraph (B)(i), any applicant who is not filing overseas and does not wish her application to be published can simply make a request and state that her invention has not and will not be the subject of an application filed in a foreign country that requires publication after 18 months. Subparagraph (B)(ii) clarifies that an applicant may rescind this request at any time. Moreover, if an applicant has requested that her application not be published in a foreign country with a publication requirement, subparagraph (B)(iii) imposes a duty on the applicant to notify the Director of this fact. An unexcused failure to notify the Director will result in the abandonment of the application. If an applicant either rescinds a request that her application not be published or notifies the Director that an application has been filed in an early publication country or through the PCT, the U.S. application will be published at 18 months pursuant to subsection (b)(1).

Finally, under subparagraph (B)(v), where an applicant has filed an application in a foreign country, either directly or through the PCT, so that the application will be published 18 months from its earliest effective filing date, the applicant may limit the scope of the publication by the USPTO to the total of the cumulative scope of the applications filed in all foreign countries. Where the foreign application is identical to the application filed in the United States or where an application filed under the PCT is identical to the application filed in the United States, the applicant may not limit the extent to which the application filed in the United States is published. However, where an applicant has limited the description of an application filed in a foreign country, either directly or through the PCT in comparison with the application filed in the USPTO, the applicant may restrict the publication by the USPTO to no more than the cumulative details of what will be published in all of the foreign applications and through the PCT. The applicant may restrict the extent of publication of her U.S. application by submitting a redacted copy of the application to the USPTO eliminating only those details that will not be published in any of the foreign applications. Any description contained in at least one of the foreign national or PCT filings may not be excluded from publication in the corresponding U.S. patent application. To ensure that any redacted copy of the U.S. application is published in place of the original U.S. application, the redacted copy must be received within 16 months from the earliest effective filing date. Finally, if the published U.S. application as redacted by the applicant does not enable a person skilled in the art to make and use the claimed invention, provisional rights under section 154(d) shall not be available.

Subsection (c) requires the Director to establish procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent on an application may be initiated after publication without the express written consent of the applicant.

Subsection (d) protects our national security by providing that no application may be published under subsection (b)(1) where the publication or disclosure of such invention would be detrimental to the national security. In addition, the Director of the USPTO is required to establish appropriate procedures to ensure that such applications are promptly identified and the secrecy of such inventions is maintained in accordance with chapter 17 of the Patent Act, which governs secrecy of inventions in the interest of national security.

Subsection (b) of section 4502 of subtitle E requires the Government Accounting Office (GAO) to conduct a study of applicants who file only in the United States during a three-year period beginning on the effective date of subtitle E. The study will focus on the percentage of U.S. applicants who file only in the United States versus those who file outside the United States; how many domestic-only filers request not to be published; how many who request not to be published later rescind that request; and whether there is any correlation between the type of applicant (e.g., small vs. large entity) and publication. The Comptroller General must submit the findings of the study, once completed, to the Committees on the Judiciary of the House and Senate.

Sec. 4503. Time for claiming benefit of earlier filing date

Section 119 of the Patent Act prescribes procedures to implement the right to claim priority under Article 4 of the Paris Convention for the Protection of Industrial Property.[17] Under that Article, an applicant seeking protection in the United States may claim the filing date of an application for the same invention filed in another Convention country—provided the subsequent application is filed in the United States within 12 months of the earlier filing in the foreign country.

Section 4503 of subtitle V amends section 119(b) of the Patent Act to authorize the Director to establish a cut-off date by which the applicant must claim priority. This is to ensure that the claim will be made early enough—generally not later than the 16th month from the earliest effective filing date—so as to permit an orderly publication schedule for pending applications. As the USPTO moves to electronic filing, it is envisioned that this date could be moved closer to the 18th month.

The amendment to §119(b) also gives the Director the discretion to consider the failure of the applicant to file a timely claim for priority to be a waiver of any such priority claim. The Director is also authorized to establish procedures (including the payment of a surcharge) to accept an unintentionally delayed priority claim.

Section 4503(b) of subtitle E amends section 120 of the Patent Act in a similar way. This provision empowers the Director to: (1) establish a time by which the priority of an earlier filed United States application must be claimed; (2) consider the failure to meet that time limit to be a waiver of the right to claim such priority; and (3) accept an unintentionally late claim of priority subject to the payment of a surcharge.

Sec. 4504. Provisional rights

Section 4504 amends section 154 of the Patent Act by adding a new subsection (d) to accord provisional rights to obtain a reasonable royalty for applicants whose applications are published under amended section 122(b) of the Patent Act, supra, or applications designating the United States filed under the PCT. Generally, this provision establishes the right of an applicant to obtain a reasonable royalty from any person who, during the period beginning on the date that his or her application is published and ending on the date a patent is issued—

(1) makes, uses, offers for sale, or sells the invention in the United States, or imports such an invention into the United States; or

(2) if the invention claimed is a process, makes, uses, offers for sale, sells, or imports a product made by that process in the United States; and

(3) had actual notice of the published application and, in the case of an application filed under the PCT designating the United States that is published in a language other than English, a translation of the application into English.

The requirement of actual notice is critical. The mere fact that the published application is included in a commercial database where it might be found is insufficient. The published applicant must give actual notice of the published application to the accused infringer and explain what acts are regarded as giving rise to provisional rights.

Another important limitation on the availability of provisional royalties is that the claims in the published application that are alleged to give rise to provisional rights must also appear in the patent in substantially identical form. To allow anything less than substantial identity would impose an unacceptable burden on the public. If provisional rights were available in the situation where the only valid claim infringed first appeared in substantially that form in the granted patent, the public would have no guidance as to the specific behavior to avoid between publication and grant. Every person or company that might be operating within the scope of the disclosure of the published application would have to conduct her own private examination to determine whether a published application contained patentable subject matter that she should avoid. The burden should be on the applicant to initially draft a schedule of claims that gives adequate notice to the public of what she is seeking to patent.

Amended section 154(d)(3) imposes a six-year statute of limitations from grant in which an action for reasonable royalties must be brought.

Amended section 154(d)(4) sets forth some additional rules qualifying when an international application under the PCT will give rise to provisional rights. The date that will give rise to provisional rights for international applications will be the date on which the USPTO receives a copy of the application published under the PCT in the English language; if the application is published under the PCT in a language other than English, then the date on which provisional rights will arise will be the date on which the USPTO receives a translation of the international application in the English language. The Director is empowered to require an applicant to provide a copy of the international application and a translation of it.

Sec. 4505. Prior art effect of published applications

Section 4505 amends section 102(e) of the Patent Act to treat an application published by the USPTO in the same fashion as a patent published by the USPTO. Accordingly, a published application is given prior art effect as of its earliest effective U.S. filing date against any subsequently filed U.S. applications. As with patents, any foreign filing date to which the published application is entitled will not be the effective filing date of the U.S. published application for prior art purposes. An exception to this general rule is made for international applications designating the United States that are published under Article 21(2)(a) of the PCT in the English language. Such applications are given a prior art effect as of their international filing date. The prior art effect accorded to patents under section 4505 remains unchanged from present section 102(e) of the Patent Act.

Sec. 4506. Cost recovery for publications

Section 4506 authorizes the Director to recover the costs of early publication required by the amendment made by section 4502 of this Act by charging a separate publication fee after a notice of allowance is given pursuant to section 151 of the Patent Act.

Sec. 4507. Conforming amendments

Section 4507 consists of various technical and conforming amendments to the Patent Act. These include amending section 181 of the Patent Act to clarify that publication of pending applications does not apply to applications under secrecy orders, and amending section 284 of the Patent Act to ensure that increased damages authorized under section 284 shall not apply to the reasonable royalties possible under amended section 154(d). In addition, section 374 of the Patent Act is amended to provide that the effect of the publication of an international application designating the United States shall be the same as the publication of an application published under amended section 122(b), except as its effect as prior art is modified by amended section 102(e) and its giving rise to provisional rights is qualified by new section 154(d).

Sec. 4508. Effective date

Subtitle E shall take effect on the date that is one year after the date of enactment and shall apply to all applications filed under section 111 of the Patent Act on or after that date; and to all applications complying with section 371 of the Patent Act that resulted from international applications filed on or after that date. The provisional rights provided in amended section 154(d) and the prior art effect provided in amended section 102(e) shall apply to all applications pending on the date that is one year after the date of enactment that are voluntarily published by their applicants. Finally, section 404 (provisional rights) shall apply to international applications designating the United States that are filed on or after the date that is one year after the date of enactment.

SUBTITLE F—OPTIONAL INTER PARTES REEXAMINATION PROCEDURE

Subtitle F is intended to reduce expensive patent litigation in U.S. district courts by giving third-party requesters, in addition to the existing ex parte reexamination in Chapter 30 of title 35, the option of inter partes reexamination proceedings in the USPTO. Congress enacted legislation to authorize ex parte reexamination of patents in the USPTO in 1980, but such reexamination has been used infrequently since a third party who requests reexamination cannot participate at all after initiating the proceedings. Numerous witnesses have suggested that the volume of lawsuits in district courts will be reduced if third parties can be encouraged to use reexamination by giving them an opportunity to argue their case for patent invalidity in the USPTO. Subtitle F provides that opportunity as an option to the existing ex parte reexamination proceedings.

Subtitle F leaves existing ex parte reexamination procedures in Chapter 30 of title 35 intact, but establishes an inter partes reexamination procedure which third-party requesters can use at their option. Subtitle VI allows third parties who request inter partes reexamination to submit one written comment each time the patent owner files a response to the USPTO. In addition, such third-party requesters can appeal to the USPTO Board of Patent Appeals and Interferences from an examiner's determination that the reexamined patent is valid, but may not appeal to the Court of Appeals for the Federal Circuit. To prevent harassment, anyone who requests inter partes reexamination must identify the real party in interest and third-party requesters who participate in an inter partes reexamination proceeding are estopped from raising in a subsequent court action or inter partes reexamination any issue of patent validity that they raised or could have raised during such inter partes reexamination.

Subtitle F contains the important threshold safeguard (also applied in ex parte reexamination) that an inter partes reexamination cannot be commenced unless the USPTO makes a determination that a ''substantial new question'' of patentability is raised. Also, as under Chapter 30, this determination cannot be appealed, and grounds for inter partes reexamination are limited to earlier patents and printed publications—grounds that USPTO examiners are well-suited to consider.

Sec. 4601. Short title

This subtitle may be cited as the ''Optional Inter Partes Reexamination Procedure Act.''

Sec. 4602. Clarification of Chapter 30

This section distinguishes Chapter 31 from existing Chapter 30 by changing the title of Chapter 30 to ''Ex Parte Reexamination of Patents.''

Sec. 4603. Definitions

This section amends section 100 of the Patent Act by defining ''third-party requester'' as a person who is not the patent owner requesting ex parte reexamination under section 302 or inter partes reexamination under section 311.

Sec. 4604. Optional Inter Partes Reexamination Procedure

Section 4604 amends Part III of title 35 by inserting a new Chapter 31 setting forth optional inter partes reexamination procedures.

New section 311, as amended by this section, differs from section 302 of existing law in Chapter 30 of the Patent Act by requiring any person filing a written request for inter partes reexamination to identify the real party in interest.

Similar to section 303 of existing law, new section 312 of the Patent Act confers upon the Director the authority and responsibility to determine, within three months after the filing of a request for inter partes reexamination, whether a substantial new question affecting patentability of any claim of the patent is raised by the request. Also, the decision in this regard is final and not subject to judicial review.

Proposed sections 313–14 under this subtitle are similarly modeled after sections 304–305 of Chapter 30. Under proposed section 313, if the Director determines that a substantial new question of patentability affecting a claim is raised, the determination shall include an order for inter partes reexamination for resolution of the question. The order may be accompanied by the initial USPTO action on the merits of the inter partes reexamination conducted in accordance with section 314. Generally, under proposed section 314, inter partes reexamination shall be conducted according to the procedures set forth in sections 132–133 of the Patent Act. The patent owner will be permitted to propose any amendment to the patent and a new claim or claims, with the same exception contained in section 305: no proposed amended or new claim enlarging the scope of the claims will be allowed.

Proposed section 314 elaborates on procedure with regard to third-party requesters who, for the first time, are given the option to participate in inter partes reexamination proceedings. With the exception of the inter partes reexamination request, any document filed by either the patent owner or the third-party requester shall be served on the other party. In addition, the third party-requester in an inter partes reexamination shall receive a copy of any communication sent by the USPTO to the patent owner. After each response by the patent owner to an action on the merits by the USPTO, the third-party requester shall have one opportunity to file written comments addressing issues raised by the USPTO or raised in the patent owner's response. Unless ordered by the Director for good cause, the agency must act in an inter partes reexamination matter with special dispatch.

Proposed section 315 prescribes the procedures for appeal of an adverse USPTO decision by the patent owner and the third-party requester in an inter partes reexamination. Both the patent owner and the third-party requester are entitled to appeal to the Board of Patent Appeals and Interferences (section 134 of the Patent Act), but only the patentee can appeal to the U.S. Court of Appeals for the Federal Circuit (§§141–144); either may also be a party to any appeal by the other to the Board of Patent Appeals and Interferences. The patentee is not entitled to the alternative of an appeal of an inter partes reexamination to the U.S. District Court for the District of Columbia. Such appeals are rarely taken from ex parte reexamination proceedings under existing law and its removal should speed up the process.

To deter unnecessary litigation, proposed section 315 imposes constraints on the third-party requester. In general, a third-party requester who is granted an inter partes reexamination by the USPTO may not assert at a later time in any civil action in U.S. district court[18] the invalidity of any claim finally determined to be patentable on any ground that the third-party requester raised or could have raised during the inter partes reexamination. However, the third-party requester may assert invalidity based on newly discovered prior art unavailable at the time of the reexamination. Prior art was unavailable at the time of the inter partes reexamination if it was not known to the individuals who were involved in the reexamination proceeding on behalf of the third-party requester and the USPTO.

Section 316 provides for the Director to issue and publish certificates canceling unpatentable claims, confirming patentable claims, and incorporating any amended or new claim determined to be patentable in an inter partes procedure.

Subtitle F creates a new section 317 which sets forth certain conditions by which inter partes reexamination is prohibited to guard against harassment of a patent holder. In general, once an order for inter partes reexamination has been issued, neither a third-party requester nor the patent owner may file a subsequent request for inter partes reexamination until an inter partes reexamination certificate is issued and published, unless authorized by the Director. Further, if a third-party requester asserts patent invalidity in a civil action and a final decision is entered that the party failed to prove the assertion of invalidity, or if a final decision in an inter partes reexamination instituted by the requester is favorable to patentability, after any appeals, that third-party requester cannot thereafter request inter partes reexamination on the basis of issues which were or which could have been raised. However, the third-party requester may assert invalidity based on newly discovered prior art unavailable at the time of the civil action or inter partes reexamination. Prior art was unavailable at the time if it was not known to the individuals who were involved in the civil action or inter partes reexamination proceeding on behalf of the third-party requester and the USPTO.

Proposed section 318 gives a patent owner the right, once an inter partes reexamination has been ordered, to obtain a stay of any pending litigation involving an issue of patentability of any claims of the patent that are the subject of the inter partes reexamination, unless the court determines that the stay would not serve the interests of justice.

Sec. 4605. Conforming amendments

Section 4605 makes the following conforming amendments to the Patent Act:

A patent owner must pay a fee of $1,210 for each petition in connection with an unintentionally abandoned application, delayed payment, or delayed response by the patent owner during any reexamination.

A patent applicant, any of whose claims has been twice rejected; a patent owner in a reexamination proceeding; and a third-party requester in an inter partes reexamination proceeding may all appeal final adverse decisions from a primary examiner to the Board of Patent Appeals and Interferences.

Proposed section 141 states that a patent owner in a reexamination proceeding may appeal an adverse decision by the Board of Patent Appeals and Interferences only to the U.S. Court of Appeals for the Federal Circuit as earlier noted. A third-party requester in an inter partes reexamination proceeding may not appeal beyond the Board of Patent Appeals and Interferences.

The Director is required pursuant to section 143 (proceedings on appeal to the Federal Circuit) to submit to the court the grounds for the USPTO decision in any reexamination addressing all the issues involved in the appeal.

Sec. 4606. Report to Congress

Not later than five years after the effective date of subtitle F, the Director must submit to Congress a report evaluating whether the inter partes reexamination proceedings set forth in the title are inequitable to any of the parties in interest and, if so, the report shall contain recommendations for change to eliminate the inequity.

Sec. 4607. Estoppel Effect of Reexamination

Section 4607 estops any party who requests inter partes reexamination from challenging at a later time, in any civil action, any fact determined during the process of the inter partes reexamination, except with respect to a fact determination later proved to be erroneous based on information unavailable at the time of the inter partes reexamination. The estoppel arises after a final decision in the inter partes reexamination or a final decision in any appeal of such reexamination. If section 4607 is held to be unenforceable, the enforceability of the rest of subtitle F or the Act is not affected.

Sec. 4608. Effective date

Subtitle F shall take effect on the date of the enactment and shall apply to any patent that issues from an original application filed in the United States on or after that date, except that the amendments made by section 4605(a) shall take effect one year from the date of enactment.

SUBTITLE G—UNITED STATES PATENT AND TRADEMARK OFFICE

Subtitle G establishes the United States Patent and Trademark Office (USPTO) as an agency of the United States within the Department of Commerce. The Secretary of Commerce gives policy direction to the agency, but the agency is autonomous and responsible for the management and administration of its operations and has independent control of budget allocations and expenditures, personnel decisions and processes, and procurement. The Committee intends that the Office will conduct its patent and trademark operations without micro-management by Department of Commerce officials, with the exception of policy guidance of the Secretary. The agency is headed by an Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, a Deputy, and a Commissioner of Patents and a Commissioner of Trademarks. The agency is exempt from government-wide personnel ceilings. A patent public advisory committee and a trademark public advisory committee are established to advise the Director on agency policies, goals, performance, budget and user fees.

Sec. 4701. Short title

This subtitle may be cited as the ''Patent and Trademark Office Efficiency Act.''

Subchapter A—United States Patent and Trademark Office

Sec. 4711. Establishment of Patent and Trademark Office

Section 4711 establishes the USPTO as an agency of the United States within the Department of Commerce and under the policy direction of the Secretary of Commerce. The USPTO, as an autonomous agency, is explicitly responsible for decisions regarding the management and administration of its operations and has independent control of budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. Patent operations and trademark operations are to be treated as separate operating units within the Office, each under the direction of its respective Commissioner, as supervised by the Director.

The USPTO shall maintain its principal office in the metropolitan Washington, D.C., area, for the service of process and papers and for the purpose of discharging its functions. For purposes of venue in civil actions, the agency is deemed to be a resident of the district in which its principal office is located, except where otherwise provided by law. The USPTO is also permitted to establish satellite offices in such other places in the United States as it considers necessary and appropriate to conduct business. This is intended to allow the USPTO, if appropriate, to serve American applicants better.

Sec. 4712. Powers and duties

Subject to the policy direction of the Secretary of the Commerce, in general the USPTO will be responsible for the granting and issuing of patents, the registration of trademarks, and the dissemination of patent and trademark information to the public.

The USPTO will also possess specific powers, which include:

(1) a requirement to adopt and use an Office seal for judicial notice purposes and for authenticating patents, trademark certificates and papers issued by the Office;

(2) the authority to establish regulations, not inconsistent with law, that

(A) govern the conduct of USPTO proceedings within the Office,

(B) are in accordance with § 553 of title 5,

(C) facilitate and expedite the processing of patent applications, particularly those which can be processed electronically,

(D) govern the recognition, conduct, and qualifications of agents, attorneys, or other persons representing applicants or others before the USPTO,

(E) recognize the public interest in ensuring that the patent system retain a reduced fee structure for small entities, and

(F) provide for the development of a performance-based process for managing that includes quantitative and qualitative measures, standards for evaluating cost-effectiveness, and consistency with principles of impartiality and competitiveness;

(3) the authority to acquire, construct, purchase, lease, hold, manage, operate, improve, alter and renovate any real, personal, or mixed property as it considers necessary to discharge its functions;

(4) the authority to make purchases of property, contracts for construction, maintenance, or management and operation of facilities, as well as to contract for and purchase printing services without regard to those federal laws which govern such proceedings;

(5) the authority to use services, equipment, personnel, facilities and equipment of other federal entities, with their consent and on a reimbursable basis;

(6) the authority to use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities or personnel of any State or local government agency or foreign patent or trademark office or international organization to perform functions on its behalf;

(7) the authority to retain and use all of its revenues and receipts;

(8) a requirement to advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) a requirement to advise Federal departments and agencies of intellectual property policy in the United States and intellectual property protection abroad;

(10) a requirement to provide guidance regarding proposals offered by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) the authority to conduct programs, studies or exchanges regarding domestic or international intellectual property law and the effectiveness of intellectual property protection domestically and abroad;

(12) a requirement to advise the Secretary of Commerce on any programs and studies relating to intellectual property policy that the USPTO may conduct or is authorized to conduct, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(13) the authority to (A) coordinate with the Department of State in conducting programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations, and (B) transfer, with the concurrence of the Secretary of State, up to $100,000 in any year to the Department of State to pay an international intergovernmental organization for studies and programs advancing international cooperation concerning patents, trademarks, and other matters.

The specific powers set forth in new subsection (b) are clarified in new subsection (c). The special payments of paragraph (14)(B) are additional to other payments or contributions and are not subject to any limitation imposed by law. Nothing in subsection (b) derogates from the duties of the Secretary of State or the United States Trade Representative as set forth in section 141 of the Trade Act of 1974[19], nor derogates from the duties and functions of the Register of Copyrights. The Director is required to consult with the Administrator of General Services when exercising authority under paragraphs (3) and (4)(A). Nothing in section 4712 may be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the USPTO. Finally, in exercising the powers and duties under this section, the Director shall consult with the Register of Copyright on all Copyright and related matters.

Sec. 4713. Organization and management

Section 4713 details the organization and management of the agency. The powers and duties of the USPTO shall be vested in the Under Secretary and Director, who shall be appointed by the President, by and with the consent of the Senate. The Under Secretary and Director performs two main functions. As Under Secretary of Commerce for Intellectual Property, she serves as the policy advisor to the Secretary of Commerce and the

President on intellectual property issues. As Director, she is responsible for supervising the management and direction of the USPTO. She shall consult with the Public Advisory Committees, infra, on a regular basis regarding operations of the agency and before submitting budgetary proposals and fee or regulation changes. The Director shall take an oath of office. The President may remove the Director from office, but must provide notification to both houses of Congress.

The Secretary of Commerce, upon nomination of the Director, shall appoint a Deputy Director to act in the capacity of the Director if the Director is absent or incapacitated. The Secretary of Commerce shall also appoint two Commissioners, one for Patents, the other for Trademarks, without regard to chapters 33, 51, or 53 of title 5 of the U.S. Code. The Commissioners will have five-year terms and may be reappointed to new terms by the Secretary. Each Commissioner shall possess a demonstrated experience in patent and trademark law, respectively; and they shall be responsible for the management and direction of the patent and trademark operations, respectively. In addition to receiving a basic rate of compensation under the Senior Executive Service[20] and a locality payment,[21] the Commissioners may receive bonuses of up to 50 percent of their annual basic rate of compensation, not to exceed the salary of the Vice President, based on a performance evaluation by the Secretary, acting through the Director. The Secretary may remove Commissioners for misconduct or unsatisfactory performance. It is intended that the Commissioners will be non-political expert appointees, independently responsible for operations, subject to supervision by the Director.

The Director may appoint all other officers, agents, and employees as she sees fit, and define their responsibilities with equal discretion. The USPTO is specifically not subject to any administratively or statutorily imposed limits (full-time equivalents, or ''FTEs'') on positions or personnel.

The USPTO is charged with developing and submitting to Congress a proposal for an incentive program to retain senior (of the primary examiner grade or higher) patent and trademark examiners eligible for retirement for the sole purpose of training patent and trademark examiners.

The Director of the USPTO, in consultation with the Director of the Office of Personnel Management, is required to maintain a program for identifying national security positions at the USPTO and for providing for appropriate security clearances for USPTO employees in order to maintain the secrecy of inventions as described in section 181 of the Patent Act and to prevent disclosure of sensitive and strategic information in the interest of national security.

The USPTO will be subject to all provisions of title 5 of the U.S. Code governing federal employees. All relevant labor agreements which are in effect the day before enactment of subtitle G shall be adopted by the agency. All USPTO employees as of the day before the effective date of subtitle G shall remain officers and employees of the agency without a break in service. Other personnel of the Department of Commerce shall be transferred to the USPTO only if necessary to carry out purposes of subtitle G of the bill and if a major function of their work is reimbursed by the USPTO, they spend at least half of their work time in support of the USPTO, or a transfer to the USPTO would be in the interest of the agency, as determined by the Secretary of Commerce in consultation with the Director.

On or after the effective date of the Act, the President shall appoint an individual to serve as Director until a Director qualifies under subsection (a). The persons serving as the Assistant Commissioner for Patents and the Assistant Commissioner for Trademarks on the day before the effective date of the Act may serve as the Commissioner for Patents and the Commissioner for Trademarks, respectively, until a respective Commissioner is appointed under subsection (b)(2).

Sec. 4714. Public Advisory Committees

Section 4714 provides a new section 5 of the Patent Act which establishes a Patent Public Advisory Committee and a Trademark Public Advisory Committee. Each Committee has nine voting members with three-year terms appointed by and serving at the pleasure of the Secretary of Commerce. Initial appointments will be made within three months of the effective date of the Act; and three of the initial appointees will receive one-year terms, three will receive two-year terms, and three will receive full terms. Vacancies will be filled within three months. The Secretary will also designate chairpersons for three-year terms.

The members of the Committees will be U.S. citizens and will be chosen to represent the interests of USPTO users. The Patent Public Advisory Committee shall have members who represent small and large entity applicants in the United States in proportion to the number of applications filed by the small and large entity applicants. In no case shall the small entity applicants be represented by less than 25 percent of the members of the Patent Public Advisory Committee, at least one of whom shall be an independent inventor. The members of both Committees shall include individuals with substantial background and achievement in finance, management, labor relations, science, technology, and office automation. The patent and trademark examiners' unions are entitled to have one representative on their respective Advisory Committee in a non-voting capacity.

The Committees meet at the call of the chair to consider an agenda established by the chair. Each Committee reviews the policies, goals, performance, budget, and user fees that bear on its area of concern and advises the Director on these matters. Within 60 days of the end of a fiscal year, the Committees prepare annual reports, transmit the reports to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Congress, and publish the reports in the Official Gazette of the USPTO.

Members of the Committees are compensated at a defined daily rate for meeting and travel days. Members are provided access to USPTO records and information other than personnel or other privileged information including that concerning patent applications. Members are special Government employees within the meaning of section 202 of title 18. The Federal Advisory Committee Act shall not apply to the Committees. Finally, section 4714 provides that Committee meetings shall be open to the public unless by a majority vote the Committee meets in executive session to consider personnel or other confidential information.

Sec. 4715. Conforming amendments

Technical conforming amendments to the Patent Act are set forth in section 4715.

Sec. 4716. Trademark Trial and Appeal Board

Section 4716 amends section 17 of the Trademark Act of 1946 by specifying that the Director shall give notice to all affected parties and shall direct a Trademark Trial and Appeal Board to determine the respective rights of those parties before it in a relevant proceeding. The section also invests the Director with the power of appointing administrative trademark judges to the Board. The Director, the Commissioner for Trademarks, the Commissioner for Patents, and the administrative trademark judges shall serve on the Board.

Sec. 4717. Board of Patent Appeals and Interferences

Under existing section 7 of the Patent Act, the Commissioner, Deputy Commissioner, Assistant Commissioners, and the examiners-in-chief constitute the Board of Patent Appeals and Interferences. Pursuant to section 4717 of subtitle G, the Board shall be comprised of the Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges. In addition, the existing statute allows each appellant a hearing before three members of the Board who are designated by the Director. Section 4717 empowers the Director with this authority.

Sec. 4718. Annual report of Director

No later than 180 days after the end of each fiscal year, the Director must provide a report to Congress detailing funds received and expended by the USPTO, the purposes for which the funds were spent, the quality and quantity of USPTO work, the nature of training provided to examiners, the evaluations of the Commissioners by the Secretary of Commerce, the Commissioners' compensation, and other information relating to the agency.

Sec. 4719. Suspension or exclusion from practice

Under existing section 32 of the Patent Act, the Commissioner (the Director pursuant to this Act) has the authority, after notice and a hearing, to suspend or exclude from further practice before the USPTO any person who is incompetent, disreputable, indulges in gross misconduct or fraud, or is noncompliant with USPTO regulations. Section 4719 permits the Director to designate an attorney who is an officer or employee of the USPTO to conduct a hearing under section 32.

Sec. 4720. Pay of Director and Deputy Director

Section 4720 replaces the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to receive pay at Level III of the Executive Schedule.[22] Section 4720 also establishes the pay of the Deputy Director at Level IV of the Executive Schedule.[23]

Subchapter B—Effective Date; Technical Amendments

Sec. 4731. Effective date

The effective date of subtitle G is four months after the date of enactment.

Sec. 4732. Technical and conforming amendments

Section 4732 sets forth numerous technical and conforming amendments related to subtitle G.

Subchapter C—Miscellaneous Provisions

Sec. 4741. References

Section 4741 clarifies that any reference to the transfer of a function from a department or office to the head of such department or office means the head of such department or office to which the function is transferred. In addition, references in other federal materials to the current Commissioner of Patents and Trademarks refer, upon enactment, to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. Similarly, references to the Assistant Commissioner for Patents are deemed to refer to the Commissioner for Patents and references to the Assistant Commissioner for Trademarks are deemed to refer to the Commissioner for Trademarks.

Sec. 4742. Exercise of authorities

Under section 4742, except as otherwise provided by law, a federal official to whom a function is transferred pursuant to subtitle G may exercise all authorities under any other provision of law that were available regarding the performance of that function to the official empowered to perform that function immediately before the date of the transfer of the function.

Sec. 4743. Savings provisions

Relevant legal documents that relate to a function which is transferred by subtitle G, and which are in effect on the date of such transfer, shall continue in effect according to their terms unless later modified or repealed in an appropriate manner. Applications or proceedings concerning any benefit, service, or license pending on the effective date of subtitle G before an office transferred shall not be affected, and shall continue thereafter, but may later be modified or repealed in the appropriate manner.

Subtitle G will not affect suits commenced before the effective date of passage. Suits or actions by or against the Department of Commerce, its employees, or the Secretary shall not abate by reason of enactment of subtitle G. Suits against a relevant government officer in her official capacity shall continue post enactment, and if a function has transferred to another officer by virtue of enactment, that other officer shall substitute as the defendant. Finally, administrative and judicial review procedures that apply to a function transferred shall apply to the head of the relevant federal agency and other officers to which the function is transferred.

Sec. 4744. Transfer of assets

Section 4744 states that all available personnel, property, records, and funds related to a function transferred pursuant to subtitle G shall be made available to the relevant official or head of the agency to which the function transfers at such time or times as the Director of the Office of Management and Budget (OMB) directs.

Sec. 4745. Delegation and assignment

Section 4745 allows an official to whom a function is transferred under subtitle G to delegate that function to another officer or employee. The official to whom the function was originally transferred nonetheless remains responsible for the administration of the function.

Sec. 4746. Authority of Director of the Office of Management and Budget with respect to functions transferred

Pursuant to section 4746, if necessary the Director of OMB shall make any determination of the functions transferred pursuant to subtitle G.

Sec. 4747. Certain vesting of functions considered transfers

Section 4747 states that the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of that function.

Sec. 4748. Availability of existing funds

Under section 4748, existing appropriations and funds available for the performance of functions and other activities terminated pursuant to subtitle G shall remain available (for the duration of their period of availability) for necessary expenses in connection with the termination and resolution of such functions and activities, subject to the submission of a plan to House and Senate appropriators in accordance with Public Law 105–277 (Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, Fiscal Year 1999).

Sec. 4749. Definitions

''Function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

''Office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

SUBTITLE H—MISCELLANEOUS PATENT PROVISIONS

Subtitle H consists of seven largely-unrelated provisions that make needed clarifying and technical changes to the Patent Act . Subtitle H also authorizes a study. The provisions in Subtitle H take effect on the date of enactment except where stated otherwise in certain sections.

Sec. 4801. Provisional applications

Section 4801 amends section 111(b)(5) of the Patent Act by permitting a provisional application to be converted into a non-provisional application. The applicant must make a request within 12 months after the filing date of the provisional application for it to be converted into a non-provisional application.

Section 4801 also amends section 119(e) of the Patent Act by clarifying the treatment of a provisional application when its last day of pendency falls on a weekend or a Federal holiday, and by eliminating the requirement that a provisional application must be co-pending with a non-provisional application if the provisional application is to be relied on in any USPTO proceeding.

Sec. 4802. International applications

Section 4802 amends section 119(a) of the Patent Act to permit persons who filed an application for patent first in a WTO[24] member country to claim the right of priority in a subsequent patent application filed in the United States, even if such country does not yet afford similar privileges on the basis of applications filed in the United States. This amendment was made in conformity with the requirements of Articles 1 and 2 of the TRIPS Agreement.[25] These Articles require that WTO member countries apply the substantive provisions of the Paris Convention for the Protection of Industrial Property to other WTO member countries. As some WTO member countries are not yet members of the Paris Convention, and as developing countries are generally permitted periods of up to 5 years before complying with all provisions of the TRIPS Agreement, they are not required to extend the right of priority to other WTO member countries until such time.

Section 4802 also adds subsection (f) to section 119 of the Patent Act to provide for the right of priority in the United States on the basis of an application for a plant breeder's right first filed in a WTO member country or in a UPOV[26] Contracting Party. Many foreign countries provide only a sui generis system of protection for plant varieties. Because section 119 presently addresses only patents and inventors' certificates, applicants from those countries are technically unable to base a priority claim on a foreign application for a plant breeder's right when seeking plant patent or utility patent protection for a plant variety in this country.

Subsection (g) is added to section 119 to define the terms ''WTO member country'' and ''UPOV Contracting Party.''

Sec. 4803. Certain limitations on remedies for patent infringement not applicable

Section 4803 amends section 287(c)(4) of the Patent Act, which pertains to certain limitations on remedies for patent infringement, to make it applicable only to applications filed on or after September 30, 1996.

Sec. 4804. Electronic filing and publications

Section 4804 amends section 22 of the Patent Act to clarify that the USPTO may receive, disseminate, and maintain information in electronic form. Subsection (d)(2), however, prohibits the Director from ceasing to maintain paper or microform collections of U.S. patents, foreign patent documents, and U.S. trademark registrations, except pursuant to notice and opportunity for public comment and except the Director shall first submit a report to Congress detailing any such plan, including a description of the mechanisms in place to ensure the integrity of such collections and the data contained therein, as well as to ensure prompt public access to the most current available information, and certifying that the implementation of such plan will not negatively impact the public.

In addition, in the operation of its information dissemination programs and as the sole source of patent data, the USPTO should implement procedures that assure that bulk patent data are provided in such a manner that subscribers have the data in a manner that grants a sufficient amount of time for such subscribers to make the data available through their own systems at the same time the USPTO makes the data publicly available through its own Internet system.

Sec. 4805. Study and report on biologic deposits in support of biotechnology patents

Section 4805 charges the Comptroller General, in consultation with the Director of the USPTO, with conducting a study and submitting a report to Congress no later than six months after the date of enactment on the potential risks to the U.S. biotechnological industry regarding biological deposits in support of biotechnology patents. The study shall include: an examination of the risk of export and of transfers to third parties of biological deposits, and the risks posed by the 18–month publication requirement of subtitle E; an analysis of comparative legal and regulatory regimes; and any related recommendations. The USPTO is then charged with considering these recommendations when drafting regulations affecting biological deposits.

Sec. 4806. Prior invention

Section 4806 amends section 102(g) of the Patent Act to make clear that an inventor who is involved in a USPTO interference proceeding and establishes a date of invention under section 104 is subject to the requirements of section 102(g), including the requirement that the invention was not abandoned, suppressed, or concealed.

Sec. 4807. Prior art exclusion for certain commonly assigned patents

Section 4807 amends section 103 of the Patent Act, which sets forth patentability conditions related to the nonobviousness of subject matter. Section 103(c) of the current statute states that subject matter developed by another person which qualifies as prior art only under section 102(f) or (g) shall not preclude granting a patent on an invention with only obvious differences where the subject matter and claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. The bill amends section 103(c) by adding a reference to section 102(e), which currently bars the granting of a patent if the invention was described in another patent granted on an application filed before the applicant's date of invention. The effect of the amendment is to allow an applicant to receive a patent when an invention with only obvious differences from the applicant's invention was described in a patent granted on an application filed before the applicant's invention, provided the inventions are commonly owned or subject to an obligation of assignment to the same person.

Sec. 4808. Exchange of copies of patents with foreign countries

Sec. 4808 amends section 12 of the Patent Act to prohibit the Director of the USPTO from entering into an agreement to exchange patent data with a foreign country that is not one of our NAFTA[27] or WTO trading partners, unless the Secretary of Commerce explicitly authorizes such an exchange.

TITLE V—MISCELLANEOUS PROVISIONS

Section 5001. Commission on Online Child Protection.

Section 5001(a) provides that references contained in the amendments made by this title are to section 1405 of the Child Online Protection Act (47 U.S.C. 231 note).

Section 5001(b) amends the membership of the Commission on Online Child Protection to remove a requirement that a specific number of representatives come from designated sectors of private industry, as outlined in the Act. Section 5001(b) also provides that the members appointed to the Commission as of October 31, 1999, shall remain as members. Section 5001(b) also prevents the members of the Commission from being paid for their work on the Commission. This provision, however, does not preclude members from being reimbursed for legitimate costs associated with participating in the Commission (such as travel expenses).

Section 5001(c) extends the due date for the report of the Commission by one year.

Section 5001(d) establishes that the Commission's statutory authority will expire either (1) 30 days after the submission of the report required by the Act, or (2) November 30, 2000, whichever is earlier.

Section 5001(e) requires the Commission to commence its first meeting no later than March 31, 2000. Section 5001(e) also requires that the Commission elect, by a majority vote, a chairperson of the Commission not later than 30 days after holding its first meeting.

Section 5001(f) establishes minimum rules for the operations of the Commission, and also allows the Commission to adopt other rules as it deems necessary.

Section 5002. Privacy Protection for Donors to Public Broadcasting Entities.

This provision, which was added in Conference, protects the privacy of donors to public broadcasting entities.

Section 5003. Completion of Biennial Regulatory Review.

Section 5003 provides that, within 180 days after the date of enactment, the FCC will complete the biennial review required by section 202(h) of the Telecommunications Act of 1996. The Conferees expect that if the Commission concludes that it should retain any of the rules under the review unchanged, the Commission shall issue a report that includes a full justification of the basis for so finding.

Section 5004. Broadcasting Entities.

This provision, added in Conference, allows for a remittance of copyright damages for public broadcasting entities where they are not aware and have no reason to believe that their activities constituted violations of copyright law. This is currently the standard for nonprofit libraries, archives and educational institutions.

Section 5005. Technical Amendments Relating to Vessel Hull Design Protection.

This section makes several amendments to chapter 13 of the Copyright Act regarding design protection for vessel hulls. The sunset provision for chapter 13, enacted as part of the Digital Millennium Copyright Act, is removed so that chapter 13 is now a permanent provision of the Copyright Act. The timing and number of joint studies to be done by the Copyright Office and the Patent and Trademark Offices of the effectiveness of chapter 13 are also amended by reducing the number of studies from two to one, and requiring that the one study not be submitted until November 1, 2003. Current law requires delivery of two studies within the first two years of chapter 13, which is unnecessary and an insufficient amount of time for the Copyright Office and the Patent and Trademark Office to accurately measure and assess the effectiveness of design protection within the marine industry.

The definition of a ''vessel'' in chapter 13 is amended to provide that in addition to being able to navigate on or through water, a vessel must be self-propelled and able to steer, and must be designed to carry at least one passenger. This clarifies Congress's intent not to allow design protection for such craft as barges, toy and remote controlled boas, inner tubes and surf boards.

Section 5006. Informal Rulemaking of Copyright Determination.

The Copyright Office has requested that Congress make a technical correction to section 1201(a)(1)(C) of title 17 by deleting the phrase ''on the record.'' The Copyright Office believes that this correction is necessary to avoid any misunderstanding regarding the intent of Congress that the rulemaking proceeding which is the be conducted by the Copyright Office under this provision shall be an informal, rather than a formal, rulemaking proceeding. Accordingly, the phrase ''on the record'' is deleted as a technical correction to clarify the intent of Congress that the Copyright Office shall conduct the rulemaking under section 1201(a)(1)(C) as an informal rulemaking proceeding pursuant to section 553 of Title 5. The intent is to permit interested persons an opportunity to participate through the submission of written statements, oral presentations at one or more of the public hearings, and the submission of written responses to the submissions or presentations of others.

Section 5007. Service of Process for Surety Corporations

This section allows surety corporations, like other corporations, to utilize approved state officials to receive service of process in any legal proceeding as an alternative to having a separate agent for service of process in each of the 94 federal judicial districts.

Section 5008. Low-Power Television.

Section 5008, which can be cited as the Community Broadcasters Protection Act of 1999, will ensure that many communities across the nation will continue to have access to free, over-the-air low-power television (LPTV) stations, even as full-service television stations proceed with their conversion to digital format. In particular, Section 5008 requires the Federal Communications Commission (FCC) to provide certain qualifying LPTV stations with ''primary'' regulatory status, which in turn will enable these LPTV stations to attract the financing that is necessary to provide consumers with critical information and programming. At the same time, recognizing the importance of, and the engineering complexity in, the FCC's plan to convert full-service television stations to digital format, Section 5009 protects the ability of these stations to provide both digital and analog service throughout their existing service areas.

The FCC began awarding licenses for low-power television service in 1982. Low-power television service is a relatively inexpensive and flexible means of delivering programming tailored to the interests of viewers in small localized areas. It also ensures that spectrum allocated for broadcast television service is more efficiently used and promotes opportunities for entering the television broadcast business.

The FCC estimates that there are more than 2,000 licensed and operational LPTV stations, about 1,500 of which are operated in the continental United States by 700 different licensees in nearly 750 towns and cities.[28] LPTV stations serve rural and urban communities alike, although about two-thirds of all LPTV stations serve rural communities. LPTV stations in urban markets typically provide niche programming (e.g., bilingual or non-English programming) to under-served communities in large cities. In many rural markets, LPTV stations are consumers' only source of local, over-the-air programming. Owners of LPTV stations are diverse, including high school and college student populations, churches and religious groups, local governments, large and small businesses, and even individual citizens.

From an engineering standpoint, the term ''low-power television service'' means precisely what it implies, i.e., broadcast television service that operates at a lower level of power than full-service stations. Specifically, LPTV stations radiate 3 kilowatts of power for stations operating on the VHF band (i.e., channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (i.e., channels 14 through 69). By comparison, full-service stations on VHF channels radiate up to 316 kilowatts of power, and stations on UHF channels radiate up to 5,000 kilowatts of power. The reduced power levels that govern LPTV stations mean these stations serve a much smaller geographic region than do full-service stations. LPTV signals typically extend to a range of approximately 12 to 15 miles, whereas the originating signal of full-service stations often reach households 60 or 80 miles away.

Compared to its rules for full-service television station licensees, the FCC's rules for obtaining and operating an LPTV license are minimal. But in return for ease of licensing, LPTV stations must operate not only at reduced power levels but also as ''secondary'' licensees. This means LPTV stations are strictly prohibited from interfering with, and must accept signal interference from, ''primary'' licensees, such as full-service television stations. Moreover, LPTV stations must yield at any point in time to full-service stations that increase their power levels, as well as to new full-service stations.

The video programming marketplace is intensely competitive. The three largest broadcast networks that once dominated the market now face competition from several emerging broadcast and cable networks, cable systems, satellite television operators, wireless cable, and even the Internet. Low-power television plays a valuable, albeit modest, role in this market because it is capable of providing locally-originated programming to rural and urban communities that have either no access to local programming, or an over-abundance of national programming.

Low-power television's future, however, is uncertain. To begin with, LPTV's secondary regulatory status means a licensee can be summarily displaced by a full-service station that seeks to expand its own service area, or by a new full-service station seeking to enter the same market. This cloud of regulatory uncertainty necessarily affects the ability of LPTV stations to raise capital over the long-term, irrespective of an LPTV station's popularity among consumers.

The FCC's plan to convert full-service stations to digital substantially complicates LPTV stations' already uncertain future. In its digital television (DTV) proceeding, the FCC adopted a table of allotments for DTV service that provided a second channel for

each existing full-service station to use for DTV service in making the transition from the existing analog technology to the new DTV technology. These second channels were provided to broadcasters on a temporary basis. At the end of the DTV transition, which is currently scheduled for December 31, 2006, they must relinquish one of their two channels.

In assigning DTV channels, the FCC maintained the secondary status of LPTV stations (as well as translators). In order to provide all full-service television stations with a second channel, the FCC was compelled to establish DTV allotments that will displace a number of LPTV stations, particularly in the larger urban market areas where the available spectrum is most congested.

The FCC's plan also provides for the recovery of a portion of the existing broadcast television spectrum so that it can be reallocated to new uses. Specifically, the FCC provided for immediate recovery of broadcast channels 60 through 69, and for recovery of broadcast channels 52 through 59 at the end of the DTV transition. As further required by Congress under the Balanced Budget Act of 1997,[29] the FCC has completed the reallocation of broadcast channels 60 through 69. Existing analog stations, including LPTV stations and a few DTV stations, are permitted to operate on these channels during the DTV transition. But at the end of the transition, all analog broadcast TV stations will have to cease operation, and the DTV stations on broadcast channels 52 through 69 will be relocated to new channels in the DTV core spectrum. As a result, the FCC estimates that the DTV transition will require about 35 to 45 percent of all LPTV stations to either change their operation or cease operation. Indeed, some full-service stations have already ''bumped'' several LPTV stations a number of times, at substantial cost to the LPTV station, with no guarantee that the LPTV station will be permitted to remain on its new channel in the long term.

The conferees, therefore, seek to provide some regulatory certainty for low-power television service. The conferees recognize that, because of emerging DTV service, not all LPTV stations can be guaranteed a certain future. Moreover, it is not clear that all LPTV stations should be given such a guarantee in light of the fact that many existing LPTV stations provide little or no original programming service.

Instead, the conferees seek to buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities. The House Committee on Commerce's record in considering this legislation reflects that there are a significant number of LPTV stations which broadcast programming—including locally originated programming—for a substantial portion of each day. From the consumers' perspective, these stations provide video programming that is functionally equivalent to the programming they view on full-service stations, as well as national and local cable networks. Consequently, these stations should be afforded roughly similar regulatory status. Section 5008, the Community Broadcasters Protection Act of 1999, will achieve that objective, and at the same time, protect the transition to digital.

Section 5008(a) provides that the short title of this section is the ''Community Broadcasters Protection Act of 1999.''

Section 5008(b) describes the Congress' findings on the importance of low-power television service. The Congress finds that LPTV stations have operated in a manner beneficial to the public, and in many instances, provide worthwhile and diverse services to communities that lack access to over-the-air programming. The Congress also finds, however, that LPTV stations' secondary regulatory status effectively blocks access to capital.

Section 5008(c) amends section 336 of the Communications Act of 1934[30] to require the FCC to create a new ''Class A'' license for certain qualifying LPTV stations. New paragraph (1)(A) in particular directs the FCC to prescribe rules within 120 days of enactment for the establishment of a new Class A television license that will be available to qualifying LPTV stations. The FCC's rules must ensure that a Class A licensee receives the same license terms and renewal standards as any full-service licensee, and that each Class A licensee is accorded primary regulatory status. Subparagraph (B) further requires the FCC, within 30 days of enactment, to send to each existing LPTV licensee a notice that describes the requirements for Class A designation. Within 60 days of enactment (or within 30 days of the FCC's notice), LPTV stations intending to seek Class A designation must submit a certification of eligibility to the FCC. Absent a material deficiency in an LPTV station's certification materials, the FCC is required under subparagraph (B) to grant a certification of eligibility.

Subparagraph (C) permits an LPTV station, within 30 days of the issuance of the rules required under subparagraph (A), to submit an application for Class A designation. The FCC must award a Class A license to a qualifying LPTV station within 30 days of receiving such application. Subparagraph (D) mandates that the FCC must act to preserve the signal contours of an LPTV station pending the final resolution of its application for a Class A license. In the event technical problems arise that require an engineering solution to a full-service station's allotted parameters or channel assignment in the DTV table of allotments, subparagraph (D) requires the FCC to make the necessary modifications to ensure that such full-service station can replicate or maximize its service area, as provided for in the FCC's rules.

With regard to maximization, a full-service digital television station must file an application for maximization or a notice of intent to seek such maximization by December 31, 1999, file a bona fide application for maximization by May 1, 2000, and also comply with all applicable FCC rules regarding the construction of digital television facilities. The term ''maximization'' is defined in paragraph 31 of the FCC's Sixth Report and Order as the process by which stations increase their service areas by operating with additional power or higher antennae than specified in the FCC's digital television table of allotments. Subparagraph(E) requires that a station must reduce the protected contour of its digital television service area in accordance with any modifications requested in future change applications. This provision is intended to ensure that stations indeed utilize the full amount of maximized spectrum for which they originally apply by the aforementioned deadlines.

Paragraph (2) lists the criteria an LPTV station must meet to qualify for a Class A license. Specifically, the LPTV station must: during the 90 days preceding the date of enactment, broadcast a minimum of 18 hours per day—including at least 3 hours per week of locally-originated programming—and also be in compliance with the FCC's rules on low-power television service; and from and after the date of its application for a Class A license, be in compliance with the FCC's rules for full-service television stations. In the alternative, the FCC may qualify an LPTV station as a Class A licensee if it determines that such qualification would serve the public interest, convenience, and necessity or for other reasons determined by the FCC.

Paragraph (3) provides that no LPTV station authorized as of the date of enactment may be disqualified for a Class A license based on common ownership with any other medium of mass communication.

Paragraph (4) makes clear that the FCC is not required to issue Class A LPTV stations (or translators) an additional license for advanced television services. The FCC, however, must accept applications for such services, provided the station will not cause interference to any other broadcast facility applied for, protected, permitted or authorized on the date of the filing of the application for advanced television services. Either the new license for advanced services or the original license must be forfeited at the end of the DTV transition. The licensee may elect to convert to advanced television services on its analog channel, but is not required to convert to digital format until the end of the DTV transition.

Paragraph (5) clarifies that nothing in new subsection 336(f) preempts, or otherwise affects, section 337 of the Communications Act of 1934.[31]

Paragraph (6) precludes the FCC from granting Class A licenses to LPTV stations operating between 698 megahertz (MHz) and 806 MHz (i.e., television broadcast channels 52 through 69). However, the FCC shall provide to LPTV stations assigned to, and temporarily operating on, those channels the opportunity to qualify for a Class A license. If a qualifying LPTV station is ultimately assigned a channel within the band of frequencies that will eventually comprise the ''core spectrum'' (i.e., television broadcast channels 2 through 51), then the FCC is required to issue a Class A license simultaneously. However, the FCC may not grant a Class A license to an LPTV station operating on a channel within the core spectrum that the FCC will identify within 180 days of enactment.

Finally, paragraph (7) provides that the FCC may not grant a Class A license (or a modification thereto) unless the requesting LPTV station demonstrates that it will not interfere with one of three types of radio-based services. First, under subparagraph (A), the LPTV station must show that it will not interfere with: (i) the predicted Grade B contour of any station transmitting in analog format; or (ii) the digital television service areas provided in the DTV table of allotments; or the digital television areas explicitly protected (as opposed to those areas that may be permitted) in the Commission's digital television regulations; or the digital television service areas of stations subsequently granted by the FCC prior to the filing of a Class A application; or lastly, stations seeking to maximize power under the FCC's rules (provided such stations are in compliance with the notification requirements under paragraph (1)).

Second, under subparagraph (B), the LPTV station must show that it will not interfere with any licensed, authorized or pending LPTV station or translator. And third, under subparagraph (C), the LPTV station must show that it will not interfere with other services (e.g., land mobile services) that also operate on television broadcast channels 14 through 20.

Finally, paragraph (8) establishes priority for those LPTVs that are displaced by an application filed under this section, in that these LPTVs have priority over other LPTVs in the assignment of available channels.

FOOTNOTES

[1] See Rust v. Sullivan, 500 U.S. 173 (1991) (grants); Indopco, Inc. v. Commissioner, 503 U.S. 79, 84 (1992) (tax benefits). The First Amendment requires only

that Congress not aim at ''the suppression of dangerous ideas.'' NEA v. Finley, 118 S. Ct. 2168, 2178–79 (1998).

[2] See United States v. O'Brien, 391 U.S. 367 (1968).

[3] See Turner Broadcasting Sys., Inc. v. FCC, 512 U.S. 622, 663 (1994).

[4] See, e.g., H.R. Rep. No. 102–628, p. 51 (1992); S. Rep. No. 102–92, p. 62 (1991); see also Feb. 24 Hearing (Al DeVaney).

[5] The Supreme Court has described the ''two types'' of quasi in rem proceedings: a type I proceeding, in which ''the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons,'' and a type II action, in which ''the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him.'' Hanson v. Denckla, 357 U.S. 235, 246 n.12 (1958).

[6] 15 U.S.C. §1051, et seq.

[7] 149 F.3d 1368 (Fed. Cir. 1998) [hereinafter State Street].

[8] See Dunlop Holdings v. Ram Golf Corp., 524 F.2d 33 (7th Cir. 1975), cert. denied, 424 US 985 (1976).

[9] General Agreement on Tariffs and Trade, Pub. L. No. 103–465. The framework for international trade since its inception in 1948, GATT is now administered under the auspices of the World Trade Organization (WTO) (see note 19, infra).

[10] See Herbert F. Schwartz, Patent Law & Practice (2d ed., Federal Judicial Center, 1995), note 72 at 22. The PCT is a multilateral treaty among more than 50 nations that is designed to simplify the patenting process when an applicant seeks a patent on the same invention in more than one nation. See also 35 U.S.C.A. chs. 35–37 and PCT Applicant's Guide (1992, rev. 1994).

[11] 35 U.S.C. §135(a).

[12] 35 U.S.C. §181.

[13] 5 U.S.C. §§551–559, 701–706, 1305, 3105, 3344, 5372, 7521.

[14] 28 U.S.C. §1295.

[15] 35 U.S.C. §111(b). Pursuant to 35 U.S.C. §111(b)(5), all provisional applications are abandoned 12 months after the date of their filing; accordingly, they are not subject to the 18–month publication requirement.

[16] 35 U.S.C. §171. Since design applications do not disclose technology, inventors do not have a particular interest in having them published. The bill as written therefore simplifies the proposed system of publication to confine the requirement to those applications for which there is a need for publication.

[17] Mar. 20, 1883, as revised at Brussels, Dec. 14, 1900, 25 Stat. 1645, T.S. No. 579, and subsequently through 1967. The Convention has 156 member nations, including the United States.

[18] See 28 U.S.C. §1338.

[19] 19 U.S.C. §2171.

[20] 28 U.S.C. §5382.

[21] 5 U.S.C. §5304(h)(2)(C).

[22] 5 U.S.C. §5314.

[23] 5 U.S.C. §5315.

[24] World Trade Organization. The agreement establishing the WTO is a multilateral instrument which creates a permanent organization to oversee the implementation of the Uruguay Round Agreements, including the GATT 1994, to provide a forum for multilateral trade negotiations and to administer dispute settlements (see note 3, supra). Staff of the House Comm. on Ways and Means, 104th Cong., 1st Sess., Overview and Compilation of U.S. Trade Statutes 1040 (Comm. Print 1995) [hereinafter, Overview and Compilation of U.S. Trade Statutes].

[25] Trade-Related Aspects of Intellectual Property Rights Agreement; i.e., that component of GATT which addresses intellectual property rights among the signatory members.

[26] International Convention for the Protection of New Varieties of Plants. UPOV is administered by the World Intellectual Property Organization (WIPO), which is charged with the administration of, and activities concerning revisions to, the international intellectual property treaties. UPOV has 40 members, and guarantees plant breeders national treatment and right of priority in other countries that are members of the treaty, along with certain other benefits. See M.A. Leaffer, International Treaties on Intellectual Property at 47 (BNA, 2d ed. 1997).

[27] North American Free Trade Agreement, Pub. L. No. 103–182. The cornerstone of NAFTA is the phased-out elimination of all tariffs on trade between the U.S., Canada, and Mexico. Overview and Compilation of U.S. Trade Statutes 1999.

[28] LPTV stations are distinct from so called ''translators.'' Whereas LPTV stations typically offer original programming, translators merely amplify or ''boost'' a full-service television station's signal into rural and mountainous regions adjacent to the station's market.

[29] See 47 U.S.C. §337.

[30] 47 U.S.C. §336.

[31] 47 U.S.C. §337.

By Mr. LEAHY:

S. 1949. A bill to promote economically sound modernization of electric power generation capacity in the United States, to establish requirements to improve the combustion heat rate efficiency of fossil fuel-fired electric utility generating units, to reduce emissions of mercury, carbon dioxide, nitrogen oxides, and sulfur dioxide, to require that all fossil fuel-fired electric utility generating units operating in the United States meet new review requirements, to promote the use of clean coal technologies, and to promote alternative energy and clean energy sources such as solar, wind, biomass, and fuel cells; to the Committee on Finance.

CLEAN POWER PLANT AND MODERNIZATION ACT OF 1999

Mr. LEAHY. Mr. President, Vermonters have a proud tradition of protecting our environment. We have some of the strongest environmental laws in the country. Yet despite this proud tradition of environmental stewardship, we have seen how pollution from outside our state has affected our mountains, lakes and streams. Acid rain caused from sulfur dioxide emissions outside Vermont has drifted through the atmosphere and scarred our mountains and poisoned our streams. Mercury has quietly made its deadly poisonous presence into the food chain of our fish to the point where health advisories have been posted for the consumption of several species. And, despite our own tough air laws and small population, the EPA has considered air quality warnings in Vermont that are comparable to emissions consistent for much larger cities. Silently each night, pollution from outside Vermont seeps into our state, and our exemplary and forward-looking environmental laws are powerless to stop or even limit the encroachment.

The Clean Air Act of 1970 was a milestone law which established national air quality standards for the first time and attempted to provide protection for populations who are affected by emissions outside their own local and state control. That bill did much to halt declining air quality around the country and improve it in some areas. It also acknowledged that fossil fuel utility plants contribute a significant amount of air pollution not only in the area immediately around the plant but can affect air quality hundreds of miles away.

While the bill has improved air quality, changes in the utility market since passage of the Clean Air Act make it necessary to consider important updates to the legislation. States throughout the country are deregulating utilities and soon Congress may consider federal legislation on this issue. I support these economic changes but Congress and the Administration should keep pace with this changing market. Breaking down the barriers of a regulated utility market can have important economic consequences for utility customers. More competition will drive down prices. But these lower costs will come with a price—the cheapest power is unfortunately produced by some of the dirtiest power plants. Most of these power plants were grandfathered under the Clean Air Act.

So today I am introducing the ''Clean Power Plant and Modernization Act'' to address the local, regional, and global air pollution problems that are posed by fossil-fired power plants under a deregulated market.

In the last few weeks, the EPA and the Administration have taken some important steps to address the power plant loophole in the Clean Air Act that allows hundreds of old, mostly coal-fired power plants to continue to pollute at levels much higher than new plants. Closing this loophole is critical to protecting the health of our environment and the health of our children.

Last week the Justice Department and the Environmental Protection Agency filed suit against 32 coal-fired power plants who had made major changes to their plants without also installing new equipment to control smog, acid rain and soot. This is illegal, even under the Clean Air Act, and it spotlights the glaring need to level the playing field for all power plants. This is particularly as our country moves toward a deregulated electricity industry.

Unfortunately, some of our colleagues decided that this move unfairly targeted some of their utilities that have benefitted from this loophole for almost thirty years. I would point out that many of us from New England and New York believe it is unfair that our states have been the dumping ground for the pollution coming out of these plants for the past thirty years. My colleagues have heard me speak on the floor about how this pollution is contaminating our fish with mercury, damaging our lakes and forests with acid rain, and causing respiratory problems and obscuring the view of Vermont's mountains with summertime ozone pollution from nitrogen oxide emissions.

Now, added to these concerns is the growing body of knowledge showing that carbon dioxide emissions are having an impact on the global climate. More than a decade of record heat, reports from around the globe of dying coral reefs, and melting glaciers should be warning signals to all of us.

In Vermont, one of our warning signals is the impact to sugar maples. Sugar maple now range naturally as far south as Tennessee and west of the Mississippi River from Minnesota to Missouri. Given the current predictions for climate changes, by the end of the next century the range of sugar maples in North America will be limited the state of Maine and portions of eastern Canada. Vermont's climate may not

change so much that palm trees will line the streets of Burlington and Montpelier, but the impact on the character and economy of Vermont and many other states will be profound.

It is hard to imagine a Vermont hillside in the fall without the brilliant reds of the sugar maples, and it is hard to imagine a stack of pancakes without Vermont maple syrup. And it is unlikely that sugar maples will be the only species or crop that will be affected by climate change, or that the effects will be limited to Vermont. Many like to dismiss concerns about pollution from power plants as a ''Northeastern issue.'' It is not; it affects all of us, perhaps in ways that we have not even begun to imagine.

I can show you maps that mark the deposition ''hot spots'' for these pollutants in the Everglades, the Upper Midwest, New England, Long Island Sound, Chesapeake Bay and the West Coast. This clearly is not a regional issue. Collectively, fossil fuel-fired power plants constitute the largest source of air pollution in the United States, annually emitting more than 2 billion tons of carbon dioxide, more than 12 million tons of acid rain producing sulfur dioxide, nearly 6 million tons of smog producing nitrogen oxides, and more than 50 tons of highly toxic mercury.

These are staggering sums. Consider the fact that it would take nearly 25,000 Washington Monuments, weighing 81,120 tons apiece, to add up to 2 billion tons. And that is just one year.

Why are we continuing to allow pollutants on that enormous scale to be dumped on some of our most fragile ecosystems, much less into our lungs through the air we breathe? It is because Congress assumed when it passed the 1970 Clean Air Act that these old pollution-prone plants would be retired over time and replaced by newer, cleaner plants. It has not worked out that way, and it is time for the Congress to rethink our strategy.

More than 75 percent of the fossil-fired plants in the United States began operation before the 1970 Clean Air Act was passed. As a result, they are ''grandfathered'' out from under the full force of its regulations. Many of the environmental problems posed by this industry are linked to the antiquated and inefficient technologies at these plants. The average fossil-fuel fired power plant uses combustion technology devised in the 1950's or before. Would any of us buy a car today that was still using 1950s technology? Of course not. So why are we still going out of our way to preserve 1950s technology for power plants?

As long as we allow these plants to operate inefficiently they will produce enormous amounts of air pollution. My bill takes a new approach to reducing this pollution by retiring the inefficient ''grandfathered'' power plants and bring new, clean, and efficient technologies for the 21st Century on line.

Obviously, major changes in this industry will not occur over night. The ''continue-business-as-usual'' inertia is enormous. The old, inefficient, pollution-prone power plants will operate until they fall down because they are paid for, burn the cheapest fuel, and are subject to much less stringent environmental requirements. ''Grandfathered'' plants have the statutory equivalent of an eternal lifetime under the Clean Air Act loophole.

Mr. President, this article in Forbes Magazine describes how valuable the old ''grandfathered'' power plants are. The article cites the example of the ''grandfathered'' Homer City generating station outside of Pittsburgh. Until last year, the utility valued this plant at $540 million. According to the Forbes article, last year the utility sold the plant for $1.8 billion. That works out to $955 per kilowatt of generating capacity, or about the cost of building a new plant. Why are these old pollution-prone plants suddenly so valuable? Maybe their ''grandfathered'' status has something to do with it.

What does my bill propose to do? First, it closes the ''grandfather'' loophole. Second, it lays out an aggressive but achievable set of air pollution and efficiency requirements for fossil-fired power plants. Third, the emissions standards will allow clean coal technologies to have a fair chance to compete in the future mix of electrical power generation. Fourth, it provides industry decision-makers with a comprehensive and predictable set of regulatory requirements and tax code changes so they can see up-front what the playing field is going to look like in the future. This will allow them to make informed, comprehensive, and economically efficient business decisions. Public health and the environment will benefit, consumers will benefit, and the utility companies will benefit from this approach.

As U.S. power plants become more efficient and more power is produced by renewable technologies, less fossil fuel will be consumed. This will have an impact on the workers and communities that produce fossil fuels. These effects are likely to be greatest for coal, even with significant deployment of clean coal technology. The bill provides funding for programs to help workers and communities during the period of transition. I am eager to work with organized labor to ensure that these provisions address the needs of workers, particularly those who may not fully benefit from retraining programs.

The bill provides substantial additional funding for research, development, and commercial demonstrations of renewable and clean energy technologies such as solar, wind, biomass, and fuel cells. As utilities retire their ''grandfathered'' plants and plan for future generating capacity, renewable and clean technologies need to be part of the equation. My bill also authorizes expenditures for implementing known ways of biologically sequestering carbon dioxide from the atmosphere such as planting trees, preserving wetlands, and soil restoration.

How will the environment benefit from the emission and efficiency standards in my bill? Mercury emissions will be cut from more than 50 tons per year to no more than 5 tons per year. Annual emissions of sulfur dioxide that causes acid rain will be cut by more than 6 million tons beyond the requirements in Phase II of the Clean Air Act of 1990. Nitrogen oxide emissions that result in summertime ozone pollution will be cut by more than 3 million tons per year beyond Phase II requirements. And the bill would prevent at least 650 million tons of carbon dioxide emissions per year.

Of course, this discussion should not just be about the impact to our environment. This debate should equally be focused on public health. There is mounting evidence of the health effects of these pollutants. The Washington Post Magazine ran an alarming article that documented the escalating number of children with asthma, jumping to 17.3 million in 1998 from 6.8 million in 1980. Asthma may not be caused directly by air pollution, but it certainly aggravates it and can lead to premature deaths.

The American public still overwhelmingly supports the commitment to the environment that we made in the early 1970s. As stewards of the environment for our children and our grandchildren, we need to act without delay to ensure that in the new millennium the United States produces electricity more efficiently and with much less environmental and public health impact. There is no reason why we should go into the next century still using technology from the era of Ozzie and Harriet.

Mr. President, I ask unanimous consent that a section-by-section overview of the bill, and an article entitled ''Poor Me'' from the May 31, 1999, edition of Forbes Magazine, be printed in the RECORD.

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

S. 1949

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clean Power Plant and Modernization Act of 1999''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Combustion heat rate efficiency standards for fossil fuel-fired generating units.
Sec. 5. Air emission standards for fossil fuel-fired generating units.
Sec. 6. Extension of renewable energy production credit.
Sec. 7. Megawatt hour generation fees.
Sec. 8. Clean Air Trust Fund.
Sec. 9. Accelerated depreciation for investor-owned generating units.

Sec. 10. Grants for publicly owned generating units.
Sec. 11. Recognition of permanent emission reductions in future climate change implementation programs.
Sec. 12. Renewable and clean power generation technologies.
Sec. 13. Clean coal, advanced gas turbine, and combined heat and power demonstration program.
Sec. 14. Evaluation of implementation of this Act and other statutes.
Sec. 15. Assistance for workers adversely affected by reduced consumption of coal.
Sec. 16. Community economic development incentives for communities adversely affected by reduced consumption of coal.
Sec. 17. Carbon sequestration.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the United States is relying increasingly on old, needlessly inefficient, and highly polluting powerplants to provide electricity;

(2) the pollution from those powerplants causes a wide range of health and environmental damage, including—

(A) fine particulate matter that is associated with the deaths of approximately 50,000 Americans annually;

(B) urban ozone, commonly known as ''smog'', that impairs normal respiratory functions and is of special concern to individuals afflicted with asthma, emphysema, and other respiratory ailments;

(C) rural ozone that obscures visibility and damages forests and wildlife;

(D) acid deposition that damages estuaries, lakes, rivers, and streams (and the plants and animals that depend on them for survival) and leaches heavy metals from the soil;

(E) mercury and heavy metal contamination that renders fish unsafe to eat, with especially serious consequences for pregnant women and their fetuses;

(F) eutrophication of estuaries, lakes, rivers, and streams; and

(G) global climate change that may fundamentally and irreversibly alter human, animal, and plant life;

(3) tax laws and environmental laws—

(A) provide a very strong incentive for electric utilities to keep old, dirty, and inefficient generating units in operation; and

(B) provide a strong disincentive to investing in new, clean, and efficient generating technologies;

(4) fossil fuel-fired power plants, consisting of plants fueled by coal, fuel oil, and natural gas, produce nearly two-thirds of the electricity generated in the United States;

(5) since, according to the Department of Energy, the average combustion heat rate efficiency of fossil fuel-fired power plants in the United States is 33 percent, 67 percent of the heat generated by burning the fuel is wasted;

(6) technology exists to increase the combustion heat rate efficiency of coal combustion from 35 percent to 50 percent above current levels, and technological advances are possible that would boost the net combustion heat rate efficiency even more;

(7) coal-fired power plants are the leading source of mercury emissions in the United States, releasing an estimated 52 tons of this potent neurotoxin each year;

(8) in 1996, fossil fuel-fired power plants in the United States produced over 2,000,000,000 tons of carbon dioxide, the primary greenhouse gas;

(9) on average—

(A) fossil fuel-fired power plants emit 1,999 pounds of carbon dioxide for every megawatt hour of electricity produced;

(B) coal-fired power plants emit 2,110 pounds of carbon dioxide for every megawatt hour of electricity produced; and

(C) coal-fired power plants emit 205 pounds of carbon dioxide for every million British thermal units of fuel consumed;

(10) the average fossil fuel-fired generating unit in the United States commenced operation in 1964, 6 years before the Clean Air Act (42 U.S.C. 7401 et seq.) was amended to establish requirements for stationary sources;

(11)(A) according to the Department of Energy, only 23 percent of the 1,000 largest emitting units are subject to stringent new source performance standards under section 111 of the Clean Air Act (42 U.S.C. 7411); and

(B) the remaining 77 percent, commonly referred to as ''grandfathered'' power plants, are subject to much less stringent requirements;

(12) on the basis of scientific and medical evidence, exposure to mercury and mercury compounds is of concern to human health and the environment;

(13) pregnant women and their developing fetuses, women of childbearing age, and children are most at risk for mercury-related health impacts such as neurotoxicity;

(14) although exposure to mercury and mercury compounds occurs most frequently through consumption of mercury-contaminated fish, such exposure can also occur through—

(A) ingestion of breast milk;

(B) ingestion of drinking water, and foods other than fish, that are contaminated with methyl mercury; and

(C) dermal uptake through contact with soil and water;

(15) the report entitled ''Mercury Study Report to Congress'' and submitted by the Environmental Protection Agency under section 112(n)(1)(B) of the Clean Air Act (42 U.S.C. 7412(n)(1)(B)), in conjunction with other scientific knowledge, supports a plausible link between mercury emissions from combustion of coal and other fossil fuels and mercury concentrations in air, soil, water, and sediments;

(16)(A) the Environmental Protection Agency report described in paragraph (15) supports a plausible link between mercury emissions from combustion of coal and other fossil fuels and methyl mercury concentrations in freshwater fish;

(B) in 1997, 39 States issued health advisories that warned the public about consuming mercury-tainted fish, as compared to 27 States that issued such advisories in 1993; and

(C) the number of mercury advisories nationwide increased from 899 in 1993 to 1,675 in 1996, an increase of 86 percent;

(17) pollution from powerplants can be reduced through adoption of modern technologies and practices, including—

(A) methods of combusting coal that are intrinsically more efficient and less polluting, such as pressurized fluidized bed combustion and an integrated gasification combined cycle system;

(B) methods of combusting cleaner fuels, such as gases from fossil and biological resources and combined cycle turbines;

(C) treating flue gases through application of pollution controls;

(D) methods of extracting energy from natural, renewable resources of energy, such as solar and wind sources;

(E) methods of producing electricity and thermal energy from fuels without conventional combustion, such as fuel cells; and

(F) combined heat and power methods of extracting and using heat that would otherwise be wasted, for the purpose of heating or cooling office buildings, providing steam to processing facilities, or otherwise increasing total efficiency; and

(18) adopting the technologies and practices described in paragraph (17) would increase competitiveness and productivity, secure employment, save lives, and preserve the future.

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

(1) to protect and preserve the environment while safeguarding health by ensuring that each fossil fuel-fired generating unit minimizes air pollution to levels that are technologically feasible through modernization and application of pollution controls;

(2) to greatly reduce the quantities of mercury, carbon dioxide, sulfur dioxide, and nitrogen oxides entering the environment from combustion of fossil fuels;

(3) to permanently reduce emissions of those pollutants by increasing the combustion heat rate efficiency of fossil fuel-fired generating units to levels achievable through—

(A) use of commercially available combustion technology, including clean coal technologies such as pressurized fluidized bed combustion and an integrated gasification combined cycle system;

(B) installation of pollution controls;

(C) expanded use of renewable and clean energy sources such as biomass, geothermal, solar, wind, and fuel cells; and

(D) promotion of application of combined heat and power technologies;

(4)(A) to create financial and regulatory incentives to retire thermally inefficient generating units and replace them with new units that employ high-thermal-efficiency combustion technology; and

(B) to increase use of renewable and clean energy sources such as biomass, geothermal, solar, wind, and fuel cells;

(5) to establish the Clean Air Trust Fund to fund the training, economic development, carbon sequestration, and research, development, and demonstration programs established under this Act;

(6) to eliminate the ''grandfather'' loophole in the Clean Air Act relating to sources in operation before the promulgation of standards under section 111 of that Act (42 U.S.C. 7411);

(7) to express the sense of Congress that permanent reductions in emissions of greenhouse gases that are accomplished through the retirement of old units and replacement by new units that meet the combustion heat rate efficiency and emission standards specified in this Act should be credited to the utility sector and the owner or operator in any climate change implementation program;

(8) to promote permanent and safe disposal of mercury recovered through coal cleaning, flue gas control systems, and other methods of mercury pollution control;

(9) to increase public knowledge of the sources of mercury exposure and the threat to public health from mercury, particularly the threat to the health of pregnant women and their fetuses, women of childbearing age, and children;

(10) to decrease significantly the threat to human health and the environment posed by mercury;

(11) to provide worker retraining for workers adversely affected by reduced consumption of coal; and

(12) to provide economic development incentives for communities adversely affected by reduced consumption of coal.

SEC. 3. DEFINITIONS.

In this Act:

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

(2) GENERATING UNIT.—The term ''generating unit'' means an electric utility generating unit.

SEC. 4. COMBUSTION HEAT RATE EFFICIENCY STANDARDS FOR FOSSIL FUEL-FIRED GENERATING UNITS.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than the day that is 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit that commences operation on or before that day shall achieve and maintain, at all operating levels, a combustion heat rate efficiency of not less than 45 percent (based on the higher heating value of the fuel).

(2) FUTURE GENERATING UNITS.—Each fossil fuel-fired generating unit that commences operation more than 10 years after the date of enactment of this Act shall achieve and maintain, at all operating levels, a combustion heat rate efficiency of not less than 50 percent (based on the higher heating value of the fuel), unless granted a waiver under subsection (d).

(b) TEST METHODS.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, shall promulgate methods for determining initial and continuing compliance with this section.

(c) PERMIT REQUIREMENT.—Not later than 10 years after the date of enactment of this Act, each generating unit shall have a permit issued under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) that requires compliance with this section.

(d) WAIVER OF COMBUSTION HEAT RATE EFFICIENCY STANDARD.—

(1) APPLICATION.—The owner or operator of a generating unit that commences operation more than 10 years after the date of enactment of this Act may apply to the Administrator for a waiver of the combustion heat rate efficiency standard specified in subsection (a)(2) that is applicable to that type of generating unit.

(2) ISSUANCE.—The Administrator may grant the waiver only if—

(A)(i) the owner or operator of the generating unit demonstrates that the technology to meet the combustion heat rate efficiency standard is not commercially available; or

(ii) the owner or operator of the generating unit demonstrates that, despite best technical efforts and willingness to make the necessary level of financial commitment, the combustion heat rate efficiency standard is not achievable at the generating unit; and

(B) the owner or operator of the generating unit enters into an agreement with the Administrator to offset by a factor of 1.5 to 1, using a method approved by the Administrator, the emission reductions that the generating unit does not achieve because of the failure to achieve the combustion heat rate efficiency standard specified in subsection (a)(2).

(3) EFFECT OF WAIVER.—If the Administrator grants a waiver under paragraph (1), the generating unit shall be required to achieve and maintain, at all operating levels, the combustion heat rate efficiency standard specified in subsection (a)(1).

SEC. 5. AIR EMISSION STANDARDS FOR FOSSIL FUEL-FIRED GENERATING UNITS.

(a) ALL FOSSIL FUEL-FIRED GENERATING UNITS.—Not later than 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit, regardless of its date of construction or commencement of operation, shall be subject to, and operating in physical and operational compliance with, the new source review requirements under section 111 of the Clean Air Act (42 U.S.C. 7411).

(b) EMISSION RATES FOR SOURCES REQUIRED TO MAINTAIN 45 PERCENT EFFICIENCY.—Not later than 10 years after the date of enactment of this Act, each fossil fuel-fired generating unit subject to section 4(a)(1) shall be in compliance with the following emission limitations:

(1) MERCURY.—Each coal-fired or fuel oil-fired generating unit shall be required to remove 90 percent of the mercury contained in the fuel, calculated in accordance with subsection (e).

(2) CARBON DIOXIDE.—

(A) NATURAL GAS-FIRED GENERATING UNITS.—Each natural gas-fired generating unit shall be required to achieve an emission rate of not more than 0.9 pounds of carbon dioxide per kilowatt hour of net electric power output.

(B) FUEL OIL-FIRED GENERATING UNITS.—Each fuel oil-fired generating unit shall be required to achieve an emission rate of not more than 1.3 pounds of carbon dioxide per kilowatt hour of net electric power output.

(C) COAL-FIRED GENERATING UNITS.—Each coal-fired generating unit shall be required to achieve an emission rate of not more than 1.55 pounds of carbon dioxide per kilowatt hour of net electric power output.

(3) SULFUR DIOXIDE.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 95 percent of the sulfur dioxide that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.3 pounds of sulfur dioxide per million British thermal units of fuel consumed.

(4) NITROGEN OXIDES.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 90 percent of nitrogen oxides that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.15 pounds of nitrogen oxides per million British thermal units of fuel consumed.

(c) EMISSION RATES FOR SOURCES REQUIRED TO MAINTAIN 50 PERCENT EFFICIENCY.—Each fossil fuel-fired generating unit subject to section 4(a)(2) shall be in compliance with the following emission limitations:

(1) MERCURY.—Each coal-fired or fuel oil-fired generating unit shall be required to remove 90 percent of the mercury contained in the fuel, calculated in accordance with subsection (e).

(2) CARBON DIOXIDE.—

(A) NATURAL GAS-FIRED GENERATING UNITS.—Each natural gas-fired generating unit shall be required to achieve an emission rate of not more than 0.8 pounds of carbon dioxide per kilowatt hour of net electric power output.

(B) FUEL OIL-FIRED GENERATING UNITS.—Each fuel oil-fired generating unit shall be required to achieve an emission rate of not more than 1.2 pounds of carbon dioxide per kilowatt hour of net electric power output.

(C) COAL-FIRED GENERATING UNITS.—Each coal-fired generating unit shall be required to achieve an emission rate of not more than 1.4 pounds of carbon dioxide per kilowatt hour of net electric power output.

(3) SULFUR DIOXIDE.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 95 percent of the sulfur dioxide that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.3 pounds of sulfur dioxide per million British thermal units of fuel consumed.

(4) NITROGEN OXIDES.—Each fossil fuel-fired generating unit shall be required—

(A) to remove 90 percent of nitrogen oxides that would otherwise be present in the flue gas; and

(B) to achieve an emission rate of not more than 0.15 pounds of nitrogen oxides per million British thermal units of fuel consumed.

(d) PERMIT REQUIREMENT.—Not later than 10 years after the date of enactment of this Act, each generating unit shall have a permit issued under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) that requires compliance with this section.

(e) COMPLIANCE DETERMINATION AND MONITORING.—

(1) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Energy, shall promulgate methods for determining initial and continuing compliance with this section.

(2) CALCULATION OF MERCURY EMISSION REDUCTIONS.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate fuel sampling techniques and emission monitoring techniques for use by generating units in calculating mercury emission reductions for the purposes of this section.

(3) REPORTING.—

(A) IN GENERAL.—Not less than often than quarterly, the owner or operator of a generating unit shall submit a pollutant-specific emission report for each pollutant covered by this section.

(B) SIGNATURE.—Each report required under subparagraph (A) shall be signed by a responsible official of the generating unit, who shall certify the accuracy of the report.

(C) PUBLIC REPORTING.—The Administrator shall annually make available to the public, through 1 or more published reports and 1 or more forms of electronic media, facility-specific emission data for each generating unit and pollutant covered by this section.

(D) CONSUMER DISCLOSURE.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate regulations requiring each owner or operator of a generating unit to disclose to residential consumers of electricity generated by the unit, on a regular basis (but not less often than annually) and in a manner convenient to the consumers, data concerning the level of emissions by the generating unit of each pollutant covered by this section and each air pollutant covered by section 111 of the Clean Air Act (42 U.S.C. 7411).

(f) DISPOSAL OF MERCURY CAPTURED OR RECOVERED THROUGH EMISSION CONTROLS.—

(1) CAPTURED OR RECOVERED MERCURY.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate regulations to ensure that mercury that is captured or recovered through the use of an emission control, coal cleaning, or another method is disposed of in a manner that ensures that—

(A) the hazards from mercury are not transferred from 1 environmental medium to another; and

(B) there is no release of mercury into the environment.

(2) MERCURY-CONTAINING SLUDGES AND WASTES.—The regulations promulgated by the Administrator under paragraph (1) shall ensure that mercury-containing sludges and wastes are handled and disposed of in accordance with all applicable Federal and State laws (including regulations).

(g) PUBLIC REPORTING OF FACILITY-SPECIFIC EMISSION DATA.—

(1) IN GENERAL.—The Administrator shall annually make available to the public, through 1 or more published reports and the Internet, facility-specific emission data for each generating unit and for each pollutant covered by this section.

(2) SOURCE OF DATA.—The emission data shall be taken from the emission reports submitted under subsection (e)(3).

SEC. 6. EXTENSION OF RENEWABLE ENERGY PRODUCTION CREDIT.

Section 45(c) of the Internal Revenue Code of 1986 (relating to definitions) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking ''and'';

(B) in subparagraph (B), by striking the period and inserting '', and''; and

(C) by adding at the end the following:

''(C) solar power.'';

(2) in paragraph (3)—

(A) by inserting '', and December 31, 1998, in the case of a facility using solar power to produce electricity'' after ''electricity''; and

(B) by striking ''1999'' and inserting ''2010''; and

(3) by adding at the end the following:

''(4) SOLAR POWER.—The term 'solar power' means solar power harnessed through—

''(A) photovoltaic systems,

''(B) solar boilers that provide process heat, and

''(C) any other means.''.

SEC. 7. MEGAWATT HOUR GENERATION FEES.

(a) IN GENERAL.—Chapter 38 of the Internal Revenue Code of 1986 (relating to miscellaneous excise taxes) is amended by inserting after subchapter D the following:

''Subchapter E—Megawatt Hour Generation Fees

''Sec. 4691. Imposition of fees.

''SEC. 4691. IMPOSITION OF FEES.

''(a) TAX IMPOSED.—There is hereby imposed on each covered fossil fuel-fired generating unit a tax equal to 30 cents per megawatt hour of electricity produced by the covered fossil fuel-fired generating unit.

''(b) ADJUSTMENT OF RATES.—Not less often than once every 2 years beginning after 2002, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate the rate of the tax imposed by subsection (a) and increase the rate if necessary for any succeeding calendar year to ensure that the Clean Air Trust Fund established by section 9511 has sufficient amounts to fully fund the activities described in section 9511(c).

''(c) PAYMENT OF TAX.—The tax imposed by this section shall be paid quarterly by the owner or operator of each covered fossil fuel-fired generating unit.

''(d) COVERED FOSSIL FUEL-FIRED GENERATING UNIT.—The term 'covered fossil fuel-fired generating unit' means an electric utility generating unit that—

''(1) is powered by fossil fuels;

''(2) has a generating capacity of 5 or more megawatts; and

''(3) because of the date on which the generating unit commenced commercial operation, is not subject to all regulations promulgated under section 111 of the Clean Air Act (42 U.S.C. 7411).''.

(b) CONFORMING AMENDMENT.—The table of subchapters for such chapter 38 is amended by inserting after the item relating to subchapter D the following:

''SUBCHAPTER E. Megawatt hour generation fees.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced in calendar years beginning after December 31, 2000.

SEC. 8. CLEAN AIR TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following:

''SEC. 9511. CLEAN AIR TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Air Trust Fund' (hereafter referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Trust Fund amounts equivalent to the taxes received in the Treasury under section 4691.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available, without further Act of appropriation, upon request by the head of the appropriate Federal agency in such amounts as the agency head determines are necessary—

''(1) to provide funding under section 12 of the Clean Power Plant and Modernization Act of 1999, as in effect on the date of enactment of this section;

''(2) to provide funding for the demonstration program under section 13 of such Act, as so in effect;

''(3) to provide assistance under section 15 of such Act, as so in effect;

''(4) to provide assistance under section 16 of such Act, as so in effect; and

''(5) to provide funding under section 17 of such Act, as so in effect.''.

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following:

''Sec. 9511. Clean Air Trust Fund.''.

SEC. 9. ACCELERATED DEPRECIATION FOR INVESTOR-OWNED GENERATING UNITS.

(a) IN GENERAL.—Section 168(e)(3) of the Internal Revenue Code of 1986 (relating to classification of certain property) is amended—

(1) in subparagraph (E) (relating to 15-year property), by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following:

''(iv) any 45-percent efficient fossil fuel-fired generating unit.''; and

(2) by adding at the end the following:

''(F) 12-YEAR PROPERTY.—The term '12-year property' includes any 50-percent efficient fossil fuel-fired generating unit.''.

(b) DEFINITIONS.—Section 168(i) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(15) FOSSIL FUEL-FIRED GENERATING UNITS.—

''(A) 50-PERCENT EFFICIENT FOSSIL FUEL-FIRED GENERATING UNIT.—The term '50-percent efficient fossil fuel-fired generating unit' means any property used in an investor-owned fossil fuel-fired generating unit pursuant to a plan approved by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to place into service such a unit that is in compliance with sections 4(a)(2) and 5(c) of the Clean Power Plant and Modernization Act of 1999, as in effect on the date of enactment of this paragraph.

''(B) 45-PERCENT EFFICIENT FOSSIL FUEL-FIRED GENERATING UNIT.—The term '45-percent efficient fossil fuel-fired generating unit' means any property used in an investor-owned fossil fuel-fired generating unit pursuant to a plan so approved to place into service such a unit that is in compliance with sections 4(a)(1) and 5(b) of such Act, as so in effect.''.

(c) CONFORMING AMENDMENT.—The table contained in section 168(c) of the Internal Revenue Code of 1986 (relating to applicable recovery period) is amended by inserting after the item relating to 10-year property the following:

''12-year property ..... 12 years''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property used after the date of enactment of this Act.

SEC. 10. GRANTS FOR PUBLICLY OWNED GENERATING UNITS.

Any capital expenditure made after the date of enactment of this Act to purchase, install, and bring into commercial operation any new publicly owned generating unit that—

(1) is in compliance with sections 4(a)(1) and 5(b) shall, for a 15-year period, be eligible for partial reimbursement through annual grants made by the Secretary of the Treasury, in consultation with the Administrator, in an amount equal to the monetary value of the depreciation deduction that would be realized by reason of section 168(c)(3)(E) of the Internal Revenue Code of 1986 by a similarly-situated investor-owned generating unit over that period; and

(2) is in compliance with sections 4(a)(2) and 5(c) shall, over a 12-year period, be eligible for partial reimbursement through annual grants made by the Secretary of the Treasury, in consultation with the Administrator, in an amount equal to the monetary value of the depreciation deduction that would be realized by reason of section 168(c)(3)(D) of such Code by a similarly-situated investor-owned generating unit over that period.

SEC. 11. RECOGNITION OF PERMANENT EMISSION REDUCTIONS IN FUTURE CLIMATE CHANGE IMPLEMENTATION PROGRAMS.

It is the sense of Congress that—

(1) permanent reductions in emissions of carbon dioxide and nitrogen oxides that are accomplished through the retirement of old generating units and replacement by new generating units that meet the combustion heat rate efficiency and emission standards specified in this Act, or through replacement of old generating units with nonpolluting renewable power generation technologies, should be credited to the utility sector, and to the owner or operator that retires or replaces the old generating unit, in any climate change implementation program enacted by Congress;

(2) the base year for calculating reductions under a program described in paragraph (1) should be the calendar year preceding the calendar year in which this Act is enacted; and

(3) a reasonable portion of any monetary value that may accrue from the crediting described in paragraph (1) should be passed on to utility customers.

SEC. 12. RENEWABLE AND CLEAN POWER GENERATION TECHNOLOGIES.

(a) IN GENERAL.—Under the Renewable Energy and Energy Efficiency Technology Act of 1989 (42 U.S.C. 12001 et seq.), the Secretary of Energy shall fund research and development programs and commercial demonstration projects and partnerships to demonstrate the commercial viability and environmental benefits of electric power generation from—

(1) biomass (excluding unseparated municipal solid waste), geothermal, solar, and wind technologies; and

(2) fuel cells.

(b) TYPES OF PROJECTS.—Demonstration projects may include solar power tower plants, solar dishes and engines, co-firing of biomass with coal, biomass modular systems, next-generation wind turbines and wind turbine verification projects, geothermal energy conversion, and fuel cells.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under any other law, there is authorized to be appropriated to carry out this section $75,000,000 for each of fiscal years 2001 through 2010.

SEC. 13. CLEAN COAL, ADVANCED GAS TURBINE, AND COMBINED HEAT AND POWER DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Under subtitle B of title XXI of the Energy Policy Act of 1992 (42 U.S.C. 13471 et seq.), the Secretary of Energy shall establish a program to fund projects and partnerships designed to demonstrate

the efficiency and environmental benefits of electric power generation from—

(1) clean coal technologies, such as pressurized fluidized bed combustion and an integrated gasification combined cycle system;

(2) advanced gas turbine technologies, such as flexible midsized gas turbines and baseload utility scale applications; and

(3) combined heat and power technologies.

(b) SELECTION CRITERIA.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall promulgate criteria and procedures for selection of demonstration projects and partnerships to be funded under subsection (a).

(2) REQUIRED CRITERIA.—At a minimum, the selection criteria shall include—

(A) the potential of a proposed demonstration project or partnership to reduce or avoid emissions of pollutants covered by section 5 and air pollutants covered by section 111 of the Clean Air Act (42 U.S.C. 7411); and

(B) the potential commercial viability of the proposed demonstration project or partnership.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts made available under any other law, there is authorized to be appropriated to carry out this section $75,000,000 for each of fiscal years 2001 through 2010.

(2) DISTRIBUTION.—The Secretary shall make reasonable efforts to ensure that, under the program established under this section, the same amount of funding is provided for demonstration projects and partnerships under each of paragraphs (1), (2), and (3) of subsection (a).

SEC. 14. EVALUATION OF IMPLEMENTATION OF THIS ACT AND OTHER STATUTES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Energy, in consultation with the Chairman of the Federal Energy Regulatory Commission and the Administrator, shall submit to Congress a report on the implementation of this Act.

(b) IDENTIFICATION OF CONFLICTING LAW.—The report shall identify any provision of the Energy Policy Act of 1992 (Public Law 102–486), the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.), or the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.), or the amendments made by those Acts, that conflicts with the intent or efficient implementation of this Act.

(c) RECOMMENDATIONS.—The report shall include recommendations from the Secretary of Energy, the Chairman of the Federal Energy Regulatory Commission, and the Administrator for legislative or administrative measures to harmonize and streamline the statutes specified in subsection (b) and the regulations implementing those statutes.

SEC. 15. ASSISTANCE FOR WORKERS ADVERSELY AFFECTED BY REDUCED CONSUMPTION OF COAL.

In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2001 through 2015 to provide assistance, under the economic dislocation and worker adjustment assistance program of the Department of Labor authorized by title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.), to coal industry workers who are terminated from employment as a result of reduced consumption of coal by the electric power generation industry.

SEC. 16. COMMUNITY ECONOMIC DEVELOPMENT INCENTIVES FOR COMMUNITIES ADVERSELY AFFECTED BY REDUCED CONSUMPTION OF COAL.

In addition to amounts made available under any other law, there is authorized to be appropriated $75,000,000 for each of fiscal years 2001 through 2015 to provide assistance, under the economic adjustment program of the Department of Commerce authorized by the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.), to assist communities adversely affected by reduced consumption of coal by the electric power generation industry.

SECTION-BY-SECTION OVERVIEW OF ''THE CLEAN POWER PLANT AND MODERNIZATION ACT OF 1999''

WHAT WILL THE ''CLEAN POWER PLANT AND MODERNIZATION ACT OF 1999'' DO?

The ''Clean Power Plant and Modernization Act of 1999'' lays out an ambitious, achievable, and balanced set of financial incentives and regulatory requirements designed to increase power plant efficiency, reduce emissions, and encourage use of renewable power generation methods. The bill encourages innovation, entrepreneurship, and risk-taking.

The bill encourages ''retirement and replacement'' of old, pollution-prone, and inefficient generating capacity with new, clean, and efficient capacity. The bill does not utilize a ''cap and trade'' approach. Many believe that the ''retirement and replacement'' approach does a superior job at the local and regional levels of protecting public health and the environment from mercury pollution, ozone pollution, and acid deposition. On a global level, the ''retirement and replacement'' also does a far superior job of permanently reducing the volume of carbon dioxide emitted.

WHAT WILL THE BILL DO FOR THE ENVIRONMENT?

The bill would prevent at least 650 million tons of carbon dioxide emissions per year. Over time, even more greenhouse gas emissions will be avoided annually as increases in power plant efficiencies exceed 50%, more combined heat and power systems are installed, and use of renewable energy sources increases. Prevention of greenhouse gas emissions of up to 1 billion tons per year may be possible. Mercury emissions will be cut from more than 50 tons per year to no more than 5 tons per year. Annual emissions of acid rain producing sulfur dioxide emissions will be cut by more than 6 million tons beyond Phase II Clean Air Act of 1990 requirements. Nitrogen oxide emissions that result in summertime ozone pollution will be cut by 3.2 million tons per year beyond Phase II requirements.

Over a 50 year period, the proposal laid out in the bill will prevent more than 30 billion tons in carbon dioxide emissions, and maybe as high as 50 billion tons. Carbon dioxide is further addressed in the bill by authorizing expenditures for implementing known ways of biologically sequestering carbon dioxide from the atmosphere such as planting trees, preserving wetlands, and soil restoration.

Over a 50 year period, more than 2,200 tons of mercury emissions would be avoided. While this might not sound like a lot in relation to the other pollutants, consider that a teaspoon of mercury is enough to contaminate several millions of gallons of water. And over a 50 year period more than 300 million tons of sulfur dioxide and 160 million tons of nitrogen oxides will be prevented beyond the Phase II emission limits specified in the Clean Air Act of 1990.

Section 1. Title; table of contents

Section 2. Findings and purposes

Section 3. Definitions

Section 4. Heat rate efficiency standards for fossil fuel-fired generating units

On average, fossil fuel-fired power plants in the United States operate at a thermal efficiency rate of 33%, converting just one-third of the energy in the fuel to electricity, and wasting 67% of the heat generated by burning the fuel. Increasing efficiency in converting the energy in the fuel into electricity is really the only way to reduce carbon dioxide ''greenhouse'' emissions from these facilities. According to the Energy Information Administration, fossil-fired power plants in the United States emit more the 2 billion tons of carbon dioxide per year (or the weight equivalent of nearly 25,000 Washington Monuments every year). This is approximately 40% of annual domestic carbon dioxide emissions.

Section 4 lays out a phased two-stage process for increasing efficiency. In the first stage, by 10 years after enactment, all units in operation must achieve a heat rate efficiency (at the higher heating value) of not less than 45%. In the second stage, with expected advances in combustion technology, units commencing operation more than 10 years after enactment must achieve a heat rate efficiency (at the higher heating value) of not less than 50%.

If, for some unforeseen reason, technological advances do not achieve the 50% efficiency level, Section 4 contains a waiver provision that allows owners of new units to offset any shortfall in carbon dioxide emissions through implementation of carbon sequestration projects.

Section 5. Air emission standards for fossil fuel-fired generating units

Subsection (a) eliminates the ''grandfather'' loophole in the Clean Air Act and requires all units, regardless of when they were constructed or began operation, to comply with existing new source review requirements under Section 111 of the Clean Air Act. The average ''in service'' date for fossil-fired generating units in the United States is 1964—six years before passage of the Clean Air Act. More than 75% of operating fossil-fired generating units came into service before implementation of the 1970 Clean Air Act and are subject to much less stringent requirements than newer units.

Subsection (b) sets mercury, carbon dioxide, sulfur dioxide, and nitrogen oxide emission standards for units that are subject to the 45% thermal efficiency standards set forth in Section 4. For mercury, 90% removal of mercury contained in the fuel is required. For carbon dioxide, the emission limits are set by fuel type (i.e., natural gas = 0.9 pounds per kilowatt hour of output; fuel oil = 1.3 pounds per kilowatt hour of output; coal = 1.55 pounds per kilowatt hour of output). Ninety-five percent of sulfur dioxide emissions (and not more than 0.3 pounds per million Btus of fuel consumed), and 90 percent of nitrogen oxides (and not more than 0.15 pounds per million Btus of fuel consumed) are to be removed.

Subsection (c) contains the same emission standards for mercury, sulfur dioxide, and nitrogen oxides as those in Subsection (b). Increased thermal efficiency will result in lower emissions of carbon dioxide, and the fuel specific emission limits at the 50% efficiency level are lowered accordingly (i.e., natural gas = 0.8 pounds per kilowatt hour of output; fuel oil = 1.2 pounds per kilowatt hour of output; coal = 1.4 pounds per kilowatt hour of output).

Furthering the public's right-to-know information on emission volumes, Subsection (e) requires EPA to annually publish pollutant-specific emissions data for each generating unit covered by the ''Clean Power Plant and Modernization Act of 1999.'' In addition, at least once per year residential consumers will receive information from their electricity supplier on the emission volumes.

Section 6. Extension of renewable energy production credit

Section 45(c) of the Internal Revenue Code of 1986 is amended to include solar power,

and to extend renewable energy production credit to 2010 (it is currently set to expire in 1999).

Section 7. Mega watt hour generation fee, and Section 8. Clean air trust fund

The Clean Air Trust Fund is similar to the Highway Trust Fund and the Superfund. Revenue for the Clean Air Trust Fund will be provided through implementation of a fee on electricity produced by fossil-fired generating units that are ''grandfathered'' from the Clean Air Act's Section 111 new source requirements. Utilities will be assessed at the rate of 30 cents per megawatt hour of electricity that they produce from ''grandfathered'' units. For residential consumers receiving power from ''grandfathered'' plants, the cost of the fee would average 25 cents per month. Income from the fee will be placed in the Clean Air Trust Fund to pay for: a.) assistance to workers and communities adversely affected by reduced consumption of coal; b.) research and development and demonstration programs for renewable and clean power generation technologies (e.g., wind, solar, biomass, and fuel cells); c) demonstrations of the efficiency, environmental benefits, and commercial viability of electrical power generation from clean coal, advanced gas, and combined heat and power technologies; and d.) carbon sequestration projects.

Section 9. Accelerated depreciation for investor-owned generating units.

Under the Internal Revenue Code of 1986, utilities can depreciate their generating equipment over a 20-year period. New, cleaner and efficient generating technologies will experience shorter physical lifetimes compared to their dirtier, less efficient, but more durable predecessors. Over a 20-year timeframe, most components of new generating units will need to be replaced; some components will be replaced several times. To update the Internal Revenue Code of 1986 to reflect this change in the expected physical lifetimes of generating equipment, Section 9 amends Section 168 of the Code to allow depreciation over a 15-year period for units meeting the 45% efficiency level and the emission standards in Section 5(b) above. Section 168 is further amended to allow for deprecation over a 12-year period for units meeting the 50% efficiency level and the emission standards in Section 5(c).

Section 10. Grants for publicly-owned generating units.

No federal taxes are paid on publicly-owned generating units. Section 10 provides for annual grants in an amount equal to the monetary value of the depreciation deduction that would be realized by a similarly-situated investor owned generating unit under Section 9. Units meeting the 45% efficiency level and the emission standards in Section 5(b) above would receive annual grants over a 15-year period, and units meeting the 50% efficiency level and the emission standards in Section 5(c) would receive annual grants over a 12-year period.

Section 11. Recognition of permanent emission reductions in future climate change implementation programs.

This section expresses the sense of Congress that permanent reductions in emissions of carbon dioxide and nitrogen oxides that are accomplished through the retirement of old generating units and replacement by new generating units that meet the efficiency and emissions standards in the bill, or through replacement with non polluting renewable power generation technologies, should be credited to the utility sector and to the owner/operator in any climate change implementation program enacted by Congress. The base year for calculating reductions will be the year preceding enactment of the ''Clean Power Plant and Modernization Act of 1999.'' The bill stipulates that a portion of any monetary value that may accrue from credits under this section should be passed on to utility customers.

Section 12. Renewable and clean power generation technologies.

This section provides a total of $750 million over 10 years to fund research and development programs and commercial demonstration projects and partnerships to demonstrate the commercial viability and environmental benefits of electric power generation from biomass, geothermal, solar, wind, and fuel cell technologies. Types of projects may include solar power tower plants, solar dishes and engines, co-firing biomass with coal, biomass modular systems, next-generation wind turbines and wind verification projects, geothermal energy conversion, and fuel cells.

Section 13. Clean coal, advanced gas turbine, and combined heat and power generation demonstration program.

This section provides a total of $750 million over 10 years to fund projects and partnerships that demonstrate the efficiency and environmental benefits and commercial viability of electric power generation from clean coal technologies (including, but not limited to, pressurized fluidized bed combustion and integrated gasification combined cycle systems), advanced gas turbine technologies (including, but not limited to, flexible mid-sized gas turbines and baseload utility scale applications), and combined heat and power technologies.

Section 14. Evaluation of implementation of this act and other statutes

Not later than 2 years after enactment, DOE, in consultation with EPA and FERC, shall report to Congress on the implementation of the ''Clean Power Plant and Modernization Act of 1999.'' The report shall identify any provision of the Energy Policy Act of 1992, the Energy Supply and Environmental Coordination Act of 1974, the Public Utilities Regulatory Policies Act of 1978, or the Powerplant and Industrial Fuel Use Act of 1978 that conflicts with the efficient implementation of the ''Clean Power Plant and Modernization Act of 1999.'' The report shall include recommendations for legislative or administrative measures to harmonize and streamline these other statutes.

Section 15. Assistance for workers adversely affected by reduced consumption of coal

With increased power plant efficiency, less fuel will need to be burned to produce a given quantity of electricity. This section provides a total of $1.125 billion over 15 years ($75 million per year) to provide assistance to workers who are adversely affected as a result of reduced consumption of coal by the electric power generation industry. The funds will be administered under the economic dislocation and workers' adjustment assistance program of the Department of Labor authorized by Title III of the Job Training Partnership Act.

Section 16. Community economic development incentives for communities adversely affected by reduced consumption of coal

With increased power plant efficiency, less fuel will need to be burned to produce a given quantity of electricity. This section provides a total of $1.125 billion over 15 years ($75 million per year) to provide assistance to communities adversely affected as a result of reduced consumption of coal by the electric power generation industry. The funds will be administered under the economic adjustment program of the Department of Commerce authorized by the Public Works and Economic Development Act of 1965.

Section 17. Carbon sequestration

This section authorizes expenditure of $345 million over 10 years for development of a long-term carbon sequestration strategy ($45 million) for the United States, and authorizes EPA and USDA to fund carbon sequestration projects including soil restoration, tree planting, wetland's protection, and other ways of biologically sequestering carbon dioxide ($300 million). Projects funded under this section may not be used to offset emissions otherwise mandated by the ''Clean Power Plant and Modernization Act of 1999.''

POOR ME

(By Christopher Palmeri)

Utilities are telling the rate regulators that their old power plants are practically worthless. But they're selling them for fancy prices.

The Homer City Generation Station is a 34-year-old, coal-fired power plant near Pittsburgh. What's it worth? Until last year it was carried on the books of two utilities for $540 million. Then the companies sold it for $1.8 billion, or $955 per kilowatt—about what it would cost to build a brand-spanking-new electric plant.

Are old plants a millstone for utilities as they enter the deregulated future? That's what the utilities are telling rate regulators. We built all these plants over the years because you told us to, they are saying—and now that newcomers are about to undercut us, we need compensation for the ''stranded costs.'' The logic of compensation for stranded costs is unassailable. The only debate is over the amount. Is the average power plant indeed a white elephant?

According to data collected by Cambridge Energy Research Associates, the average nonnuclear power plant put up for sale in the last year sold for nearly twice its book value. Granted, the plants being sold tend to be the more desirable ones, by dint of their location or their fuel efficiency. Still, the pricing makes one wonder whether the power industry should be entitled to much of anything for stranded costs.

Some states—California, Maine, Connecticut and New York, for example—have ordered utilities to sell all or part of their generation capacity. That should set an arm's length fair price. Thanks largely to the fat prices received for its power plants, Sempra Energy, the parent of San Diego Gas & Electric, says that its stranded-cost charges related to generation—about 12% of a typical customer's bill—will be paid off by July. That is two and a half years ahead of schedule, a savings of $400 million for southern Californians.

Not every state legislature or utility commission has the political will to force divestiture, however. If a utility does not want to sell, the utility and the regulators have to estimate the fair market value for a plant and then see if that is a lot less than book value.

This is tricky business. Last year Allegheny Energy, parent of West Penn Power Co., estimated the value of its power plant at $148 a kilowatt, half of their book value. An expert hired by a number of industrial energy users suggested the value should be $409. A hearing revealed that Allegheny had bought back a half-interest in one of its plants two years earlier at a price of $612 a kilowatt. Allegheny settled with the Pennsylvania Public Utility Commission for a

valuation of $225 a kilowatt, half again the original estimate. At that price, Allegheny's 700,000 customers in western Pennsylvania are stuck paying $670 million in stranded costs.

What happens if the utility doesn't get the compensation it wants? Litigation. In New Hampshire the state legislature passed a law designed to open up the power market in 1996. New Hampshire's power companies and utility commission have been tied up in court ever since over the issue of stranded costs.

For this reason, legislators and regulators sometimes feel like they need to cut some deal, any deal, just to get a competitive market moving forward. The state of Virginia, for example, dodged any stranded cost calculation. In a move supported by local utilities, the legislature delayed true competition and simply froze electric rates until 2007. Utilities had donated more than $1 million to Virginia politicians in the last two election cycles.

Last year Ohio legislators proposed a bill to open up the power market. They figured stranded costs at $6 billion, spread among Ohio's eight big utilities. Not liking that number, the utilities came up with an $18 billion figure. The latest compromise is $11 billion. This number represents, in effect, the excess of the plants' book value over their market value.

Wait a minute, says Samuel Randazzo, an attorney for some industrial power users. That $11 billion number is more than the book value of all the plants. Can the utilities lose more than their investment? Negotiations are to continue.

''We are applying a political solution to an economic problem,'' shrugs Ohio utility commissioner Craig Glazer. ''All intellectual arguments have been thrown out the window. Now it comes down to who screams the loudest.

Expect further screaming as utilities enter the deregulated market.

By Mr. ENZI (for himself and Mr. THOMAS):

S. 1950. A bill to amend the Mineral Leasing Act of 1920 to ensure the orderly development of coal, coalbed methane, natural gas, and oil in the Powder River Basin, Wyoming and Montana, and for other purposes; to the Committee on Energy and Natural Resources.

THE POWDER RIVER BASIN RESOURCE DEVELOPMENT ACT

Mr. ENZI. Mr. President, I rise today to introduce the ''Powder River Basin Resource Development Act of 1999.'' This legislation is designed to provide a procedure for the orderly and timely resolution of disputes between coal producers and oil and gas operators in the Powder River Basin in north-central Wyoming and southern Montana. This legislation is cosponsored by my colleague from Wyoming, Senator THOMAS.

Mr. President, the Powder River Basin in Wyoming and southern Montana is one of the richest energy resource regions in the world. This area contains the largest coal reserves in the United States, providing nearly thirty percent of America's total coal production. This region also contains rich reserves of oil and gas, including coalbed methane. Wyoming is the fifth largest producer of natural gas in the county and the sixth largest producer of crude oil. The Powder River Basin plays an important role in the Wyoming's oil and gas production, and this role promises to grow as the exploration and production of coalbed methane increases over the next several years. This region, and the State of Wyoming as a whole, provides many of the resources that heat our homes, fuel our cans, generate electricity for our computers, microwaves, and televisions. In short, there is very little that any of us do in a day that is not affected by the resources of coal, oil, and natural gas.

The production of these natural resources is a vital part of the economy of my home state of Wyoming. The production of coal and oil and gas employs more than 21,000 people in Wyoming. The property taxes, severance taxes, and state and federal royalties fund our schools, our roads, and many of the other services that are essential for the functioning of our state. Since Wyoming has no state income tax, our State relies heavily on the minerals industry for our tax base.

Given the great importance both the coal and oil and gas industries have to Wyoming's economy, the State of Wyoming and the Federal Government have tried to encourage concurrent development in areas where it is feasible and safe to do so. Unfortunately, this is not always possible. This legislation is designed to provide a procedure for the fair and expeditious resolution of conflicts between oil and gas producers and coal producers who have interests on federal land in the Powder River Basin in Wyoming and southern Montana.

Mr. President, this legislation sets forth a reasonable procedure to resolve conflicts between coal producers and oil and gas producers when their mineral rights come into conflict because of overlapping federal leasing. First, this proposal requires that once a potential conflict is identified, the parties must attempt to negotiate an agreement between themselves to resolve this conflict. Second, if the parties are unable to come to an agreement between themselves, either of the parties may file a petition for relief in U.S. district court in the district in which the conflict is located. Third, after such a petition is filed, the court would determine whether an actual conflict exists. Fourth, if the court determines that a conflict does in fact exist, the court would determine whether the public interest, as determined by the greater economic benefit of each mineral, is best served by suspension of the federal coal lease or suspension or termination of all or part of the oil and gas lease. Fifth, a panel of three experts would be assembled to determine the value of the mineral of lesser economic value. Each party to the action; the oil and gas interest, the coal interest, and the federal government, would each appoint one of the three experts. Finally, after the panel issues its final valuation report, the court would enter an order setting the compensation that is due the developer who had to temporarily or permanently forgo his development rights. This compensation would be paid by the owner of the mineral of greater economic value. A credit against federal royalties would also be available against the compensation price in a limited number of situations where the value of such compensation was not foreseen in the original federal lease bid.

Mr. President, the ''Powder River Basin Resource Development Act of 1999'' has several benefits over the present system. First, it requires parties whose mineral interests may come into conflict to attempt to negotiate an agreement among themselves before either one of them may avail themselves of the expedited resolution mechanism. No such requirement exists today. Second, it directs the Secretary of the Interior to encourage expedited development of federal minerals and that are leased pursuant to the federal Mineral Leasing Act, that exist in conflict areas, and which may otherwise be lossed or bypassed. As such, this legislation encourages full and expeditious development of federal resources in this narrow conflict area where it is economically feasible and safe to do so. Third and finally, this bill provides an expeditious procedure to resolve conflicts that cannot be solved by the two parties alone, and it does so in a manner that ensures that any mineral owner will be fairly compensated for any suspension or loss of his mineral rights. In turn, this proposal will prevent the serious economic hardship to hundreds of families and the State treasury that could occur if mineral development is stalled for an indefinite amount of time due to protracted litigation under the current system.

Mr. President, this legislation builds on legislation I introduced last year with Senators THOMAS and BINGAMAN, which passed Congress and was signed into law last November. That bill, S. 2500, ensured that existing lease and contract rights to coalbed methane would not be terminated by a decision from the 10th Circuit Court of Appeals which concluded that coalbed methane gas was reserved to the federal government under earlier coal reservation Acts. As it turned out, the Supreme Court earlier this year realized we got in right in our bill and held that the coalbed methane was in fact a gas and not a solid, and therefore was not reserved to the government under earlier coal reservation Acts. As such, the protections we provided in S. 2500 were guaranteed to future as well as past oil and gas leaseholders.

Mr. President, S. 2500 was an important step in providing certainty and resolution to the question of mineral ownership in Wyoming, and throughout the country. This bill, builds on last year's work by providing a means to

resolve ongoing development conflicts between owners of coal and oil and gas in the Powder River Basin. It represents the result of nearly a year of negotiations between the coal and coal-bed producers, as well as the deep oil and gas interests, on a method to fairly reconcile mineral development disputes when they occur because of multiple leasing by the federal government. This bill has also incorporated recommendations made by the Bureau of Land Management. I look forward to working with all the affected parties during the second session of the 106th Congress to pass legislation that will put into place a reasonable, balanced method to ensure that we receive the best return on our valuable natural resources in the Powder River Basin.

By Mr. SCHUMER (for himself and Ms. COLLINS):

S. 1951. A bill to provide the Secretary of Energy with authority to draw down the Strategic Petroleum Reserve when oil and gas prices in the United States rise sharply because of anticompetitive activity, and to require the President, through the Secretary of Energy, to consult with Congress regarding the sale of oil from the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

OIL PRICE SAFEGUARD ACT

Ms. COLLINS. Mr. President, I rise this afternoon to join my distinguished colleague, Senator SCHUMER, in introducing legislation that provides an effective option to the President and the Secretary of Energy to address the unfair, harmful manipulation in the global oil market. The Oil Price Safeguard Act would help to moderate sharp spikes in oil and gas prices caused by price fixing and production quotas through the judicious use of our enormous petroleum reserves.

The global oil market is dominated by an international cartel with the ability to dramatically affect the price of oil. The eleven member countries of the Organization of Petroleum Exporting Countries known as OPEC supply over 40 percent of the world's oil and possess 78 percent of the world's total proven crude oil reserves. Their control of the world's oil supply allows these countries to collude to drive up the price of oil. OPEC has power to dominate the market and when it wields this power, consumers lose. Mr. President, if OPEC operated in the United States, the Department of Justice would undoubtedly prosecute the cartel for violation of U.S. anti-trust laws, but the cartel is beyond the reach of our antitrust enforcement.

To appreciate how much economic power OPEC wields, it is helpful to review the historical relationship between world oil prices and the U.S. Gross Domestic Product. When OPEC cuts production to increase profits, the American consumer suffers, as does our economy. Rising oil prices increase transportation and manufacturing costs, dampening economic growth.

The chart behind me entitled, ''Oil is a Vital Resource for the U.S. Economy,'' was prepared by the Energy Information Administration of the Department of Energy. On this chart, world oil prices are represented by the blue line, and U.S. Gross Domestic Product is represented by the red line. It is easy to see the inverse relationship between the two. When world oil prices are high, U.S. Gross Domestic Product drops. For example, in the late 1970s and early 1980s, as the price of oil climbed, the U.S. economy slumped into a deep recession. Conversely, the strength currently enjoyed by the U.S. economy was until recently accompanied by low oil prices.

If these historical trends hold, the current rise in crude oil prices is a serious threat to our economic prosperity. This second chart entitled ''EIA Crude Oil Price Outlook,'' shows that crude oil prices have risen since January 1999 and are expected to continue rising this winter. To a large extent, this chart demonstrates the ability of OPEC to drive the price of oil up. It is chilling, that the Federal agency responsible for projecting energy prices for the government is predicting that the price of oil will be above $25 a barrel into January of next year. This prediction underscores the need for the legislation Senator SCHUMER and I introduce today.

The bottom line is that consumers, as well as businesses, are hurt by expensive petroleum products. A rise in crude oil prices increases the price of home heating oil and gasoline. Northern states like Maine are particularly hard hit by increased oil prices because of the need to heat homes through long cold winters. Since about 6 out of 10 Maine homes burn oil and the average household uses 800 gallons annually increases in oil prices have a dramatic impact on the state's population and particularly on low-income families and seniors.

A rural state like Maine is also hard hit by increased gasoline prices at the pump since rural residents often travel further distances than those living in urban or suburban areas. For example, my constituents in Aroostook County are currently paying close to $1.50 a gallon for regular octane gasoline. At the same time, higher petroleum prices increase the cost of transporting oil and gasoline to rural areas, like Northern Maine.

At a recent OPEC meeting, the member nations reasserted their resolve to maintain high crude oil prices through production quotas. This is particularly troubling considering that the Energy Information Administration has projected that if New England experiences a particularly cold winter, the price of home heating oil could reach as high as $1.20 per gallon. This is 50 percent higher than what New Englanders paid for oil last year. Even if this winter has normal weather, the Energy Information Administration predicts significantly increased oil prices due in large measure to the OPEC production reductions. This chart, ''Crude and Distillate Price Outlook Higher than Last Winter'' shows projections for steeply increased prices in crude oil and, consequently, home heating oil. As you can see, prices have risen already and are expected to reach levels higher than those experienced during the winter of 1996–97.

Even if our diplomatic efforts fail to break OPEC's choke-hold on the world oil supply, we need not sit idly as oil and gas prices rise well-beyond where they would be in a normally-functioning market.

The United States has a tool available to ease the sting of this unfair market manipulation. The United States owns the largest strategic reserve of crude oil in the world. The Strategic Petroleum Reserve (SPR) consists of roughly 571 million barrels of crude oil held in salt caverns in Texas and Louisiana. The Energy Policy and Conservation Act allows the Secretary of Energy to sell oil from the reserve if the President makes certain findings set forth in the law. In order to tap into the Reserve, the President must determine that an emergency situation exists causing significant and lasting reductions in the supply of oil and severe price increases likely to cause a major adverse impact on the national economy. In the history of the Reserve, the President has only made this declaration once, during the Gulf War.

The legislation I am proud to sponsor with Senator SCHUMER today, who has been a leader on this issue, will give the President more flexibility in using the Strategic Petroleum Reserve to protect American consumers. Specifically, this measure will amend the Energy Policy and Conservation Act to authorize a draw down of the reserve when the President finds that a significant reduction in the supply of oil has been caused by anti-competitive conduct. While many, myself included, believe that the President currently should consider ordering a draw down to counteract OPEC's latest market-distorting production quotas, this legislation will make it clear that he has the power to do so. It will also ensure that the proceeds from a draw-down of the Reserve are used to replenish its oil. The bill does by mandating that the proceeds are deposited in a special account designed for that purpose. We want to give the President the authority to use the SPR to restore market discipline, but not to permanently deplete the reserve in the process.

To further encourage the use of the SPR to offset harmful and uncompetitive activities of foreign pricing cartels, the Oil Price Safeguard Act will require the Secretary of Energy to consult with Congress regarding the sale of oil from the Reserve. If the price of a barrel of crude exceeds 25 dollars for a period greater than 14 days, the

President, through the Secretary of Energy, will be required to submit to Congress a report within thirty days. This report will have four parts. First, it will detail the causes and potential consequences of the price increase. Second, it will provide an estimate of the likely duration of the price increase, based on analyses and forecasts of the Energy Information Administration. Third, it will provide an analysis of the effects of the price increase on the cost of home heating oil. And fourth, the report will provide a specific rationale for why the President does or does not support a draw down and distribution of oil from the SPR to counteract anti-competitive behavior in the oil market.

The bill we are introducing today will grant important new authority to the President to protect consumers from the market-distorting behavior of foreign cartels. It will require the President to explain to Congress and the American people why actions available to the President have not been exercised to protect consumers. I urge my colleagues to join Senator SCHUMER and me in working for expeditious passage of this important measure.

I yield to my colleague, the distinguished Senator from New York, so he may provide further explanation of our legislation. I commend him for his leadership on this issue.

Mr. SCHUMER. I thank Senator COLLINS from Maine for her leadership on this issue. She has well represented her constituents on an issue of great concern. Like Maine, northern New York—much of New York—is very concerned with the prices of oil; not only gasoline but some heating oil, which—just as it is in Maine—is going through the roof in New York as we come into this winter season, which, thus far anyway, has been colder than people have predicted. I thank the Senator for garnering time to talk about our legislation, and I look forward to working with her on this issue.

Two months ago, I wrote President Clinton and Energy Secretary Richardson requesting that they look into the possibility of releasing a modest amount of oil from our Nation's well-stocked Strategic Petroleum Reserve. I made this request not because the price of crude oil was rising, but rather because global oil prices had recently more than doubled, primarily due to the new-found unity between OPEC members and allies to uphold rigid supply quotas—not free market but rigid supply quotas.

OPEC's decision in September to maintain the supply quotas meant the daily global oil supply would remain millions of barrels below last year's levels—and millions of barrels per day below global demand. The effects this decision would have on oil prices were clear. Yesterday, my colleagues—listen to this—oil closed at nearly $26 a barrel, and many industry experts now believe it will go to $30 or even $35 a barrel this winter.

Most industry and financial experts believe oil prices above $25 per barrel for an extended period will adversely affect economic growth, even if you come from Arizona; not only will it raise your gasoline prices—you don't have to worry about home heating oil, but $35 per barrel is clearly recessionary.

The effects will be felt most among the poor and elderly, both at the gas pump and in a sharp increase in the cost of home heating oil. It will effect our manufacturing, transportation, as well as other businesses that rely on oil.

I don't believe in interfering with free markets. But these OPEC decisions are not examples of fair economic play. In fact, OPEC recently announced that it would not even revisit the supply until March of 2000. With American and global oil demand increasing, and a cold winter forecast for North America, OPEC's continued supply quota could have a severely detrimental effect on the U.S. economy over the coming months, and may very well throw sand in the gears of the global economy.

Unfortunately, OPEC, with more than 40 percent market share in the global oil market, can have inordinate power over the global economy.

So the question is, Should we rely on the judgment of OPEC ministers to make the right decision when it comes to the American and the world economy? The answer is clearly no.

The next question is, What can we do about it?

My colleague from Maine, Senator COLLINS, and I have worked together to formulate what we believe is a reasonable response policy by the U.S. Government to instances when foreign oil producers collude to manipulate oil prices to a level that will likely cause a significant adverse impact on our economy, not to mention gasoline, which could go to a $1.60, $1.70, or even higher a gallon, and home heating oil that could go, in my part of the country, from $1 to $1.25 a gallon.

Here is how our legislation works. It works within the parameters of the 1975 Energy Policy and Conservation Act, which set up the U.S. Strategic Petroleum Reserve and the Energy Policy Act of 1992, which described oil supply reductions leading to severe price increases as a potential national emergency.

We simply add a provision that allows the Energy Secretary to order a drawdown of the SPR when oil and gas prices in the U.S. rise sharply because of anticompetitive conduct of foreign oil producers.

Oil supply can fall short for many natural, market-based reasons. But when the shortfall is due to opportunistic manipulations by foreign producers, especially to the degree that it will harm our economic well-being, we have the right to act in our own defense.

That is why our bill also requires the administration to report to Congress within 30 days after the price of oil sustains a price higher than $25 for more than 2 weeks. This reporting requirement—which will get Congress more involved in SPR policies—simply calls for a comprehensive review of the causes and likely consequences of the price increase. It also requires the President to explain why the administration does or does not —we don't force his hand—support the drawdown and distribution of oil from the SPR.

Before concluding, I want to make a few things clear about this legislation. First, it doesn't attempt in any way to bring oil prices down to what some would call unreasonable levels. Most of us believe oil prices were unrealistically low last winter, and that OPEC's initial supply cuts were an understandable strategy to achieve a better balance between global supply and demand.

But to maintain the cuts despite the price recovery and the projected growth in demand amounts to nothing less than price gouging.

OPEC is currently enjoying unity as a cartel not seen since the early 1980s.

The bill also protects our national security by requiring that proceeds from the sale of oil from the SPR be used only to resupply the SPR, with profits from sales remaining in the SPR account. Therefore, in the long run, we are not going to deplete the oil reserve. We are just going to use it to try to bring oil prices to a reasonable level.

And with the SPR currently stocked at 570 million barrels, we have more than enough oil to release several hundred thousand barrels a day in the event of a supply crisis without undercutting our stockpile. This should be more than sufficient to pressure oil producers to increase their supply to more realistically meet demand.

The bottom line is this legislation would show foreign producers the U.S. can and may well intervene when unfair markets threaten our domestic economy. We will say loud and clear our national economic health is a national security issue. That knowledge may be sufficient to prevent OPEC from extensive oil market manipulations in the first place.

A signal to OPEC that we are willing to use some of our strategic reserves to stabilize oil prices is consistent with the prudent long-term approach toward maintaining a stable economy.

Mr. President, this legislation is a measured, bipartisan response to a vital economic issue. I look forward to debating and passing this legislation next year.

With that, I yield back my time to the good Senator from Maine and thank her for her leadership.

Ms. COLLINS. Mr. President, it has been a pleasure to work with the Senator from New York on this issue.

By Mr. BINGAMAN (for himself, Mr. THOMPSON, and Mr. KENNEDY):

S. 1954. A bill to establish a compensation program for employees of the

Department of Energy, its contractors, subcontractors, and beryllium vendors, who sustained beryllium-related illness due to the performance of their duty; to establish a compensation program for certain workers at the Paducah, Kentucky, gaseous diffusion plant; to establish a pilot program for examining the possible relationship between workplace exposure to radiation and hazardous materials and illnesses or health conditions; and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

ENERGY EMPLOYEES' COMPENSATION ACT

Mr. BINGAMAN. Mr. President, I am pleased to introduce today, along with my colleagues, Senators THOMPSON and KENNEDY, a bill to establish compensation programs for workers at Department of Energy sites, contractors, and vendors who are ill because they were exposed to severe chemical and radioactive hazards while on the job. This bill, the Energy Employees' Compensation Act, will recognize three of the more egregious workplace hazards that were allowed to exist over the years at DOE facilities.

The first of these situations was the exposure of workers at DOE sites and vendors to beryllium, a metal that has been used for the past 50 years in the production of nuclear weapons. Even very small amounts of exposure to beryllium can result in the onset of Chronic Beryllium Disease (CBD), an allergic lung reaction resulting in lung scarring and loss of lung function. The only treatment is the use of steroids to control the inflammation. There is no cure. Once a person has been exposed to beryllium, he or she has a lifelong risk of developing CBD. While only 1 to 6 percent of exposed people will generally develop CBD, some work tasks are associated with disease rates as high as 16 percent. Beryllium was used at 20 DOE sites, including sites in my state of New Mexico. An estimated 20,000 workers may have been exposed, including 1,000–1,500 in New Mexico. To date, DOE screening programs have identified 146 cases of CBD among current and former workers, although the number can be expected to grow. The people who are affected by this disease were typically blue-collar workers at these facilities. They are not covered by the federal workers' compensation system, and the various state workers' compensation programs are not well geared to deal with chronic occupational illnesses like CBD. I believe that, since these workers became exposed to beryllium while working in the defense of their country, the country owes them something in return, should they come down with Chronic Beryllium Disease. That is why I will fight to help the workers and their families in New Mexico and elsewhere through this part of the bill.

The second situation which this bill seeks to remedy occurred at the DOE Paducah Gaseous Diffusion Plant in Kentucky. Here, workers were unknowingly exposed to plutonium and other highly radioactive materials that were present in recycled uranium sent to the plant by the former Atomic Energy Commission. The AEC and the managers of the plant knew about this hazard in the 1950s, but enhanced protection for workers at Paducah was not implemented until 1992. This is an unbelievable and outrageous error. These workers deserve full compensation for the health effects of exposures that they were subject to without their knowledge.

The third situation that this bill addresses occurred to 55 workers at the DOE's East Tennessee Technology Park, who also suffered exposures to radiation and hazardous materials that have resulted in occupational illness. Through this provision, DOE can make a grant of $100,000 to each worker, if medical experts find that it is appropriate.

The Department of Energy, under Secretary Richardson's leadership, is facing up to some of its past failures to properly oversee worker health and safety at its facilities. It is a tragedy that we have to introduce and pass bills like this one, particularly in cases where it seems so clear that the problems could have been prevented. But this bill is the right thing to do for workers who served their country and expected that they would be kept safe from occupational injury. As the Congress considers this bill, I hope that we also remain vigilant to the ongoing challenges to worker safety and health at DOE facilities, particularly in the parts of the Department that are being reorganized as a result of legislation we passed earlier this year.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

TITLE I—ENERGY EMPLOYEES' BERYLLIUM COMPENSATION ACT

SECTION 101. SHORT TITLE

This section designates this title as the ''Energy Employees' Beryllium Compensation Act.''

SECTION 102. FINDINGS

Employees of the Department of Energy, and employees of the Department's contractors and vendors, have been, and currently may be, exposed to harmful substances, including dust particles or vapor of beryllium, while performing duties uniquely related to the Department of Energy's nuclear weapons production program. Exposure to dust particles or vapor of beryllium in this situation may cause beryllium sensitivity and chronic beryllium disease, and those who suffer beryllium-related health conditions should have uniform and adequate compensation.

SECTION 103. DEFINITIONS

This section provides the definitions of a number of terms necessary to implement this legislation. It also incorporates the definitions of multiple terms from the Federal Employees' Compensation Act, section 8101 of title, United States Code.

A beryllium vendor is defined as those vendors known to have produced or provided beryllium for the Department of Energy. The definition allows the Secretary of Energy to add other vendors by regulation.

A covered employee is defined as an employee of entities that contracted with the Department of Energy to perform certain services at a Department of Energy facility and an employee of a subcontractor. The definition also includes an employee of a beryllium vendor during a time when beryllium was being processed and sold to the Department of Energy. An employee of the federal government is also a covered employee if the employee may have been exposed to beryllium at a Department of Energy facility or that of a beryllium vendor.

Covered illness is defined as Beryllium Sensitivity and Chronic Beryllium Disease. The statute sets forth criteria by which the existence of these conditions may be established. Consequential injuries arising from these conditions are also covered illnesses.

SECTION 104. REGULATORY AUTHORITY TO REVISE DEFINITIONS

This section provides specific authority for the Secretary of Energy to designate by regulation additional entities as beryllium vendors for the purposes of this title. This section also authorizes the Secretary of Energy to provide by regulation additional criteria through which a claimant may establish the existence of a covered illness.

With regard to proposed subsection (a), it is possible that new vendors of beryllium or beryllium-related products will develop contractual relationships with the Department of Energy in the future; as these contractual relationships develop, it will become necessary to designate these vendors as ''beryllium vendors'' for the purposes of this title.

With respect to subsection (b), advances in medical science and testing, and in the medical field's understanding of the harmful effects of exposure to beryllium, are expected to occur. The definition of ''covered illness'' in section 103(4) of this title represents the understanding of the Department of Energy of the current state of medical knowledge on the demonstrated methods of establishing beryllium sensitivity or chronic beryllium disease. This subsection would allow the Secretary of Energy to specify additional criteria by which a claimant may establish existence of a covered illness.

SECTION 105. ADMINISTRATION

This section provides that the Secretary of Energy may administer the program or may enter into an agreement with another agency of the United States, such as the Department of Labor, to administer the program. The Department of Energy would reimburse the other agency for its administrative services.

SECTION 106. EXPOSURE TO BERYLLIUM IN THE PERFORMANCE OF DUTY

In order to receive compensation under the Energy Employees' Beryllium Compensation Act (EEBCA) for any condition related to exposure to beryllium, a covered employee must be determined to have been exposed to beryllium in the performance of duty.

Subsection (a) of this section provides a rebuttable presumption that employees of DOE contractors (section 103(3)(A)) and federal employees (section 103(3)(C)) who were employed at a DOE facility, or whose employment caused them to be present at a DOE or a beryllium vendor's facility, when beryllium was present, were exposed to beryllium in the performance of duty. To rebut the presumptions, substantial evidence would have to be introduced into the record establishing that the covered employee was not exposed to beryllium or beryllium dust during the employee's presence at the facility.

With respect to employees of beryllium vendors (section 103(3)(B)), subsection (b) of

this section provides that these employees have the burden of establishing by substantial evidence exposure to beryllium that was intended for sale to, or to be used by, the DOE. Thus, to the extent that employees of beryllium vendors adduce evidence of exposure to beryllium or beryllium dust solely in circumstances where the eventual product was not intended for sale to, or use by, the DOE, this evidence would not support a finding that the employees were exposed to beryllium in the performance of duty.

SECTION 107. COMPENSATION FOR DISABILITY OR DEATH, MEDICAL SERVICES, AND VOCATIONAL REHABILITATION

This section incorporates into this statute the relevant provisions of the FECA regarding payment of compensation and other benefits for covered illnesses. Provisions incorporated by reference include FECA sections regarding medical services and benefits (5 U.S.C. §8103); vocational rehabilitation (§§8104 and 8111(b)); total (§8105) and partial (§8106) disability; schedule awards for permanent impairment (§§8107–8109); augmented compensation for dependents (§8110); additional compensation for services of attendants (§8111(a)); maximum and minimum monthly payments (§8112); increase or decrease of basic compensation (§8113); wage-earning capacity (§8115); three-day waiting period (§8117); compensation in case of death (§8133); funeral expenses (§8134); lump-sum payment (§8135); and cost-of-living adjustment (§8146a (a) and (b)).

Subsection (b) of this section provides that all of the compensation under this title will come out of the Energy Employees' Beryllium Compensation Fund established pursuant to section 120 of this title and is limited to amounts available in that fund.

Subsection (c) of this section prohibits any payment of compensation for any period prior to the effective date of the title, except for the retroactive lump-sum compensation payment specified in section 111 of this title.

SECTION 108. COMPUTATION OF PAY

This section incorporates 5 U.S.C. §8114 regarding computation of pay into this title. Subsection (b) of this section contains slight wording changes from 5 U.S.C. §8114(d)(3) necessitated by the fact that not all covered employees under this title are federal employees within the meaning of the FECA.

SECTION 109. LIMITATIONS ON RECEIVING COMPENSATION

This section parallels, with some modifications, the restrictions on receipt of compensation simultaneously with receipt of other benefits for the same covered illness set forth in 5 U.S.C. §8116. Subsections (a) and (b) of section 109 contain the same prohibitions against dual benefits sete forth in 5 U.S.C. §8116(a) and (b), and apply to federal employees and beneficiaries whose benefit derives from federal employees. Thus, individuals who are eligible to receive benefits under this title may not simultaneously receive those benefits and an annuity from the Office of Personnel Management, whether such annuity is based on length of service or disability. The election required by subsection (b) is not subject to the provisions of section 110 regarding coordination of benefits.

Subsection (c) applies only to federal employees awarded benefits under this title and under FECA for the same covered illness or death, and requires an election between the two systems.

Once an informed election has been made, the election is irrevocable.

Subsections (d) and (e) require an individual eligible to receive benefits under this title, and also eligible to receive benefits under a state worker's compensation system based on the same covered illness or death, to elect either benefits under this title (subject to the reduction in benefits set forth in section 110) or under the applicable state workers' compensation system, unless the state workers' compensation coverage was secured by an insurance policy or contract, and the Secretary of Energy specifically waives the requirement to make an election. An informed election under these two subsections, once made, is irrevocable.

Subsection (f) requires a widow or widower who would theoretically be eligible for benefits derived from more than one husband or wife to make an election of one benefit. The provision prevents a potential duplication of compensation benefits in unusual, but predictable, circumstances. An informed election under this subsection, once made, is irrevocable.

SECTION 110. COORDINATION OF BENEFITS

This section provides for reduction of benefits under this title if the claimant is awarded benefits under any state or federal workers' compensation system for the same covered illness or death. This section is intended to prevent a double recovery by individuals who have already received compensation for illnesses covered by this title. Subsection (a) of this section provides for a dollar-for-dollar reduction of benefits under this title by the amount of benefits received under this state or federal workers' compensation system, less than reasonable costs of obtaining such benefits. The determination of the reasonable costs obtaining such benefits is a matter reserved to the Secretary of Energy.

Subsection (b) of this section provides that, if the Secretary of Energy has granted a waiver of the election requirement under section 109(d)(2) of this title, the amount of compensation benefits is reduced by eighty percent of the net amount of any state workers' compensation benefits actually received or entitled to be received in the future, after deducting the claimant's reasonable costs (as determined by the Secretary of Energy) of obtaining such benefits. Permitting an employee whose state workers' compensation remedy is secured by insurance to retain an additional twenty percent of state benefits provides an incentive for the employee to seek such benefits in situations where the Secretary of Energy has determined that it is appropriate to waive the election requirement. In these circumstances; value may be obtained for insurance policies purchased prior to the enactment of this title.

SECTION 111. RETROACTIVE COMPENSATION

This section allows an eligible covered employee to elect to receive retroactive compensation of $100,000, in lieu of any other compensation under this title, if the employee was diagnosed, prior to October 1, 1999, as having a beryllium-related pulmonary condition consistent with Chronic Beryllium Disease and if the employee demonstrates the existence of such diagnosis and condition by medical documentation created during the employee's lifetime, at the time of death, or autopsy.

When an employee who would have been eligible to elect to receive retroatice compensation dies prior to making the election, of any cause, the employee's survivors may make the election. The right to make an election shall be afforded to survivors in the order of precedence set forth in section 8109 of title 5, United States Code, which is based, in essence, on proximity of family relationship to the covered employee.

The employee or survivor must make the election within 30 days after the date the Secretary of Energy determined to award compensation for total or partial disability or within 30 days after the date that the Secretary informs the employee or the employee's survivor of the right to make the election, whichever is later, unless the Secretary extends the time. Informed elections are irrevocable and binding on all survivors.

When an employee or a survivor has made an election, no other payment of compensation may be made on account of any other beryllium-releated illness.

A determination that the covered employee had ''beryllium-related pulmonary condition'' does not constitute a determination that he or she had a covered illness.

Retroactive compensation is not subject to a cost of living adjustment.

SECTION 112. EXCLUSIVITY OF REMEDY AGAINST THE UNITED STATES, CONTRACTORS, AND SUBCONTRACTORS

This section provides that the benefits authorized under this title are an exclusive remedy for individuals against the United States, DOE, and DOE contractors and subcontractors, except for proceedings under a state or federal workers compensation statute, subject to sections 109 and 110 of this title.

SECTION 113. ELECTION OF REMEDY AGAINST BERYLLIUM VENDORS

This section provides that if an individual elects to accept payment under this title, acceptance also will be an exclusive remedy against beryllium vendors who have supplied DOE with beryllium products, except for proceedings under a state or federal workers compensation statute, subject to sections 109 and 110.

SECTION 114. CLAIM

This section adopts the requirements of a claim in section 8121, title 5, United States Code, which requires a claim to be in writing and delivered or properly mailed to the Secretary of Energy. The claim must be on an approved form, contain all required information, sworn, and accompanied by a physician's certificate stating the nature of the injury and the nature and probable extent of the disability, although the Secretary may waive these latter four requirements for reasonable cause.

SECTION 115. TIME LIMITATION ON FILING A CLAIM

This section limits the time for fling a claim under this title.

SECTION 116. REVIEW OF AWARD

This section provides that the decisions of the Secretary of Energy in allowing or denying any payment under this title are final, and are not subject to judicial review or review by another official of the United States. For purposes of this section, decisions issued by the Beryllium Compensation Appeals Panel (to be established under regulations authorized by section 122 of this title) are decisions of the designee of the Secretary of Energy, in the same way that the decisions of the Employees' Compensation Appeals Board established under 5 U.S.C. §8149 are decisions of the designee of the Secretary of Labor.

SECTION 117. ASSIGNMENT OF CLAIM

This section is identical to 5 U.S.C. §8130.

SECTION 118. ADJUDICATION

Subsection (a) provides that, if the Secretary of Energy establishes new criteria for establishing coverage of a covered illness by specifically promulgating a regulation pursuant to the authority granted by section 104(b) of this title, a claimant has the right to request reconsideration of a decision awarding or denying coverage. This provision is intended to permit a claimant whose claim was properly denied under the criteria in effect at the time of the initial denial to seek and obtain reconsideration based on the new criteria, notwithstanding the fact that,

under the administrative appeal rights contained in this title, the claimant would not be entitled to reconsideration.

Subsection (b) incorporates into this title FECA provisions regarding physical examinations (§ 123); findings and awards (§ 8124); misbehavior at proceedings (§ 8125); subpoenas, oaths, and examination of witnesses (§ 8126); representation and attorney's fees (§ 8127); reconsideration (§ 8128); and recovery of overpayments (§ 8129).

SECTION 119. SUBROGATION OF THE UNITED STATES

This section incorporates the provisions of 5 U.S.C. §§ 8131 and 8132 into this title. Based on these provisions, the United States has the same statutory right of reimbursement of the compensation payable under this title against the proceeds of any recovery from a responsible third party tortfeasor as that set forth in the FECA.

Subsection (c) notes that, for purposes of this title, the last sentence of 5 U.S.C. § 8131(a) that an ''employee required to appear as a party or witness in the prosecution of such an action [against a third party] is in an active duty status while so engaged'' applies only to federal employees covered under this title, as defined in section 103(3)(C).

SECTION 120. ENERGY EMPLOYEES BERYLLIUM COMPENSATION FUND

This section creates in the U.S. Treasury the Energy Employees' Beryllium Compensation Fund, which consists of amounts appropriated to it or transferred to it from other DOE accounts and amounts that otherwise accrue to it under this title. Amounts in the Fund may be used for the payment of compensation and other benefits and expenses authorized by this title and for payment of administrative expenses.

SECTION 121. FORFEITURE OF BENEFITS BY CONVICTED FELONS

Any individual convicted of violating section 1920 of title 18, United States Code, which prohibits false statements to obtain federal employees' compensation, or any other federal or state criminal statute relating to fraud in the application or receipt of any benefits under the title, or any other workers' compensation Act, shall forfeit (as of the date of conviction) any benefits for any injury occurring on or before the date of the conviction. This forfeiture is in addition to any action of the Secretary of Energy under two other provisions of the FECA that have been incorporated into this title. Section 8106 of title 5, United States Code, provides that an employee who fails to make a required report or knowingly understates earnings forfeits compensation for any period for which the report was required. Section 8129 provides for the recovery of overpayments made to an individual due to a mistake in fact or law by decreasing later payments.

Except for payments to dependents as calculated under section 8133 of title 5, United States Code, an individual confined for the commission of a felony may not receive benefits during the period of incarceration or retroactively after release.

State and federal governments must make available to the Secretary of Energy, upon written request, the names and social security numbers of individuals who are incarcerated for felony offenses.

SECTION 122. REGULATIONS—BERYLLIUM COMPENSATION APPEALS PANEL

This section, modeled after 5 U.S.C. § 8149, authorizes the Secretary of Energy to provide by regulation for the creation of the Beryllium Compensation Appeals Panel. This panel is intended to have the same adjudicatory authority over appeals from adverse determinations of claims under this title that the Employees' Compensation Appeals Board exercises over appeals from adverse determinations of claims under the FECA.

SECTION 123. CIVIL SERVICE RETENTION RIGHTS

This section provides that a federal employee who meets the definition of a covered employee within the meaning of section 103(3)(C) of this title has the same civil service retention rights as are applicable to federal employees by virtue of the provisions of 5 U.S.C. § 8151. Civil Service retention rights are administered by the Office of Personnel Management; as with 5 U.S.C. § 8151, see Charles J. McQuistion, 37 ECAB 193 (1985), this section is intended to be administered, enforced, and interpreted by OPM.

SECTION 124. ANNUAL REPORT

This section provides that the Secretary of Energy will prepare a report with respect to the administration of this title on a fiscal year basis, and will submit this report to Congress.

SECTION 125. AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations and authorizes transfers from other DOE accounts, to the extent provided in advance in appropriations Acts, to carry out the purposes of this title. This section also provides that the Secretary limit the amount for the payment of compensation and other benefits to an amount not in excess of the sum of the appropriations to the Fund and amounts made available by transfer to the Fund.

SECTION 126. CONSTRUCTION

This section provides that any amendments to provisions of the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101–8151, which have been incorporated by reference into this title, will also be effective to proceedings under this title.

SECTION 127. CONFORMING AMENDMENTS

This section makes conforming amendments to criminal provisions of the United States Code (18 U.S.C. §§ 1920, 1921, and 1922).

SECTION 128. EFFECTIVE DATE

This section provides that the title is effective upon enactment, and applies to all claims, civil actions, and proceedings ''pending on, or filed on or after, the date of the enactment'' of this title. Because compensation under this title constitutes a covered employee's exclusive remedy against the United States, and DOE's contractors and subcontractors, any claim against the United States (under the Federal Tort Claims Act) or against any of the other above-referenced entities that has not been reduced to a final judgment before the date is barred by this title.

TITLE II—ENERGY EMPLOYEES PILOT PROJECT ACT

SECTION 201. SHORT TITLE

This section designates this Act as the ''Energy Employees Pilot Project Act.''

SECTION 202. PILOT PROJECT

This section directs the Secretary of Energy to conduct a pilot program to examine the possible relationship between workplace exposures to radiation, hazardous materials, or both and occupational illness or other adverse health conditions.

SECTION 203. PHYSICIANS PANEL

This section requires a panel of physicians who specialize in health conditions related to occupational exposure to radiation and hazardous materials to issue a report which examines whether 55 current and former employees of the Department of Energy's East Tennessee Technology Park may have sustained any illness or health condition as a result of their employment.

SECTION 204. SECRETARY OF ENERGY FINDING

The contractor is required by this section to provide the report of the panel to the Secretary of Energy, who will determine whether any of the employees who are covered by the report may have sustained an adverse health condition from their employment.

SECTION 205. AWARD

If the Secretary of Energy makes a positive finding under section 204 concerning an employee, the employee may receive an award of $100,000. If the employee is eligible for an award under title I, the employee may elect to receive payment under this title in place of compensation under title I.

SECTION 206. ELECTION

This section provides that the employee is to make the election under section 205 within a certain period of time. Informed elections are irrevocable and binding on all survivors.

SECTION 207. SURVIVOR'S ELECTION

If an individual dies before making the election, the employee's survivor may make the election. The right to make an election shall be afforded to survivors in the order of precedence set forth in section 8109 of title 5, United States Code, which is based, in essence, on proximity of family relationship to the covered employee.

SECTION 208. STATUS OF AWARD

An award is not income under the Internal Revenue Code.

SECTION 209. PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES, CONTRACTORS, AND SUBCONTRACTORS

This section provides that employees at the facility eligible for benefits under this title can elect which remedy to pursue. If they elect to proceed under this title, then acceptance of payment under this title will be in full settlement of all claims against the United States, DOE, a DOE contractor, a DOE subcontractor, or an employee, agent, or assign of one of them arising out of the condition for which the payment was made, except that the employee would retain the right to proceed under a state workers compensation statute, subject to the reduction-of-benefits provision of subsection (c). Under that subsection, the benefits awarded to a claimant under this title would be reduced by the amount of any other payments received by that claimant because of the same illness or adverse health condition, excluding payments for medical expenses under a workers' compensation system.

SECTION 210. SUBROGATION

This section sets out the conditions under which the United States is subrogated to a claim.

SECTION 211. AUTHORIZATION OF APPROPRIATION

This section authorizes appropriations for the program and provides that authority under this title to make payments is effective in any fiscal year only to the extent, or in the amounts, provided in advance in an appropriation Act

TITLE III—PADUCAH EMPLOYEES' EXPOSURE COMPENSATION ACT

SECTION 301. SHORT TITLE

This section designates this Act as the ''Paducah Employees' Exposure Compensation Act.''

SECTION 302. DEFINITIONS

This section defines a number of terms necessary to implement this legislation, including ''Paducah employee'' and ''specified disease''

SECTION 303. PADUCAH EMPLOYEES' EXPOSURE COMPENSATION FUND

This section establishes in the Treasury of the United States the Paducah Employee's

Exposure Compensation Fund. The amounts in the fund are available for expenditure by the Attorney General under section 305, and the Fund terminates 22 years after the date of enactment of this title. This section also authorizes appropriations to the Fund in the sums necessary to carry out the purposes of the title and provides that authority under this Act to enter into contracts or to make payments is not effective in any fiscal year except to the extent, or in the amounts, provided in advance in appropriations Acts.

SECTION 304. ELIGIBLE EMPLOYEES

This section sets forth who is eligible to receive compensation under this title and provides that an eligible employee who files a claim that the Attorney General determines meets the requirements of this title, receives $100,000 as compensation.

A person eligible for compensation is a Paducah employee (as defined under section 302(2)) who was employed at the Paducah, Kentucky, gaseous diffusion plant for at least one year during the period beginning on January 1, 1953, and ending on February 1, 1992, who during that period was monitored through the use of dosimetry badges for exposure at the plant to radiation from gamma rays or who worked in a job that, as determined by regulation, led to exposure at the plant to radioactive contaminants, including plutonium contaminants; and who submits written medical documentation as to having contracted a specified disease after beginning employment at the plant during the indicated period and after being monitored or beginning work at a job that could have led to exposure as specified.

SECTION 305. DETERMINATION AND PAYMENT OF CLAIMS

Generally, this section sets forth the procedures for filing claims, authority for the Attorney General to consider claims and make compensation payments, consequences of payment of a claim, cost of administering the program, and appeals procedures.

Subsection (a) provides that the Attorney General establish procedures whereby individuals may submit claims for payment under this title.

Subsection (b) provides that the Attorney General determine whether a claim filed under this title meets the requirements of the title. It also provides for consultation with the Surgeon General and the Secretary of Energy in certain instances.

Subsection (c) provides that the Attorney General pay, from amounts available in the Fund, claims filed under this title that the Attorney General determines meet the requirements of this title. This subsection also sets out the conditions under which payments are offset and the United States is subrogated to a claim. It also provides for payment to the survivor of a Paducah employee who is deceased at the time of payment under this section.

Subsection (d) provides that the Attorney General complete the determination on each claim not later than twelve months after the claim is so filed. The Attorney General may request from any claimant, or from any individual or entity on behalf of any claimant, additional information or documentation necessary to complete the determination.

Subsection (e) provides that employees at the Paducah facility eligible for benefits under this title can elect which remedy to pursue. If they elect to proceed under this title, then acceptance of payment under this title will be in full settlement of all claims against the United States, DOE, a DOE contractor, a DOE subcontractor, or an employee, agent, or assign of one of them arising out of the illness for which the payment was made, except for claims in an administrative or judicial proceeding under a state workers' compensation statute, subject to the reduction-of-benefits provision of subparagraph (3). Under that subparagraph, the benefits awarded to a claimant under this title would be reduced by the amount of any other payments received by that claimant because of the same specified illness, excluding payments for medical expenses under a workers' compensation system.

Subsection (f) sets forth how costs of administering the title are paid.

Subsection (g) provides that the duties of the Attorney General under this section cease when the Fund terminates.

Subsection (h) provides that amounts paid to an individual under this section are not subject to federal income tax under the internal revenue laws of the United States; are not included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code or the amount of these benefits; and are not subject to offset under section 3701 et seq. of title 31, United States Code.

Subsection (i) provides that the Attorney General may issue the regulations necessary to carry out this title.

Subsection (j) provides that regulations, guidelines, and procedures to carry out this title shall be issued not later than 270 days after the date of enactment of this title.

Subsection (k) sets forth administrative appeals procedures and procedures for judicial review.

SECTION 306. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE

This section provides that a claim cognizable under this title is not assignable or transferable.

SECTION 307. LIMITATIONS ON CLAIMS

This section provides that claim to which this title applies shall be barred unless the claim is filed within 20 years after the date of the enactment of this title.

SECTION 308. ATTORNEY FEES

This section limits the amount of attorney fees for services rendered in connection with a claim under this title to no more than 10 percent of a payment made on the claim. An attorney who violates this section shall be fined not more than $5,000.

SECTION 309. CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES

This section provides that a payment made under this title shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on the individual receiving the payment, on the basis of this receipt; to repay any insurance carrier for insurance payments. A payment under this title does not affect any claim against an insurance carrier with respect to insurance.

ADDITIONAL COSPONSORS

S. 88

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 88, a bill to amend title XIX of the Social Security Act to exempt disabled individuals from being required to enroll with a managed care entity under the medicaid program.

S. 345

At the request of Mr. ALLARD, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 505

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 505, a bill to give gifted and talented students the opportunity to develop their capabilities.

S. 751

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 751, a bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes.

S. 761

At the request of Mr. ABRAHAM, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 761, a bill to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and for other purposes.

S. 961

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 961, a bill to amend the Consolidated Farm And Rural Development Act to improve shared appreciation arrangements.

S. 1187

At the request of Mr. DORGAN, the names of the Senator from Utah (Mr. BENNETT), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1187, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the Lewis and Clark Expedition, and for other purposes.

S. 1272

At the request of Mr. NICKLES, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1272, a bill to amend the Controlled Substances Act to promote pain management and palliative care without permitting assisted suicide and euthanasia, and for other purposes.

S. 1384

At the request of Mr. KOHL, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1384, a bill to amend the Public Health Service Act to provide for a national folic acid education program to prevent birth defects, and for other purposes.

S. 1452

At the request of Mr. SHELBY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1452, a bill to modernize the requirements under the National Manufactured Housing Construction and Safety Standards of 1974 and to establish a balanced consensus process for the development, revision, and interpretation of Federal construction

and safety standards for manufactured homes.

S. 1526

At the request of Mr. ROCKEFELLER, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1526, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities.

S. 1547

At the request of Mr. BURNS, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1547, a bill to amend the Communications Act of 1934 to require the Federal Communications Commission to preserve low-power television stations that provide community broadcasting, and for other purposes.

S. 1557

At the request of Mr. KERREY, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 1557, a bill to amend the Internal Revenue Code of 1986 to codify the authority of the Secretary of the Treasury to issue regulations covering the practices of enrolled agents.

S. 1579

At the request of Ms. SNOWE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1579, a bill to amend title 38, United States Code, to revise and improve the authorities of the Secretary of Veterans Affairs relating to the provision of counseling and treatment for sexual trauma experienced by veterans.

S. 1592

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1592, a bill to amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

S. 1680

At the request of Mr. ASHCROFT, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1680, a bill to provide for the improvement of the processing of claims for veterans compensation and pensions, and for other purposes.

S. 1762

At the request of Mr. COVERDELL, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1762, a bill to amend the Watershed Protection and Flood Prevention Act to authorize the Secretary of Agriculture to provide cost share assistance for the rehabilitation of structural measures constructed as part of water resources projects previously funded by the Secretary under such Act or related laws.

S. 1798

At the request of Mr. REID, his name was added as a cosponsor of S. 1798, a bill to amend title 35, United States Code, to provide enhanced protection for investors and innovators, protect patent terms, reduce patent litigation, and for other purposes.

S. 1803

At the request of Mr. ROBB, the names of the Senator from Connecticut (Mr. DODD) and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of S. 1803, a bill to amend the Internal Revenue Code of 1986 to extend permanently and expand the research tax credit.

S. 1812

At the request of Mr. WARNER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1812, a bill to establish a commission on a nuclear testing treaty, and for other purposes.

S. 1814

At the request of Mr. SMITH, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 1814, a bill to establish a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers and to amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers, and for other purposes.

S. 1823

At the request of Mr. DEWINE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1823, a bill to revise and extend the Safe and Drug-Free Schools and Communities Act of 1994.

S. 1825

At the request of Mr. ROCKEFELLER, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 1825, a bill to empower telephone consumers, and for other purposes.

S. 1900

At the request of Mr. LAUTENBERG, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from Rhode Island (Mr. REED), and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 1900, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes.

S. 1911

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. 1911, a bill to conserve Atlantic highly migratory species of fish, and for other purposes.

SENATE RESOLUTION 106

At the request of Mr. DOMENICI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of Senate Resolution 106, a resolution to express the sense of the Senate regarding English plus other languages.

SENATE RESOLUTION 128

At the request of Mr. COCHRAN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Indiana (Mr. BAYH), and the Senator from Oregon (Mr. SMITH) were added as cosponsors of Senate Resolution 128, a resolution designating March 2000, as ''Arts Education Month.''

SENATE RESOLUTION 217

At the request of Mr. HUTCHINSON, the names of the Senator from Maine (Ms. SNOWE), the Senator from Washington (Mr. GORTON), the Senator from Georgia (Mr. COVERDELL), and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of Senate Resolution 217, a resolution relating to the freedom of belief, expression, and association in the People's Republic of China.

SENATE RESOLUTION 227

At the request of Mr. BRYAN, the names of the Senator from Nebraska (Mr. KERREY) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of Senate Resolution 227, a resolution expressing the sense of the Senate in appreciation of the National Committee for Employer Support of the Guard and Reserve.

At the request of Mr. SANTORUM, his name was added as a cosponsor of Senate Resolution 227, supra.

AMENDMENT NO. 2667

At the request of Mr. FEINGOLD the names of the Senator from Minnesota (Mr. WELLSTONE), the Senator from Wisconsin (Mr. KOHL), and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of Amendment No. 2667 intended to be proposed to S. 625, a bill to amend title 11, United States Code, and for other purposes.

SENATE CONCURRENT RESOLUTION 74—RECOGNIZING THE UNITED STATES BORDER PATROL'S 75 YEARS OF SERVICE SINCE ITS FOUNDING

Mrs. HUTCHISON (for herself, Mr. ABRAHAM, Mr. KYL, and Mr. GRAMM) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 74

Whereas the Mounted Guard was assigned to the Immigration Service under the Department of Commerce and Labor from 1904 to 1924;

Whereas the founding members of this Mounted Guard included Texas Rangers, sheriffs, and deputized cowboys who patrolled the Texas frontier looking for smugglers, rustlers, and people illegally entering the United States;

Whereas following the Department of Labor Appropriation Act of May 28, 1924, the Border Patrol was established within the Bureau of Immigration, with an initial force of 450 Patrol Inspectors, a yearly budget of $1 million, and $1,300 yearly pay for each Patrol Inspector, with each patrolman furnishing his own horse;

Whereas changes regarding illegal immigration and increases of contraband alcohol traffic brought about the need for this young patrol force to have formal training in border enforcement;

Whereas during the Border Patrol's 75-year history, Border Patrol Agents have been deputized as United States Marshals on numerous occasions;

Whereas the Border Patrol's highly trained and motivated personnel have also assisted in controlling civil disturbances, performing National security details, aided in foreign training and assessments, and responded with security and humanitarian assistance in the aftermath of numerous natural disasters;

Whereas the present force of over 8,000 agents, located in 146 stations under 21 sectors, is responsible for protecting more than 8,000 miles of international land and water boundaries;

Whereas, with the increase in drug-smuggling operations, the Border Patrol has also been assigned additional interdiction duties, and is the primary agency responsible for drug interdiction between ports-of-entry;

Whereas Border Patrol agents have a dual role of protecting the borders and enforcing immigration laws in a fair and humane manner; and

Whereas the Border Patrol has a historic mission of firm commitment to the enforcement of immigration laws, but also one fraught with danger, as illustrated by the fact that 86 agents and pilots have lost their lives in the line of duty—6 in 1998 alone: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress recognizes the historical significance of the United States Border Patrol's founding and its 75 years of service to our great Nation.

SENATE CONCURRENT RESOLUTION 75—EXPRESSING THE STRONG OPPOSITION OF CONGRESS TO THE CONTINUED EGREGIOUS VIOLATIONS OF HUMAN RIGHTS AND THE LACK OF PROGRESS TOWARD THE ESTABLISHENT OF DEMOCRACY AND THE RULE OF LAW IN BELARUS AND CALLING ON PRESIDENT ALEXANDER LUKASHENKA TO ENGAGE IN NEGOTIATONS WITH THE REPRESENTATIVES OF THE OPPOSITION AND TO RESTORE THE CONSTITUTIONAL RIGHTS OF THE BELARUSIAN PEOPLE

Mr. DURBIN (for himself and Mr. CAMPBELL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 75

Whereas the United States has a vital interest in the promotion of democracy abroad and supports democracy and economic development in Belarus;

Whereas in the Fall of 1996, President Lukashenka devised a controversial referendum to impose a new constitution on Belarus and abolish the Parliament, replacing it with a rubber-stamp legislature;

Whereas Lukashenka illegally extended his own term of office to 2001 by an illegitimate referendum;

Whereas Belarus has effectively become an authoritarian police state, where human rights are routinely violated;

Whereas Belarusian economic development is stagnant and living conditions are deplorable;

Whereas in May 1999, the Belarusian opposition challenged Lukashenka's unconstitutional lengthening of his term by staging alternative presidential elections, unleashing the government crackdown;

Whereas the leader of the opposition, Simyon Sharetsky, was forced to flee Belarus to the neighboring Baltic state of Lithuania in fear for his life;

Whereas several leaders of the opposition—Viktor Gonchar, Yuri Krasovsky, Yuri Zakharenka, Tamara Vinnikova, and other members of the opposition, have disappeared;

Whereas the Belarusian authorities harass and persecute the independent media and work to actively suppress the freedom of speech;

Whereas the former Prime Minister Mikhail Chygir, who was a candidate in the opposition's alternative presidential elections in May 1999, has been held in the pretrial detention on trumped up charges since April 1999;

Whereas President Lukashenka's government provoked the clashes between riot police and the demonstrators at the October 17, 1999, ''Freedom March'', which resulted in injuries to demonstrators and scores of illegal arrests;

Whereas President Lukashenka addressed a session of the Russian State Duma on October 26, 1999, advocating a merger between Russia and Belarus; and

Whereas Anatoly Lebedko, Chairman of the Committee for International Affairs of the Supreme Soviet of the Republic of Belarus, Nikolay Statkevich, leader of the Social Democratic Party, and Valery Shchukin, Deputy of the Supreme Council, were arrested and imprisoned for taking part in the Freedom March: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) condemns the current Belarusian regime;

(2) further condemns the arrests of Anatoly Lebedko, Nikolay Statkevich, and Valery Shchukin;

(3) is gravely concerned about the disappearances of Viktor Gonchar, Yuri Krasovsky, Yuri Zakharenka, Tamara Vinnikova, and other members of the opposition;

(4) calls for immediate dialogue between President Lukashenka and the Consultative Council of Belarusian opposition and the restoration of a civilian, democratically elected government in Belarus;

(5) calls for a duly constituted national legislature, the rule of law, and an independent judiciary;

(6) urges President Lukashenka to respect the human rights of all Belarusian citizens, including those members of the opposition who are currently being illegally detained in violation of their constitutional rights;

(7) further urges President Lukashenka to make good on his promise to hold free parliamentary elections in 2000;

(8) supports the appeal by the Consultative Council of Belarusian opposition parties to the Government of Russia, the State Duma, and the Federation Council for a cessation of support for Lukashenka's regime;

(9) calls on the international community to support the opposition by continuing to meet with the legitimately elected parliament; and

(10) calls on the President of the United States to continue to—

(A) fund travel to the United States by the Belarusian opposition figures;

(B) provide funding for the nongovernmental organizations in Belarus; and

(C) support information flows into Belarus.

● Mr. DURBIN. Mr. President, in 1996, President Alexander Lukashenka imposed a new constitution on Belarus that effectively destroyed its nascent democracy and returned that country to a Soviet-style police state. Human rights violations are routine and living conditions are deplorable because of the stagnant economy. Opposition leader Simyon Sharetsky fled to Vilnius, Lithuania.

The situation in Belarus has worsened dramatically in recent months for remaining members of the opposition. Some have disappeared, including Viktor Gonchar, Yuri Krasovsky, Yuri Zakharenka, and Tamara Vinnikova. Some have been arrested for taking part in the October 17, 1999 ''Freedom march,'' including Anatoly Lebedko, Chairman of the Committee for International Affairs of the Supreme Soviet of the Republic of Belarus, Nikolay Statkevich, leader of the Social Democratic Party, and Valery Shchukin, Deputy of the Supreme Council.

Poland, Lithuania, and Latvia are very concerned about the direction Belarus has taken under the Lukashenka regime. Belarus' economy is apparently imploding, and neighboring countries are concerned about regional instability. Our recent experience with Slobodan Milosevic's Yugoslavia should make us all concerned about the implications of a ruthless dictator threatening stability in Europe.

Poland, Lithuania, and Latvia have successfully transformed themselves from Soviet-dominated Communist states to fully democratic market democracies integrated with the West and Western institutions. We must be sure that Belarus does not threaten the remarkable progress these stalwart countries have made in only 10 years since the fall of the Soviet empire.

Also troubling is a draft treaty that may be signed before the end of the year between Lukashenka and President Yeltsin to effect a political union between Russia and Belarus. All Western countries should be concerned that such a union would only hurt efforts to shore up Russia's economy and strengthen its fragile democracy.

That is why my colleague, Senator CAMPBELL, and I join together today to a resolution condemning the actions of the Lukashenka regime. This resolution—a companion measure to one introduced by our colleague in the House of Representatives, Representative SAM GEJDENSON—condemns the Lukashenka regime, the arrest of opposition figures and the disappearance of others; calls for a dialog between Lukashenka and the opposition, the restoration of a democratically-elected government and institutions; calls on the U.S. President to fund travel by Belarusian opposition figures and for non-governmental organizations in Belarus and to support information flows into Belarus. I call on my colleagues to join us in cosponsoring this resolution.●

AMENDMENTS SUBMITTED

BANKRUPTCY REFORM ACT OF 1999

FEINGOLD AMENDMENT NO. 2779

Mr. FEINGOLD proposed an amendment to amendment No. 2748 proposed by him to the bill (S. 625) to amend title 11, United States Code, and for other purposes; as follows:

On page 1, line 5, strike all after ''(23) and insert the following:

''under subsection (a)(3) of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property——

''(A) on which the debtor resides as a tenant under a rental agreement; and

''(B) with respect to which——

''(i) the debtor fails to make a rent payment that initially becomes due under the rental agreement or applicable State law after the date of filing of the petition or within the 10 days prior to the filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification to the debtor; or

''(ii) the debtor's lease has expired according to its terms and (a) or a member of the lessor's immediate family intends to personally occupy that property or (b) the lessor has entered into an enforceable lease agreement with another tenant prior to the filing of the petition, if the lessor files with the court a certification of such facts with the court a certification of such facts and serves a copy of the certification to the debtor:

''(24) under subsection (a)(3) of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property, if during the 1-year period preceding the filing of the petition, the debtor——

''(A) commenced another case under this title; and

''(B) failed to make a rent payment that initially became due under an applicable rental agreement or State law after the date of filing of the petition for that other case; or

''(25) under subsection (a)(3), of an eviction action based on endangerment of property or the use of an illegal drug, if the lessor files with the court a certification that the debtor has endangered property or used an illegal drug and serves a copy of the certification to the debtor''; and

(4) by adding at the end of the flush material at the end of the subsection the following ''With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in that paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under that paragraph, unless the debtor takes such action as may be necessary to address the subject of the certification or the court orders that the exception to the automatic stay shall not become effective or provides for a later date of applicability.''.

AUTHORITY FOR COMMITTEE TO MEET

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, November 17, 1999, after the 10 a.m. vote, to conduct a markup in Dirksen Room 226.

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

ADDITIONAL STATEMENTS

PANDA TRIBUTE

● Mr. CLELAND. Mr. President, I share with my colleagues some very exciting news coming out of my home state of Georgia. Earlier this month, two giant pandas, Lun Lun and Yang Yang, were delivered safely by UPS from Beijing, China to their new home at Zoo Atlanta after a 17-hour global journey.

Zoo Atlanta Director Dr. Terry Maple ''signed'' for the special delivery during a welcoming ceremony at Atlanta's Hartsfield International Airport with more than 200 dignitaries and elementary school children looking on. The very special delivery brings to six the total number of rare giant pandas now residing in the United States.

I would like to recognize the special role that UPS has played in this long journey to bring the pandas to their new home. UPS became involved with the panda transport when Zoo Atlanta officials asked for their help in the construction and maintenance of the panda habitat. The UPS Foundation agreed to give $625,000 over five years to fund the habitat project at the zoo, and also agreed to provide all the logistical support necessary to move the pandas from Beijing to Atlanta.

The move involved over 100 UPS employees in six cities from around the world (Atlanta, Louisville, Anchorage, Singapore, Hong Kong and Beijing) covering travels of 7,526 miles. There were backup flight crews and a backup aircraft in place in case of health problems or mechanical failures, customs support people to smooth the process of bringing the animals onto U.S. soil, and even a UPS manager to accompany the two-person flight crew and act as load master.

UPS also flew two Chinese and one American veterinarians from Beijing to Atlanta. The animals were unloaded by UPS air gateway employees and placed in UPS package cars (the familiar brown delivery truck) that were specially marked with panda graphics. The vehicles (four trucks, two as back ups in case of mechanical problems) were driven by specially chosen Circle of Honor members, UPS drivers who have driven for 25 years or more without an accident. The package cars were outfitted with air conditioning and heating units for the animals.

This exciting new addition to the Atlanta landscape would not have been possible without the hard work, dedication and financial support of many people, especially at Zoo Atlanta and UPS. I am thrilled that Atlanta will be a part of such an important exchange and friendship endeavor with the people of China and I am proud of the support and enthusiasm that have showered Lun Lun and Yang Yang throughout their journey and now that they are in their new home.●

WAYNE COUNTY MEDICAL SOCIETY 150TH ANNIVERSARY

● Mr. ABRAHAM. Mr. President, I rise today to honor and congratulate the Wayne County Medical Society as they gather in celebration of their 150th Anniversary.

The Wayne County Medical Society has set a pioneering tradition in health care since it was founded on April 14, 1849. They began with only 50 physicians and have grown to include more than 4,200 physicians. They work together to promote unity and loyalty among physicians in the community and to raise awareness of public health issues concerning the citizens of Wayne County.

What is truly remarkable about this select group is the profound impact they have had on the public health of the people in Detroit and Wayne County. One of its most notable accomplishments was leading a polio immunization drive which vaccinated thousands of Detroiters and all but eliminated the threat of the crippling disease.

The WCMS continues to provide health care that shows no bounds with the free medical and dental clinic they run at the Webber School in Detroit. Every child is offered free services such as physical examinations, dental fluoride sealants and prophylaxis. The WCMS also takes a proactive approach to health care, in 1998 they sponsored a teen pregnancy conference with more than 500 Detroit Public School students in attendance. The children were encouraged to abstain from sex and to understand the consequences of not practicing safe sex. By sponsoring an annual party for foster children in Wayne the WCMS shows their commitment to the community extends beyond healthcare. The WCMS is truly an asset to the Detroit Community.

The accomplishments this elite group has made in the past 150 years are to be commended. Guided by the spirit of charity the WCMS has improved and enriched the lives of countless people. It is my hope that they will continue encouraging unity among physicians and be a crusader for public health in Detroit for many years to come.●

IN RECOGNITION OF THE REV. DR. GEORGE ELIAS MEETZE

● Mr. HOLLINGS. Mr. President, I rise today to recognize my good friend, the Reverend Dr. George Elias Meetze, who was recently named Pastor Emeritus of Incarnation Lutheran Church in Columbia, South Carolina.

Dr. Meetze has been serving the South Carolina community for over sixty years. He led the congregation at

St. Barnabas Lutheran Church in Charleston, SC from 1934 to 1937, at Grace Lutheran Church in Prosperity, SC from 1937 to 1942 and at Incarnation Lutheran Church from 1942 to 1974. In addition, Dr. George Meetze has been the chaplain of the South Carolina Senate for fifty years.

His honors and affiliations are too numerous to list, but include leadership positions within the Lutheran Church and involvement with such organizations as the Salvation Army, The American Cancer Society, and The Rotary Club, which named him a Paul Harris Fellow in 1979. He is, as you would imagine, an active supporter of the Lutheran Theological Southern Seminary in Columbia, SC and Newberry College in Newberry, SC. A fixture in the Columbia, SC community and across the state of South Carolina, Dr. George Meetze knows many people, but is known by even more for his friendliness and genuine interest in every individual he meets.

My wife, Peatsy, and I, whom Dr. George Meetze joined in marriage twenty-eight years ago, commend Incarnation Lutheran Church for conferring the title of Pastor Emeritus on Dr. George Meetze and we send our warmest congratulations to George and his family on this happy occasion.●

BRIGADIER GENERAL CLAY'S RETIREMENT

● Mr. HATCH. Mr. President, I want to call the Senate's attention to the recent retirement of Air Force Brigadier General John L. Clay who is retiring after 28 years of dedicated service to our country.

General Clay, a native of Utah, joined the Air Force following his graduation from the United States Air Force Academy. He has served honorably and professionally in a variety of research and development assignments encompassing armaments, missiles and space programs.

He is renowned as a developer and manager of many space systems programs and currently serves as the Director of Space and Nuclear Deterrence in the Office of the Secretary of the Air Force for Acquisition.

His outstanding leadership, management expertise, and foresight have been the foundation for the success of major ICBM and space force improvements and the effective use of $50 billion of the defense budget.

General Clay directed the effort to replace the Minuteman missile guidance system. This vitally important accomplishment now provides the nation with a key element of our strategic deterrence capability. This was the first major modification to the Minuteman system in almost 30 years.

Additionally, he was instrumental in the comprehensive national review of our nation's space launch program, including the innovative Evolved Expendable Launch Vehicle program which has resulted in the establishment of two internationally competitive commercial families of vehicles capable of meeting government and commercial needs.

General Clay also established the Shared Early Warning System program following the September 1998 summit agreement between Presidents Clinton and Yeltsin. This program is a milestone in strategic partnerships as it allows the United States and partner countries to share early warning data. It also establishes a first-ever Center for Strategic Stability in Colorado Springs for the upcoming Y2K changeover. This Center will provide launch information to a jointly manned U.S.-Russian operations team during the Y2K rollover period.

Unquestionably, Brigadier General John L. Clay is a man of unwavering loyalty and dedication. He has earned the respect of his colleagues in the Air Force, defense contractors, and members of Congress.

On behalf of the Senate, I am pleased to convey to General Clay, my fellow Utahns, and his wife, Beverly, our best wishes on the occasion of his retirement and express our appreciation for his service to our country. We wish them well as they embark on this new chapter in their lives.●

MAYOR FRANCIS H. DUEHAY OF CAMBRIDGE

● Mr. KENNEDY. Mr. President, it is an honor to take this opportunity to recognize a leader who has given so much to the people of Cambridge, Massachusetts. Mayor Francis H. Duehay has been an elected official in the City of Cambridge for thirty-six consecutive years. Under his leadership, the city has made great progress in housing, welfare, youth employment, and many other important issues for the people. This year, Frank is retiring, and his loss will be felt deeply by all those whose lives he has touched.

Frank's commitment to public service is extraordinary. Throughout his years as Mayor, City Councilor, and on the School Committee he has taken pride in his commitment to work directly with the people he represents, in order to learn their concerns firsthand. Frank's work with city officials and numerous other organizations to open new lines of communication between the city government and the people of Cambridge has created a local government at its best—responsive to the needs of the people, accountable for its actions, and always open to new ideas.

Frank worked tirelessly to improve the quality of life for Cambridge families. He served as the chairperson for the Cambridge Kids' Council, where he's worked to create greater opportunities in the community, giving hope to children and families and providing a model for cities throughout the state. The Mayor's Summer Youth Employment Program has been extremely successful in giving young men and women the opportunity to serve their city during the summer months, enabling them to explore their interests and enhance their lives. Frank has fought hard for the families of Cambridge, and his legacy will live on through their success.

In all of these and many other ways, Frank Duehay has served the people of Cambridge with great distinction. I am honored to pay tribute to this remarkable leader. His public service and generosity are shining examples to us all. I know that I speak for all of the people of Cambridge when I say thank you, Frank, for your commitment and dedication to public service. You will be deeply missed.●

MICHIGAN TEACHER OF THE YEAR MARGARET HOLTSCHLAG TRIBUTE

● Mr. ABRAHAM. Mr. President, I rise today to recognize and congratulate Margaret Holtschlag on receiving the Michigan Teacher of the Year award given by the Michigan Department of Education.

Mrs. Holtschlag, a fourth grade teacher at Murphy Elementary School in the Haslet School District, was selected from nearly thirty regional finalists as the Michigan Teacher of the Year. Described by colleagues as an innovative, thoughtful and progressive teacher, her dedication is second to none. As the winning teacher, Mrs. Holtschlag will share her expertise as she travels across the state working with teachers to improve programs and teacher quality.

What is truly remarkable about Mrs. Holtschlag is that her classroom extends beyond a room filled with desks and chalkboards. Two years ago she took a group of students on a trip to Korea and set up an Internet pen-pal link between Haslet, China and Korea. In the past, her students have built weather stations and explored nearby wetlands. Additionally, her students have spent time at the Michigan Library and Historical Center, discovering and exploring aspects of Michigan history that can not be learned from a text book.

For twenty-one years Mrs. Holtschlag has devoted her life to teaching and making a positive impact on each and every student she encounters. Her captivating teaching style inspires both students and colleagues alike. This is truly a rare gift.

A quality education is one of the most important tools that a child needs and it gives me great joy to know that such a dynamic and caring teacher is helping to shape the lives of Michigan students.●

NICHOLAS W. ALLARD ON THE COLLEGE APPLICATION PROCESS

● Mr. KENNEDY. Mr. President, families across the country know that a college education is essential for their children. A college graduate earns twice what a high school graduate earns in a year, and close to three

times what a high school dropout earns. More and more students are applying for college each year—over 2 million freshmen began college last year. The result is increasingly heavy pressures on schools, families, and colleges.

No one understands these pressures more than prospective college students and their families who are now filling out applications, visiting college campuses, and preparing to make the all-important choices for their futures.

An article by Nicholas W. Allard, in the Washington Post last week, provides excellent common sense advice to prospective students and their families about the college application process. Mr. Allard, whom many of us recall from his years as a staff member of the Senate Judiciary Committee, has had extensive experience in interviewing college applicants. I believe his article will be of interest to all of us in the Senate, and I ask that it be printed in the RECORD.

The article follows.

[From the Washington Post, Nov. 9, 1999]

NAVIGATING THE COLLEGE ADMISSIONS PROCESS

(By Nicholas W. Allard, Associated Press)

A friend who is intelligent, high educated, and a wonderful parent recently called me in a meltdown panic over whether to give white or manila envelopes to their teenager's teachers for college recommendations.

My anxious friend has lots of company. Every year this is the season when tree leaves turn color and drop, while common sense about college admissions heads south. Aside from the uselessness of self-inflicted pressure, important decisions by college prospects are often based on inadequate information and worse advice. So I can't resist offering some food for thought.

APPLY TO THE COLLEGES YOU WANT TO ATTEND

Pretty basic, huh? Yet how many times have you heard advice such as: ''You need some 'reach' schools.'' Or ''Where's your 'safety' school?'' In other words, you're often encouraged to think about schools in a way that ranks their desirability according to the difficulty of being admitted. This approach will make you feel like you are ''settling'' if you decide to attend anywhere but one of the most selective schools.

According to Peterson's Annual Survey of Undergraduate Institutions, in the United States there are almost 2,000 accredited, public and private four-year colleges and universities. They vary tremendously.

Find a handful or so of colleges out of this very large number you would be enthusiastic about attending. Then, once you've got your working list together, turn to the issue of how to be admitted to your favorite schools.

THE EARLY APPLICATION PROGRAM

In you're considering participating in an early application program because you are very, very sure that a college is your top choice, then go ahead. If you're not sure, then don't do it. Think about it. What if you succeed and are admitted to a place that you are not sure is your first choice?

If the early acceptance is nonbinding, you're going to apply elsewhere anyway. If it is binding, then you are stuck. You are not going to find any college that will tell you it's relatively easy to be admitted at the early stage. But you'll tell me you are worried that some colleges admit so many students early that there seem to be very few places left if you wait.

Keep your head. Those people who are so well qualified that colleges are sure they want to offer them a binding offer at the early stage are taken out of the pool of applicants. They are not filing multiple applications to schools that may interest you. You even may appear to be a relatively stronger candidate in the remaining pool come spring, especially after your strong academic performance this fall.

And, remember, many, if not most, college applicants are not accepted at the early stage. Are you sure that you want to go through the angst of applying to college for the first time, and then suddenly finding, without any counter-balancing good news, that your hopes have been dashed and you must apply in earnest to several other colleges?

YOU AND YOUR GUIDANCE COUNSELOR

Your job is to learn enough about yourself and about colleges to think clearly about where you would want to attend, and then for you (not your parents) to take the lead applying for admission.

Many high school college advisers act as if their job is to make sure that you and all your classmates have been admitted somewhere, anywhere. Also, understandably, they are concerned about managing the bureaucratic demands of processing a large volume of college applications.

It's not necessarily a bad thing if your list of favorite colleges makes counselors nervous. Maybe they'll pay a little more attention to your file. The best high school counselors help you match your preferences with colleges. They also can assist your campaign to be admitted where you want to go. That takes a lot of time and dedication.

MAKE THE PROCESS FUN

Think about what it's going to be like to be on your own and to live, study and goof off in a new place, meeting new people. Take advantage of the need to pause, to make a detailed report about what you've accomplished in this first part of your life. In this way the college application can be more than a chore. It can be a satisfying inventory of positives and promote honest self-evaluation of how you want to grow or change or improve.

The application process doesn't have to be nerve-racking. If you only apply to schools that really turn you on, then you really don't have to worry about being accepted to the wrong place.

In the unlikely event that you do not gain acceptance to any of your favorite schools, maybe you should take another year and do something that interests you or prepare yourself to reapply to colleges after spending some time better equipping yourself for college.

The dirty little secret is that there simply is no single school that will make or break your future.

BE A 'SMART SHOPPER'

You are in the market for one of the most expensive, most valuable things you will ever acquire; a college education.

Have you talked to people who have recently attended the colleges that you are considering? What have you read about the colleges? Have you visited colleges that you are seriously considering, alone, without your family?

The traditional family summer tour of colleges is a nice starting point and often can be very helpful in eliminating college choices. But in terms of getting a good feel for what it's like to be a student on campus during a term, there is only so much you can learn by staring at bricks and mortar from the outside of empty buildings, while trying to act as if you are not actually part of your family encourage—how embarrassing.

Thump the melon, test-drive the car, try to get, on your own, to the few colleges that most interest you. Bring a sleeping bag, arrange to stay, if you can, in the dorm room of a friend or somebody who graduated from your home area high schools. Attend class, find out how bad the food is in the dining hall, attend an athletic event or concert, go read, in the library and work on some homework in the midst of other students doing the same thing.

If you're already in your senior year and haven't done this, it's not too late. And, of course, after you are accepted at a college you certainly have the opportunity to visit before you make your decision.

BE YOURSELF

When you're applying to college you certainly want to put your best foot forward and present an accurate and compelling case for admission. But above all things, remember to be yourself.

Suppose, if by some miracle, you actually were able to gussy up your application and essays to come across as a different person or convincingly act out a role in an interview. Would the college be accepting the wrong person? More practically, it just often doesn't work to try to be someone else. Phoniness is difficult to maintain, and in most cases it's transparent.

This also means that the application form that you complete should be your own work. Relax; take the task seriously; do the best job you can and don't forget: Parents, teachers and consultants who have too large a hand in preparing applications leave very visible fingerprints.

THE INTERVIEW PROCESS

Colleges generally do not require interviews, but, if available, they provide an opportunity to learn more about a school and to supplement your written application.

If you have an interview with an alumni volunteer, remember they are not decision makers. Their task is to collect information and pass it on. They can be very good or very bad. Count on this: Whatever they report to their alma maters will be taken with a full shaker of salt. Their views will not outweigh the record you have built over time, the evaluations of professional teachers who have seen you in a class context or your own words on your application.

Still, alumni interviews can help uncover or reinforce strengths and corroborate the profile that appears on the written application file. Again, be yourself, and be prepared for a variation of the inevitable final interview question: ''Is there anything else you would like to ask me?''

Also, if you're wondering about what to wear to an interview, the acceptable range of attire is very broad. On matters of dress, and all such questions about your application, let your own good judgment be your guide.

DON'T WORRY ABOUT OTHER APPLICANTS

It is simply not true that somebody else in your school or your neighborhood is competing with you for a spot that they might take away your space at a college that you want to attend.

At the very most selective colleges you are not competing against the person sitting next to you in a classroom, you'r competing against the national pool of applicants.

In colleges that are less selective, if you make a compelling case that satisfies its requirements, you have a very good chance of being accepted. Your case for acceptance is not diminished, it is not less compelling if other qualified candidates in your community are accepted.

In any event, know that any information you have about other candidates for acceptance is suspect: What somebody's board

scores supposedly are or are not; whether or not a particular college has a quota for your high school; what a college has supposedly communicated to a candidate; what athletes have been told; whether students with learning disabilities get a fair shake—it's all unreliable.

None of it helps you make your case and it will get your stomach juices roiling if you pay attention to such gossip.

Have confidence in yourself. Focus on what you can do something about, which is your own application and at the end of the day things will work out just fine. Be happy if people you know also are accepted to a college of your choice. You'll already know people to embrace or avoid when you get to campus in the fall.

MAKING YOUR DECISION

Don't torture yourself about the choice you make. Remember, you've carefully compiled a list of schools that make sense for you. Be liberated in the idea that you can't make a wrong decision.

Attending college is expensive. Whether or not you receive scholarships, take out loans, or get a part-time job, it's likely your college education is going to cost a lot. Talk this over with your family and determine your realistic options.

In the end, after you carefully weigh the different factors that are important to you, it's probably going to come down to a gut reaction. Trust your own instincts. Make up your mind and then get excited about it. Also make sure to thank your parents, other family members, teachers and advisers.

AND, FINALLY

I'm not a professional admissions officer or an educator. I don't know any particulars about you or your situation. I just suggest you think about the questions raised.

Don't let hopes about college become a black cloud over the best year of high school.

Oh, either white or manila envelopes are fine, but don't forget the postage.●

COMMENDING PAULA DUGGAN

● Mr. JEFFORDS. Mr. President, I would like to commend Paula Duggan who is retiring after 13 years as a senior policy analyst at the Northeast-Midwest Institute. She has been instrumental on a variety of labor market, education, and fiscal federalism issues.

Paula, for instance, was the key force behind labor market information provisions within the Workforce Preparedness Act, and she has worked diligently to ensure that the law is well implemented. She was one of the first analysts to make the connection between worker education and business productivity. And she has written numerous reports explaining how federal allocation formulas are structured and how federal funds are distributed among the states.

I have benefitted from Paula's expertise and experience in my capacities as chairman of the Health, Education, Labor, and Pensions Committee and as co-chair of the Northeast-Midwest Senate Coalition. Paula consistently has provided unbiased and insightful research that has advanced bipartisan efforts on behalf of this region and the nation. As she begins her well-earned retirement, Mr. President, I again want to thank Paula Duggan for her fine work.●

TRIBUTE TO MR. BOBBY BOSS

● Mr. CLELAND. Mr. President, I rise today to recognize a great American institution and its leader. The American Legion Barrett-Davis-Watson Post #233 is located in a small Georgia town called Loganville and it is commanded by a true patriot in every sense of the word—Mr. Bobby Boss. For over 50 years this man's leadership has allowed the post to continue offering community services that any American would be proud of.

Post #233 held its first meeting on November 19, 1946 with the Legion's standard program of the day: patriotism, rehabilitation, community service, community welfare and membership. Less than ten years after its inception, the Post responded to the town of Loganville's need for a medical doctor by building a clinic. The Post later donated a truck and tractor to the city.

Over the past 40 years, the Post has continued to make numerous donations to the community, including an annual $1,500 donation to the town's elementary school to help purchase shoes and clothes for the needy and a $12,000 donation for dropout prevention programs in all Walton County Schools.

Tragedy struck the Post in 1977 when a fire all but destroyed the Post building, leaving nothing but ashes and concrete. At the first monthly meeting after the fire, a majority of the members present chose not to rebuild, but Commander Boss was not in that majority. Two weeks after that meeting, he took his own bulldozer and cleared the charred remains. His efforts resulted in the fine building the Post uses today.

Once the Post was back on its feet, many of the programs that had fallen by the wayside due to rebuilding costs were reinstated. In the past 10 years alone, Post #233 has supported renovation projects for the city of Loganville and donated $8,000 towards the purchase of computers for the local high school; donated half the costs of building a baseball field complete with lights, restrooms and a concession stand. Post #233 has also contributed funds to help the local Sheriff's department purchase camera equipment for patrol cars. This Christmas season, members of Post #233 will prepare and deliver more than one thousand baskets for widows, the disabled and needy families.

The good work of Post #233 represents all that is noble in our great nation. I applaud their community service and their patriotism. They are an asset to their community, the great state of Georgia and the United States of America.●

HENRI TERMEER PRESENTED WITH THE INTERNATIONAL INSTITUTE OF BOSTON'S GOLDEN DOOR AWARD

● Mr. KENNEDY. Mr. President, I am honored to have this opportunity to congratulate Henri Termeer on receiving the Golden Door Award from the International Institute of Boston. I also congratulate Henri for recently being sworn in as a United States citizen during a ceremony on October 29.

As chairman, chief executive officer and president of Genzyme Corporation, one of the largest biotechnology companies in the world, Henri is renowned as a pioneer in the industry. He serves on the board of directors of both the Biotechnology Industry Organization, the industry's national trade association, and the Pharmaceutical Research and Manufacturers of America, a national pharmaceutical trade organization.

It is very fitting, indeed, that Henri was honored with the Golden Door Award, which is presented to US citizens of foreign birth who have made outstanding contributions to American society. Henri is a native of the Netherlands, and in recent years he has received numerous honors such as the Anti-Defamation League's Torch of Liberty Award and the Governor's New American Appreciation Award. He was also recently inducted as a fellow of the American Academy of Arts and Sciences.

Throughout his career in biotechnology, Henri has been a strong advocate for the responsibility of industry and government to make life-saving drug treatments available to all people in need, regardless of their economic status or geographic location. Under Henri's leadership, Genzyme has worked diligently over the years to make this vision a reality.

In addition to his commitment to patients, Henri is also a leader in promoting educational opportunities for minorities. Since 1995, he has been a director of the Biomedical Science Careers Project, which provides corporate scholarships to academically outstanding minority high school students. In May 1999, the group presented Henri with highest honor, the Hope Award.

Henri's extensive record of public service includes his role as a director of the Massachusetts Cystic Fibrosis Foundation, as a trustee and vice-chairman of the Boston Museum of Science, and as a member of the Massachusetts Council on Economic Growth and Technology.

In receiving the Golden Door award, Henri joins a distinguished list of previous recipients including Arthur Fiedler, the famed former conductor of the Boston Pops; Jean Mayer, the eminent nutritionist, educator, and former president of Tufts University; and An Wang, the founder of Wang Labs.

I commend Henri Termeer for this well-deserved award, and for his new American citizenship. Massachusetts is proud of him, and I congratulate him for his many impressive contributions to our Nation.●

DEATH ON THE HIGH SEAS ACT

● Mr. MCCAIN. Mr. President, most unfortunately it appears unlikely that House and Senate conferees will be able to reach agreement this year on a multi-year bill to reauthorize the Federal Aviation Administration. I am bitterly disappointed at Congress' inability to act on this legislation because of a number of parliamentary budget fights that ignore the dire need to pass this bill. Yet one of my most prominent disappointments is the likelihood that Congress' efforts to amend the Death on the High Seas Act will fall by the wayside in the short term. We will be forced to postpone out efforts to make damage recovery fair for all family members of aviation accident victims who have died.

The Death on the High Seas Act is a 1920's-era law that was put in place to help compensate the wives of sailors who died at sea. The law allows survivors to recover pecuniary damages, or the lost wages of their relatives on whom they depended upon financially. Unlike modern tort law, the Death on the High Seas Act does not allow family members to recover for non-monetary damages, such as for pain and suffering, or to seek punitive damages.

Despite its benevolent inception, the Death on the High Seas Act has been used to limit the recovery of damages among the families of airline passengers whose lives have been lost over international waters. The family members of those who died on TWA Flight 800 and EgyptAir Flight 990, for instance, will not be able to seek the same compensation that they would be entitled to if these accidents had occurred over land. The parents of children killed in these accidents cannot sustain a legal claim for damages, since they did not depend upon their children as the family breadwinners. That is an inequity and an unintended consequence that we need to fix.

As I said earlier, Congress intended to fix these problems in the context of the FAA reauthorization bill, yet negotiations have stalled for unrelated reasons. Consequently, I want to pledge every effort to move Death on the High Seas Act legislation independently, as soon as possible next year.

The Commerce Committee will hold additional hearings on this issue as soon as Congress reconvenes in 2000. I will take the lead in working with my colleagues to ensure that legislation to limit the application of the Death on the High Seas Act to aviation accidents moves as quickly as possible through Congress. I believe it enjoys enormous support within Congress. At the very least, it should not be bogged down in unrelated controversies.

The families of aviation accident victims over international waters have waited far too long for Congress to make sure that their losses are accorded the same respect as those associated with accidents over land. Family members should know that their children have value in the eyes of the law. The recent aviation tragedies only highlight the need for prompt action.●

IMMIGRATION ESSAY CONTEST

● Mr. KENNEDY. Mr. President, each year, the American Immigration Law Foundation and the American Immigration Lawyers Association sponsor a national writing contest on immigration. Thousands of fifth grade students across the country participate in the competition, answering the question, ''Why I'm Glad America is a Nation of Immigrants.''

In fact, ''A Nation of Immigrants'' was the title of a book that my brother President Kennedy wrote in 1958 at a time when he was a Senator. All his life, he took pride in America's great heritage and history of immigration.

As one of the judges of this year's contest, I was immensely impressed with the quality of the students' writing and the pride of the students in America's immigrant heritage. Many of the students told the story of their own family's immigration to the United States.

The winner of this year's contest is Crystal Uvalle, a fifth grader from Pennsylvania. She wrote about her father's immigrant background and how he came to America 20 years ago. Other students honored for the high quality of their essays were Leif Holmstrand and Eugene Yakubov of Chicago, Samantha Huber of Fredonia, Wisconsin, Alexa Lash of Miami, and Daniel Rocha of Media, Pennsylvania.

Mr. President, I believe these award winning essays from the ''Celebrate America'' essay contest will be of interest to all of us in the Senate, and I ask that they be printed in the RECORD.

The essays follow:

WHY I AM GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Crystal Uvalle, Grand Prize Winner)

It was about 20 years ago,
A man come here from Mexico.
He sought a better way to live,
And found he had a lot to give.
He didn't speak a word of English,
So he took a job busing dishes.
To learn his new country's ways,
He worked and studied everyday.
He made Dallas his new home,
And before he knew it he was in the know.
He worked his way up in that restaurant,
And a lady there, his eye she caught.
She was a native of another state,
And he asked her out on a date.
She liked pierogies and roast beef,
He liked tamales and spicy meat.
It didn't take long, they were in love,
Then God sent them a baby from heaven above.
I'm so happy for them you see,
That man and woman and I make three.
I'm so happy America let him in,
He's my father and my friend.

I love you Daddy!

AMERICA, AMERICA—THEY CAME TO BE FREE

(By Leif Holmstrand, Chicago, Illinois)

I dedicate this song to my Farfar (father's father), who came to America from Sweden In 1920. His boat arrived in New York, at Ellis Island, where he spent some time. He told my father stories about his trip: friends dying of tuberculosis, lice, over crowding. He went to Nebraska to try farming, but finally settled in Chicago, where he was a fine painter and woodworker.

America, the land of the free;
The immigrants made it strong with their diversity
First, from England, came the Pilgrims, to worship as they pleased,
Next came the Germans, Irish, the French, the Swedes.
The Finns, the Danes, the Polish and Portuguese,
The Welsh, the Dutch, the Scots and the Chinese
America, America, they came to be free,
The immigrants made it strong with their diversity
As indentured servants looking for opportunity,
Stolen from West Africa as slaves without liberty,
They came for land, they came for gold. From tyranny,
War and famine, they fled to this country.
America, America, they came to be free;
The immigrants made it strong with their diversity.
A dangerous, relentless journey across the sea,
The immigrants landed at Ellis Island wanting to be free.
They worked in mines and factories, on farm and railroad,
Men, women, children, they carried a heavy
America, America the land of the free,
The immigrants made it strong with diversity.
The IMMIGRANTS made it what it's come to be:
The U.S.A.—proud and free
America, America, the land of the free,
The immigrants made it strong with their diversity.
Mexico, Korea, Bosnia, the Sudan
From Haiti, the Honduras, Afghanistan.
They're still coming from many other lands,
They come to America, they want this country:
America, America, from sea to shining sea,
America, America, the immigrants' country.
America, America, the land of the free.

WHY I AM GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Samantha Huber, Fredonia, Wisconsin)

Africans, coming to America on slave ships
Whipped and beaten
No choice
French, looking for gold and other treasures
Claiming land that was not up for sale
Indentured servants, looking for a new life
Finding it
America
A nation of immigrants
Spain, France, Mexico, England, Africa condensed into one
Freedom, education, equality, and justice for all
Diversity, teaching us tolerance
Variety
Differences in customs, holidays, foods, games, language, and clothing
Even ideas and thoughts differ
Everyone with a different life story
Giving us a taste of the rest of the world
I'm proud of my country
Glad to live in a nation of immigrants
Accepting and welcoming people of the world.

WHY I'M GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Alexa Lash, Miami, Florida)

I am alone

Unprotected by the evil that stands before me
I am alone
Without home or a road to freedom

I am afraid
Walking through the blackened street of fear
I am afraid
Going to a new world where my language is not spoken

I am transparent
I am seeking a place with no one to be my guide
I am transparent
People see an ugly girl

I am new
Seeing new people who can help
I am new
Going to be free

I am loved
By my friends who I will trust
I am loved
By the family I will miss

I am leaving
I am going on the ship to freedom
I am leaving
Going to a street of gold

I am crying
Saying my good byes
I am crying
From tear to dangling tear

I am forming
I am becoming a woman on my own
I am forming
I am looking to see who I really am

I am reaching
Hearing the call of an eagle
I am reaching
Getting closer to the destination I have longed for

I am observing
Seeing the ocean bloom into waves along the shore
I am observing
Seeing the sun rise and the birds chirp

I have arrived
Feeling the warmth of the sand
I have arrived
In America.

AMERICA

(By Daniel Rocha, Media, Pennsylvania)

America a land of differences
different races;
different faces,
America a land of differences.

America a land of freedom,
Immigrants come from far and near,
To taste the freedom we have here.
They come for freedom of religion,
freedom of speech,
freedom of press,
they come for freedom from dictators and laws
America a land of freedom

America a land of family,
people come from different lands,
to see their family that lives here,
America a land of family.

America a land of hope,
Immigrants who come here,
hope for freedom from unfair rules,
hope to escape their fears,
hope to stop their endless tears,
America a land of hope

America a land of people,
many people,
some have similarities,
some have differences
some have both
America a land of people.

America a land of different languages
Spanish, English,
Portuguese, Scottish
Chinese, Japanese,
many languages,
America a land of different languages

America a land of all,
America a land of difference,
America a land of freedom,
America a land of family,
America a land of hope,
America a land of people,
America a land of different languages,
America a land for all.

WHY I AM GLAD AMERICA IS A NATION OF IMMIGRANTS

(By Eugene Yakubov, Chicago, Illinois)

My family came to the United States in 1996 because life in Ukraine was getting worse and was getting worse. There were no jobs, no food, and no money.

My friends' parents didn't have jobs for two years. In America his father got a job right away. Many people left their countries even though they had to change their professions.

In Ukraine my father was a tinsmith. Now he repairs air conditioners. My mom went to ''Beauty School.''

It is great that America is a nation of immigrants because when new immigrants arrive they meet people just like them. No one laughs at their English or their misery.

On my first day of school I was afraid I didn't know English. In class I saw children from all around the world. A Russian boy helped me a lot.

In America people have to work hard because life is not easy. This is the country that is built with hard labor.

New immigrants are like new-borns in the family. They bring happiness and joy.

I am grateful to America because my parents could find a job, and I may go to school where teachers don't faint because they are hungry.

Once President Kennedy addressed his fellow Americans. I address my fellow immigrants. Don't ask what America can do for you ask what you can do for America, a Promised Land for many of us.

EXECUTIVE CALENDAR

EXECUTIVE SESSION

Mr. SESSIONS. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: No. 271 and No. 274. Further, I ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, that any statements relating to the nominations be printed in the RECORD, 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 nominations were considered and confirmed as follows:

THE JUDICIARY

Ronald M. Gould, of Washington, to be United States Circuit Judge for the Ninth Circuit.

THE JUDICIARY

Barbara M. Lynn, of Texas, to be United States District Judge for the Northern District of Texas.

Mr. GORTON. Mr. President, I am pleased to support the confirmation of Ronald Gould to the Ninth Circuit Court of Appeals.

Since 1975, Ron has practiced law at the Seattle law firm of Perkins Coie, specializing in commercial litigation, and the numerous letters of support and recommendation that I have received throughout this long process attest to the high regard in which he is held by the legal community in Washington state.

Ron's admirable professional and academic record, however, while alone enough to qualify him for the federal bench, is only a small part of what will make him an asset to the Ninth Circuit. While distinguishing himself professionally, Ron has actively participated in volunteer legal, civic, and community organizations and projects too numerous to recite in full.

In addition to being a former President of the Washington State Bar Association, Ron Gould has served on the historical societies for the Supreme Court and the Ninth Circuit Court of Appeals, has co-chaired, with Washington state Attorney General Christine Gregoire, a project to develop mediation in high schools, and has been a member of Washington Women Lawyers, and the Washington Association of Lawyers with Disabilities.

Among the many non-legal, civic organizations in which Ron has been involved is the Boyscouts of America, for which Ron has served on the Executive Board of the Chief Seattle Council since 1984.

Ron's legal and life experience has been extraordinary. So extraordinary that I am pleased to vote to confirm him to one of the positions of highest honor and responsibility in this country.

Mrs. MURRAY. Mr. President, I rise this evening in very strong support of my friend Ronald Gould's confirmation to the U.S. Court of Appeals for the Ninth Circuit. This has been a long hard-fought battle and I commend him for his patience, perseverance, and persistence. We made it, Ron. Congratulations!

Let me share with my colleagues some of the special things about Ronald Gould that make him a person I was proud to recommend to the President for a seat on the Federal bench. He has personally supported me in my political career and helped others to believe in me. Ron is an excellent lawyer, a strong advocate for the legal profession, a community booster, a dedicated family man, a Distinguished Eagle Scout, and a man who has overcome much in his personal life to continue to be all of these things. I am honored to have been a part of his journey to the Federal bench.

I would like to highlight some of Mr. Gould's personal history. He married his wife Suzanne more than 30 years ago, and they have two children. their 23-year-old son Daniel, who is also an Eagle Scout, is a jazz saxophone performer and technology student who recently graduated from Stanford University and founded his own Internet

startup business. Their 20-year-old daughter Rebecca is a sophomore at Hampshire College in Amherst, MA. Rebecca was selected for the Seattle ''High School Hall of Fame'' for her courage in conquering challenges following an auto accident in which she was seriously injured.

Mr. Gould also has been supported in this and all other endeavors of his life by his mother, Sylvia Gould. She is an active 81-year old walker and swimmer who justifiably takes some credit for her son's accomplishments since she encouraged him to do well in school and succeed as a Boy Scout.

Mr. Gould graduated the Wharton School of Business and Commerce at the University of Pennsylvania with a B.S. in economics. He received his J.D. degree in May 1973, graduating magna cum laude from the University of Michigan Law School where he won academic awards and served as editor-in-chief of the Michigan Law Review. During law school he received the Abram Sempliner Memorial Award for legal excellence, the Henry Bates Memorial Scholarship, and the Order of the Coif.

After law school, Mr. Gould served as a law clerk for Judge Wade McCree on the U.S. Court of Appeals for the Sixth Circuit. He next served as a law clerk for Justice Potter Stewart at the U.S. Supreme Court during the 1974 term.

Since December 1975, Mr. Gould has practiced law as an associate and then as a partner with Seattle's largest firm, Perkins Coie. He has had a varied civil litigation practice, including litigation in antitrust, banking, director and officer liability, and trade secrets. Mr. Gould is highly respected in his field and has worked for many of our region's most influential companies and constituencies.

Mr. Gould's fellow lawyers in the King County Bar Association honored him with the 1987 Award for Distinguished Service to the Legal Profession and Public. He was elected to the Board of Governors of the Washington State Bar Association for 1988–91 and served as President of the Washington State Bar Association for its 1994–95 term. Also, as President-Elect and as President of the Washington State Bar Association, Ron co-founded with Washington State Attorney General Christine Gregoire a project to implement mediation in Washington State high schools to prevent youth violence. This program teaches young people how to avoid the kind of tragedies our nation has seen too much of in recent years.

Mr. Gould shares my commitment to public education. He has served Bellevue Community College as a trustee from 1993 to the present and was elected chair of the Board of Trustees in 1996.

In addition, Mr. Gould has served as a member of several legal delegations under the People to People Citizen Ambassador Program, founded by President Eisenhower and supported by Presidents since as a means of enhancing international personal diplomacy and goodwill. He has participated in legal delegations to eastern Asia, Tokyo, and Eastern Europe.

Mr. Gould's long and consistent leadership service to the Boy Scouts has been well-recognized. He became an Eagle Scout in 1962. He serves on the executive board of the Chief Seattle Council of Boy Scouts of America, which serves over 40,000 youth and participating adult leaders. Mr. Gould has served as vice president for Programs, vice president for Exploring, vice president for Special Events and chair of the Jamboree Committee. In 1995, he received the Silver Beaver Award for Chief Seattle Council, the highest award given to volunteer leaders. In 1998, he received from Boy Scouts of America the Distinguished Eagle Scout Award, reflecting decades of service to scouting and his profession.

Mr. President, I commend my colleagues for their decision to support Mr. Gould's confirmation unanimously. Again, I am proud of Ron and look forward to seeing him serve justice as a circuit court judge. I have no doubt he will carry his commitment to the profession and to the larger community to the federal bench and be one of our outstanding Ninth Circuit judges.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

Mr. SESSIONS. Mr. President, the two nominees who have been confirmed, Ronald Gould for the Ninth Circuit Court of Appeals, and Barbara Lynn, U.S. district judge for the Northern District of Texas, have indeed received august, important lifetime appointments. Federal judgeships are great offices. The persons who receive them are committed to a lifetime of dedication to law. They must conduct themselves with the highest degree of professionalism and integrity. We believe both of those nominees will meet that standard. I am pleased this could be concluded tonight.

With regard to Mr. Gould, I want to share these thoughts. He is a most capable man who has overcome personal adversity to reach the position to which he has been confirmed this evening. He has achieved a reputation as an excellent lawyer and as a person who is respected throughout his area of the country, for both his legal skills, and for his commitment to voluntarism within his community, as evidenced by his continuing service with the Boy Scouts of America. I am proud for him tonight. However, I have supported his nomination with some concern, not because of anything he has done, but because of my concern about the Ninth Circuit Court of Appeals.

Over the past 20 years, the Ninth Circuit has established a reputation as an extremely activist circuit. It is a large and important circuit, covering over 20 percent of the American population, and I believe that it is a circuit that we have a responsibility in this body to do something about. A couple of years ago, 28 cases from this Circuit were reviewed by the Supreme Court; 27 were reversed. Over the last several years, the Ninth Circuit has had by far the highest reversal rate of any circuit in the country. They have been an extremely liberal, activist circuit that has consistently gone too far in protecting the rights of criminals, and is far too quick to find that legislative acts or referendums have violated the Constitution. That is a fact without dispute by many legal scholars in this country. Indeed, the New York Times recently wrote that a majority of the U.S. Supreme Court considers the Ninth Circuit to be a rogue circuit.

My sole concern about Mr. Gould's nomination is that I don't believe his appointment and confirmation, by itself, will cause any significant movement of that circuit back to the mainstream of American law. We want to confirm the nominees the President gives the Senate when they are men and women of demonstrated integrity and ability, and when their records and backgrounds indicate that they have the ability to adhere to the law, to follow Supreme Court rulings, to follow the Constitution, to follow laws passed by the people through their elected representatives, and to recognize that it is not their function as judges to make law.

I have concluded that Mr. Gould's confirmation should go forward today because I think he has demonstrated that he recognizes his proper role as a federal judge, and I have not held up his nomination, as any Senator would have a right to do. However, there are other nominees pending for this circuit who I believe have a record of activism that, in my view, does not warrant their confirmation, particularly to a circuit that is already known to be an activist circuit.

I wanted to share those remarks because I wanted to state for the record that this Senate has been very cooperative with the President's desire to get his nominations confirmed, as evidenced by the fact that there have been over 325 Federal judges nominated to this body and confirmed. Only one judge has been rejected, and very few have been held up for any length of time. Those that have been held up are the judges with whom many Senators have some serious concerns. Most judges, however, are moving along in a prompt and efficient manner.

Comments and complaints to the contrary notwithstanding, this Senate has a constitutional duty to advise and consent with the President on any nomination to the Federal courts, and we have a duty and a responsibility to make sure that each and every circuit judge in this country understands what the supreme law of the land is, and that circuit judges should respect the prerogatives of the people through

their elected representatives to pass laws which the judges are required to enforce, whether the judges personally like them or not. We need to make sure our circuits, and every Federal judge we see, are consistent with that view and follow that script.

Mr. Gould is a capable attorney, an Eagle Scout, and a man of great personal integrity, it appears. He will soon assume a position on the U.S. Circuit Court for the Ninth Circuit. It is a great honor, and I congratulate him for it.

ORDERS FOR THURSDAY, NOVEMBER 18, 1999

Mr. SESSIONS. On behalf of the majority leader, I ask unanimous consent when the Senate completes its business today, it adjourn until the hour of 11 a.m. on Thursday, November 18. I further ask consent that on Thursday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for 1 hour, with Senators speaking for up to 5 minutes each, with the following exceptions: Senator VOINOVICH or his designee, 11 to 11:30; Senator DURBIN or his designee, 11:30 to 12 noon.

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

PROGRAM

Mr. SESSIONS. For the information of all Senators, at 11 a.m. on Thursday, the Senate will begin a period of morning business until 12 noon. Following morning business, it is expected that the Senate will begin work on measures regarding the appropriations process. Final agreements are being made, and it is hoped final action on the appropriations measures can begin as soon as possible.

I thank my colleagues for their patience and cooperation during these final days prior to adjournment.

RECORD TO REMAIN OPEN

Mr. SESSIONS. I ask unanimous consent that the RECORD remain open until 9 p.m. in order for the majority leader to introduce a Senate bill.

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

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. SESSIONS. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:09 p.m., adjourned until Thursday, November 18, 1999, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate November 17, 1999:

THE JUDICIARY

RHONDA C. FIELDS, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE STANLEY SPORKIN, RETIRED.

EXECUTIVE OFFICE OF THE PRESIDENT

KATHRYN SHAW, OF PENNSYLVANIA, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE REBECCA M. BLANK, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 17, 1999:

THE JUDICIARY

RONALD M. GOULD, OF WASHINGTON, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

BARBARA M. LYNN, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.