against innocent civilians elsewhere in the Middle East and Europe—bears direct responsibility for much of the tensions in southeast Turkey and for prompting the recent Turkish invasions of Iraq.

Operation Provide Comfort, the allied humanitarian and security operation in Northern Iraq, is a critical element of U.S. and Western strategies with regard to Iraq, and may be the only thing preventing tens of thousands of Kurds from pouring into southeastern Turkey. Although some Turkish officials recognize these facts and military officials at Incirlik have provided splendid cooperation to their British, French and American counterparts, other Turkish military and political officials (including parliamentarians) argue that Provide Comfort offers the PKK protection and cover in Northern Iraq. This rather schizophrenic view of Provide Comfort makes Turkey appear a relucant participant in the allied effort, which Turkey has exploited to its advantage in dealings with its allies.

In keeping with traditions established during the days of Mustafa Kemal Attaturk, Turkey has an almost paranoid fear of losing its Turkish identity. The government of Turkey accordingly is unable—or unwilling—to distinguish the genuine threat posed by the PKK from the legitimate rights and aspirations of the Kurdish people. As a result, Turkey refuses to engage in a political dialogue with nonviolent Kurdish representatives, and is executing a heavy-handed, indiscriminate military campaign to eradicate what it views as a monolithic threat to the unity of the country.

The city of Diyarbakir, which symbolizes the ethnic difficulties that persist within Turkey, has become a haven for rural Kurds forced to evacuate neighboring towns and villages destroyed by the Turkish military. By some estimates, the city's population has grown from roughly 300,000 to more than 1,500,000 during the past five years. Although Turkish officials, local residents, and some independent observers suggest that tensions have subsided during the past two years, it is evident that any existing calm is tenuous and the result of Turkey's overwhelming—and at times oppressive—security presence, which has exacted a high cost in terms of human rights violations.

Turkey's government refuses even to acknowledge that there is a ''Kurdish problem,'' and thereby is ignoring the real issue. By equating all Kurdish aspirations with the terrorist designs of the PKK, Turkey effectively has eliminated outlets for nonviolent Kurdish political or cultural expression. As a consequence, Turkey unintentionally may be contributing to the PKK's appeal.

Turkey desperately wants to join the European Union's Customs Union, and is making some effort to meet the European Parliament's minimum demands regarding democratization and human rights in order to achieve membership. It may even make some modifications to Article 8 of the Anti-Terror law (which prohibits the advocacy of separatism). Turkey will not, however, take any action which it perceive as comprising the Turkish identity, so there are limits to the amount of genuine change it will make to gain membership in the Customs Union. It is equally unclear that the West would have much impact on Turkish behavior by withholding benefits such as Customs Union membership.

Despite claims that it regards fundamentalism as a threat to its secular heritage, the government of Turkey appears to be encouraging and even sponsoring Islamic activities in an attempt to bind the country together and defuse separaist sentiment. Such a strategy—which parallels efforts of governments in the Near East seeking to counter radical lefist groups during the 1970s and early 1980s—could backfire and inadvertently provide a foothold for Islamic extremists.

## EXECUTIVE AND OTHER COMMUNICATIONS

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

1441. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

1442. A communication from the Associate Attorney General, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1994; to the Committee on the Judiciary.

1443. A communication from the Associate Attorney General for Legislative Affairs, transmitting, pursuant to law, the report on the activities and operations of The Public Integrity Section for calendar years 1992 and 1993; to the Committee on the Judiciary.

1444. A communication from the Inspector General of the Railroad Retirement Board, transmitting, pursuant to law, the report of the budget request for fiscal year 1997; to the Committee on Labor and Human Resources.

1445. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Council on Alzheimer's Disease for fiscal year 1994; to the Committee on Labor and Human Resources.

1446. A communication from the Secretary of Health and Human Services, transmitting pursuant to law, the report entitled, ''Alcohol and Other Drug Abuse Prevention: The National Structured Evaluation''; to the Committee on Labor and Human Resources.

1447. A communication from the Director of Health Care Delivery and Quality Issues, the General Accounting Office, transmitting, the report entitled, ''VA Health Care: Need for Brevard Hospital Not Justified''; to the Committee on Veterans' Affairs.

1448. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report on veterans' employment in the Federal Government for fiscal years 1993 and 1994; to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 1244. An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1996, and for other purposes (Rept. No. 104–144).

## 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. JEFFORDS:

S. 1244. An original bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1996, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. ASHCROFT (for himself, Mr. ABRAHAM, Mr. BOND, Mr. COCHRAN, Mr. DEWINE, Mr. HATCH, Mr. INHOFE, Mr. KYL, Mr. MCCAIN, Mr. SIMPSON, Mr. THURMOND, and Mr. GRAMM):

S. 1245. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hard-core juvenile offenders and treat them as adults, and for other purposes; to the Committee on the Judiciary.

By Mr. WARNER:

S. 1246. A bill to amend titles 5 and 37, United States Code, to provide for the continuance of pay and the authority to make certain expenditures and obligations during lapses in appropriations; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself, Mr. KYL, and Mr. NICKLES):

S. 1247. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for contributions to a medical savings account by any individual who is covered under a catastrophic coverage health plan; to the Committee on Finance.

By Mr. WELLSTONE (for himself, Mr. PRESSLER, Mr. HARKIN, Mr. KERREY, Mr. CONRAD, and Mr. DORGAN):

S. 1248. A bill to amend the Internal Revenue Code of 1986 to allow the alcohol fuels credit to be allocated to patrons of a cooperative in certain cases; to the Committee on Finance.

By Mr. FRIST:

S. 1249. A bill to amend the Internal Revenue Code of 1986 to establish medical savings account, and for other purposes; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE:

S. Res. 172. A resolution providing for severance pay; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ASHCROFT (for himself, Mr. ABRAHAM, Mr. BOND, Mr. COCHRAN, Mr. DEWINE, Mr. HATCH, Mr. INHOFE, Mr. KYL, Mr. MCCAIN, Mr. SIMPSON, Mr. THURMOND, and Mr. GRAMM):

S. 1245. A bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hard-core juvenile offenders and treat them as adults, and for other purposes; to the Committee on the Judiciary.

### THE VIOLENT AND HARD-CORE JUVENILE OFFENDER REFORM ACT OF 1995

Mr. ASHCROFT. Mr. President, along with Senators ABRAHAM, BOND, COCHRAN, DEWINE, HATCH, INHOFE, KYL, MCCAIN, SIMPSON, and THURMOND, I am pleased to introduce the Violent and Hard-Core Juvenile Offender Reform Act of 1995. The crime epidemic sweeping across our country—growing with each passing year—can be attributed,

in significant part, to the steady increase in serious and violent crimes committed by juveniles.

Between 1988 and 1992, juvenile arrests for violent crimes increased by 47 percent, while adult violent crime arrests increased by 19 percent. Specifically, juvenile murders increased 26 percent, forcible rapes increased 41 percent, robberies increased 39 percent, and aggravated assaults increased 27 percent. These statistics are alarming. But in order for Congress to provide a real solution, it must first understand the nature of the problem. Until that occurs, legislative initiatives coming out of both Houses of Congress will continue to miss the mark.

Just last year, Congress passed the Omnibus Violent Crime Control and Law Enforcement Act, a bill intended to control crime. Although the bill contained some provisions directed at youth violence, they were amendments to the Federal criminal code. The reality is that a very small number of juveniles are tried in Federal proceedings. In 1990, there were 197 such proceedings; in 1991, 166; in 1992, 109; in 1993, 64; and in 1994, 92. Therein lies the major weakness in the 1994 crime bill. Any amendments strengthening the federal criminal code regarding juveniles are limited to those offenders, a minute number, who happen to find themselves in federal juvenile proceedings. If the goal is to reduce juvenile crime, then fundamental changes must occur at the state level. This is because States and local governments handle the vast majority of juvenile offenders.

The problem of juvenile violence is occurring everywhere in the United States.

In Rockland, MA, four teenagers beat a man to death with a baseball bat and bottle while he was waiting for his girlfriend. The assault followed the death of two men who were shot by a teenager for a leather jacket.

In Jacksonville, FL, when the victim could find only $5 in his pocket to appease the two 16 year olds robbing him in 1994, he asked: ''You're not going to shoot me over $5, are you?'' They did, and he died.

In St. Louis, MO, two female college students were out on a weekend night when they were abducted by two suspects, ages 16 and 19. The lone survivor was raped, shot in the face three times, and abandoned. The other, Melissa Aptman, who pleaded with the teenagers not to hurt them, was shot and killed. Both suspects had previous criminal records. In fact, the 16 year old was on probation at the time of the abduction.

In Washington, DC, 11 blocks from the Capitol, a 14 year old stopped a young man during rush hour who he thought had stolen his jacket a few days before. He whipped out a pistol and blazed away. One bullet killed a father of two. The teenager got the maximum sentence: 2 years in the District of Columbia detention center.

In Detroit, MI, six teenagers decided to carjack a motorist by dragging a tree across a road. When the driver tried to run their blockade, one of the thugs shot him dead. The gunman, a 16 year old, was sentenced as a juvenile, and, unless the prosecutor's wins an appeal, he will go free at 21. The judge was quoted as saying, ''I'm not concerned about whether or not this makes anybody safer.''

Law and order in our neighborhood communities have yielded to crime and disorder. For its part, the current juvenile justice system reprimands the crime victim for being at the wrong place at the wrong time, and then turns around and hugs the young criminal, whispering ever so softly into his ear, ''Don't worry, the State will protect you.'' The critical question facing us Americans, as asked by the late FBI Director J. Edgar Hoover, is: ''Are we to stand idly by while fierce young hoodlums—too often and too long harbored under the glossy misnomer of juvenile delinquents—roam our streets and desecrate our communities?'' We cannot afford to stand idly by, not when the homicide rate committed by teens ages 14–17 has more than doubled, increasing 165 percent from 1985 to 1993; not when juvenile arrests for weapons law violations increased 117 percent between 1983 and 1992; not when one out of every 13 juveniles reported being a victim of a violent crime in 1992; and not when the number of juvenile violent crime arrests is expected to double by the year 2010. We must challenge this culture of violence and restore the culture of personal responsibility.

Having examined the juvenile justice system, having analyzed the efficacy of different philosophical approaches, having had conversations with representatives from school districts, law enforcement, and citizens' organizations, I have devised a comprehensive approach that will control violent juvenile crime by encouraging States to enact sweeping reforms. This legislation provides Federal funds to States and local governments to assist them in reforming their juvenile justice systems. The bill identifies violent and hard-core criminals, imposes stiffer penalties, and deters crimes.

First, serious, violent, and chronic juvenile offenders would be held accountable.

The juvenile justice system's primary goal is to rehabilitate the juvenile offender. Such a system can handle runaways or school truants, but is ill-equipped to deal with chronic, serious offenders. Even the National Council of Juvenile and Family Court Judges, a membership organization for juvenile justice professionals, is hard-pressed to admit: Rehabilitation has been remarkably successful for most juvenile offenders. It has not been successful for the small number of chronic and serious offenders. For them, strict accountability appears necessary. Studies have found that a small percentage of juveniles are responsible for the vast majority of serious offenses committed by juveniles. The bill identifies this group of juvenile offenders.

Traditionally, the juvenile court judge decides whether to transfer a juvenile to adult criminal court. In making this decision, the juvenile judge has broad discretion. Thus, the judge is able to abuse his discretion. The bill would replace the subjectivity of the juvenile court judge with the objectivity of the seriousness of the crime committed and the age of the offender. The bill would encourage States to prosecute juveniles, age 14 and older, who commit: First, murder; second attempted murder; third, forcible rape, fourth, serious drug offenses—as defined by Federal law, or fifth, serious offenses while armed with a dangerous or deadly weapon, namely, robbery, assault and battery. Such a system is not a radical idea. In fact, more than 25 States legislatively exclude certain serious offenses from the juvenile court's jurisdiction. Those States include Delaware, Illinois, Indiana, and Maryland. Moreover, the automatic referral of certain serious cases to the criminal justice system will free up limited resources in the juvenile court system.

The criminal justice system, not the juvenile justice system, can emphasize that adult criminal acts have real consequences. The purpose of the criminal justice system is to punish, that is, to hold defendants accountable. Studies show repeatedly that punishment reduces both frequency and seriousness of offenses by young criminals and is most effective when it is consistently imposed for every offense, according to University of Southern California psychologist Sarnoff Mednick. Therefore, since research studies have confirmed that criminal punishment of young offenders will reduce further criminal activity, then serious offenders should face adult prosecution.

In addition, the bill contains what I like to refer to as the ''three-strikes-and-you're-out'' provision for chronic offenders. It provides that juveniles, who have two prior felony adjudications, will be subject to transfer to adult criminal court on their third, subsequent charge for a felony offense. A 1988 study on the court careers of juvenile offenders found that juveniles referred to juvenile court for a second time before age 15 are likely to continue their law-violating behavior. The study further found that juveniles who committed a violent offense were the most likely to return to court charged with a subsequent violent offense. The legislative proposal draws from these findings. The bill seeks to intervene early in the lives of the hardened career criminal and places them in the criminal justice system.

Second, States would create and maintain juvenile criminal records.

The U.S. Supreme Court, in the 1967 landmark decision, In re Gault, said: ''The summary procedures of juvenile courts are sometimes defended by a statement that it is the law's policy to hide youthful errors from the full gaze

of the public and bury them in the graveyard of the forgotten past. This claim of secrecy, however, is more rhetoric than reality.'' In other words, in rhetoric we are protecting juveniles from the stigma of a record but in reality we are coddling criminals. We must divorce the rhetoric from reality by lifting the veil of secrecy. The bill encourages States to create and maintain records on juveniles, age 14 and older, for offenses that if committed by an adult would be classified as a felony. And, juveniles under age 14 adjudicated delinquent of any of the enumerated crimes I mentioned earlier will have their conviction recorded and made available to necessary parties. The bill would also encourage States to transmit juvenile criminal records to the Federal Bureau of Investigation for inclusion in the criminal identification database. That way, when young criminals and gangs move from State to State, their records will follow them. The juvenile records would be made available to law enforcement agencies, school officials, and judges.

Third, juvenile criminal records would be made available to adult courts for purposes of adult sentencing.

According to the 1991 Survey of Inmates in State Correctional Facilities, nearly 40 percent of prison inmates had a prior record as a juvenile. That is approximately four in 10 prison inmates. The significance of this statistical information is illustrated in Armstrong Williams' book ''Beyond Blame'' in which he writes about the real-life experience of a 29-year-old former drug dealer named ''Brad Howard.'' Mr. Williams gives a vivid description of how society suffers the consequences when the criminal justice system fails to hold criminals accountable:

> Brad, staring at a sentence of thirty to sixty years in prison for violating Federal drug trafficking laws, used his drug money and the help of his parents to hire a good lawyer. He was able to beat the charge. The judge, Brad explains, looked favorably on his story to such an extent that even Brad is surprised that he got off. Obviously, the judge thought that Brad was just another young man who inadvertently ended up on the wrong end of the system—probably for lack of real opportunity. In a sense, you can't blame the judge. Brad did not have a criminal record as an adult, since his youthful encounters with the law were hidden from the legal system under rules that prevent juvenile criminal history from being reopened once the person turns eighteen. . . . After the trial was over, Brad returned to the streets.

This is a typical problem with many State statutes that seal juvenile criminal records. Our laws view juveniles through the prism of kids gone astray. When in fact those juveniles who commit serious and violent crimes are criminals who happen to be young. Young criminals know what Brad Howard knew in his former life as a street hustler—that they can commit crimes repeatedly as juveniles because their juvenile records are kept hidden under the veil of secrecy. These young criminals know that when they reach 18 years of age they can begin their second career as adult criminals with an unblemished criminal record. The time has come to discard the anachronistic idea that crimes, no matter how heinous, by juveniles must be kept confidential. Under the bill introduced today, the Brad Howards in this nation would be held accountable for their criminal acts. The Brad Howards would be held accountable in their juvenile years because they would be tried as adults for selling illicit drugs. The Brad Howards would be held accountable in their adult years because their previous juvenile court records would be made available to State and Federal courts at adult sentencing. No longer will the Brad Howards of this country be able to act like neophytes to the criminal justice system. Our message will be clear, cogent, and convincing: Serious acts have serious consequences.

Fourth, school officials would have access to juvenile criminal records.

This past spring, I received a letter from a seventh grader who wrote ''Sometimes I wonder what people think crime really is. It's much worse than that. My definition is bringing drugs and guns to school so that other classmates wake up with the question: Will I be safe today?''

Following receipt of this letter, I met with school officials to discuss school violence. A school teacher recalled an actual incident in which a student came to school with an electronic ankle bracelet and no one had any knowledge of what that a student had done and, more important, no way of finding out.

Students and teachers spend the greater part of their day at school. Students and teachers have a right to a safe, educational environment. Yet students are challenged to learn in an environment in which chronically violent students roam the halls terrorizing them during class exchange periods and after school. Teachers are challenged to carry out their duties and responsibilities in a seriously disruptive work environment. Under my bill, school officials would have access to juvenile criminal records to assist them in looking out for the best interests of all students. If schools know the identity of a violent juvenile, they can respond to misbehaviors by imposing stricter sanctions, assigning particular teachers, or having the student's locker near a teacher's doorway entrance so that the teacher can monitor his conduct during the changing of class periods. In short, this bill would allow schools to take measures to prevent violence.

Fifth, the sharing of juvenile records would assist law enforcement Agencies.

The bill would assist law enforcement agencies in criminal investigations and apprehension. It encourages States to share juvenile record information within their subdivisions and with other States. While visiting with several law enforcement officers I heard the same recurring problem—when police officers arrest juveniles they have no idea with whom they are handling because the records are kept confidential. This veil of secrecy undermines law enforcement efforts. Law enforcement agencies need to know the prior records of individuals who are subsequently arrested. Under the bill, if a juvenile is arrested, the police will be able to access other state criminal history records. With more information, law enforcement officials will be able to make more intelligent decisions, like whether to detain or release a juvenile arrested for a serious crime.

Additionally, the interstate sharing of accurate and up-to-date records would assist police departments in criminal investigations. For example, suppose a young offender is found guilty of burglary in Oklahoma. The court sentences him to 7 months in a detention center. Following his release, he travels to Texas where he robs an elderly lady who upon being accosted refuses to give away her purse. Angered by her refusal the young offender stabs her to death. He opens her purse, takes the wallet, and flees the crime scene. Assume further there are no eyewitnesses to the murder. The police, however, are able to lift fingerprints from the purse. If the bill were enacted, the Texas police would be able to identify the assailant because the juvenile would have been fingerprinted and photographed immediately following his conviction for burglary in Oklahoma.

Sixth, school officials would be able to treat all students equally.

Consider the case of Morgan versus Chris L.: In May 1992, Chris L. was diagnosed as suffering from attention deficit hyperactivity disorder. As a result, he was being treated with prescription medication. Throughout the 1992–93 academic year, his behavioral problems continued. On May 11, 1993, Chris allegedly kicked a water pipe in the school lavatory until it burst—a crime against public property. The Knox County School District filed a petition in juvenile court. Chris' father filed for a due process hearing under the Individuals with Disabilities Education Act [IDEA] to review the filing of the petition in juvenile court. The hearing officer concluded that ''[t]he filing of a petition in Juvenile Court shall be considered as the initiation of a change in placement and/or a disciplinary action commensurate with expulsion or suspension for more than 10 days. * * * [B]efore a school files a petition against a child in Juvenile Court, it must follow the same procedures as for expulsion or suspension for more than 10 days.'' A Federal district court judge upheld the hearing officer's conclusion of law. IDEA is a grant funding statute that contains special due process procedures for children with disabilities. The problem is that the special due process procedures for disabled students take several months, and sometimes a year, to complete.

The practical effect of the judge's ruling is that schools, as a matter of law, cannot unilaterally refer disabled children to juvenile court unless parents consent to the filing of the juvenile court petition. The bill makes it clear that those disabled students who commit criminal acts on school property are not protected under IDEA's special due process procedures.

Seventh, the Office of Juvenile Justice and Delinquency Prevention would provide assistance to States to implement serious habitual offender comprehensive action programs.

The bill would allow State and local governments to use Federal funding to implement serious habitual offender comprehensive action programs [SHOCAP]. SHOCAP is a multiagency program that is intended to improve the effectiveness of jurisdictions in handling serious habitual juvenile offenders. The program enlists police, schools, prosecutors, probation officers, juvenile courts, family and youth services, detention and corrections officials to collaborate more effectively and utilize their collective resources to identify serious, violent habitual juvenile offenders. SHOCAP targets the top 2 to 3 percent of the most serious habitual offenders and puts them under intense supervision.

The Office of Juvenile Justice and Delinquency Prevention, a division of the U.S. Department of Justice, conducted five test pilots of SHOCAP. Oxnard, CA was of the selected sites. SHOCAP was implemented in 1983. Four years later, Oxnard's violent crime dropped 38 percent. By 1989, rape decreased 30 percent; robbery decreased 41 percent; and murder decreased 60 percent. The statistics demonstrate that SHOCAP can effectively control juvenile crime.

SHOCAP is also instrumental in apprehending young criminals. Take, for example, the murder of the British tourist in Monticello, FL. If you recall, four teenagers age 13–16 were charged with murder in the 1993 slaying of a British tourist at a highway rest stop and attempted murder of his companion. The killing occurred while the juveniles were riding around in a stolen car. Because 3 of the 4 teenagers were serious habitual offenders, they were arrested within a matter of days. What is more, the 13-year-old reportedly had more than 50 offenses on his record.

SHOCAP works, and through word of mouth in the law enforcement community: 16 States have at least one experienced site implementing the SHOCAP process; 150 sites have been reported as implementing SHOCAP based on the technical assistance provided by experienced SHOCAP sites; 5 States (Florida, Virginia, Oklahoma, California, & Illinois); and 3 States are reportedly considering SHOCAP legislation.

The bill would make support for SHOCAP available in all jurisdictions.

CONCLUSION

Mr. President, if enacted, the Violent and Hard-Core Juvenile Offender Reform Act of 1995 will effectively address the problem of juvenile violence.

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By Mr. WARNER:

S. 1246. A bill to amend titles 5 and 37, United States Code, to provide for the continuance of pay and the authority to make certain expenditures and obligations during lapses in appropriations; to the Committee on Governmental Affairs.

THE FURLOUGH PROTECTION ACT OF 1995

● Mr. WARNER. Mr. President, I offer legislation to safeguard Federal and military pay in the event of a Government shutdown due to an appropriations funding lapse. This bill is titled ''The Furlough Protection Act of 1995.''

Mr. President, during the past several weeks, hundreds of civilian and uniformed personnel of the Federal Government have contacted my office to express their dismay over prospects of a budgetary train wreck and possible employee furloughs.

While I am a strong supporter of the balanced budget resolution and the reconciliation process, I am deeply concerned that the Federal employees could potentially be held hostage to the politics of the budget process as Congress and the administration work out their respective differences in the appropriations process.

The most recent furlough of Federal employees occurred over the Columbus Holiday weekend of 1990. President Bush vetoed a continuing resolution to provide stopgap funding for Government operations. This action was the result of the President's dissatisfaction with congressional progress on the fiscal year 1991 budget.

After the furlough, several Members of Congress asked the General Accounting Office [GAO] to examine the taxpayer costs of the 1990 Columbus Day weekend shutdown. The GAO's findings were published in a 1991 report titled, ''Government Shutdown: Permanent Funding Lapse Legislation Needed.'' The GAO found that of the 22 executive branch agencies surveyed, 7 reported significant shutdown costs totaling about $3.4 million.

The GAO report states that the costs and disruptions of a Government shutdown would have been much more severe if the furlough had occurred during a normal workweek. Twenty of the twenty-two agencies estimated that an average of 506,500 Federal employees would be furloughed daily during a funding lapse. The GAO report goes on to state that the total cost of such a 3-day workweek shutdown would range from $244.6 to $607.3 million. Mr. President, in this time of tight budgetary constraints, such irresponsible actions do not make for good public policy.

Our Nation's dedicated civilian and uniformed personnel should not be penalized for the inability of Congress and the administration to agree on spending priorities. Consequently, I am offering legislation to ensure that uniformed and civilian Federal employees will continue to be compensated during a funding lapse.

Mr. President, my intent in offering this legislation is to provide some measure of financial reassurance for the hundreds of thousands of Federal employees and their families that would be affected by a Government shutdown. It is my hope that Congress and the administration will work together to resolve our respective differences without holding Federal employees hostage to the politics of the budget process. In the best of all worlds, Congress and the President will agree to a continuing resolution to provide limited funding for continued Government operations, however, if an agreement cannot be reached and a funding lapse occurs, my legislation will protect our Nation's dedicated civilian and uniformed personnel and their families from undue financial hardship.

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

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

S. 1246

*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 ''Furlough Protection Act of 1995''.

**SEC. 2. CONTINUANCE OF CIVILIAN PAY DURING PERIODS OF LAPSED APPROPRIATIONS.**

(a) CONTINUANCE OF PAY.—Subchapter III of chapter 55 of title 5, United States Code, is amended by redesignating section 5527 as section 5528 and inserting after section 5526 the following:

**''§ 5527. Continuance of pay during periods of lapsed appropriations**

''(a) For purposes of this section—

''(1) the term 'period of lapsed appropriations', when used with respect to an employee, means any period during which appropriations are not available due to the absence of the timely enactment of any Act or joint resolution appropriating funds for the employing agency of the employee;

''(2) the term 'employee' means an individual employed (or holding office) in or under an agency;

''(3) the term 'agency' means—

''(A) an Executive agency;

''(B) the judicial branch;

''(C) the Library of Congress;

''(D) the Government Printing Office;

''(E) the legislative branch (excluding any agency otherwise referred to in this paragraph); and

''(F) the government of the District of Columbia;

''(4) the term 'pay' means—

''(A) basic pay;

''(B) premium pay;

''(C) agency contributions for retirement and life and health insurance; and

''(D) any other element of aggregate compensation, including allowances, differentials, bonuses, awards, and other similar cash payments; and

''(5) the term 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

''(b) For any period of lapsed appropriations, there are appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the pay of any employee who—

''(1) performs service as an employee during the period of lapsed appropriations; or

''(2) is prevented from serving during such period by reason of having been furloughed due to a lapse in appropriations.

''(c)(1) Notwithstanding section 1341 of title 31, any employee who is furloughed due to a lapse in appropriations shall be paid for the period during which such employee is so furloughed.

''(2) For purposes of paragraph (1), the pay payable to an employee for any period during which such employee is furloughed shall be the pay that would have been payable to such employee for such period had such employee not been furloughed.

''(d) For purposes of carrying out section 5528 with respect to this section, any reference in section 5528(b) to an agency outside the executive branch shall be construed based on the definition of 'agency' under subsection (a).

''(e) Expenditures made for any fiscal year pursuant to this section shall be charged to the applicable appropriation, fund, or authorization whenever the regular appropriation bill becomes law.

''(f) This section shall take effect on October 1, 1995, and shall terminate on September 30, 1996.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The heading for subchapter III of chapter 55 of title 5, United States Code, is amended by striking ''AND ASSIGNMENT'' and inserting ''ASSIGNMENT, AND CONTINUANCE''.

(2) The table of sections at the beginning of chapter 55 of title 5, United States Code, is amended by striking the item relating to section 5527 and inserting the following:

''5527. Continuance of pay during periods of lapsed appropriations.
''5528. Regulations.''.

(3) The table of sections at the beginning of chapter 55 of title 5, United States Code, is further amended by striking ''AND ASSIGNMENT'' in the item relating to subchapter III and inserting ''ASSIGNMENT, AND CONTINUANCE''.

**SEC. 3. CONTINUANCE OF MILITARY PAY DURING PERIODS OF LAPSED APPROPRIATIONS.**

(a) CONTINUANCE OF PAY.—Chapter 19 of title 37, United States Code, is amended by adding at the end the following:

**''§ 1015. Continuance of pay during periods of lapsed appropriations**

''(a) For the purposes of this section—

''(1) the term 'pay', with respect to a member of a uniformed service, means the pay and allowances of such member; and

''(2) the term 'period of lapsed appropriations', when used with respect to any member, means any period during which appropriations are not available due to the absence of the timely enactment of any Act or joint resolution appropriating funds for the uniformed service of that member.

''(b) For any period of lapsed appropriations, there are appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the pay of any member serving as a member of a uniformed service during the period of lapsed appropriations.

''(c) Expenditures made for any fiscal year pursuant to this section shall be charged to the applicable appropriation, fund, or authorization whenever the regular appropriation bill becomes law.

''(d) This section shall take effect on October 1, 1995, and shall terminate on September 30, 1996.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 19 of title 37, United States Code, is amended by inserting after the item relating to section 1014 the following:

''1015. Continuance of pay during periods of lapsed appropriations.''.●

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By Mr. GRASSLEY (for himself, Mr. KYL, and Mr. NICKLES):

S. 1247. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for contributions to a medical savings account by any individual who is covered under a catastrophic coverage health plan; to the Committee on Finance.

THE FAMILY MEDICAL SAVINGS AND INVESTMENT ACT

● Mr. GRASSLEY. Mr. President, last year we had a long, controversial, debate about health care reform. When the dust had settled, a number of things were clear. The American people want health care cost containment. They want to choose their own physician. They want portable health insurance. They don't want to worry about losing their health insurance if they lose or change their jobs. Finally, they want more equitable treatment under the tax code. Mr. President, today I am introducing a medical savings account [MSA] bill which can help achieve each of these goals.

The basic MSA concept is simple and straightforward, and similar to individual retirement accounts: Reduce premium costs by selecting a catastrophic, high-deductible policy. Use the premium cost savings to establish special medical savings accounts. Pay medical costs below the deductible amount from the medical savings account. And provide favorable tax treatment of these accounts.

Wider use of medical savings accounts would reduce health care costs. It would do so by reducing administrative costs. Those with MSA's would pay most of their low dollar, under $3,000, health care claims from these accounts. The administrative cost of such claims would be negligible.

It would do so also by making consumers more selective in the use of optional health care services.

Most importantly, it would cause them to be more selective in choosing competing providers. This competition among providers for the business of those who hold MSA's should reduce the prices they charge for their services.

It is true, as critics of medical savings accounts have charged, that a relatively small percentage of people spend a majority of the health care dollars. By implication, since MSA's would pay only for relatively low dollar claims, they will not have a major impact on health care costs. However, it is the case that substantial sums are spent for relatively low dollar claims under $3,000. Thus, wider use of MSA's does offer the potential of lower health care costs.

Second, MSA's put the patient back into the health care equation. Patients will make more cost-conscious decisions for routine health care expenses. Those who hold medical savings accounts would be able to chose their own physicians for routine medical expenses under the deductible limit. Since the money they spend for health care up to the deductible would be their own, no one else could tell them what physician they could see, or what services they could pay for. It should also be clearer, in an MSA context, that the money spent for the catastrophic health plan is the individual consumer's money. Organizations providing health care through the catastrophic coverage policy necessarily will have to orient themselves toward satisfying the individuals purchasing those policies.

Third, wider use of medical savings accounts would make health care coverage more dependable. Individuals with MSA's would no longer have to worry about losing insurance when changing jobs or when experiencing temporary unemployment. Their MSA's would follow them to their new jobs, or would continue to protect them when they become unemployed.

Fourth, it follows that medical savings accounts should increase health care coverage. Fully half of the approximately 40 million Americans who are uninsured at any given time are uninsured for 4 months or less. Only 15 percent are uninsured for more than 2 years. For most, these uninsured periods occur between jobs. Widespread use of medical savings accounts would reduce the number of uninsured, since individuals would be able to pay health expenses during periods of unemployment from those accounts.

Fifth, wider use of medical savings accounts would promote personal savings. Since pre-tax moneys are deposited in medical savings accounts, there is a strong tax incentive to use them.

Finally, it would make the tax treatment of health insurance more equitable. Currently, the tax system allows employers who pay for health insurance for their employees to deduct it from the income on which they pay Federal taxes. It permits the employees who receive such an employer-provided benefit to exclude its value from their taxable income. The better paid the employee and the richer the benefit provided by the employer, the bigger the tax benefits to employer and employee. In contrast, smaller employers who do not offer health insurance and their employees, the self-employed, and the unemployed receive no tax benefit. This is manifestly unfair.

This bill, if enacted, would help to correct that situation. Any individual capable of contributing to a medical savings account would receive favorable tax treatment. Amounts contributed by individuals to an MSA could deduct those contributions from income for Federal tax purposes. Or, if their employer contributes to an MSA

on their behalf, the employee can exclude the contributed amount from income for Federal tax purposes.

The medical savings account bill I am introducing today is a revision of H.R. 1818, the Family Medical Savings and Investment Act of 1995, introduced by Congressman ARCHER on June 13 of this year.

This bill would permit individuals to maintain a medical savings account. They could do so if they are covered at the same time by a catastrophic health plan. Contributions to the medical savings account would be excludable from gross income if made by an employer on behalf of an employee. They would be tax deductible if made by the individual. The total amount that could be excluded or deducted from income would be the lesser of the deductible amount under the catastrophic policy, or $2,500 for an individual and $5,000 for a family.

An individual could withdraw from this medical savings account to pay for qualified medical expenses. Such withdrawals would be excludable from gross income for tax purposes.

Mr. President, the medical savings account bill I am introducing today, if enacted, would achieve a number of the most important health care reform goals the American people desire.

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

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

THE GRASSLEY FAMILY MEDICAL SAVINGS AND INVESTMENT ACT

How The Grassley Bill Works: It would allow MSAs equal tax treatment with other types of employer-provided health insurance, and it would allow individuals and the self-employed the ability to contribute to a Medical Savings Account (with certain restrictions) and receive a 100% deduction for their contribution. The Grassley bill will end the current tax-code discrimination against MSAs by ending the taxation on MSA deposits. Interest build-up in MSAs, however, would be taxed as ordinary income.

How MSAs Work: MSAs are flexible, and could work like this: an employer would create the option for employees to choose an MSA by purchasing a high-deductible policy. The employer would then deposit funds in the MSA. The amount of the deposit in the MSA under Grassley is limited to the lesser amount of either the deductible amount of the insurance policy, or to $2,500 for an individual, or $5,000 for a family. Below is a chart which explains the changes the Grassley bill makes in current law.

| Insured premium | MSA contribution | High-deductible |
|---|---|---|
| Employees with Employer-Provided Insurance. | Allows deposits of up to $5,000 for families and $2,500 for individuals and excludes deposits from taxes. | Retains current law: premium costs are 100% excluded from taxes. |
| Self-Employed ..... | Allows deposits of up to $5,000 for families and $2,500 for individuals. 100% tax deductible for qualified medical expenses. | Retains current law: 30% deduction for self-employed for premium costs. |
| Individuals ..... | Allows deposits of up to $5,000 for families and $2,500 for individuals. 100% tax deductible for qualified medical expenses. | Retains current law: allows deduction for medical expenditures if they exceed 7.5% of gross income. |

Roll Over of Funds: The money in the account is the family's money, and they have complete control over it. The account is portable, and accessible for any medical expense. The funds in the MSA roll over from year to year for future medical expenses or for retirement needs.

Long-Term Care: The Grassley bill allows individuals and families to pay for long-term care premiums from the account. Over the longer term significant portions of the population will use funds from the MSAs to purchase private insurance for long-term care coverage. This coverage will in turn decrease the demand on the Federal government for such services, as will the savings that build up in MSA over time which can be used for health care and other retirement costs.

Cost: The House companion bill, Archer-Jacobs, has been scored by the Joint Committee on Taxation as costing $1.8 billion over seven years.

Support for the 10% Penalty on Non-Medical Withdrawals: In addition to taxing these funds as income, the Archer bill imposes a 10 percent penalty for non-medical withdrawals. The Business Coalition strongly supports the 10 percent penalty since we believe it will encourage savings and discourage frivolous consumption. One of the key indirect effects of MSAs will be to increase our nation's abysmally low savings rate, which in turn will help lower interest rates.

MSAs Have a Strong Appeal to Low-Income Wage Earners: Companies that have MSAs have found MSAs are most popular among lower income employees. Under conventional insurance plans, low-income employees would have to meet their $250 or $500 deductible with after-tax dollars before they could access their insurance. A single mother earning $14,000 or $15,000 a year may find it difficult to meet the deductible when rent, transportation, taxes, grocery bills and other needs for her children are pressing. An MSA allows these low income earners first dollar coverage, permitting them to get medical care when they or their children need it.

MSAs Enhance Portability: Should an employee change jobs or be laid off or fired, the money in his MSA goes with him. This feature of MSAs allows the individual to continue to pay for his health care premium until he finds another job or is accepted into his new employer's health care plan. Indeed, according to the above cited article in the Journal of American Health Policy, ''forty-one percent of persons losing private health insurance have an uninsured spell that ends within one to three months, and 71 percent have a spell that ends within four months.'' MSAs are a perfect tool to help bridge this gap.

MSAs Allow Total Freedom of Choice of Doctor: MSAs allow patients to shop around, choose their own doctors, and tailor their health care expenditures to suit their own needs.

MSAs Encourage Savings for Retirement Care Costs: According to the U.S. Census Bureau, the number of Americans most likely to need long term care (85 years and older) will double in the next 25 years, and the number of Americans over 90 will triple. Allowing individuals in their late thirties and early forties to have an MSA in which they could build up two or three decades of savings, would give these individuals the funds to pay for drug therapies, nursing home care, and in-home care.

MSAs Will Stimulate Administrative Savings: When paying for routine health care costs, the MSA patient has no forms to fill out or claim forms to file. The patient would simply write a check to the provider from his MSA, or the doctor would bill the employer or insurance company, depending on how the MSA patient's plan is administered. In most cases, the doctor receives payment immediately. The patient's insurance company would not have to incur the cost of adjudicating a small, say, $30 claim.

SIGNIFICANT CHANGES TO THE ARCHER-JACOBS BILL AS INTRODUCED BY SENATOR GRASSLEY

The Grassley MSA bill incorporates six significant improvements to the Archer bill.

FEHBP Employees Are Eligible: The Grassley bill allows federal employees in the Federal Employee Health Benefit Plan (i.e. Hill staff, Senators, and Representatives) to have an MSA. Legislation is needed to make this possible.

Withdrawal at 59½ years old: Retirement withdrawal at 59½ years old is provided for in the Grassley bill, and the provision for withdrawal is similar to the current rules for IRAs. This provision was not in the original Archer-Jabobs bill because of the uncertainty of how MSAs would be structured for Medicare.

One Family MSA Per Family: $300 million will be knocked off the official score of the bill by restricting one family to only one $5,000 MSA. The Archer bill as written could have allowed one family a $10,000 MSA.

Hundreds of Millions of Dollars in Savings from Changes in the treatment of Flexible Spending Accounts (FSAs): Several hundred million dollars will be saved by not allowing the FSA to rollover into an MSA during the first year of this MSA legislation.

Total Cost Savings for Grassley Bill: With the restriction of one MSA per family, and with the change in the treatment of FSAs in the Grassley bill, the cost of the bill will be $500 million cheaper than the Archer-Jacobs bill. The Grassley bill score will be about $1.8 billion over 7 years.

New Minimum Deductibles for High Deductible Policies: The minimum high-deductible policy in the Grassley bill is $1,500 for individuals, and $3,000 for families, as opposed to $1,800 for individuals and $3,600 for families in the Archer-Jacobs bill.

No spending from the MSA for high-deductible health care premiums: Unless an employee is laid off, MSAs will not be used to pay for health care premiums for working employees. The MSA was never designed to operate as a fund for the high-deductible premium, only as a source of funds for medical costs below the deductible level of the high-deductible policy.

Note: The bill Senator Grassley will introduce in the Senate will include these changes. The above changes to the Archer-Jacobs bill will likely be made to the Archer-Jacobs bill in mark-up since Senator Grassley's office worked closely with the House Ways and Means Committee staff and the Joint Committee on Taxation in making these changes.●

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By Mr. WELLSTONE (for himself, Mr. PRESSLER, Mr. HARKIN, Mr. KERREY, Mr. CONRAD, and Mr. DORGAN):

S. 1248. A bill to amend the Internal Revenue Code of 1986 to allow the alcohol fuels credit to be allocated to patrons of a cooperative in certain cases; to the Committee on Finance.

ALCOHOL FUELS CREDIT LEGISLATION

● Mr. WELLSTONE. Mr. President, on behalf of myself and Senators PRESSLER, HARKIN, KERREY, CONRAD, and DORGAN, I am introducing a bill to correct a discrepancy in the Tax Code which acts to discriminate against a type of enterprise that Federal policy should actually be encouraging: small, cooperatively owned ethanol plants.

The bill would allow these plants to utilize the existing small ethanol producers credit by passing the credit through to their owner/members.

I am confident that it was never the intention of Congress to preclude cooperatives from making full use of this credit. Rather, the current obstacle facing co-ops is a result of legislative oversight at the time the original small producers credit was passed. Farmer-owned cooperatives simply were not a prominent part of the ethanol industry landscape in 1990, whereas today they certainly are.

Indeed, I am extremely pleased that Minnesota leads the Nation in small, cooperatively owned ethanol plants. We have two already in operation, and four more under construction in our State. Still another Minnesota cooperative ethanol plant has been so successful that it has expanded in our State beyond what the small producers credit considers a small plant, and its owner/members have even constructed an additional cooperative plant in Nebraska.

These plants produce a clean fuel which is essential to the achievement of Clean Air Act objectives in American cities. They create jobs in rural communities. By utilizing agricultural commodity crops, they bolster the price of those crops and thus reduce the cost of Federal farm programs. And because they are owned by farmers, small ethanol-producing cooperatives allow farmers to do what is becoming more and more necessary: Move up the food chain and capture the value-added dollars in processed agricultural products.

Not only farmers benefit from this retention of value-added processing dollars; entire rural communities do. Farmer-owned cooperatives help make sure that precious renewable resources contribute to the local rural economy and are not merely removed for a low price and processed in other locations.

Mr. President, Congress has recognized the importance of promoting the development of domestically produced, renewable clean fuels. In addition to the economic and environmental benefits I have mentioned, we in Congress also consciously have decided for energy-security reasons to promote domestic renewables. The relatively young ethanol industry has received needed assistance. That assistance is especially justified in view of the decades of assistance and preference that the Federal Government has provided for the nonrenewable fossil fuels industry, much of whose product today is imported.

The assistance we have provided to the ethanol industry is paying off. It is allowing the industry to grow, and it is making the industry better. It has helped the ethanol industry become more economically efficient and more energy efficient. A study released by the Department of Agriculture this summer concludes that ethanol yields nearly 25 percent more energy than is used in the growing, harvesting, and distilling of the corn that is the feed stock for most American ethanol plants—plants which convert that corn to a premium liquid fuel. USDA's study found that each gallon of domestically produced ethanol displaces 7 gallons of imported oil. That is a remarkably positive statistic.

One criticism of Federal support for ethanol is that the industry has in its recent history been dominated by a single large corporation. The small producer credit and the extension of that credit to cooperatively owned plants acts directly to address that concern. In Minnesota, cooperatively owned plants are the leading ethanol producers. That trend can and should be further encouraged.

The existing small ethanol producer credit allows ethanol plants which produce fewer than 30 million gallons annually to collect a 10-cent-per-gallon tax credit for the first 15 million gallons of their production. Unfortunately, the Internal Revenue Service has judged that the way the provision of the Tax Code is currently written, cooperatives cannot pass the credit through to their patrons. Thus, a co-op which distributes all income to patrons in the form of dividends cannot utilize the nonrefundable credit because it lacks taxable income to which the credit can be applied. Farmer-owners, who are taxed on their share of the cooperative's income, are denied the credit. The bill would correct this unintentional negative outcome by explicitly authorizing the passthrough of the credit to patrons of a cooperative. Those few cooperatively owned ethanol plants which retain income at the cooperative level, usually due to the business' relationship to another cooperative business, could continue to collect the credit at the cooperative level.

Mr. President, it is no time to stand still regarding Federal policy which affects the economic health of our rural communities. This bill links positive effects for the rural economy to sound energy and environmental policy. It is endorsed by the National Council for Farm Cooperatives, the American Farm Bureau Federation, the National Corn Growers Association, the National Farmers Union, and the American Corn Growers. It has been introduced with bipartisan cosponsorship in the House of Representatives, and I hope we can pass it here in the Senate.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1248

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

**SECTION 1. ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.**

(a) IN GENERAL.—Subsection (d) of section 40 of the Internal Revenue Code of 1986 (relating to alcohol used as fuel) is amended by adding at the end the following new paragraph:

''(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

''(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization made on a timely filed return (including extensions) for such year, be apportioned pro rata among patrons on the basis of the quantity or value of business done with or for such patrons for the taxable year. Such an election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) for the taxable year of the organization, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron in which the patronage dividend for the taxable year referred to in subparagraph (A) is includible in gross income.

''(C) SPECIAL RULE FOR DECREASING CREDIT FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a)(3) for a taxable year is less than the amount of such credit shown on the cooperative organization's return for such year, an amount equal to the excess of such reduction over the amount not apportioned to the patrons under subparagraph (A) for the taxable year shall be treated as an increase in tax imposed by this chapter on the organization. Any such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this subpart or subpart A, B, E, or G of this part.''

(b) TECHNICAL AMENDMENT.—Section 1388 of such Code (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

''(k) CROSS REFERENCE.—

**''For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(d)(6).''**

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.●

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By Mr. FRIST:

S. 1249. A bill to amend the Internal Revenue Code of 1986 to establish medical savings accounts, and for other purposes; to the Committee on Finance.

MEDICAL SAVINGS ACCOUNTS LEGISLATION

● Mr. FRIST. Mr. President, I introduce legislation aimed at controlling skyrocketing health care costs in America today. Specifically, this legislation creates medical savings accounts [MSA's] which are designed to give individuals another choice in the health care market. MSA's also serve to change provider and consumer behavior by decreasing the role of third party payors, while increasing individual awareness of health care costs.

Today, there is little, if any, incentive for patients to be cost-conscious consumers of health care. Imagine if you were required to pay only 20 cents of every dollar you spend on food, clothing, consumer goods, and transportation. Essentially, imagine that an

80 percent off sign was posted above every product you buy. If this were the case, you'd probably eat more, buy more, and own more, probably much more than you need. This may sound too good to be true—but it's exactly what is happening in our health care system today.

On average, every time a patient in America receives a dollar's worth of medical services, 79 cents is paid for by someone else—usually the Government or an insurance company. The result is that we grossly overconsume medical services. Everyone wants the best—whether it is a deluxe hospital room, the latest in nuclear medical imaging, or an MRI scan for a headache—and the result is that health care costs are going through the roof.

Medical savings accounts are a solution. MSA's would give individuals more choice in the health care market. MSA's would stem rising health care costs without decreasing the availability and quality of patient care by empowering individuals to purchase medical services directly. These personal accounts would encourage patients to make prudent, cost-conscious decisions about their health care needs, and would force hospitals and physicians to compete for patients on the basis of the cost and quality of care.

What are Medical savings accounts? Medical savings accounts are tax-free, personal accounts which can be used by an individual to pay medical bills. Take, for example, the employee of a company: today an employer might pay three or four thousand dollars for a medical insurance policy with a $500 deductible. The employee has no incentive to be cost-conscious. In contrast, with my legislation, if medical savings accounts were available, the employer would deposit an amount up to $2,500 tax free in the savings account, which would belong to the employee. The employee would buy an inexpensive, catastrophic-type policy which would cover all medical expenses above $2,500 per year. For medical expenses up to the $2,500 annual out-of-pocket cost, the employee would use money from the savings account. Any savings account money not spent on health care expenses that year would grow in the employee's account and would accumulate year to year. The money could be used to pay for health care expenses, insurance premiums during periods of unemployment, and long-term care expenses.

Furthermore, as owner of the account, the individual has a strong incentive to become a cost-conscious consumer of medical care. He will demand quality care at competitive prices. The system will respond with better outcome measures and lower unit prices for health care. We will potentially save billions of dollars in health care costs because individual patients will modify their health care habits to consume health care services prudently.

Medical savings accounts—and this is usually overlooked by policy makers in Washington—will change provider behavior as well. Throughout much of my practice as a heart and lung transplant surgeon, I would perform a transplant, submit the bill, and it was paid—no questions asked. However, one day an individual—who was actually paying for his transplant from his own pocket—came into my office with a list of five or six transplant centers, morbidity data, infection rates, and prices. He asked me why I charged what I charged, why my success was different than others on his list, and how our program at Vanderbilt differed from its competitors. That one individual caused me to totally reassess how our multiorgan transplant center operated. For the next 2 weeks, each of the transplant teams at our facility worked together to determine where we could improve the quality of care and become more efficient and ultimately lower our prices in a competitive market.

Because someone else usually pays the bills, many patients forget that they are consumers. They don't ask providers to be accountable. If one individual empowered because he was responsible for his own health care dollars could transform my entire transplant center by asking questions, imagine what could happen if we empowered hundreds of thousands of individuals across the county similarly.

Finally, let me describe how my legislation differs from previously introduced MSA bills. Previous bills have defined only a catastrophic plan by the dollar amount of the deductible. These bills, by their very nature, would exclude other types of plan designs which focus on significant cost sharing. If our goal is to allow individuals greater control of their health care dollars, it makes sense to allow individuals a choice of MSA plan options to best meet their unique needs. The real value of our U.S. health care market lies in its responsiveness and opportunity for innovation. My legislation is designed to encourage this innovation. My legislation defines a catastrophic health plan as any health plan which has an annual ''out-of-pocket expense requirement'' which is not less than $2,500. With this definition, in addition to traditional indemnity insurers, a broad range of coordinated care plans will also be able to offer an MSA plan. In turn, competitive market forces will spur innovation to meet the needs of the market, and individuals will benefit from a variety of MSA plan options to choose from. For example, one individual may choose a high deductible plan for which MSA dollars would fund 100 percent of the first $2,500 of care. However, another individual may choose a different plan requiring 50 percent cost sharing for the first $5,000 of care. Both plans will encourage cost-conscious behavior.

Mr. President, I ask that the introduction of my medical savings account proposal today be viewed as a fresh start. As I have explained, some of my colleagues in the Senate and House have proposed that medical savings accounts be linked only to high-deductible, catastrophic health policies. I, however, believe that my proposal will increase the choices available to individual consumers. This will not only increase choices available to individuals, but will reduce the potential problem of adverse selection and will promote a level playing field in the health care system.

Mr. President, in closing, we in America are fortunate to have the absolute highest quality health care in the world. When the leaders of the world become seriously ill, they do not go to Great Britain or Canada to seek treatment, they come to the United States. And while there are those who would like to stifle our technological advances and allow bureaucrats to tell us how much and what kind of health care we can receive, the American people have loudly and clearly rejected this notion.

No one can predict what will happen in medicine in the first 50 years of the 21st century. Fifty years ago, when my father was a young doctor in Tennessee making house calls, he could not have envisioned what medical practice today would be like. The technological advances are simply mind-boggling. Mr. President, the challenge for us is to maintain the highest quality health care in the world and to continue to make it available to all Americans. But this can only be done if we first change the basic framework through which medical services are consumed, and build on a market-based system. I believe my legislation which creates the use of medical savings accounts will be a major step in that direction.

I would welcome any suggestions my colleagues or others may have for improving this legislation and hope we do not forgo the opportunity to establish MSA's this year.

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

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

S. 1249

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

**SECTION 1. DEDUCTION FOR CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

**''SEC. 220. CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.**

''(a) DEDUCTION ALLOWED.—In the case of an eligible individual, there shall be allowed as a deduction the amounts paid in cash during the taxable year by the individual to a medical savings account for the benefit of—

''(1) the eligible individual, or

''(2) any spouse or dependent (as defined in section 152) of the eligible individual who is enrolled in the same health plan as the eligible individual but only if the spouse or dependent is also an eligible individual.

''(b) LIMITATIONS.—

''(1) ONLY 1 ACCOUNT PER FAMILY.—No deduction shall be allowed under subsection (a) for amounts paid to any medical savings account for the benefit of an eligible individual, such individual's spouse, or any dependent (as so defined) of such individual if such individual, spouse, or dependent is a beneficiary of any other medical savings account.

''(2) DOLLAR LIMITATION.—

''(A) IN GENERAL.—The amount allowable as a deduction under subsection (a) with respect to contributions to a medical savings account for the taxable year shall not exceed the lesser of—

''(i) $2,500 ($5,000 in the case of a medical savings account established on behalf of more than 1 individual), or

''(ii) the catastrophic health plan differential.

''(B) CATASTROPHIC HEALTH PLAN DIFFERENTIAL.—For purposes of subparagraph (A)(ii)—

''(i) IN GENERAL.—The catastrophic health plan differential for any taxable year is equal to the sum of the amounts determined under clause (ii) for each month during the taxable year for which the taxpayer was an eligible individual.

''(ii) MONTHLY DIFFERENTIAL.—The amount determined under this clause for any month is the excess (if any) of—

''(I) the monthly premium determined under clause (iii) for the same class of enrollment as the catastrophic health plan in which the eligible individual is enrolled in, over

''(II) the aggregate amount paid for coverage for such month under the catastrophic health plan.

''(iii) MONTHLY PREMIUM.—Not later than December 31 of each calendar year, the Secretary shall determine and publish the monthly premium (for each class of enrollment) for coverage under the health benefits plan offered under chapter 89 of title 5, United States Code, with the highest enrollment, adjusted for a national population under 65 years of age (as determined by the Secretary) for the following calendar year. The premium shall be determined on the basis of the annual open enrollment period with respect to such following calendar year.

''(C) COST-OF-LIVING ADJUSTMENT.—In the case of a taxable year beginning in a calendar year after 1996, each dollar amount in subparagraph (A)(i) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '1995' for '1992' in subparagraph (B) thereof.

''(3) PHASE-IN OF DEDUCTION.—In the case of taxable years beginning after December 31, 1995, and before January 1, 2000, only the following percentages of the deduction allowable under this section (without regard to this paragraph) shall be allowed:

| **''If the taxable year begins in:** | **The applicable percentage is:** |
|---|---|
| 1996 or 1997 ..... | 50 percent |
| 1998 or 1999 ..... | 75 percent |

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to any month, any individual who is not eligible during such month—

''(A) to participate in an employer-subsidized health plan maintained by an employer of the individual, the individual's spouse, or any dependent (as defined in section 152) of either, or

''(B) to receive any employer contribution to a medical savings account.

For purposes of subparagraph (B), a self-employed individual (within the meaning of section 401(c)) shall not be treated as his own employer.

''(2) CATASTROPHIC HEALTH PLAN.—For purposes of this section—

''(A) IN GENERAL.—The term 'catastrophic health plan' means a health plan which—

''(i) has an annual out-of-pocket expense requirement per covered individual which is not less than $2,500, and

''(ii) has an aggregate annual limit on out-of-pocket expenses for all covered individuals which is not less than $5,000.

''(B) MINIMUM PERIOD OF PLAN.—A health plan shall not be treated as a catastrophic health plan unless—

''(i) the initial period of coverage under the plan is 24 months, and

''(ii) coverage under the plan may not be terminated after such initial period without advance notice of at least 1 year unless the individual is enrolling in another catastrophic health plan.

Clauses (i) and (ii) shall not preclude any termination for cause.

''(C) HEALTH PLAN.—The term 'health plan' means any plan or arrangement which provides, or pays the cost of, health benefits. Such term does not include the following, or any combination thereof:

''(i) Coverage only for accidental death, dismemberment, dental, or vision.

''(ii) Coverage providing wages or payments in lieu of wages for any period during which the employee is absent from work on account of sickness or injury.

''(iii) A medicare supplemental policy (as defined in section 1882(g)(1)) or additional health care services under a risk contract under section 1876 for which an individual is charged premiums in addition to premiums under part B of title XVIII.

''(iv) Coverage issued as a supplement to liability insurance.

''(v) Workers' compensation or similar insurance.

''(vi) Automobile medical-payment insurance.

''(vii) A long-term care insurance policy, including a nursing home fixed indemnity policy (unless the Secretary determines that such a policy provides sufficiently comprehensive coverage of a benefit so that it should be treated as a health plan).

''(viii) An equivalent health care program.

''(ix) Any plan or arrangement not described in any preceding subparagraph which provides for benefit payments, on a periodic basis, for a specified disease or illness or period of hospitalization without regard to the costs incurred or services rendered during the period to which the payments relate.

''(x) Such other plan or arrangement as the Secretary determines is not a health plan.

''(D) EQUIVALENT HEALTH CARE PROGRAM.—The term 'equivalent health care program' means—

''(i) part A or part B of the medicare program under title XVIII of the Social Security Act,

''(ii) the medicaid program under title XIX of the Social Security Act,

''(iii) the health care program for active military personnel under title 10, United States Code,

''(iv) the veterans health care program under chapter 17 of title 38, United States Code,

''(v) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in section 1073(4) of title 10, United States Code, and

''(vi) the Indian health service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

''(3) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' has the meaning given such term by section 7705.

''(4) TIME WHEN CONTRIBUTIONS DEEMED MADE.—A contribution shall be deemed to be made on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).''

(b) DEDUCTION ALLOWED AGAINST GROSS INCOME.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (15) the following new paragraph:

''(16) MEDICAL SAVINGS ACCOUNTS.—The deduction allowed by section 220.''

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

''Sec. 220. Contributions to medical savings accounts.

''Sec. 221. Cross reference.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 2. EXCLUSION FROM INCOME OF EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Section 106 (relating to contributions by employers to accident and health plans) is amended by adding at the end the following new subsection:

''(b) CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

''(1) TREATMENT OF CONTRIBUTIONS.—

''(A) IN GENERAL.—Gross income of an employee who is covered by a catastrophic health plan of an employer shall not include any employer contribution to a medical savings account on behalf of the employee or the employee's spouse or dependents (as defined in section 152).

''(B) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions described in subparagraph (A) and employer contributions to a health plan of the employer.

''(2) LIMITATIONS.—

''(A) ONLY 1 ACCOUNT PER FAMILY.—No exclusion shall be allowed under paragraph (1) for amounts paid to any medical savings account on behalf of an employee or the employee's spouse or dependents (as so defined) if employee, spouse, or dependent is a beneficiary of any other medical savings account.

''(B) DOLLAR LIMITATION.—The amount which may be excluded under paragraph (1) for any taxable year shall not exceed the lesser of—

''(i) $2,500 ($5,000 in the case of a medical savings account established on behalf of more than 1 individual), or

''(ii) the sum of the catastrophic health plan differentials for each month during the taxable year.

''(3) CATASTROPHIC HEALTH PLAN DIFFERENTIAL.—For purposes of subparagraph (B)(ii), the catastrophic health plan differential with respect to any employee for any month is the amount by which the cost for the month of the catastrophic health plan in which the employee is enrolled is less than—

''(A) the cost of the health plan (for the same class of enrollment) which—

''(i) the employee is eligible to enroll in through the employer, and

''(ii) has the highest cost of all health plans in which the employee may enroll in through the employer, or

''(B) if the employee is not eligible to enroll in any such health plan through the employer or the employer does not offer any such health plan, the monthly premium for the month determined under section 220(b)(2)(B)(iii).

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of a taxable year beginning in a calendar year after 1996, each dollar amount in paragraph (2)(B)(i) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '1995' for '1992' in subparagraph (B) thereof.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) CATASTROPHIC HEALTH PLAN.—The term 'catastrophic health plan' has the meaning given such term by section 220(c)(2).

''(B) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' has the meaning given such term by section 7705.''

(b) EMPLOYER PAYMENTS EXCLUDED FROM EMPLOYMENT BASE.—

(1) SOCIAL SECURITY.—

(A) Subsection (a) of section 3121 is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(B) Subsection (a) of section 209 of the Social Security Act is amended by striking ''or'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting ''; or'', and by inserting after paragraph (19) the following new paragraph:

''(20) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b) of the Internal Revenue Code of 1986.''

(2) RAILROAD RETIREMENT.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

''(10) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(3) UNEMPLOYMENT.—Subsection (b) of section 3306 is amended by striking ''or'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ''; or'', and by inserting after paragraph (16) the following new paragraph:

''(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(4) WITHHOLDING.—Subsection (a) of section 3401 is amended by striking ''or'' at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting ''; or'', and by inserting after paragraph (20) the following new paragraph:

''(21) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).''

(c) CONFORMING AMENDMENT.—Section 106 is amended by striking ''Gross'' and inserting:

''(a) GENERAL RULE.—Gross''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 3. MEDICAL SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Chapter 79 is amended by adding at the end the following new section:

**''SEC. 7705. MEDICAL SAVINGS ACCOUNTS.**

''(a) GENERAL RULE.—The term 'medical savings account' means a trust created or organized in the United States for the exclusive benefit of the beneficiaries of the trust, but only if the written governing instrument creating the trust meets the following requirements:

''(1) Except in the case of a rollover contribution described in subsection (c)(5), no contribution will be accepted unless—

''(A) it is in cash, and

''(B) it is made for a period during which the individual on whose behalf it is made is covered under a catastrophic health plan.

''(2) Contributions will not be accepted for any taxable year in excess of the amount allowable as a deduction under section 220(b)(2) for such taxable year.

''(3) The trustee is a bank (as defined in section 408(n)), insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(4) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(5) No part of the trust assets will be invested in life insurance contracts.

''(6) The interest of an individual in the balance in the individual's account is nonforfeitable.

''(b) TREATMENT OF ACCOUNTS.—

''(1) ACCOUNT TREATED AS GRANTOR TRUST.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the account beneficiary of a medical savings account shall be treated for purposes of this title as the owner of such account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

''(B) TREATMENT OF CAPITAL LOSSES.—With respect to assets held in a medical savings account, any capital loss for a taxable year from the sale or exchange of such an asset shall be allowed only to the extent of capital gains from such assets for such taxable year. Any capital loss which is disallowed under the preceding sentence shall be treated as a capital loss from the sale or exchange of such an asset in the next taxable year.

''(2) ACCOUNT TERMINATES IF INDIVIDUAL ENGAGES IN PROHIBITED TRANSACTION.—

''(A) IN GENERAL.—If, during any taxable year of the account beneficiary, such beneficiary engages in any transaction prohibited by section 4975 with respect to the account, the account shall cease to be a medical savings account as of the first day of such taxable year.

''(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be a medical savings account by reason of subparagraph (A) on the first day of any taxable year, subsection (c) shall be applied as if—

''(i) there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day), and

''(ii) no portion of such distribution were used to pay qualified medical expenses.

''(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the account beneficiary uses the account or any portion thereof as security for a loan for purposes other than to pay qualified medical expenses, the portion so used is treated as distributed and not used to pay qualified medical expenses.

''(c) TREATMENT OF DISTRIBUTIONS.—

''(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES.—Any amount paid or distributed out of a medical savings account which is used exclusively to pay qualified medical expenses of any account beneficiary (or spouse or dependent (as defined in section 152)) of the account shall not be includible in gross income.

''(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

''(A) IN GENERAL.—Any amount paid or distributed out of a medical savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary (or spouse or dependent (as so defined)) shall be included in the gross income of such beneficiary to the extent such amount does not exceed the excess of—

''(i) the aggregate contributions to such account which were not includible in gross income by reason of section 106(b) or which were deductible under section 220, over

''(ii) the aggregate prior payments or distributions from such account which were includible in gross income under this paragraph.

''(B) SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) all payments and distributions during any taxable year shall be treated as 1 distribution, and

''(ii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

''(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (2) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account to the extent that such contribution exceeds the amount under subsection (a)(2) if—

''(A) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

''(B) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (B) shall be included in the gross income of the individual for the taxable year in which it is received.

''(4) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

''(A) IN GENERAL.—The tax imposed by chapter 1 on the account beneficiary for any taxable year in which there is a payment or distribution from a medical savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 10 percent of the amount which is so includible.

''(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

''(5) ROLLOVER CONTRIBUTION.—If any amount paid or distributed from a medical savings account to the account beneficiary (or spouse or dependent (as defined in section 152)) is paid into a medical savings account for the benefit of such beneficiary (or spouse or dependent) not later than the 60th day after the day on which the beneficiary (or spouse or dependent) receives the payment or distribution—

''(A) paragraph (2) shall not apply to such amount, and

''(B) such amount shall be treated as a rollover contribution described in this paragraph.

''(6) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of section 213, any payment or distribution out of a medical savings account for qualified medical expenses shall not be treated as an expense

paid for medical care to the extent of the amount of such payment or distribution which is attributable to amounts described in paragraph (2)(A).

''(7) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a medical savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer shall be treated as a medical savings account of such spouse, and not of such individual. Any such account or annuity shall, for purposes of this subtitle, be treated as maintained for the benefit of the spouse to whom the interest was transferred.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED MEDICAL EXPENSES.—

''(A) IN GENERAL.—The term 'qualified medical expenses' means any expense for—

''(i) medical care (as defined in section 213(d)), or

''(ii) qualified long-term care services.

''(B) EXCEPTION FOR INSURANCE.—

''(i) IN GENERAL.—Such term shall not include any expense for insurance.

''(ii) EXCEPTIONS.—Clause (i) shall not apply to any expense for—

''(I) coverage under a health plan during a period of continuation coverage described in section 4980B(f)(2)(B),

''(II) coverage under a medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act), or

''(III) payment of premiums under part A or B of title XVIII of the Social Security Act,

''(IV) coverage under a policy providing qualified long-term care services, or

''(V) coverage under a health plan during any period during which an individual is unemployed.

''(C) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, preventive, therapeutic, rehabilitative, and maintenance (including personal care) services—

''(I) which are required by an individual during any period during which such individual is a functionally impaired individual,

''(II) which have as their primary purpose the provision of needed assistance with 1 or more activities of daily living which a functionally impaired individual is certified as being unable to perform under clause (ii)(I), and

''(III) which are provided pursuant to a continuing plan of care prescribed by a licensed health care practitioner (other than a relative of such individual).

''(ii) FUNCTIONALLY IMPAIRED INDIVIDUAL.—

''(I) IN GENERAL.—The term 'functionally impaired individual' means any individual who is certified by a licensed health care practitioner (other than a relative of such individual) as being unable to perform, without substantial assistance from another individual (including assistance involving verbal reminding, physical cueing, or substantial supervision), at least 3 activities of daily living described in clause (iii).

''(II) SPECIAL RULE FOR HOME HEALTH CARE SERVICES.—In the case of services which are provided during any period during which an individual is residing within the individual's home (whether or not the services are provided within the home), subclause (I) shall be applied by substituting '2' for '3'. For purposes of this subclause, a nursing home or similar facility shall not be treated as a home.

''(iii) ACTIVITIES OF DAILY LIVING.—Each of the following is an activity of daily living:

''(I) Eating.

''(II) Transferring.

''(III) Toileting.

''(IV) Dressing.

''(V) Bathing.

''(D) LICENSED HEALTH CARE PRACTITIONER.—For purposes of subparagraph (C)—

''(i) IN GENERAL.—The term 'licensed health care practitioner' means—

''(I) a physician or registered professional nurse,

''(II) a qualified community care case manager (as defined in clause (ii)), or

''(III) any other individual who meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

''(ii) QUALIFIED COMMUNITY CARE CASE MANAGER.—The term 'qualified community care case manager' means an individual or entity which—

''(I) has experience or has been trained in providing case management services and in preparing individual care plans;

''(II) has experience in assessing individuals to determine their functional and cognitive impairment;

''(III) is not a relative of the individual receiving case management services; and

''(IV) meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

''(E) RELATIVE.—For purposes of this paragraph, the term 'relative' means an individual bearing a relationship to another individual which is described in paragraphs (1) through (8) of section 152(a).

''(2) ACCOUNT BENEFICIARY.—The term 'account beneficiary' means the individual for whose benefit the medical savings account is maintained.

''(e) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if—

''(1) the assets of such account are held by a bank (as defined in section 408(n)), insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the account will be consistent with the requirements of this section, and

''(2) the custodial account would, except for the fact that it is not a trust, constitute a medical savings account described in subsection (a).

For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

''(f) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the individual for whose benefit the account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

(b) PREEMPTION OF CERTAIN CONFLICTING LAWS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no Federal or State law shall prohibit a carrier from offering a catastrophic health plan in conjunction with a medical savings account (as defined in section 7705 of the Internal Revenue Code of 1986).

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''carrier'' means any entity licensed or authorized under Federal or State law to offer a health plan,

(B) the term ''catastrophic health plan'' means a health plan—

(i) which is described in section 220(c)(2) of the Internal Revenue Code of 1986, or

(ii) a similar health plan which provides significant cost sharing, and

(C) the term ''health plan'' has the meaning given such term by section 220(c)(2)(C) of such Code.

(c) TREATMENT OF EXCESS CONTRIBUTIONS.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended—

(1) by inserting ''**MEDICAL SAVINGS ACCOUNTS**,'' after ''**ACCOUNTS**,'' in the heading of such section,

(2) by striking ''or'' at the end of paragraph (1) of subsection (a),

(3) by redesignating paragraph (2) of subsection (a) as paragraph (3) and by inserting after paragraph (1) the following:

''(2) a medical savings account (within the meaning of section 7705(a)), or'', and

(4) by adding at the end the following new subsection:

''(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—For purposes of this section, in the case of a medical savings account (within the meaning of section 7705(a)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the account exceeds the amount which may be contributed to the account under section 7705(a)(2) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the medical savings account in a distribution to which section 7705(c)(3) applies shall be treated as an amount not contributed.''

(d) TREATMENT OF PROHIBITED TRANSACTIONS.—Section 4975 (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

''(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account (within the meaning of section 7705(a)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 7705(b)(2)(A) to such account.'', and

(2) by inserting ''or a medical savings account described in section 7705(a)'' in subsection (e)(1) after ''described in section 408(a)''.

(e) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting ''**OR ON MEDICAL SAVINGS ACCOUNTS**'' after ''**ANNUITIES**'' in the heading of such section, and

(2) by adding at the end of subsection (a) the following: ''The person required by section 7705(f) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.''

(f) CLERICAL AMENDMENTS.—

(1) The table of sections for chapter 43 is amended by striking the item relating to section 4973 and inserting the following:

''Sec. 4973. Treatment of excess contributions to individual retirement accounts, medical savings accounts, certain 403(b) contracts, and certain individual retirement annuities.''

(2) The table of sections for subchapter B of chapter 68 is amended by inserting ''or on medical savings accounts'' after ''annuities'' in the item relating to section 6693.

**SEC. 4. SENSE OF THE SENATE REGARDING TAX TREATMENT OF HEALTH INSURANCE AND LONG-TERM CARE INSURANCE.**

It is the sense of the Senate that—

(1) there should be tax parity for all health insurance whether provided or purchased by individuals, self-employed, or employers; and

(2) long-term care services and insurance should be provided tax status similar to medical care services and insurance.●

## ADDITIONAL COSPONSORS

S. 304

At the request of Mr. SANTORUM, the names of the Senator from Tennessee [Mr. FRIST], the Senator from Washington [Mrs. MURRAY], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 358

At the request of Mr. HEFLIN, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 358, a bill to amend the Internal Revenue Code of 1986 to provide for an excise tax exemption for certain emergency medical transportation by air ambulance.

S. 715

At the request of Mr. D'AMATO, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 715, a bill to provide for portability of health insurance, guaranteed renewability, high risk pools, medical care savings accounts, and for other purposes.

S. 960

At the request of Mr. SANTORUM, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 960, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns, and for other purposes.

S. 1134

At the request of Mr. NICKLES, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1134, a bill to provide family tax relief.

S. 1137

At the request of Mr. THOMAS, the names of the Senator from Colorado [Mr. CAMPBELL], and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 1137, a bill to amend title 17, United States Code, with respect to the licensing of music, and for other purposes.

AMENDMENT NO. 2486

At the request of Mr. DOLE his name was added as a cosponsor of amendment No. 2486 proposed to H.R. 4, a bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

AMENDMENT NO. 2526

At the request of Mr. FRIST his name was added as a cosponsor of amendment No. 2526 proposed to H.R. 4, a bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

AMENDMENT NO. 2550

At the request of Mr. KOHL the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of amendment No. 2550 proposed to H.R. 4, a bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

AMENDMENT NO. 2568

At the request of Mr. GRAHAM the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of amendment No. 2568 proposed to H.R. 4, a bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

## SENATE RESOLUTION 172—PROVIDING FOR SEVERANCE PAY

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 172

*Resolved*, That (a) an individual who is an employee in the office of the Sergeant at Arms and Doorkeeper of the Senate, who was an employee in that office for at least 183 days (whether or not service was continuous) during fiscal year 1995, and whose service in that office is terminated on or after the date this resolution is agreed to, but prior to October 1, 1995, shall be entitled to one lump sum payment consisting of severance pay in an amount equal to 2 months of the individual's basic pay at the rate in effect on September 1, 1995.

(b) The Secretary of the Senate shall make payments under this resolution from funds appropriated for fiscal year 1995 from the appropriation account ''Salaries, Officers and Employees'' for salaries of officers and employees in the office of the Sergeant at Arms and Doorkeeper of the Senate.

(c) A payment may be make under this resolution only upon certification to the Disbursing Office by the Sergeant at Arms and Doorkeeper of the Senate of the individual's eligibility for the payment.

(d) In the event of the death of an individual who is entitled to payment under this resolution, any such payment that is unpaid shall be paid to the widow or widower of the individual or, if there is no widow or widower of such decreased individual, to the heirs at law or next of kin of such decreased individual.

(e) A payment under this resolution shall not be treated as compensation for purposes of any provision of title 5, United States Code, or of any other law relating to benefits accruing from employment by the United States, and the period of entitlement to such pay shall not be treated as a period of employment for purposes of any such provision or law.

## AMENDMENTS SUBMITTED

## THE WORK OPPORTUNITY ACT OF 1995

### DASCHLE (AND KENNEDY) AMENDMENT NO. 2682

Mr. DASCHLE (for himself and Mr. KENNEDY) proposed an amendment to amendment No. 2280 proposed by Mr. DOLE to the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence; as follows:

On page 40, between lines 16 and 17, insert the following new paragraph:

''(4) NON-CASH ASSISTANCE FOR CHILDREN.—Nothing in paragraph (1) shall be construed as prohibiting a State from using funds provided under section 403 to provide aid, in the form of in-kind assistance, vouchers usable for particular goods or services as specified by the State, or vendor payments to individuals providing such goods or services, to the minor children of a needy family.''.

### DOLE AMENDMENT NO. 2683

Mr. DOLE proposed an amendment to amendment No. 2280 proposed by himself to the bill H.R. 4, supra; as follows:

On page 17, strike lines 13 through 22 and insert the following:

''(A) IN GENERAL.—For purposes of paragraph (1)(A), a State family assistance grant for any State for a fiscal year is an amount equal to the sum of—

''(i) the total amount of the Federal payments to the State under section 403 (other than Federal payments to the State described in section subparagraphs (A), (B) and (C) of section 419(a)(2)) for fiscal year 1994 (as such section 403 was in effect during such fiscal year), plus

''(ii) the total amount of the Federal payments to the State under subparagraphs (A), (B) and (C) of section 419(a)(2),

as such payments were reported by the State on February 14, 1995, reduced by the amount, if any, determined under subparagraph (B), and for fiscal year 2000, reduced by the percent specified under section 418(a)(3), and increased by an amount, if any, determined under paragraph (2)(D).

On page 77, line 21, strike the end quotation marks and the second period.

One page 77, between lines 21 and 22, insert the following new section:

**''SEC. 419. AMOUNTS FOR CHILD CARE.**

''(a) CHILD CARE ALLOCATION—

''(1) IN GENERAL.—From the amount appropriated under section 403(a)(4)(A) for a fiscal year, the Secretary shall set aside an amount equal to the total amount of the Federal payments for fiscal year 1994 to States under section—

''(A) 402(g)(3)(A) of this Act (as such section was in effect before October 1, 1995) for amounts expended for child care pursuant to paragraph (1) of such section;

''(B) 403(l)(1)(A) of this Act (as so in effect) for amounts expended for child care pursuant to section 402(g)(1)(A) of this Act, in the case of a State with respect to which section 1108 of this Act applies; and

''(C) 403(n) of this Act (as so in effect) for child care services pursuant to section 402(i) of this Act.

''(2) DISTRIBUTION.—From amounts set-aside for a fiscal year under paragraph (1), the Secretary shall pay to a State an amount equal to the total amounts of Federal payments for fiscal year 1994 to the State under section—