

MCCAIN) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1046

At the request of Mr. HOLLINGS, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1046, a bill to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations.

S. 1052

At the request of Mr. NELSON of Florida, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1052, a bill to ensure that recipients of unsolicited bulk commercial electronic mail can identify the sender of such electronic mail, and for other purposes.

S. 1091

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1091, a bill to provide funding for student loan repayment for public attorneys.

S. 1115

At the request of Mrs. MURRAY, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 1115, a bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

S. 1180

At the request of Mr. SANTORUM, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1180, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1181

At the request of Mr. CORZINE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1181, a bill to promote youth financial education.

S. 1201

At the request of Mr. GRAHAM of South Carolina, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 1201, a bill to promote healthy lifestyles and prevent unhealthy, risky behaviors among teenage youth.

S. 1233

At the request of Ms. MIKULSKI, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1233, a bill to authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center.

S. 1237

At the request of Mr. BENNETT, the names of the Senator from West Vir-

ginia (Mr. ROCKEFELLER) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 1237, a bill to amend the Rehabilitation Act of 1973 to provide for more equitable allotment of funds to States for centers for independent living.

S. 1248

At the request of Mr. GREGG, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1248, a bill to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

S. 1273

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1273, a bill to provide for a study to ensure that students are not adversely affected by changes to the needs analysis tables, and to require the Secretary of Education to consult with the Advisory Committee on Student Financial Assistance regarding such changes.

S. CON. RES. 27

At the request of Mr. BOND, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. Con. Res. 27, a concurrent resolution urging the President to request the United States International Trade Commission to take certain actions with respect to the temporary safeguards on imports of certain steel products, and for other purposes.

S. CON. RES. 45

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing appreciation to the Government of Kuwait for the medical assistance it provided to Ali Ismaeel Abbas and other children of Iraq and for the additional humanitarian aid provided by the Government and people of Kuwait, and for other purposes.

S. CON. RES. 52

At the request of Mr. HARKIN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Con. Res. 52, a concurrent resolution expressing the sense of Congress that the United States Government should support the human rights and dignity of all persons with disabilities by pledging support for the drafting and working toward the adoption of a thematic convention on the human rights and dignity of persons with disabilities by the United Nations General Assembly to augment the existing United Nations human rights system, and for other purposes.

S. RES. 151

At the request of Mr. WYDEN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 151, a resolution eliminating secret Senate holds.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIDEN (for himself, Mr. McCONNELL, Mr. BUNNING, and Mr. GRAHAM of South Carolina):

S. 1277. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement discipline, accountability, and due process laws; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise to introduce the Law Enforcement Discipline, Accountability, and Due Process Act of 2003, along with the Chairman of the Judiciary Subcommittee on Crime, Corrections and Victims' Rights Senator GRAHAM, Senator McCONNELL and Senator BUNNING.

These are trying times for the men and women on our front lines providing domestic security, our Nation's law enforcement personnel. State and local fiscal problems are forcing many communities to cut their police budgets. Each change in the Nation's homeland security alert level results in increased overtime and other costs for local law enforcement. Just yesterday, the FBI reported that the number of murders and rapes was up across the country in 2002. And this Administration is determined to dramatically scale back Federal crime-fighting initiatives like the COPS program, a proven initiative that has been hailed as one of the keys to the crime-drop of the nineties.

At the same time, the men and women of law enforcement work in extremely dangerous environments. An average of 165 police officers are killed in the line of duty every year. And at times, internal police investigations and administrative hearings do not provide officers with basic protections. According to the National Association of Police Organizations, "[i]n roughly half of the states in this country, officers enjoy some legal protections against false accusations and abusive conduct, but hundreds of thousands of officers have very limited due process rights and confront limitations on their exercise of other rights, such as the right to engage in political activities." The Fraternal Order of Police notes that, "[i]n a startling number of jurisdictions throughout this country, law enforcement officers have no procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore."

This legislation we introduce today seeks to provide officers with certain basic protections in those jurisdictions where such workplace protections are not currently provided. This bill allows law enforcement officials to engage in political activities. It provides standards and procedures to guide State and local law enforcement agencies during internal investigations, interrogations, and administrative disciplinary hearings of law enforcement officers, and it calls upon States to develop and enforce these disciplinary procedures. The bill would preempt State laws which confer fewer rights than those provided for in the legislation, but it would not preempt any State or local laws that confer rights or protections that are equal to or exceed the rights and protections afforded in the bill. My own State of Delaware has its own law enforcement officers' bill of rights, and as such Delaware would not be impacted by the provisions of this bill. I am pleased that the bill has earned the endorsement of the Fraternal Order of Police and of the National Association of Police Organizations.

Beyond benefiting those on the front lines of local law enforcement, this bill would enhance the ability of our citizens to hold their local police accountable if they do transgress while on the job. The legislation includes provisions that will ensure citizen complaints against police officers are investigated, and that citizens are informed of the outcome of these investigations. The bill balances the rights of police officers with the rights of citizens to raise valid concerns about the conduct of some of these officers. In addition, I have consulted with constitutional experts who have opined that the bill is consistent with Congress' powers under the Commerce Clause and that it does not run afoul of the Supreme Court's Tenth Amendment jurisprudence.

While I believe that the bill we introduce today takes the right approach, I want to note the International Association of Chiefs of Police's opposition to this measure. In April of this year I met with Richmond, California Chief of Police Joseph Samuels, the president of the IACP. Chief Samuels and I acknowledged that we disagreed on this bill, but I pledged to him that their concerns would be heard and taken into consideration as the bill we introduce today is debated in Congress. It is my view that without a meeting of the minds between police management and union officials on this issue, enactment of a meaningful law enforcement officers' bill of rights will be difficult. It is my hope that the newly-constituted Subcommittee on Crime, Corrections and Victims' Rights, on which I serve as ranking member, will hold a hearing on this measure. That subcommittee is the proper forum in which to debate the merits of our approach to guaranteeing basic procedural safeguards to the men and women of law enforcement.

I urge my colleagues to join Senators GRAHAM, McCONNELL, BUNNING and me

in providing all of the Nation's law enforcement officers with the basic rights they deserve.

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. 1277

*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 "State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2003".

**SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.**

(a) FINDINGS.—Congress finds that—

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure—

(i) the due process and political rights of law enforcement officers;

(ii) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and

(iii) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) DECLARATION OF POLICY.—Congress declares that it is the purpose of this Act and the policy of the United States to—

(1) protect the due process and political rights of State and local law enforcement of-

ficers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

**SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.**

(a) IN GENERAL.—Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

**"SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.**

"(a) DEFINITIONS.—In this section:

"(1) DISCIPLINARY ACTION.—The term 'disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

"(2) DISCIPLINARY HEARING.—The term 'disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

"(3) EMERGENCY SUSPENSION.—The term 'emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

"(4) INVESTIGATION.—The term 'investigation'—

"(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

"(B) includes—

"(i) asking questions of any other law enforcement officer or non-law enforcement officer;

"(ii) conducting observations;

"(iii) reviewing and evaluating reports, records, or other documents; and

"(iv) examining physical evidence.

"(5) LAW ENFORCEMENT OFFICER.—The terms 'law enforcement officer' and 'officer' have the meaning given the term 'law enforcement officer' in section 1204, except the term does not include a law enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

"(6) PERSONNEL RECORD.—The term 'personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

"(7) PUBLIC AGENCY AND LAW ENFORCEMENT AGENCY.—The terms 'public agency' and 'law enforcement agency' each have the meaning given the term 'public agency' in section

1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

“(8) SUMMARY PUNISHMENT.—The term ‘summary punishment’ means punishment imposed—

“(A) for a violation of law that does not result in any disciplinary action; or

“(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

“(2) NONAPPLICABILITY.—This section does not apply in the case of—

“(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

“(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

“(c) POLITICAL ACTIVITY.—

“(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN POLITICAL ACTIVITY.—Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

“(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—A law enforcement officer shall not be—

“(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

“(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is determined to be in conflict with or incompatible with service as a law enforcement officer.

“(3) ADVERSE PERSONNEL ACTION.—An action by a public agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

“(d) EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS.—

“(1) COMPLAINT PROCESS.—Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that—

“(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to—

“(i) the law enforcement agency employing the law enforcement officer; or

“(ii) any other law enforcement agency charged with investigating such complaints;

“(B) sets forth the procedures for the investigation and disposition of such complaints;

“(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

“(D) requires notification to the complainant in writing of the final disposition of the

complaint and the reasons for such disposition.

“(2) INITIATION OF AN INVESTIGATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by—

“(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

“(ii) any other law enforcement agency charged with investigating such a complaint.

“(B) EXCEPTION.—Subparagraph (A) does not apply if—

“(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

“(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.

“(3) COMPLAINANT OR VICTIM CONFLICT OF INTEREST.—The complainant or victim of the alleged violation of law giving rise to an investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

“(e) NOTICE OF INVESTIGATION.—

“(1) IN GENERAL.—Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning or to otherwise being required to provide information to an investigating agency.

“(2) CONTENTS OF NOTICE.—Notice given under paragraph (1) shall include—

“(A) the nature and scope of the investigation;

“(B) a description of any allegation contained in a written complaint;

“(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

“(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

“(F) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION.—If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

“(1) COUNSEL AND REPRESENTATION.—

“(A) IN GENERAL.—Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

“(B) PRIVATE CONSULTATION.—During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

“(C) UNAVAILABILITY OF COUNSEL.—If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

“(2) REASONABLE HOURS AND TIME.—Any questioning of a law enforcement officer under investigation shall be conducted at a

reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and (f)(1).

“(3) PLACE OF QUESTIONING.—Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place—

“(A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

“(B) the place at which the officer under investigation reports for duty.

“(4) IDENTIFICATION OF QUESTIONER.—Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of—

“(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

“(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

“(5) SINGLE QUESTIONER.—During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

“(6) REASONABLE TIME PERIOD.—Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

“(7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

“(B) EXCEPTION.—The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if—

“(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

“(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

“(8) RECORDING.—

“(A) IN GENERAL.—All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

“(C) SEPARATE RECORDING.—To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

“(9) USE OF HONESTY TESTING DEVICES PROHIBITED.—No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

“(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE.—

“(1) NOTICE.—Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

“(2) OPPORTUNITY TO SUBMIT WRITTEN RESPONSE.—

“(A) IN GENERAL.—Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

“(B) CONTENTS OF RESPONSE.—The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

“(h) DISCIPLINARY HEARING.—

“(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

“(2) REQUIREMENT OF DETERMINATION OF VIOLATION.—No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

“(3) TIME LIMIT.—No disciplinary charge may be brought against a law enforcement officer unless—

“(A) the charge is filed not later than the earlier of—

“(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law; or

“(ii) 90 days after the commencement of an investigation; or

“(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

“(4) NOTICE OF HEARING.—Unless waived in writing by the officer or the counsel or representative of the officer, not later than 30 days after the filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of—

“(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

“(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

“(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing

address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

“(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with—

“(A) a copy of the complete file of the pre-disciplinary investigation; and

“(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that—

“(i) contain exculpatory information;

“(ii) are intended to support any disciplinary action; or

“(iii) are to be introduced in the disciplinary hearing.

“(6) EXAMINATION OF PHYSICAL EVIDENCE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer—

“(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

“(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

“(7) IDENTIFICATION OF WITNESSES.—Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

“(8) REPRESENTATION.—During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including—

“(A) the right to be represented by counsel or a representative;

“(B) the right to confront and examine all witnesses against the officer; and

“(C) the right to call and examine witnesses on behalf of the officer.

“(9) HEARING BOARD AND PROCEDURE.—

“(A) IN GENERAL.—A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall—

“(i) determine the composition of an independent and impartial disciplinary hearing board;

“(ii) appoint an independent and impartial hearing officer; and

“(iii) establish such procedures as may be necessary to comply with this section.

“(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD.—A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

“(10) SUMMONSES AND SUBPOENAS.—

“(A) IN GENERAL.—The disciplinary hearing board or independent hearing officer—

“(i) shall have the authority to issue summonses or subpoenas, on behalf of—

“(ii) the law enforcement agency employing the officer who is the subject of the hearing; or

“(II) the law enforcement officer who is the subject of the hearing; and

“(ii) upon written request of either the agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

“(B) EFFECT OF FAILURE TO COMPLY WITH SUMMONS OR SUBPOENA.—With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)—

“(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

“(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall—

“(I) be subject to contempt of a court proceeding according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

“(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

“(11) CLOSED HEARING.—A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

“(12) RECORDING.—All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape, video tape, or transcription.

“(13) SEQUESTRATION OF WITNESSES.—Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

“(14) TESTIMONY UNDER OATH.—The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

“(15) FINAL DECISION ON EACH CHARGE.—

“(A) IN GENERAL.—At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

“(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT.—The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law, as to which the officer was not charged.

“(16) BURDEN OF PERSUASION AND STANDARD OF PROOF.—The burden of persuasion or standard of proof of the prosecuting agency shall be—

“(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

“(B) by a preponderance of the evidence as to all other charges.

“(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD.—A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that—

“(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

“(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

“(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did

in fact violate the rule, regulation, order, or procedure as charged;

“(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

“(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

“(18) NO COMMISSION OF A VIOLATION.—If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation—

“(A) the matter is concluded;

“(B) no disciplinary action may be taken against the officer;

“(C) the personnel file of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

“(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

“(19) COMMISSION OF A VIOLATION.—

“(A) IN GENERAL.—If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

“(B) PENALTY.—The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

“(20) APPEAL.—Any officer who has been found to have committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

“(i) WAIVER OF RIGHTS.—

“(1) IN GENERAL.—An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

“(2) WRITTEN WAIVER.—A written waiver under this subsection shall be—

“(A) in writing; and

“(B) signed by—

“(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

“(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

“(j) SUMMARY PUNISHMENT.—Nothing in this section shall preclude a public agency from imposing summary punishment.

“(k) EMERGENCY SUSPENSION.—Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall—

“(1) be followed by a hearing in accordance with the requirements of subsection (h); and

“(2) not deprive the affected officer of any pay or benefit.

“(l) RETALIATION FOR EXERCISING RIGHTS.—There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of

any right provided to the officer under this section.

“(m) OTHER REMEDIES NOT IMPAIRED.—Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

“(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

“(o) PROTECTION OF LAW ENFORCEMENT OFFICER PERSONNEL FILES.—

“(1) RESTRICTIONS ON ADVERSE MATERIAL MAINTAINED IN OFFICERS’ PERSONNEL RECORDS.—

“(A) IN GENERAL.—Unless the officer has had an opportunity to review and comment, in writing, on any adverse material included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may—

“(i) include the adverse material in that personnel record; or

“(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

“(B) RESPONSIVE MATERIAL.—Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be—

“(i) attached to the adverse material; and  
“(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

“(2) RIGHT TO INSPECTION OF, AND RESTRICTIONS ON ACCESS TO INFORMATION IN, THE OFFICER’S OWN PERSONNEL RECORDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

“(B) RESTRICTIONS.—A law enforcement officer shall not have access to information in the personnel records of the officer if the information—

“(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was brought;

“(ii) contains letters of reference for the officer;

“(iii) contains any portion of a test document other than the results;

“(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

“(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

“(p) STATES’ RIGHTS.—

“(1) IN GENERAL.—Nothing in this section may be construed—

“(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State

and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

“(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

“(2) STATE OR LOCAL LAWS PREEMPTED.—A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

“(q) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section may be construed to—

“(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that provides for substantially the same or a greater right or protection afforded under this section; or

“(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.”

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

“Sec. 820. Discipline, accountability, and due process of State and local law enforcement officers.”.

#### SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.

Nothing in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

#### SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to each State on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

By Mr. VOINOVICH (for himself, Mrs. CLINTON, Mr. DEWINE, and Mr. SCHUMER):

S. 1279. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; to the Committee on Environmental and Public Works.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the text of the Disaster Area and Health and Environmental Monitoring Act of 2003 be printed in the RECORD.

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

S. 1279

*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 “Disaster Area Health and Environmental Monitoring Act of 2003”.

**SEC. 2. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.**

Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is amended by inserting after section 408 (42 U.S.C. 5174) the following:

**“SEC. 409. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.**

“(a) DEFINITIONS.—In this section:

“(1) INDIVIDUAL.—The term ‘individual’ includes—

“(A) a worker or volunteer who responds to a disaster, including—

“(i) a police officer;

“(ii) a firefighter;

“(iii) an emergency medical technician;

“(iv) any participating member of an urban search and rescue team; and

“(v) any other relief or rescue worker or volunteer that the President determines to be appropriate;

“(B) a worker who responds to a disaster by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

“(C) a person whose place of residence is in a disaster area;

“(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area; and

“(E) any other person that the President determines to be appropriate.

“(2) PROGRAM.—The term ‘program’ means a program described in subsection (b) that is carried out for a disaster area.

“(3) SUBSTANCE OF CONCERN.—The term ‘substance of concern’ means any chemical or substance associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster.

“(b) PROGRAM.—

“(1) IN GENERAL.—If the President determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area under this Act, the President may carry out a program for the protection, assessment, monitoring, and study of the health and safety of individuals to ensure that—

“(A) the individuals are adequately informed about and protected against potential health impacts of the substance of concern and potential mental health impacts in a timely manner;

“(B) the individuals are monitored and studied over time, including through baseline and follow-up clinical health examinations, for—

“(i) any short- and long-term health impacts of any substance of concern; and

“(ii) any mental health impacts;

“(C) the individuals receive health care referrals as needed and appropriate; and

“(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

“(2) ACTIVITIES.—A program under paragraph (1) may include such activities as—

“(A) collecting and analyzing environmental exposure data;

“(B) developing and disseminating information and educational materials;

“(C) performing baseline and follow-up clinical health and mental health examinations and taking biological samples;

“(D) establishing and maintaining an exposure registry;

“(E) studying the long-term human health impacts of any exposures through epidemiological and other health studies; and

“(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

“(3) TIMING.—To the maximum extent practicable, a program under paragraph (1) shall be established, and activities under the program shall be commenced (including baseline health examinations), in a timely manner that will ensure the highest level of public health protection and effective monitoring.

“(4) PARTICIPATION IN REGISTRIES AND STUDIES.—

“(A) IN GENERAL.—Participation in any registry or study that is part of a program under paragraph (1) shall be voluntary.

“(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

“(5) COOPERATIVE AGREEMENTS.—The President may carry out a program under paragraph (1) through a cooperative agreement with a medical institution, or a consortium of medical institutions, that is—

“(A) located near the disaster area, and near groups of individuals that worked or volunteered in response to the disaster in the disaster area, with respect to which the program is carried out; and

“(B) experienced in the area of environmental or occupational health, toxicology, and safety, including experience in—

“(i) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

“(ii) conducting long-term health monitoring and epidemiological studies;

“(iii) conducting long-term mental health studies; and

“(iv) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

“(6) INVOLVEMENT.—

“(A) IN GENERAL.—In establishing and maintaining a program under paragraph (1), the President shall ensure the involvement of interested and affected parties, as appropriate, including representatives of—

“(i) Federal, State, and local government agencies;

“(ii) labor organizations;

“(iii) local residents, businesses, and schools (including parents and teachers);

“(iv) health care providers; and

“(v) other organizations and persons.

“(B) COMMITTEES.—Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

“(c) REPORTS.—Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress a report on programs and studies carried out under the program.”.

**SEC. 3. BLUE RIBBON PANEL ON DISASTER AREA HEALTH PROTECTION AND MONITORING.**

(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall jointly establish a Blue Ribbon Panel on Disaster Area Health Protection and Monitoring (referred to in this section as the “Panel”).

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Panel shall be composed of—

(A) 15 voting members, to be appointed by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency in accordance with paragraph (2); and

(B) officers or employees of the Department of Health and Human Services, the Department of Homeland Security, the Environmental Protection Agency, and other Federal agencies, as appropriate, to be appointed by the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency as nonvoting, ex officio members of the Panel.

(2) BACKGROUND AND EXPERTISE.—The voting members of the Panel shall be individuals who—

(A) are not officers or employees of the Federal Government; and

(B) have expertise in—

(i) environmental health, safety, and medicine;

(ii) occupational health, safety, and medicine;

(iii) clinical medicine, including pediatrics;

(iv) toxicology;

(v) epidemiology;

(vi) mental health;

(vii) medical monitoring and surveillance;

(viii) environmental monitoring and surveillance;

(ix) environmental and industrial hygiene;

(x) emergency planning and preparedness;

(xi) public outreach and education;

(xii) State and local health departments;

(xiii) State and local environmental protection departments;

(xiv) functions of workers that respond to disasters, including first responders; and

(xv) public health and family services.

(c) DUTIES.—

(1) IN GENERAL.—The Panel shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

(A) the implementation of programs under section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2); and

(B) the establishment of protocols for the monitoring of and response to releases of substances of concern (as defined in section 409(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2)) in a disaster area for the purpose of protecting public health and safety, including—

(i) those substances of concern for which samples should be collected in the event of a disaster, including a terrorist attack;

(ii) chemical-specific methods of sample collection, including sampling methodologies and locations;

(iii) chemical-specific methods of sample analysis;

(iv) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or substances;

(v) procedures for providing monitoring results to—

(I) appropriate Federal, State, and local government agencies;

(II) appropriate response personnel; and

(III) the public;

(vi) responsibilities of Federal, State and local agencies for—

(I) collecting and analyzing samples;

(II) reporting results; and

(III) taking appropriate response actions; and

(vii) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

(C) other issues as specified by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

(2) REPORT.—Not later than 1 year after the date of establishment of the Panel, the Panel shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency a report of the findings and recommendations of the Panel under this section, including recommendations for such legislative and administrative actions as the Panel considers to be appropriate.

(d) POWERS.—

(1) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers necessary to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section.

(B) FURNISHING OF INFORMATION.—On request of the Panel, the head of the department or agency shall furnish the information to the Panel.

(3) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) PERSONNEL.—

(1) TRAVEL EXPENSES.—The members of the Panel shall not receive compensation for the performance of services for the Panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(2) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Panel.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) STAFF, INFORMATION, AND OTHER ASSISTANCE.—The Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall provide to the Panel such staff, information, and other assistance as may be necessary to carry out the duties of the Panel.

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

(g) TERMINATION OF AUTHORITY.—This section, the authority provided under this section, and the Panel shall terminate on the date that is 18 months after the date of enactment of this Act.

By Mr. GRAHAM of Florida:

S. 1281. A bill to amend title 38, United States Code, to presume additional diseases of former prisoners of

war to be service-connected for compensation purposes, to enhance the Dose Reconstruction Program of the Department of Defense, to enhance and fund certain other epidemiological studies, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Madam President, today I introduce legislation that would take one more step toward finding answers for veterans who may have been exposed to radiation, Agent Orange, or other hazards during their military service.

The last century saw the nature of war change forever. When mustard gas drifted across the trenches of World War I, troops learned that dangers less tangible, but no less deadly, than bullets might fill the air. Since then, many veterans have questioned whether health effects of the environmental hazards that they faced on and off the battlefield might appear years or even decades later.

Congress, VA, the military, and scores of independent researchers have struggled to answer those questions. Many veterans still wait for scientific evidence to fill the gaps. However, research in some areas has linked specific exposures to a risk of later disease, and we must respond to those new findings and encourage further investigation.

Peer-reviewed studies published in recent years suggest that veterans held prisoner during World War II, the Korean War, and in Vietnam suffer from some chronic diseases at a higher rate than expected. Scientists now report that the toll taken by malnutrition, long periods of forced confinement, and untreated infections appears to pose a lifelong risk. Based on these findings, I have introduced legislation that would add heart disease, strokes, and chronic liver diseases to the list of diseases that can be presumptively connected to service for certain former prisoners of war. This would allow eligible veterans with these conditions to seek VA benefits without having to prove that their illnesses resulted from deprivations suffered during captivity.

Other veterans who were exposed to large doses of ionizing radiation in post-war Japan or during nuclear tests, and who suffer from illnesses thought to be caused by radiation, can currently claim eligibility for VA benefits. However, some veterans who believe they received high doses of radiation have been frustrated to find that their military records do not reflect the same assumptions. Congress mandated nearly 20 years ago that veterans who suffer from diseases that they suspect might be linked to radiation exposure during service could request a dose reconstruction, or a scientific estimate of past exposure levels, to remedy this.

Many veterans felt that this method fell short of expectations, and Congress responded in 1998 by requiring an independent review of the Dose Reconstruction Program conducted by the Department of Defense. A panel of experts

convened by the National Academy of Sciences reported recently that this contractor-operated program suffered from a shockingly cavalier approach to quality assurance, resulting in data that failed to meet the standards assumed by VA and veterans. This is not acceptable. Provisions introduced here would require the Secretaries of VA and Defense to establish permanent independent oversight of the Dose Reconstruction Program, and to create an advisory board to improve the program as necessary.

Our understanding of the consequences of exposure to the herbicides and dioxin in Agent Orange remains far from complete. It has been almost 25 years since Congress required the Air Force to conduct an epidemiologic study of the veterans of Operation Ranch Hand, the unit responsible for aerial spraying of herbicides during the Vietnam War. The last scheduled round of physical examinations took place just last month, and the fate of the millions of medical records and specimens remains undecided. Experts agree that both samples and data should be preserved for further research, but do not share an opinion on the best way to do so. The bill that I have introduced would task the National Academy of Sciences to develop research recommendations for extending the Air Force Health Study, or for preserving the samples and making them accessible to independent researchers as requested by many veterans' organizations.

Finally, the legislation that I have introduced would ensure that the scientific body charged with tracking veterans' and military health can continue its mission. The Medical Follow-Up Agency, MFUA, a board of the Institute of Medicine—the health agency of the National Academy of Sciences—was created at the end of World War II at the urging of the Army Surgeon General. For many years, it received funding only sporadically. In 1988, the now-defunct Office of Technology Assessment reported that MFUA's critical contribution to understanding military health issues was limited by a lack of consistent funding, which caused high staff turnover, incohesiveness in the research portfolio, and failure to maintain records.

Congress responded with Public Law 102-585, which required that VA and the military each contribute \$250,000 in annual core funding to MFUA for 10 years. MFUA's staff uses this funding to update, maintain, and improve long-term epidemiological studies of military and veterans populations. Congress, VA, the military, and independent scientists have relied on these studies to evaluate whether specific exposures might have long-term health effects that suggest a need for benefits, new treatments, or further research. The legislation that I have introduced would extend MFUA's core funding for 10 more years.

This legislation would demonstrate to those who serve their nation now

that our commitment to them will not end with the wars that they fight. We must continue to seek remedies for the sometimes invisible wounds of the new battlefield, and ensure that those who have borne them receive the support that they need. I urge my colleagues in the Senate to join me in supporting this legislation.

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. 1281

*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 “Veterans Information and Benefits Enhancement Act of 2003”.

**SEC. 2. PRESUMPTION OF ADDITIONAL DISEASES OF FORMER PRISONERS OF WAR TO BE SERVICE-CONNECTED FOR COMPENSATION PURPOSES.**

(a) **PRESUMPTION.**—Section 1112(b) of title 38, United States Code, is amended—

- (1) in paragraph (14), by striking “or” at the end; and
- (2) by inserting after paragraph (15) the following new paragraphs:

“(16) cardiovascular disease (heart disease),

“(17) cerebrovascular disease (stroke), or

“(18) chronic liver disease, including cirrhosis and primary liver carcinoma.”.

(b) **EFFECTIVE DATE.**—(1) The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) No benefit may be paid by reason of the amendments made by subsection (a) for any period before the date of the enactment of this Act.

**SEC. 3. DOSE RECONSTRUCTION PROGRAM OF DEPARTMENT OF DEFENSE.**

(b) **REVIEW OF MISSION, PROCEDURES, AND ADMINISTRATION.**—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall jointly conduct a review of the mission, procedures, and administration of the Dose Reconstruction Program of the Department of Defense.

(2) In conducting the review under paragraph (1), the Secretaries shall—

(A) determine whether any additional actions are required to ensure that the quality assurance and quality control mechanisms of the Dose Reconstruction Program are adequate and sufficient for purposes of the program; and

(B) determine the actions that are required to ensure that the mechanisms of the Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for purposes of the program, including mechanisms to permit veterans to review the assumptions utilized in their dose reconstructions.

(3) Not later than 90 days after the date of the enactment of this Act, the Secretaries shall jointly submit to Congress a report on the review under paragraph (1). The report shall set forth—

(A) the results of the review;

(B) a plan for any actions determined to be required under paragraph (2); and

(C) such other recommendations for the improvement of the mission, procedures, and administration of the Dose Reconstruction Program as the Secretaries jointly consider appropriate.

(b) **ON-GOING REVIEW AND OVERSIGHT.**—The Secretaries shall jointly take appropriate ac-

tions to ensure the on-going independent review and oversight of the Dose Reconstruction Program, including the establishment of the advisory board required by subsection (c).

(c) **ADVISORY BOARD.**—(1) In taking actions under subsection (b), the Secretaries shall jointly appoint an advisory board to provide review and oversight of the Dose Reconstruction Program.

(2) The advisory board under paragraph (1) shall be composed of the following:

(A) At least one expert in historical dose reconstruction of the type conducted under the Dose Reconstruction Program.

(B) At least one expert in radiation health matters.

(C) At least one expert in risk communications matters.

(D) A representative of the Department of Veterans Affairs.

(E) A representative of the Defense Threat Reduction Agency.

(F) At least three veterans, including at least one veteran who is a member of an atomic veterans group.

(3) The advisory board under paragraph (1) shall—

(A) conduct periodic, random audits of dose reconstructions and decisions on claims for radiogenic diseases under the Dose Reconstruction Program;

(B) assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Dose Reconstruction Program; and

(C) carry out such other activities with respect to the review and oversight of the Dose Reconstruction Program as the Secretaries shall jointly specify.

(4) The advisory board under paragraph (1) may make such recommendations on modifications in the mission or procedures of the Dose Reconstruction Program as the advisory board considers appropriate as a result of the audits conducted under paragraph (3)(A).

**SEC. 4. STUDY ON DISPOSITION OF AIR FORCE HEALTH STUDY.**

(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall, in accordance with this section, carry out a study to determine the appropriate disposition of the Air Force Health Study, an epidemiologic study of Air Force personnel who were responsible for conducting aerial spray missions of herbicides during the Vietnam era.

(b) **STUDY THROUGH NATIONAL ACADEMY OF SCIENCES.**—Not later than sixty days after the date of the enactment of this Act, the Secretary shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, to carry out the study required by subsection (a).

(c) **ELEMENTS.**—Under the study under subsection (a), the National Academy of Sciences, or other appropriate scientific organization, shall address the following:

(1) The scientific merit of retaining and maintaining the medical records, other study data, and laboratory specimens collected in the course of the Air Force Health Study after the currently-scheduled termination date of the study in 2006.

(2) Whether or not any obstacles exist to retaining and maintaining the medical records, other study data, and laboratory specimens referred to in paragraph (1), including privacy concerns.

(3) The advisability of providing independent oversight of the medical records, other study data, and laboratory specimens referred to in paragraph (1), and of any further study of such records, data, and specimens, and, if so, the mechanism for providing such oversight.

(4) The advisability of extending the Air Force Health Study, including the potential value and relevance of extending the study, the potential cost of extending the study, and the Federal or non-Federal entity best suited to continue the study if extended.

(5) The advisability of making the laboratory specimens of the Air Force Health Study available for independent research, including the potential value and relevance of such research, and the potential cost of such research.

(d) **REPORT.**—Not later than 60 days after entering into an agreement under subsection (b), the National Academy of Sciences, or other appropriate scientific organization, shall submit to the Secretary and Congress a report on the results of the study under subsection (a). The report shall include the results of the study, including the matters addressed under subsection (c), and such other recommendations as the Academy, or other appropriate scientific organization, considers appropriate as a result of the study.

**SEC. 5. FUNDING OF MEDICAL FOLLOW-UP AGENCY OF INSTITUTE OF MEDICINE OF NATIONAL ACADEMY OF SCIENCES FOR EPIDEMIOLOGICAL RESEARCH ON MEMBERS OF THE ARMED FORCES AND VETERANS.**

(a) **FUNDING BY DEPARTMENT OF VETERANS AFFAIRS.**—(1) The Secretary of Veterans Affairs shall make available to the National Academy of Sciences in each of fiscal years 2004 through 2013, \$250,000 for the Medical Follow-Up Agency of the Institute of Medicine of the Academy for purposes of epidemiological research on members of the Armed Forces and veterans.

(2) The Secretary of Veterans Affairs shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Veterans Affairs for that fiscal year.

(b) **FUNDING BY DEPARTMENT OF DEFENSE.**—(1) The Secretary of Defense shall make available to the National Academy of Sciences in each of fiscal years 2004 through 2013, \$250,000 for the Medical Follow-Up Agency for purposes of epidemiological research on members of the Armed Forces and veterans.

(2) The Secretary of Defense shall make available amounts under paragraph (1) for a fiscal year from amounts available for the Department of Defense for that fiscal year.

(c) **USE OF FUNDS.**—The Medical Follow-Up Agency shall use funds made available under subsections (a) and (b) for epidemiological research on members of the Armed Forces and veterans.

(d) **SUPPLEMENT NOT SUPPLANT.**—Amounts made available to the Medical Follow-Up Agency under this section for a fiscal year for the purposes referred to in subsection (c) are in addition to any other amounts made available to the Agency for that fiscal year for those purposes.

By Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, and Mr. SESSIONS):

S. 1282. A bill to require the Secretary of Veterans Affairs to establish national cemeteries for geographically underserved populations of veterans, and for other purposes; to the Committee on Veterans’ Affairs.

Mr. GRAHAM of Florida. Madam President, I rise today to introduce legislation that will ensure that America’s veterans and their families have access to the funeral honors they have earned. The brave men and women who fought for our Nation are a population that is aging rapidly. In 2002, America

lost 646,264 veterans. Projections show that this rate will continue to climb through the year 2008, when the annual death of the World War II and Korea-era veterans will peak at 700,000.

By the end of 2004, only 64 of the 124 veterans national cemeteries will be available for both casketed and cremated remains. As cemetery service capabilities decrease, veterans in areas near those cemeteries that are at capacity may lose access to burial options located within a reasonable distance of their homes. In order to ensure that burial options are provided for veterans and their family members, we must develop new cemeteries and expand existing cemeteries. This process must start as soon as possible because the construction of a new cemetery takes an average of 7 years.

That is why I offer this bill today, which would authorize the construction of ten new national cemeteries and ensure that the burial needs of veterans and their family members will be met in the future.

In anticipation of veterans' future needs, the Department of Veterans Affairs conducted a study that identifies veteran population centers not served by an open national or state veterans cemetery. The report, "Future Burial Needs," was initially released in May 2002 and has been recently revised using veteran population estimates from the 2000 census. My legislation would direct the Department of Veterans Affairs to establish ten new national veterans cemeteries in the top ten areas identified to be in the greatest need. These areas would include Sarasota, FL, Salem, OR, Birmingham, AL, St. Louis, MO, San Antonio, TX, Chesapeake, VA, Sumter, FL, Bakersfield, CA, Jacksonville, FL, and Philadelphia, PA.

We can not afford to wait any longer if we are to fulfill this commitment to our nation's veterans. Mr. President, I am proud to sponsor this important bill, and look forward to the support of my colleagues as we provide for our veterans who have given so much for our country. Thank you.

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

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

S. 1281

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

**SECTION 1. ESTABLISHMENT OF NATIONAL CEMETERIES FOR GEOGRAPHICALLY UNDERSERVED POPULATIONS OF VETERANS.**

(a) IDENTIFICATION OF UNDERSERVED BURIAL SERVICE AREAS.—The Secretary of Veterans Affairs shall identify the 10 burial service areas in the United States that, as determined by the Secretary, are most in need of a new national cemetery in order to ensure that 90 percent of the veterans who reside in each such service area live within 75 miles of a national cemetery.

(b) BURIAL SERVICE AREA.—For purposes of this section, the term "burial service area"

means a service area for burial in national cemeteries that is established by the Secretary utilizing the most current population data available to the Secretary as of the date of the enactment of this Act, which service area—

- (1) has a radius of approximately 75 miles;
- (2) contains a minimum population of veterans of approximately 170,000 veterans; and
- (3) is not served as of the date of the enactment of this Act by a national cemetery or State cemetery for veterans.

(c) ESTABLISHMENT OF NATIONAL CEMETERIES.—The Secretary shall establish, in accordance with chapter 24 of title 38, United States Code, a national cemetery in each burial service area identified under subsection (a) in order to serve the burial needs of veterans and their families.

(d) ADVANCE PLANNING.—(1) The Secretary shall carry out in fiscal year 2004 such activities as the Secretary considers appropriate for advance planning for the establishment of national cemeteries under subsection (c).

(2) Amounts appropriated for fiscal year 2004 for the advance planning fund in the Construction, Major Projects account shall be available for activities under paragraph (1).

(e) REPORTS.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the establishment of national cemeteries under subsection (c). The report shall set forth the following:

(A) Each burial service area identified by the Secretary under subsection (a) to require the establishment of a national cemetery under subsection (c).

(B) A schedule for the establishment of each such national cemetery.

(C) An estimate of the costs of the establishment of each such national cemetery.

(D) The amount to be obligated under subsection (d) during fiscal year 2004 for advance planning required under that subsection.

(2) Not later than one year after the date of the report under paragraph (1), and annually thereafter until the completion of each national cemetery required by subsection (c), the Secretary shall submit to Congress an update of the report under that paragraph (as previously updated, if at all, under this paragraph).

By Mr. GRAHAM of Florida:

S. 1283. A bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. GRAHAM of Florida. Madam President, the Department of Veterans Affairs, VA, is in the midst of determining how best to serve the millions of veterans who turn to the VA health care system for their care. This process—known as CARES or Capital Asset Realignment for Enhanced Services—will likely bring significant change to the VA system. Recommendations stemming from this process could lead to billions of dollars in new facilities construction, on the one hand, and possible closure of facilities and thousands of beds, on the other. Despite the magnitude of these possible changes, Congress has virtually no formal role in the process.

I introduce legislation today that would allow for Congressional review of

the CARES recommendations that the Secretary of VA will begin to implement at the end of this year.

The CARES initiative has been ongoing since the Fall of 2002, tasking VA facilities with developing recommendations based on a review of population data; the conduct of market analyses of veterans' health care needs; the identification of planning initiatives for each market area; and most important, the significant involvement of stakeholders, including myriad public meetings. These so-called planning initiatives are ultimately slated to be passed on to the Secretary, who will then make the final decisions.

While an independent review led by a national CARES Commission is already planned, in addition to public hearings—which I fully support—I must reiterate that Congress has little, if any, role in the CARES effort outside of construction authorization and appropriation activities. Yet, all states and most health care facilities will be affected by the results. The legislation I introduce today would give Congress a 60-day period to review the CARES recommendations submitted by the Secretary of Veterans Affairs. During that time, VA would be prohibited from moving forward with any bed or facility closures.

This oversight is absolutely essential—particularly in light of recent events. Just last month, all VA health care networks submitted their plans to VA headquarters. These plans were developed following substantial analysis and thorough stakeholder involvement. While abiding by the criteria and process set forth by VA, facilities made their recommendations to the Under Secretary for Health. In a surprise move and an apparent manipulation of the process, VA instructed the network directors to re-evaluate the plans they had already submitted for 20 different VA facilities. They were told to "evaluate a strategy to convert from a 24-hour operation to an 8 hour a day operation. This includes any inpatient care, including long term care."

One of these hospitals is in Lake City, in my home State of Florida. Network 8, which has responsibility for Lake City, had previously recommended that no long-term care beds be deactivated at this facility, yet they were told to go back to the drawing board to develop a strategy to close nursing home beds there.

Another facility tasked with re-examining their plan is Bedford, Massachusetts. In their network's plan, submitted to the Under Secretary, officials stated that they had in fact considered "alternatives to consolidate Long Term Care, LTC, including the Alzheimer's and SCI Units, and Psychiatry inpatient beds from the Bedford to Brockton facilities" yet, "as final projections are not available for LTC inpatient beds and earlier projections indicated a substantial increase in LTC beds, it was determined to utilize current capacities." Despite these assessments to the contrary, VA has asked

that they instead plan to convert these facilities to outpatient operations only.

Yet one more example of this apparent manipulation involves another facility now slated for bed closures, the Leavenworth VA Medical Center in Kansas. The network plan concluded that “[r]ealignment of workload from Leavenworth to Kansas City would exceed current capacity. . . . Elimination of inpatient and outpatient primary care capabilities at Leavenworth would seriously undermine continuity of care for the remaining long-term care patients, reduce timely access to care, hinder its ability to provide ongoing support to the DoD facility located at Ft. Leavenworth . . . .” Again, analysis conducted at the regional level resulted in a recommendation that VA is now directing be reconsidered.

The VA facility in Knoxville, IA, is being targeted for significant changes as well. The current proposal is to move all of the beds from Knoxville to Des Moines. The Knoxville facility has more than 226 long-term care beds, 40 domiciliary beds, and 34 inpatient psychiatric beds. We need to take a look at this proposal and the many others that will affect veterans all across the country.

Other facilities asked to re-evaluate are: Batavia, Lyons, St. Albans, Montrose, Pittsburgh at Highland Drive, Augusta, Dublin, Lexington, Brecksville, Gulfport, Marlin/Waco, Vancouver, Livermore, and Hot Springs.

While VA intends to present a five-year capital plan to Congress, there is nothing that requires VA to inform Members about possible reductions, closures, and other decisions that would have a deleterious effect on VA health care services and our veterans. This is unacceptable. Congress’ role should not be limited to merely funding the implementation of these decisions; rather, we should be involved in a process that could result in the significant loss of inpatient, long-term care, and domiciliary capacity at VA health care facilities nationwide. We can rectify this problem very easily, however, by enacting the legislation I propose today.

In an internal VA memo, Secretary Principi stated that “the CARES process may be one of the most important activities undertaken by VA this decade. The outcome of this process will construct the foundation for, and set the course of, our health care system for the first half of the 21st century.” In light of the great impact of this initiative on VA health care services, as well as recent actions that threaten the integrity of the process, it is imperative that Congress be granted a mere 60 days to review VA’s proposals. I urge my colleagues to join me in this effort to secure the future of health care for our nation’s veterans.

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. 1283

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

**SECTION 1. ADVANCE NOTIFICATION OF A DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET REALIGNMENT INITIATIVE.**

(a) REQUIREMENT FOR ADVANCE NOTIFICATION.—Before taking any action proposed under the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall submit to Congress a written notification of the intent to take such action.

(b) LIMITATION.—The Secretary of Veterans Affairs may not take any proposed action described in subsection (a) until the later of—

(1) the expiration of the 60-day period beginning on the date on which the Secretary submits to Congress the notification of the proposed action required under subsection (a); or

(2) the expiration of a period of 30 days of continuous session of Congress beginning on such date of notification or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(c) CONTINUOUS SESSION OF CONGRESS.—For the purposes of subsection (b)—

(1) the continuity of session of Congress is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

By Mr. CARPER:

S. 1285. A bill to reform the postal laws of the United States; to the Committee on Governmental Affairs.

Mr. CARPER. Madam President, I rise today to introduce the Postal Accountability and Enhancement Act of 2003, legislation that makes the reforms necessary for the Postal Service to thrive in the 21st Century and to better serve the American people.

The Postal Service has, for the most part, operated in the same manner for more than thirty years. In the early 1970s, Senator STEVENS and others led the effort in the Senate to create the Postal Service out of the failing Post Office Department. At the time, the Post Office Department received about 20 percent of its revenue from taxpayer subsidies. The service it provided was suffering and there was little money available to expand. By all accounts, the product of Senator STEVENS’ labors, the Postal Reorganization Act signed into law by President Nixon in 1971, has been a phenomenal success. The Postal Service today receives virtually no taxpayer support and the service its hundreds of thousands of employees provide to every American, every day is second to none. More than thirty years later, the Postal Service now delivers to 141 million addresses each day and is the anchor of a \$900 billion mailing industry.

All that said, the Postal Service is clearly in need of modernization once

again. When it started out in 1971, nobody had access to fax machines, cell phones and pagers and nobody imagined that we would ever enjoy conveniences like e-mail and electronic bill pay. After decades of success, electronic diversion of mail volume coupled with economic recession and terrorism have made for some rough going at the Postal Service in recent years. In 2001, as Postmaster General Potter assumed his position, the Postal Service was projecting its third consecutive year of deficits. They lost \$199 million in fiscal year 2000 and \$1.68 billion in fiscal year 2001. They were projecting losses of up to \$4 billion in fiscal year 2002. Mail volume was falling, revenues were below projections and the Postal Service was estimating that it needed to spend \$4 billion on security enhancements in order to prevent a repeat of the tragic anthrax attacks that took several lives. The Postal Service was also perilously close to its \$15 billion debt ceiling and had been forced to raise rates three times in less than two years in order to pay for its operations, further eroding mail volume.

In recent months, however, the Postal Service’s short-term financial outlook has improved. Under General Potter’s strong leadership, Postal Service management cut a total of \$2.9 billion in costs fiscal year 2002. They did this mostly by eliminating 23,000 positions, mostly through attrition. This included 800 management positions at postal headquarters in Washington and 2,000 administrative positions in regional offices. They also continued their drive to further automate their processing operations, most notably in the area of flats processing. They have continued their construction freeze and ended their self-imposed ban on post office closings, resulting in the closing of dozens of post offices across the country.

Most dramatically, the Postal Service learned in 2002 that an unfunded pension liability they once believed was as high as \$32 billion was actually \$5 billion. My friend from Maine, Ms. COLLINS, and I responded with legislation, the Postal Civil Service Retirement System Funding Reform Act, signed into law by President Bush last month, which cuts the amount the Postal Service must pay into the Civil Service Retirement System each year by nearly \$3 billion. This will free up money for debt reduction and prevent the need for another rate increase until at least 2006.

Aggressive cost cutting and the lower pension payment, then, have put off the emergency that would have come if the Postal Service had reached their debt limit. Cost cutting can only go so far, however, and will not solve the Postal Service’s long-term problems. It could actually hurt service. The Postal Service continues to add about 1.7 million new delivery points each year, creating the need for thousands of new routes and thousands of new letter carriers to work them. In addition, faster-

growing parts of the country will need new or expanded postal facilities in the coming years. Even if the economy recovers soon and the Postal Service begins to see volume and revenues improve, we will still need to make the fundamental reforms necessary to make the Postal Service as successful in the 21st Century as it was in the 20th Century.

As more and more customers turn to electronic forms of communication, letter carriers are bringing fewer and fewer pieces of mail to each address they serve. The rate increases that will be needed to maintain the Postal Service's current infrastructure, finance retirement obligations to its current employees, pay for new letter carriers and build facilities in growing parts of the country will only further erode mail volume. The Postal Service has been trying to improve on its own. They are making progress, but there is only so much they can do on their own.

That is where my bill comes in. First, the Postal Accountability and Enhancement Act begins the process of developing a modern rate system for pricing Postal Service products. The new rate system, to be developed by a strengthened Postal Rate Commission, re-named the Postal Regulatory Commission, would allow retained earnings, provide the Postal Service more flexibility in setting prices and streamline today's burdensome ratemaking process. It would also allow rates to be increased on an expedited basis during crises like a sharp spike in fuel prices and require that the Regulatory Commission develop a "phased rate" schedule whereby rate increases would be phased in gradually over a period of time.

In addition, the new rate system authorized through my bill will allow the Postal Service to negotiate service agreements with individual mailers. The Postal Rate Commission recently approved a service agreement the Postal Service negotiated with Capital One, but the process for considering the agreement took almost a year and the Postal Service's authority to enter into agreements is not clearly spelled out in law. The Postal Accountability and Enhancement Act allows the Postal Service to enter into agreements if the revenue generated from them covers all costs attributable to the Postal Service and results in a greater contribution to the Postal Service's institutional costs. No agreement would be permitted if it resulted in higher rates for any other mailer or prohibited any similarly situated mailer from negotiating a similar agreement.

Second, the Postal Accountability and Enhancement Act requires the Postal Regulatory Commission to set strong service standards for the Postal Service's Market Dominant products, a category made up mostly of those products, like First Class Mail, that are part of the postal monopoly. The Postal Service currently sets its own service standards, which allows them to

pursue efforts like the elimination of Saturday delivery, a proposal floated two years ago. The new standards set by the Commission will aim to improve service and will be used by the Postal Service to establish performance goals and to rationalize their physical infrastructure. Once the standards are established, the Postal Service will recommend a list of facilities that can be closed or consolidated without hindering their ability to meet the standards. A new commission, called the Postal Network Modernization Commission, would then study the Postal Service's recommendations. The closings and consolidations recommended by this commission would be carried out, subject to approval by the President, unless Congress passed a resolution disapproving them.

Third, the Postal Accountability and Enhancement Act ensures that the Postal Service competes fairly. The bill prohibits the Postal Service from issuing anti-competitive regulations and makes the State Department, instead of the Postal Service, responsible for setting U.S. foreign policy on mailing issues. It also subjects the Postal Service to State zoning, planning and land use laws, requires them to pay an assumed Federal income tax on products like packages and Express Mail that private firms also offer and requires that these products as a whole pay their share of the Postal Service's institutional costs.

Fourth, the Postal Accountability and Enhancement Act improves Postal Service accountability, mostly by strengthening oversight. Qualifications for membership on the Regulatory Commission would be stronger than those for the Rate Commission so that Commissioners would have a background in finance or economics. Commissioners would also have the power to demand information from the Postal Service, including by subpoena, and have the power to punish them for violating rate and service regulations. In addition, the Commission will make an annual determination as to whether the Postal Service is in compliance with rate law and meeting service standards and will have the power to punish them for any transgressions.

Finally, and most importantly, the Postal Accountability and Enhancement Act preserves universal service and forces the Postal Service to concentrate solely on what they do best—processing and delivering the mail to all Americans. The bill for the first time limits the Postal Service to providing "postal services," meaning they would be prohibited from engaging in other lines of business, such as e-commerce, that draw time and resources away from letter and package delivery. It also explicitly preserves the requirement that the Postal Service "bind the Nation together through the mail" and serve all parts of the country, urban, suburban and rural, in a non-discriminatory fashion. Any service standards established by the Postal Regulatory

Commission will continue to ensure delivery to every address, every day. In addition, the bill maintains the prohibition on closing post offices solely because they operate at a deficit, ensuring that rural and urban customers continue to enjoy full access to retail postal services.

One thing the Postal Accountability and Enhancement Act does not do, is blame postal employees for the Postal Service's problems. The bill preserves collective bargaining and does nothing that would harm postal employees' pay or benefits.

Another thing the Postal Accountability and Enhancement Act does not do is privatize or downsize the Postal Service. The bill preserves the Postal Service's monopoly along with its sole access to the mailbox. While it could result in the closing of some postal facilities, the process I have laid out in the bill is completely driven by the service standards established by the Postal Regulatory Commission. Nothing will be closed for the sake of being closed. Instead, the bill encourages the Postal Service to find ways to improve customer access to retail services through things like vending machines or post offices located in grocery stores or pharmacies.

As my colleagues are aware, President Bush last year announced the creation of the President's Commission on the United States Postal Service, which is expected to release a set of postal reform proposals this summer that I hope will offer some fair, balanced recommendations. It is also my hope, however, that the President's Commission look to the Postal Accountability and Enhancement Act as a touchstone as they complete their work. The bill is the product of nearly a decade's worth of work on postal reform in the House of Representatives led by Congressman JOHN McHUGH from New York and is based in large part on legislation Congressman McHUGH introduced towards the end of the 107th Congress. While I cannot claim that the McHugh bill had unanimous support, it did draw the support of most postal employees, much of the mailing industry and the Postal Service's Board of Governors.

When Treasury Department Under Secretary Peter Fisher addressed the President's Commission at its first meeting, he stated that everything was on the table and that the Commission's findings were not predetermined. I know there is some concern that the Commission will recommend privatization, and that this was the idea from the beginning. I will admit that I initially shared these feelings but, based on what I have heard about the Commission's deliberations, they appear on track to develop a reasonable set of recommendations. That said, I urge them to take careful consideration of the work Congress has done on postal reform in the past. Radical reforms undertaken at a number of foreign posts in recent years should teach us a lesson

about going too far. When the British deregulated Royal Mail, service began to suffer dramatically. When the New Zealand Post Office was privatized, universal service was eliminated and customers in rural areas were forced to pay for delivery. When Argentina privatized its Postal Authority, the new private entity went bankrupt even before the country's economic crisis began. We cannot afford to gamble with similar reforms at the Postal Service.

I look forward to working with Chairman COLLINS, the Governmental Affairs Committee and all of my colleagues in passing comprehensive postal reform this year.

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. 1285

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Postal Accountability and Enhancement Act”.

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

Sec. 1. Short title; table of contents.

**TITLE I—DEFINITIONS; POSTAL SERVICES**

Sec. 101. Definitions.

Sec. 102. Postal services.

**TITLE II—MODERN RATE REGULATION**

Sec. 201. Provisions relating to market-dominant products.

Sec. 202. Provisions relating to competitive products.

Sec. 203. Provisions relating to experimental and new products.

Sec. 204. Reporting requirements and related provisions.

Sec. 205. Complaints; appellate review and enforcement.

Sec. 206. Clerical amendment.

**TITLE III—MODERN SERVICE STANDARDS**

Sec. 301. Establishment of modern service standards.

Sec. 302. Postal service plan.

Sec. 303. Postal Network Modernization Commission.

Sec. 304. Closure and consolidation of facilities.

Sec. 305. Congressional consideration of commission report.

Sec. 306. Nonappealability to Postal Regulatory Commission.

**TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION**

Sec. 401. Postal Service Competitive Products Fund.

Sec. 402. Assumed Federal income tax on competitive products income.

Sec. 403. Unfair competition prohibited.

Sec. 404. Suits by and against the Postal Service.

Sec. 405. International postal arrangements.

Sec. 406. Change-of-address order involving a commercial mail receiving agency.

Sec. 407. Exception for competitive products.

**TITLE V—GENERAL PROVISIONS**

Sec. 501. Qualification requirements for Governors.

Sec. 502. Obligations.

Sec. 503. Private carriage of letters.

Sec. 504. Rulemaking authority.

Sec. 505. Noninterference with collective bargaining agreements, etc.

Sec. 506. Bonus authority.

**TITLE VI—ENHANCED REGULATORY COMMISSION**

Sec. 601. Reorganization and modification of certain provisions.

Sec. 602. Authority for Postal Regulatory Commission to issue subpoenas.

Sec. 603. Appropriations for the Postal Regulatory Commission.

Sec. 604. Redesignation of the Postal Rate Commission.

**TITLE VII—INSPECTORS GENERAL**

Sec. 701. Inspector General of the Postal Regulatory Commission.

Sec. 702. Inspector General of the United States Postal Service to be appointed by the President.

**TITLE VIII—EVALUATIONS**

Sec. 801. Definition.

Sec. 802. Assessments of ratemaking, classification, and other provisions.

Sec. 803. Study on equal application of laws to competitive products.

Sec. 804. Greater diversity in Postal Service executive and administrative schedule management positions.

Sec. 805. Contracts with women, minorities, and small businesses.

Sec. 806. Rates for periodicals.

Sec. 807. Assessment of certain rate deficiencies.

**TITLE IX—MISCELLANEOUS; TECHNICAL AND CONFORMING AMENDMENTS**

Sec. 901. Employment of postal police officers.

Sec. 902. Date of postmark to be treated as date of appeal in connection with the closing or consolidation of post offices.

Sec. 903. Provisions relating to benefits under chapter 81 of title 5, United States Code, for officers and employees of the former Post Office Department.

Sec. 904. Obsolete provisions.

Sec. 905. Expanded contracting authority.

Sec. 906. Investments.

Sec. 907. Repeal of section 5403.

Sec. 908. Technical and conforming amendments.

**TITLE I—DEFINITIONS; POSTAL SERVICES**

**SEC. 101. DEFINITIONS.**

Section 102 of title 39, United States Code, is amended by striking “and” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following:

“(5) ‘postal service’ refers to the physical delivery of letters, printed matter, or packages weighing up to 70 pounds, including physical acceptance, collection, sorting, transportation, or other services ancillary thereto;

“(6) ‘product’ means a postal service with a distinct cost or market characteristic for which a rate is applied;

“(7) ‘rates’, as used with respect to products, includes fees for postal services;

“(8) ‘market-dominant product’ or ‘product in the market-dominant category of mail’ means a product subject to subchapter I of chapter 36; and

“(9) ‘competitive product’ or ‘product in the competitive category of mail’ means a product subject to subchapter II of chapter 36; and

“(10) ‘year’, as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.”.

**SEC. 102. POSTAL SERVICES.**

(a) **IN GENERAL.**—Section 404 of title 39, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and by redesignating paragraphs (7) through (9) as paragraphs (6) through (8), respectively; and

(2) by adding at the end the following:

“(c) Nothing in this title shall be considered to permit or require that the Postal Service provide any special nonpostal or similar services.”.

(b) **CONFORMING AMENDMENTS.**—(1) Section 1402(b)(1)(B)(ii) of the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. 10601(b)(1)(B)(ii)) is amended by striking “404(a)(8)” and inserting “404(a)(7)”.

(2) Section 2003(b)(1) of title 39, United States Code, is amended by striking “and nonpostal”.

**TITLE II—MODERN RATE REGULATION**

**SEC. 201. PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS.**

(a) **IN GENERAL.**—Chapter 36 of title 39, United States Code, is amended by striking sections 3621, 3622, and 3623 and inserting the following:

**“§ 3621. Applicability; definitions**

“(a) **APPLICABILITY.**—This subchapter shall apply with respect to—

“(1) (A) single piece first-class letters (both domestic and international);

“(B) single piece first-class cards (both domestic and international);

“(C) single piece parcels (both domestic and international); and

“(D) special services;

“(2) all first-class mail not included under paragraph (1);

“(3) periodicals;

“(4) standard mail (except for parcel post);

“(5) media mail;

“(6) library mail; and

“(7) bound printed matter, subject to any changes the Postal Regulatory Commission may make under section 3642.

“(b) **RULE OF CONSTRUCTION.**—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

**“§ 3622. Modern rate regulation**

“(a) **AUTHORITY GENERALLY.**—The Postal Regulatory Commission shall, within 24 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

“(b) **OBJECTIVES.**—Such system shall be designed to achieve the following objectives:

“(1) To reduce the administrative burden of the ratemaking process.

“(2) To create predictability and stability in rates.

“(3) To maximize incentives to reduce costs and increase efficiency.

“(4) To enhance mail security and deter terrorism by promoting secure, sender-identified mail.

“(5) To allow the Postal Service pricing flexibility, including the ability to use pricing to promote intelligent mail and encourage increased mail volume during nonpeak periods.

“(6) To assure adequate revenues, including retained earnings, to maintain financial stability and meet the service standards established under section 3691.

“(c) **FACTORS.**—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

“(1) the establishment and maintenance of a fair and equitable schedule for rates and classification system;

“(2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

“(3) the direct and indirect postal costs attributable to each class or type of mail service plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

“(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

“(5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

“(6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

“(7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

“(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

“(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

“(10) the desirability of special classifications from the point of view of both the user and of the Postal Service;

“(11) the educational, cultural, scientific, and informational value to the recipient of mail matter; and

“(12) the policies of this title as well as such other factors as the Commission deems appropriate.

“(d) ALLOWABLE PROVISIONS.—The system for regulating rates and classes for market-dominant products may include—

“(1) price caps, revenue targets, or other form of incentive regulation;

“(2) cost-of-service regulation; or

“(3) such other form of regulation as the Commission considers appropriate to achieve, consistent with subsection (c), the objectives of subsection (b).

“(e) REQUIREMENTS.—The system for regulating rates and classes for market-dominant products shall—

“(1) establish a schedule whereby rates, when necessary, would increase at regular intervals by predictable amounts; and

“(2) establish procedures whereby rates may be increased on a expedited basis when an unexpected decline in revenue or increase in costs threatens the ability of the Postal Service to maintain service at the standards established by the Postal Regulatory Commission under section 3691.

“(f) TRANSITION RULE.—Until regulations under this section first take effect, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of the enactment of this section.

#### § 3623. Service agreements for market-dominant products

“(a) IN GENERAL.—

“(1) AUTHORITY.—The Postal Service may enter into service agreements with mailers that provide for the provision of postal services under terms and conditions that differ from those that would apply under the otherwise applicable market-dominant mail classification.

“(2) AGREEMENTS.—An agreement under this section may involve—

“(A) performance by the contracting mail user of mail preparation, processing, transportation, or other functions that reduce costs to the Postal Service;

“(B) performance by the Postal Service of additional mail preparation, processing, transportation, or other functions that increase costs to the Postal Service; or

“(C) other terms and conditions that meet the requirements of subsections (b) and (c).

“(b) REQUIREMENTS.—A service agreement under this section may only be entered into if the agreement will benefit the contracting mailer, the Postal Service, and mailers who are not parties to the agreement and if each of the following conditions is met:

“(1) The total revenue generated under the agreement—

“(A) will cover all costs attributable to the Postal Service; and

“(B) will result in a greater contribution to the institutional costs of the Postal Service than would have been granted had the agreement not been entered into.

“(2) Rates and fees for other mailers will not increase as a result of the agreement.

“(3) The agreement pertains exclusively to products in the market-dominant category of mail.

“(4) The agreement will not preclude or materially hinder similarly situated mail users from entering into agreements with the Postal Service on the same, or substantially the same, terms, and the Postal Service remains willing and able to enter into such.

“(c) LIMITATIONS.—A service agreement under this section shall—

“(1) be for a term of not to exceed 3 years; and

“(2) provide that such agreement shall be subject to the cancellation authority of the Commission under section 3662.

“(d) NOTICE REQUIREMENTS.—

“(1) IN GENERAL.—At least 30 days before a service agreement under this section is to take effect, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register the following:

“(A) With respect to each condition under subsection (b), information in sufficient detail to demonstrate the bases for the Postal Service's view that such condition would be met.

“(B) A description of the type of mail the agreement involves.

“(C) The mail preparation, processing, transportation, administration, or other additional functions, if any, the mail user is to perform under the agreement.

“(D) The services or benefits the Postal Service is to perform under the agreement.

“(E) The rates and fees payable by the mail user during the term of the agreement.

“(2) AGREEMENTS LESS THAN NATIONAL IN SCOPE.—In the case of a service agreement under this section that is less than national in scope, the information described under paragraph (1) shall also be published by the Postal Service in a manner designed to afford reasonable notice to persons within any geographic area to which such agreement (or any amendment thereto) pertains.

“(e) EQUAL TREATMENT REQUIRED.—If the Postal Service enters into a negotiated service agreement with a mailer under this section, the Postal Service shall make such agreement available to other mailers on the same terms and conditions.

“(f) COMPLAINTS.—Any person who believes that a service agreement under this section is not (or, in the case of a proposed agreement or a proposed amendment to a service agreement under this section, would not be) in conformance with the requirements of this section and regulations thereunder, or who aggrieved by a decision of the Postal Service not to enter into an agreement under

this section, may file a complaint with the Postal Regulatory Commission in accordance with section 3662.

“(g) POSTAL REGULATORY COMMISSION ROLE.—

“(1) REGULATIONS.—The Postal Regulatory Commission may promulgate such regulations regarding service agreements as the Commission determines necessary to implement the requirements of this section.

“(2) REVIEW.—The Postal Regulatory Commission may review any agreement or proposed agreement under this section and may suspend, cancel, or prevent such agreement if the Commission finds that the agreement does not meet the requirements of this section or the regulations thereunder.

“(h) INTERPRETATION.—The determination of whether the revenue generated under the agreement meets the requirements of (b)(1)(B) shall be based on the actual contribution of the mail involved, not on the average contribution made by the mail classification most similar to the services performed under the agreement.

“(i) RATE DISCOUNTS.—In the administration of this section, the Postal Regulatory Commission shall not permit rate discounts for additional mail preparation, processing, transportation, or other functions that exceed the costs avoided by the Postal Service by virtue of the additional functions performed by the mailer. Such discounts are allowable only if the Commission has, after notice and opportunity for a public hearing and comment, determined that such discounts are reasonable and equitable and are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States consistent with the service standards established under section 3691.”.

(b) REPEALED SECTIONS.—Sections 3624, 3625, and 3628 of title 39, United States Code, are repealed.

(c) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect after the amendment made by section 601, but before the amendment made by section 202) is amended by striking the heading for subchapter II and inserting the following:

#### “SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS”.

#### SEC. 202. PROVISIONS RELATING TO COMPETITIVE PRODUCTS.

Chapter 36 of title 39, United States Code, is amended by inserting after section 3629 the following:

#### “SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

#### “§ 3631. Applicability; definitions and updates

“(a) APPLICABILITY.—This subchapter shall apply with respect to—

“(1) priority mail;

“(2) expedited mail;

“(3) mailgrams;

“(4) international mail; and

“(5) parcel post,

subject to subsection (d) and any changes the Postal Regulatory Commission may make under section 3642.

“(b) DEFINITION.—For purposes of this subchapter, the term ‘costs attributable’, as used with respect to a product, means the direct and indirect postal costs attributable to such product.

“(c) RULE OF CONSTRUCTION.—Mail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.

“(d) LIMITATION.—Notwithstanding any other provision of this section, nothing in this subchapter shall be considered to apply

with respect to any product then currently in the market-dominant category of mail.

**“§ 3632. Action of the Governors**

“(a) AUTHORITY TO ESTABLISH RATES AND CLASSES.—The Governors, with the written concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the requirements of this subchapter and regulations promulgated under section 3633.

“(b) PROCEDURES.—

“(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

“(2) PUBLICATION.—The Governors shall cause each rate and class decision under this section and the record of the Governors’ proceedings in connection with such decision to be published in the Federal Register by such date before the effective date of any new rates or classes as the Governors consider appropriate.

“(c) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of the enactment of this section.

**“§ 3633. Provisions applicable to rates for competitive products**

“The Postal Regulatory Commission shall, within 180 days after the date of the enactment of this section, promulgate (and may from time to time thereafter revise) regulations—

“(1) to prohibit the subsidization of competitive products by market-dominant products;

“(2) to ensure that each competitive product covers its costs attributable; and

“(3) to ensure that all competitive products collectively cover their share of the institutional costs of the Postal Service.”.

**SEC. 203. PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS.**

Subchapter III of chapter 36 of title 39, United States Code, is amended to read as follows:

**“SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS**

**“§ 3641. Market tests of experimental products**

“(a) AUTHORITY.—

“(1) IN GENERAL.—The Postal Service may conduct market tests of experimental products in accordance with this section.

“(2) PROVISIONS WAIVED.—A product shall not, while it is being tested under this section, be subject to the requirements of sections 3622, 3633, or 3642, or regulations promulgated under those sections.

“(b) CONDITIONS.—A product may not be tested under this section unless it satisfies each of the following:

“(1) SIGNIFICANTLY DIFFERENT PRODUCT.—The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

“(2) MARKET DISRUPTION.—The introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns (as defined under subsection (h)).

“(3) CORRECT CATEGORIZATION.—The Postal Service identifies the product, for the purpose of a test under this section, as either

market dominant or competitive, consistent with the criteria under section 3642(b)(1). Costs and revenues attributable to a product identified as competitive shall be included in any determination under section 3633(3)(relating to provisions applicable to competitive products collectively).

“(c) NOTICE.—

“(1) IN GENERAL.—At least 30 days before initiating a market test under this section, the Postal Service shall file with the Postal Regulatory Commission and publish in the Federal Register a notice—

“(A) setting out the basis for the Postal Service’s determination that the market test is covered by this section; and

“(B) describing the nature and scope of the market test.

“(2) SAFEGUARDS.—For a competitive experimental product, the provisions of section 504(g) shall be available with respect to any information required to be filed under paragraph (1) to the same extent and in the same manner as in the case of any matter described in section 504(g)(1). Nothing in paragraph (1) shall be considered to permit or require the publication of any information as to which confidential treatment is accorded under the preceding sentence (subject to the same exception as set forth in section 504(g)(3)).

“(d) DURATION.—

“(1) IN GENERAL.—A market test of a product under this section may be conducted over a period of not to exceed 24 months.

“(2) EXTENSION AUTHORITY.—If necessary in order to determine the feasibility or desirability of a product being tested under this section, the Postal Regulatory Commission may, upon written application of the Postal Service (filed not later than 60 days before the date as of which the testing of such product would otherwise be scheduled to terminate under paragraph (1)), extend the testing of such product for not to exceed an additional 12 months.

“(e) DOLLAR-AMOUNT LIMITATION.—

“(1) IN GENERAL.—A product may only be tested under this section if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$10,000,000 in any year, subject to paragraph (2) and subsection (g).

“(2) EXEMPTION AUTHORITY.—The Postal Regulatory Commission may, upon written application of the Postal Service, exempt the market test from the limit in paragraph (1) if the total revenues that are anticipated, or in fact received, by the Postal Service from such product do not exceed \$50,000,000 in any year, subject to subsection (g). In reviewing an application under this paragraph, the Postal Regulatory Commission shall approve such application if it determines that—

“(A) the product is likely to benefit the public and meet an expected demand;

“(B) the product is likely to contribute to the financial stability of the Postal Service; and

“(C) the product is not likely to result in unfair or otherwise inappropriate competition.

“(f) CANCELLATION.—If the Postal Regulatory Commission at any time determines that a market test under this section fails, with respect to any particular product, to meet one or more of the requirements of this section, it may order the cancellation of the test involved or take such other action as it considers appropriate. A determination under this subsection shall be made in accordance with such procedures as the Commission shall by regulation prescribe.

“(g) ADJUSTMENT FOR INFLATION.—For purposes of each year following the year in which occurs the deadline for the Postal Service’s first report to the Postal Regulatory Commission under section 3652(a),

each dollar amount contained in this section shall be adjusted by the change in the Consumer Price Index for such year (as determined under regulations of the Commission).

“(h) DEFINITION OF A SMALL BUSINESS CONCERN.—The criteria used in defining small business concerns or otherwise categorizing business concerns as small business concerns shall, for purposes of this section, be established by the Postal Regulatory Commission in conformance with the requirements of section 3 of the Small Business Act.

“(i) EFFECTIVE DATE.—Market tests under this subchapter may be conducted in any year beginning with the first year in which occurs the deadline for the Postal Service’s first report to the Postal Regulatory Commission under section 3652(a).

**“§ 3642. New products and transfers of products between the market-dominant and competitive categories of mail**

“(a) IN GENERAL.—Upon request of the Postal Service or users of the mails, or upon its own initiative, the Postal Regulatory Commission may change the list of market-dominant products under section 3621 and the list of competitive products under section 3631 by adding new products to the lists, removing products from the lists, or transferring products between the lists.

“(b) CRITERIA.—All determinations by the Postal Regulatory Commission under subsection (a) shall be made in accordance with the following criteria:

“(1) The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing business to other firms offering similar products. The competitive category of products shall consist of all other products.

“(2) EXCLUSION OF PRODUCTS COVERED BY POSTAL MONOPOLY.—A product covered by the postal monopoly shall not be subject to transfer under this section from the market-dominant category of mail. For purposes of the preceding sentence, the term ‘product covered by the postal monopoly’ means any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1).

“(3) ADDITIONAL CONSIDERATIONS.—In making any decision under this section, due regard shall be given to—

“(A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;

“(B) the views of those who use the product involved on the appropriateness of the proposed action; and

“(C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

“(d) TRANSFERS OF SUBCLASSES AND OTHER SUBORDINATE UNITS ALLOWABLE.—Nothing in this title shall be considered to prevent transfers under this section from being made by reason of the fact that they would involve only some (but not all) of the subclasses or other subordinate units of the class of mail or type of postal service involved (without regard to satisfaction of minimum quantity requirements standing alone).

“(e) NOTIFICATION AND PUBLICATION REQUIREMENTS.—

“(1) NOTIFICATION REQUIREMENT.—The Postal Service shall, whenever it requests to add a product or transfer a product to a different category, file with the Postal Regulatory Commission and publish in the Federal Register a notice setting out the basis for its determination that the product satisfies the

criteria under subsection (b) and, in the case of a request to add a product or transfer a product to the competitive category of mail, that the product meets the regulations promulgated by the Postal Regulatory Commission pursuant to section 3633. The provisions of section 504(g) shall be available with respect to any information required to be filed.

“(2) PUBLICATION REQUIREMENT.—The Postal Regulatory Commission shall, whenever it changes the list of products in the market-dominant or competitive category of mail, prescribe new lists of products. The revised lists shall indicate how and when any previous lists (including the lists under sections 3621 and 3631) are superseded, and shall be published in the Federal Register.

“(e) PROHIBITION.—Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or packages may be offered by the Postal Service unless it has been assigned to the market-dominant or competitive category of mail (as appropriate) either—

“(1) under this subchapter; or

“(2) by or under any other provision of law.”.

**SEC. 204. REPORTING REQUIREMENTS AND RELATED PROVISIONS.**

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by subsection (b)) is amended by striking the heading for subchapter IV and inserting the following:

“SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW”.

(b) REPORTS AND COMPLIANCE.—Chapter 36 of title 39, United States Code, is amended by inserting after subchapter III the following:

“SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

**§ 3651. Annual reports by the Commission**

“(a) IN GENERAL.—The Postal Regulatory Commission shall submit an annual report to the President and the Congress concerning the operations of the Commission under this title, including the extent to which regulations are achieving the objectives under sections 3622, 3633, and 3691.

“(b) INFORMATION FROM POSTAL SERVICE.—The Postal Service shall provide the Postal Regulatory Commission with such information as may, in the judgment of the Commission, be necessary in order for the Commission to prepare its reports under this section.

**§ 3652. Annual reports to the Commission**

“(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex thereto as the Commission may require under subsection (e))—

“(1) which shall analyze costs, revenues, rates, and quality of service in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; and

“(2) which shall, for each market-dominant product provided in such year, provide—

“(A) market information, including mail volumes; and

“(B) measures of the service afforded by the Postal Service in connection with such product, including—

“(i) the level of service (described in terms of speed of delivery and reliability) provided; and

“(ii) the degree of customer satisfaction with the service provided.

Before submitting a report under this subsection (including any annex thereto and the information required under subsection (b)), the Postal Service shall have the informa-

tion contained in such report (and annex) audited by the Inspector General. The results of any such audit shall be submitted along with the report to which it pertains.

**“(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.**

“(1) IN GENERAL.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

“(A) The per-item cost avoided by the Postal Service by virtue of such discount.

“(B) The percentage of such per-item cost avoided that the per-item workshare discount represents.

“(C) The per-item contribution made to institutional costs.

“(2) WORKSHARE DISCOUNT DEFINED.—For purposes of this subsection, the term ‘workshare discount’ refers to presorting, barcoding, dropshipping, and other similar discounts, as further defined under regulations which the Postal Regulatory Commission shall prescribe.

“(c) SERVICE AGREEMENTS AND MARKET TESTS.—In carrying out subsections (a) and (b) with respect to service agreements (including service agreements entered into under section 3623) and experimental products offered through market tests under section 3641 in a year, the Postal Service—

“(1) may report summary data on the costs, revenues, and quality of service by service agreement and market test; and

“(2) shall report such data as the Postal Regulatory Commission requires.

“(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

**“(e) CONTENT AND FORM OF REPORTS.**

“(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating thereto) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

“(A) providing the public with adequate information to assess the lawfulness of rates charged;

“(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

“(C) protecting the confidentiality of commercially sensitive information.

“(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

“(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

“(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

“(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

**“(f) CONFIDENTIAL INFORMATION.**

“(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or pursuant to subsection (d) contains information

which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

“(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

“(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

“(1) comprehensive statement under section 2401(e);

“(2) strategic plan under section 2802;

“(3) performance plan under section 2803; and

“(4) program performance reports under section 2804.

**§ 3653. Annual determination of compliance**

“(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

“(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

“(1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or

“(2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

“(c) IF ANY NONCOMPLIANCE IS FOUND.—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take appropriate action in accordance with section 3662.

“(d) REBUTTABLE PRESUMPTION.—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described in paragraphs (1) through (3) of subsection (b)) during the year to which such determination relates.”.

**SEC. 205. COMPLAINTS; APPELLATE REVIEW AND ENFORCEMENT.**

Chapter 36 of title 39, United States Code, is amended by striking sections 3662 and 3663 and inserting the following:

**§ 3662. Rate and service complaints**

“(a) IN GENERAL.—Interested persons (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believe the Postal Service is not operating in conformance with the requirements of chapter 1, 4, or 6, or this chapter (or regulations promulgated under

any of those chapters) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

**“(b) PROMPT RESPONSE REQUIRED.—**

“(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a), either—

“(A) begin proceedings on such complaint; or

“(B) issue an order dismissing the complaint (together with a statement of the reasons therefor).

“(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed pursuant to an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

“(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance. Such action may include ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, and requiring the Postal Service to make up for revenue shortfalls in competitive products.

“(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid out of the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

**“§ 3663. Appellate review**

“A person adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

**“§ 3664. Enforcement of orders**

“The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain the Postal Service from violating, any order issued by the Postal Regulatory Commission.”

**SEC. 206. CLERICAL AMENDMENT.**

Chapter 36 of title 39, United States Code, is amended by striking the heading and analysis for such chapter and inserting the following:

**“CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES**

**“SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS**

“Sec.

“3621. Applicability; definitions.

“3622. Modern rate regulation.

“3623. Service agreements for market-dominant products.

“[3624. Repealed.]  
“[3625. Repealed.]  
“3626. Reduced Rates.  
“3627. Adjusting free rates.  
“[3628. Repealed.]  
“3629. Reduced rates for voter registration purposes.

**“SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS**

“3631. Applicability; definitions and updates.  
“3632. Action of the Governors.  
“3633. Provisions applicable to rates for competitive products.  
“3634. Assumed Federal income tax on competitive products.

**“SUBCHAPTER III—PROVISIONS RELATING TO EXPERIMENTAL AND NEW PRODUCTS**

“3641. Market tests of experimental products.  
“3642. New products and transfers of products between the market-dominant and competitive categories of mail.

**“SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS**

“3651. Annual reports by the Commission.  
“3652. Annual reports to the Commission.  
“3653. Annual determination of compliance.

**“SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW**

“3661. Postal Services.  
“3662. Rate and service complaints.  
“3663. Appellate review.  
“3664. Enforcement of orders.

**“SUBCHAPTER VI—GENERAL**

“3681. Reimbursement.  
“3682. Size and weight limits.  
“3683. Uniform rates for books; films, other materials.  
“3684. Limitations.  
“3685. Filing of information relating to periodical publications.  
“3686. Change-of-address order involving a commercial mail receiving agency.  
“3687. Bonus authority.

**“SUBCHAPTER VII—MODERN SERVICE STANDARDS**

“3691. Establishment of modern service standards.”

**TITLE III—MODERN SERVICE STANDARDS**

**SEC. 301. ESTABLISHMENT OF MODERN SERVICE STANDARDS.**

Chapter 36 of title 39, United States Code, as amended by this Act, is further amended by adding at the end the following:

**“SUBCHAPTER VII—MODERN SERVICE STANDARDS**

**“§ 3691. Establishment of modern service standards**

“(a) AUTHORITY GENERALLY.—The Postal Regulatory Commission shall, within 24 months after the date of the enactment of this section, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products consistent with sections 101 (a) and (b) and 403.

“(b) OBJECTIVES.—Such standards shall be designed to achieve the following objectives:

“(1) To increase the value of postal services to both senders and recipients.

“(2) To provide a benchmark for Postal Service performance goals.

“(3) To guarantee Postal Service customers delivery speed and frequency consistent with reasonable rates.

“(c) FACTORS.—In establishing or revising such standards, the Postal Regulatory Commission shall take into account—

“(1) any service standards previously established by the Postal Service;

“(2) the actual level of service Postal Service customers receive;

“(3) customer satisfaction with Postal Service performance;

“(4) mail volume and revenues projected for future years;

“(5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;

“(6) the current and projected future cost of serving Postal Service customers; and

“(7) the policies of this title as well as such other factors as the Commission determines appropriate.”

**SEC. 302. POSTAL SERVICE PLAN.**

(a) IN GENERAL.—Within 1 year after the establishment of the service standards under section 3691 of title 39, United States Code, as added by this Act, the Postal Service shall, in consultation with the Postal Regulatory Commission, develop and submit to Congress a plan for meeting those standards.

(b) CONTENT.—The plan under this section shall—

(1) establish performance goals;

(2) describe any changes to the Postal Service’s processing, transportation, delivery, and retail networks necessary to allow the Postal Service to meet the performance goals; and

(3) describe any changes to planning and performance management documents previously submitted to Congress to reflect new performance goals.

(c) RECOMMENDATIONS.—The Postal Service plan shall include a list of any processing and retail facilities that can be closed or consolidated without hindering the Postal Service’s ability to meet established service standards. The recommendations shall be consistent with the provisions in section 101(b) of title 39, United States Code prohibiting the closing of post offices, including post offices in rural areas and small towns, solely because they are not self-sustaining or operate at a deficit.

(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan shall include, to the extent possible, plans to provide postal services by other means, including—

(1) vending machines;

(2) the Internet;

(3) Postal Service employees on delivery routes; and

(4) retail facilities in which overhead costs are shared with private businesses and other government agencies.

(e) REEMPLOYMENT ASSISTANCE AND RETIREMENT BENEFITS.—The Postal Service plan shall include—

(1) a plan under which reemployment assistance shall be afforded to employees displaced as a result of the automation or privatization of any of its functions or the closing and consolidation of any of its facilities; and

(2) a plan, developed in consultation with the Office of Personnel Management, to offer early retirement benefits.

(f) INSPECTOR GENERAL REPORT.—

(1) IN GENERAL.—Before submitting the plan under this section to Congress, the Postal Service shall submit the plan to the Inspector General of the United States Postal Service in a timely manner to carry out this subsection.

(2) REPORT.—The Inspector General shall prepare a report describing the extent to which the Postal Service plan—

(A) is consistent with the continuing obligations of the Postal Service under title 39, United States Code; and

(B) provides for the Postal Service to meet the service standards established under section 3691.

(3) SUBMISSION OF REPORT.—The Postal Service shall submit the report of the Inspector General under this subsection with the

plan submitted to Congress under subsection (a).

(g) RECOMMENDED FACILITY CLOSINGS AND CONSOLIDATIONS.—The list of recommended facility closings and consolidations, including the criteria used for selection, justifications for each recommendation, and any comments received from affected communities, shall be transmitted to the Postal Network Modernization Commission at the same time the Postal Service plan is transmitted to Congress.

(h) CONTINUING RESPONSIBILITIES.—Nothing in this section shall affect the responsibilities of the Postal Service under section 404(b) of title 39, United States Code, with respect to any postal facility by reason of that facility being recommended for closing or consolidation under this section.

#### SEC. 303. POSTAL NETWORK MODERNIZATION COMMISSION.

(a) ESTABLISHMENT.—There is established an independent commission to be known as the “Postal Network Modernization Commission”.

(b) DUTIES.—The Commission shall carry out the duties specified in this title.

##### (c) APPOINTMENT.—

###### (1) IN GENERAL.—

(A) COMPOSITION.—The Commission shall be composed of 8 members appointed by the President, by and with the advice and consent of the Senate.

(B) LIMITATION ON POLITICAL PARTY MEMBERSHIP.—No more than 4 members of the Commission at any time shall be from the same political party.

(C) EMPLOYEE REPRESENTATION.—One member of the Commission shall be chosen from among persons nominated for such office with the unanimous concurrence of all organizations representing postmasters and all employee organizations described under section 1004(b) of title 39, United States Code.

(D) UNION REPRESENTATION.—One member of the Commission shall be chosen from among persons nominated for such office with the unanimous concurrence of all labor organizations described in section 206(a)(1) of title 39, United States Code.

(2) CHAIRMAN.—At the time the President nominates individuals for appointment to the Commission, the President shall designate one such individual who shall serve as Chairman of the Commission.

##### (d) MEETINGS.—

(1) OPEN MEETINGS.—Each meeting of the Commission shall be open to the public.

(2) PROCEEDINGS, INFORMATION, AND DELIBERATIONS.—All of the proceedings, information, and deliberation of the Commission shall be open, upon request, to the following:

(A) COMMITTEE ON GOVERNMENTAL AFFAIRS.—The Chairman and the ranking minority party member of the Committee on Governmental Affairs of the Senate, or such other members of the Committee designated by such Chairman or ranking minority party member.

(B) COMMITTEE ON GOVERNMENT REFORM.—The Chairman and the ranking minority party member of the Committee on Government Reform of the House of Representatives, or such other members of the Committee designated by such Chairman or ranking minority party member.

(C) COMMITTEES ON APPROPRIATIONS.—The Chairmen and ranking minority party members of the Subcommittees on Transportation, Treasury, and General Government of the Committees on Appropriations of the Senate and the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment.

##### (f) PAY AND TRAVEL EXPENSES.—

###### (1) IN GENERAL.—

(A) PAY.—Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) PAY FOR CHAIRMAN.—The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) TRAVEL EXPENSES.—Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

##### (g) DIRECTOR OF STAFF.—

(1) APPOINTMENT.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who was not employed by the Postal Service during the 1-year period preceding the date of such appointment.

(2) PAY.—The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

##### (h) STAFF.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) CONDITIONS OF APPOINTMENTS.—The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the highest annual rate of basic pay payable for a position classified at above GS-15 of the General Schedule.

##### (3) DETAILS.—

(A) IN GENERAL.—Not more than  $\frac{1}{2}$  of the personnel employed by or detailed to the Commission may be on detail from the Postal Service.

(B) ANALYSTS.—Not more than  $\frac{1}{2}$  of the professional analysts of the Commission staff may be persons detailed from the Postal Service to the Commission.

(C) LIMITATIONS.—A person may not be detailed from the Postal Service to the Commission if that person participated personally and substantially in any matter within the Postal Service concerning the preparation of recommendations for closures or consolidations of postal facilities. No employee of the Postal Service may—

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Postal Service to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) DETAIL UPON REQUEST.—Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) COMPTROLLER GENERAL ASSISTANCE.—The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in

accordance with an agreement entered into with the Commission.

(6) LIMITATION ON NUMBER OF STAFF.—There may not be more than 15 persons on the staff at any one time.

##### (i) OTHER AUTHORITY.—

(1) EXPERTS AND CONSULTANTS.—The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants under section 3109 of title 5, United States Code.

(2) LEASE OF SPACE.—The Commission may lease space and acquire personal property to the extent funds are available.

(j) FUNDING.—There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

##### (k) REVIEW OF POSTAL SERVICE RECOMMENDATIONS.—

(1) IN GENERAL.—After receiving the recommendations from the Postal Service under section 302, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath. The hearings shall solicit views from Postal Service customers and employees and community leaders and government officials in the communities affected by the Postal Service's recommendations.

##### (2) REPORT.—

(A) TRANSMISSION.—The Commission shall, no later than 1 year following receipt of the Postal Service's recommendations under section 302, transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Postal Service, together with the Commission's recommendations for closures and consolidations.

(B) CHANGES IN RECOMMENDATIONS.—In making its recommendations, the Commission may make changes in any of the recommendations made by the Postal Service if the Commission determines that the Postal Service's recommended closings and consolidations would not allow them to meet the service standards established by the Postal Regulatory Commission under section 301.

(3) EXPLANATION.—The Commission shall explain and justify in its report submitted to the President under paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Postal Service under section 302. The Commission shall transmit a copy of such report to the Committee on Governmental Affairs of the Senate, Committee on Government Reform of the House of Representatives and the Subcommittees on Transportation, Treasury, and General Government of the Committees on Appropriations of the Senate and the House of Representatives on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) PROVISION OF INFORMATION.—After transmitting its recommendations, the Commission shall promptly provide, upon request, to any member of Congress information used by the Commission in making its recommendations.

(5) COMPTROLLER GENERAL.—The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Postal Service under section 302; and

(B) not later than 30 days following receipt of the Postal Service's recommendations, transmit to Congress and the Commission a detailed analysis of the Postal Service's recommendations.

## (1) REVIEW BY THE PRESIDENT.—

(1) REPORT.—The President shall, no later than 14 days following receipt of the Commission's recommendations, transmit to the Commission and to Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) APPROVAL.—If the President approves all the recommendations, the President shall transmit a copy of such recommendations to Congress, together with a certification of such approval.

(3) DISAPPROVAL.—If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, within 30 days, a revised list of recommendations.

(4) APPROVAL AFTER REVISIONS.—If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to Congress, together with a certification of such approval.

**SEC. 304. CLOSURE AND CONSOLIDATION OF FACILITIES.**

(a) IN GENERAL.—Subject to subsection (b), the Postal Service shall—

(1) close all postal facilities recommended by the Commission in such report transmitted to the Congress by the President under section 303(1);

(2) consolidate all postal facilities recommended for consolidation by the Commission in such report;

(3) initiate all such closures and consolidations no later than 1 year after the date on which the President transmits a report to Congress under section 303(l) containing the recommendations for such closures or consolidations; and

(4) complete all such closures and consolidations no later than the end of the 2-year period beginning on the date on which the President transmits the report under section 303(l) containing the recommendations for such closures and consolidations.

## (b) CONGRESSIONAL DISAPPROVAL.—

(1) IN GENERAL.—The Postal Service may not carry out any closure or consolidation recommended by the Commission in a report transmitted from the President under section 303(l) if a joint resolution is enacted, in accordance with section 305, disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of the Congress sine die for the session during which such report is transmitted.

(2) DAYS OF SESSION.—For purposes of paragraph (1) and subsections (a) and (c) of section 305, the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of a period.

**SEC. 305. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT.**

(a) TERMS OF THE RESOLUTION.—For purposes of this title, the term "joint resolution" means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 303(l), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Postal Facility Closure and Consolidation Commiss-

ion as submitted by the President on \_\_\_\_\_", the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Postal Facility Closure and Consolidation Commission".

(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Government Reform of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Governmental Affairs of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 303(l), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

## (d) CONSIDERATION.—

(1) IN GENERAL.—On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of

the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

## (e) CONSIDERATION BY OTHER HOUSE.—

(1) IN GENERAL.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) DISPOSITION OF A RESOLUTION.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

**SEC. 306. NONAPPEALABILITY TO THE POSTAL REGULATORY COMMISSION.**

The closing or consolidation of any post office or other postal facility under this title may not be appealed to the Postal Regulatory Commission under the provisions of title 39, United States Code, including section 404(b)(5) of that title.

**TITLE IV—PROVISIONS RELATING TO FAIR COMPETITION****SEC. 401. POSTAL SERVICE COMPETITIVE PRODUCTS FUND.**

(a) PROVISIONS RELATING TO POSTAL SERVICE COMPETITIVE PRODUCTS FUND AND RELATED MATTERS.—

(1) IN GENERAL.—Chapter 20 of title 39, United States Code, is amended by adding at the end the following:

**“§ 2011. Provisions relating to competitive products**

“(a) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

“(1) costs attributable to competitive products; and

“(2) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

For purposes of this subsection, the term 'costs attributable' has the meaning given such term by section 3631.

“(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

“(1) revenues from competitive products;

“(2) amounts received from obligations issued by the Postal Service under subsection (e);

“(3) interest and dividends earned on investments of the Competitive Products Fund; and

“(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

“(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, it may invest such amounts as it considers appropriate in—

“(1) obligations of, or obligations guaranteed by, the Government of the United States; and

“(2) in accordance with regulations which the Secretary of the Treasury shall prescribe (by not later than 12 months after the date of enactment of the Postal Accountability and Enhancement Act), such other obligations or securities as it considers appropriate, with the exception of obligations of or securities in any business entity subject to Postal Service regulations other than those regulations applying to the mailing public generally.

“(d) The Postal Service may, in its sole discretion, provide that moneys of the Competitive Products Fund be deposited in a Federal Reserve bank or a depository for public funds.

“(e)(1) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as it determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund, except that the Postal Service may pledge only assets related to the provision of competitive products (as determined under subsection (h) or, for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)), and the revenues and receipts from such products, for the payment of the principal of or interest on such obligations, for the purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve, sinking, and other funds which may be similarly pledged and used, to such extent and in such manner as the Postal Service determines necessary or desirable.

“(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with the trustee, if any, under any agreement entered into in connection with the issuance thereof with respect to—

“(A) the establishment of reserve, sinking, and other funds;

“(B) application and use of revenues and receipts of the Competitive Products Fund;

“(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

“(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

“(3) Obligations issued by the Postal Service under this subsection—

“(A) may not be purchased by the Secretary of the Treasury;

“(B) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority;

“(C) shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state; and

“(D) notwithstanding the provisions of the Federal Financing Bank Act of 1973 or any other provision of law (except as specifically

provided by reference to this subparagraph in a law enacted after this subparagraph takes effect), shall not be eligible for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

“(4)(A) This paragraph applies with respect to the period beginning on the date of the enactment of this paragraph and ending at the close of the 5-year period which begins on the date on which the Postal Service makes its submission under subsection (h)(1).

“(B) During the period described in subparagraph (A), nothing in subparagraph (A) or (D) of paragraph (3) or the last sentence of section 2006(b) shall, with respect to any obligations sought to be issued by the Postal Service under this subsection, be considered to affect such obligations' eligibility for purchase by, commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

“(C) The Federal Financing Bank may elect to purchase such obligations under such terms, including rates of interest, as the Bank and the Postal Service may agree, but at a rate of yield no less than the prevailing yield on outstanding marketable securities of comparable maturity issued by entities with the same credit rating as the rating then most recently obtained by the Postal Service under subparagraph (D), as determined by the Bank.

“(D) In order to be eligible to borrow under this paragraph, the Postal Service shall first obtain a credit rating from a nationally recognized credit rating organization. Such rating—

“(i) shall be determined taking into account only those assets and activities of the Postal Service which are described in section 3634(a)(2) (relating to the Postal Service's assumed taxable income from competitive products); and

“(ii) may, before final rules of the Postal Regulatory Commission under subsection (h) are issued (or deemed to have been issued), be based on the best information available from the Postal Service, including the audited statements required by section 2008(e).

“(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

“(g) A judgment against the Postal Service or the Government of the United States (or settlement of a claim) shall, to the extent that it arises out of activities of the Postal Service in the provision of competitive products, be paid out of the Competitive Products Fund.

“(h)(1) The Postal Service, in consultation with an independent, certified public accounting firm and such other advisors as it considers appropriate, shall develop recommendations regarding—

“(A) the accounting practices and principles that should be followed by the Postal Service with the objectives of identifying the capital and operating costs incurred by the Postal Service in providing competitive products, and preventing the cross-subsidization of such products by market-dominant products; and

“(B) the substantive and procedural rules that should be followed in determining the Postal Service's assumed Federal income tax on competitive products income for any year (within the meaning of section 3634).

Such recommendations shall be submitted to the Postal Regulatory Commission no earlier than 6 months, and no later than 12 months, after the effective date of this section.

“(2)(A) Upon receiving the recommendations of the Postal Service under paragraph (1), the Commission shall give interested

parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

“(B) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

“(i) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

“(ii) provide for the establishment and application of the substantive and procedural rules described in paragraph (1)(B); and

“(iii) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

Final rules under this subparagraph shall be issued not later than 12 months after the date on which the Postal Service makes its submission to the Commission under paragraph (1) (or by such later date as the Commission and the Postal Service may agree to). If final rules are not issued by the Commission by the deadline under the preceding sentence, the recommendations submitted by the Postal Service under paragraph (1) shall be treated as the final rules. The Commission is authorized to promulgate regulations revising such rules.

“(C) Reports described in subparagraph (B)(iii) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires. The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data under such subparagraph whenever it shall appear that—

“(i) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

“(ii) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

“(D) A copy of each report described in subparagraph (B)(iii) shall also be transmitted by the Postal Service to the Secretary of the Treasury and the Inspector General of the United States Postal Service.

“(i) The Postal Service shall render an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund, in which it shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses. A copy of its then most recent report under this subsection shall be included with any other submission that it is required to make to the Postal Regulatory Commission under section 3652(g).”.

(2) CLERICAL AMENDMENT.—The analysis for chapter 20 of title 39, United States Code, is amended by adding after the item relating to section 2010 the following:

“2011. Provisions relating to competitive products.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 2001 of title 39, United States Code, is amended by striking “and” at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following:

“(2) ‘Competitive Products Fund’ means the Postal Service Competitive Products Fund established by section 2011; and”.

(2) CAPITAL OF THE POSTAL SERVICE.—Section 2002(b) of title 39, United States Code, is amended by striking “Fund,” and inserting “Fund and the balance in the Competitive Products Fund.”.

(3) POSTAL SERVICE FUND.—

(A) PURPOSES FOR WHICH AVAILABLE.—Section 2003(a) of title 39, United States Code, is amended by striking “title.” and inserting “title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).”.

(B) DEPOSITS.—Section 2003(b) of title 39, United States Code, is amended by striking “There” and inserting “Except as otherwise provided in section 2011, there”.

(4) RELATIONSHIP BETWEEN THE TREASURY AND THE POSTAL SERVICE.—Section 2006 of title 39, United States Code, is amended—

(A) in subsection (b), by adding at the end the following: “Nothing in this chapter shall be considered to permit or require the Secretary of the Treasury to purchase any obligations of the Postal Service other than those issued under section 2005.”; and

(B) in subsection (c), by inserting “under section 2005” before “shall be obligations”.

#### SEC. 402. ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS INCOME.

Subchapter II of chapter 36 of title 39, United States Code, as amended by section 202, is amended by adding at the end the following:

#### “§ 3634. Assumed Federal income tax on competitive products income

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘assumed Federal income tax on competitive products income’ means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service’s assumed taxable income from competitive products for the year; and

“(2) the term ‘assumed taxable income from competitive products’, with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

“(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

“(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

(b) COMPUTATION AND TRANSFER REQUIREMENTS.—The Postal Service shall, for each year beginning with the year in which occurs the deadline for the Postal Service’s first report to the Postal Regulatory Commission under section 3652(a)—

“(1) compute its assumed Federal income tax on competitive products income for such year; and

“(2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax.

(c) DEADLINE FOR TRANSFERS.—Any transfer required to be made under this section for a year shall be due on or before the January 15th next occurring after the close of such year.”.

#### SEC. 403. UNFAIR COMPETITION PROHIBITED.

(a) SPECIFIC LIMITATIONS.—Chapter 4 of title 39, United States Code, is amended by adding after section 404 the following:

#### “§ 404a. Specific limitations

“(a) Except as specifically authorized by law, the Postal Service may not:

“(1) establish any rule or regulation (including any standard) the effect of which is

to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

“(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); or

“(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any product or service that uses or is based in whole or in part on such information, without the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable).

(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

“(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.”.

#### (b) CONFORMING AMENDMENTS.—

(1) GENERAL POWERS.—Section 401 of title 39, United States Code, is amended by striking “The” and inserting “Subject to the provisions of section 404a, the”.

(2) SPECIFIC POWERS.—Section 404(a) of title 39, United States Code, is amended by striking “Without” and inserting “Subject to the provisions of section 404a, but otherwise without”.

(c) CLERICAL AMENDMENT.—The analysis for chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 404 the following:

“404a. Specific limitations.”.

#### SEC. 404. SUITS BY AND AGAINST THE POSTAL SERVICE.

(a) IN GENERAL.—Section 409 of title 39, United States Code, is amended by striking subsections (d) and (e) and inserting the following:

“(d)(1) For purposes of the provisions of law cited in paragraphs (2)(A) and (2)(B), respectively, the Postal Service—

“(A) shall be considered to be a ‘person’, as used in the provisions of law involved; and

“(B) shall not be immune under any other doctrine of sovereign immunity from suit in Federal court by any person for any violation of any of those provisions of law by any officer or employee of the Postal Service.

“(2) This subsection applies with respect to—

“(A) the Act of July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’ (15 U.S.C. 1051 and following)); and

“(B) the provisions of section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair or deceptive acts or practices.

“(e)(1) To the extent that the Postal Service, or other Federal agency acting on behalf of or in concert with the Postal Service, engages in conduct with respect to any product which is not reserved to the United States under section 1696 of title 18, the Postal Service or other Federal agency (as the case may be)—

“(A) shall not be immune under any doctrine of sovereign immunity from suit in Federal court by any person for any violation of Federal law by such agency or any officer or employee thereof; and

“(B) shall be considered to be a person (as defined in subsection (a) of the first section of the Clayton Act) for purposes of—

“(i) the antitrust laws (as defined in such subsection); and

“(ii) section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

For purposes of the preceding sentence, any private carriage of mail allowable by virtue of section 601 shall not be considered a service reserved to the United States under section 1696 of title 18.

“(2) No damages, interest on damages, costs or attorney’s fees may be recovered under the antitrust laws (as so defined) from the Postal Service or any officer or employee thereof acting in an official capacity for any conduct with respect to a product in the market-dominant category of mail.

“(3) This subsection shall not apply with respect to conduct occurring before the date of the enactment of this subsection.

“(f) To the extent that the Postal Service engages in conduct with respect to the provision of competitive products, it shall be considered a person for the purposes of the Federal bankruptcy laws.

“(g)(1) Each building constructed or altered by the Postal Service shall be constructed or altered, to the maximum extent feasible as determined by the Postal Service, in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes.

“(2) Each building constructed or altered by the Postal Service shall be constructed or altered only after consideration of all requirements (other than procedural requirements) of zoning laws, land use laws, and applicable environmental laws of a State or subdivision of a State which would apply to the building if it were not a building constructed or altered by an establishment of the Government of the United States.

“(3) For purposes of meeting the requirements of paragraphs (1) and (2) with respect to a building, the Postal Service shall—

“(A) in preparing plans for the building, consult with appropriate officials of the State or political subdivision, or both, in which the building will be located;

“(B) upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

“(C) permit inspection by such officials during construction or alteration of the building, in accordance with the customary schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Postal Service—

“(i) a copy of such schedule before construction of the building is begun; and

“(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

Nothing in this subsection shall impose an obligation on any State or political subdivision to take any action under the preceding sentence, nor shall anything in this subsection require the Postal Service or any of its contractors to pay for any action taken by a State or political subdivision to carry out this subsection (including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations).

“(4) Appropriate officials of a State or a political subdivision of a State may make recommendations to the Postal Service concerning measures necessary to meet the requirements of paragraphs (1) and (2). Such officials may also make recommendations to the Postal Service concerning measures which should be taken in the construction or alteration of the building to take into account local conditions. The Postal Service shall give due consideration to any such recommendations.

“(5) In addition to consulting with local and State officials under paragraph (3), the Postal Service shall establish procedures for soliciting, assessing, and incorporating local community input on real property and land use decisions.

“(6) For purposes of this subsection, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

“(h)(1) Notwithstanding any other provision of law, legal representation may not be furnished by the Department of Justice to the Postal Service in any action, suit, or proceeding arising, in whole or in part, under any of the following:

“(A) Subsection (d) or (e) of this section.

“(B) Subsection (f) or (g) of section 504 (relating to administrative subpoenas by the Postal Regulatory Commission).

“(C) Section 3663 (relating to appellate review).

The Postal Service may, by contract or otherwise, employ attorneys to obtain any legal representation that it is precluded from obtaining from the Department of Justice under this paragraph.

“(2) In any circumstance not covered by paragraph (1), the Department of Justice shall, under section 411, furnish the Postal Service such legal representation as it may require, except that, with the prior consent of the Attorney General, the Postal Service may, in any such circumstance, employ attorneys by contract or otherwise to conduct litigation brought by or against the Postal Service or its officers or employees in matters affecting the Postal Service.

“(3)(A) In any action, suit, or proceeding in a court of the United States arising in whole or in part under any of the provisions of law referred to in subparagraph (B) or (C) of paragraph (1), and to which the Commission is not otherwise a party, the Commission shall be permitted to appear as a party on its own motion and as of right.

“(B) The Department of Justice shall, under such terms and conditions as the Commission and the Attorney General shall consider appropriate, furnish the Commission such legal representation as it may require in connection with any such action, suit, or proceeding, except that, with the prior consent of the Attorney General, the Commission may employ attorneys by contract or otherwise for that purpose.

“(i) A judgment against the Government of the United States arising out of activities of the Postal Service shall be paid by the Postal Service out of any funds available to the Postal Service, subject to the restriction specified in section 2011(g).”.

(b) TECHNICAL AMENDMENT.—Section 409(a) of title 39, United States Code, is amended by striking “Except as provided in section 3628 of this title,” and inserting “Except as otherwise provided in this title.”.

#### SEC. 405. INTERNATIONAL POSTAL ARRANGEMENTS.

(a) IN GENERAL.—Section 407 of title 39, United States Code, is amended to read as follows:

##### § 407. International postal arrangements

“(a) It is the policy of the United States—

“(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

“(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

“(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by

intergovernmental organizations of which the United States is a member; and

“(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

“(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services, and shall have the power to conclude treaties, conventions and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

“(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

“(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

“(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

“(C) shall maintain continuing liaison with the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate;

“(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

“(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

“(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

“(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit a decision on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

“(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with a decision of the Commission adopted under

paragraph (1), except if, or to the extent, the Secretary determines, by written order, that considerations of foreign policy or national security require modification of the Commission’s decision.

“(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

“(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or otherwise) shall be solely contractual in nature and may not purport to be international law; and

“(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

“(e)(1) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

“(2) For purposes of this subsection, the term ‘private company’ means a private company substantially owned or controlled by persons who are citizens of the United States.

“(3) In exercising the authority pursuant to subsection (b) to conclude new treaties, conventions and amendments related to international postal services and to renegotiate such treaties, conventions and amendments, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary’s control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of Customs in carrying out this paragraph.

“(4) The provisions of this subsection shall take effect 6 months after the date of the enactment of this subsection or such earlier date as the Customs Service may determine in writing.”.

(b) EFFECTIVE DATE.—Notwithstanding any provision of the amendment made by subsection (a), the authority of the United States Postal Service to establish the rates of postage or other charges on mail matter conveyed between the United States and other countries shall remain available to the Postal Service until—

(1) with respect to market-dominant products, the date as of which the regulations promulgated under section 3622 of title 39, United States Code (as amended by section 201(a)) take effect; and

(2) with respect to competitive products, the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

#### SEC. 406. CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY.

(a) REDESIGNATION.—Chapter 36 of title 39, United States Code (as in effect before the amendment made by section 204(a)) is amended by striking the heading for subchapter V and inserting the following:

## “SUBCHAPTER VI—GENERAL”.

(b) CHANGE-OF-ADDRESS ORDER INVOLVING A COMMERCIAL MAIL RECEIVING AGENCY.—Subchapter VI of chapter 36 of title 39, United States Code (as so redesignated by subsection (a)) is amended by adding at the end the following:

**“§3686. Change-of-address order involving a commercial mail receiving agency**

“(a) For the purpose of this section, the term ‘commercial mail receiving agency’ or ‘CMRA’ means a private business that acts as the mail receiving agent for specific clients.

“(b) Upon termination of an agency relationship between an addressee and a commercial mail receiving agency—

“(1) the addressee or, if authorized to do so, the CMRA may file a change-of-address order with the Postal Service with respect to such addressee;

“(2) a change-of-address order so filed shall, to the extent practicable, be given full force and effect; and

“(3) any mail for the addressee that is delivered to the CMRA after the filing of an appropriate order under this subsection shall be subject to subsection (c).

“(c) Mail described in subsection (b)(3) shall, if marked for forwarding and remailed by the CMRA, be forwarded by the Postal Service in the same manner as, and subject to the same terms and conditions (including limitations on the period of time for which a change-of-address order shall be given effect) as apply to, mail forwarded directly by the Postal Service to the addressee.”.

**SEC. 407. EXCEPTION FOR COMPETITIVE PRODUCTS.**

(a) IN GENERAL.—Section 403(c) of title 39, United States Code, is amended by striking “user.” and inserting “user, except that this subsection shall not apply to competitive products.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services, classifications, rates, and fees, to the extent provided or applicable (as the case may be) on or after the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

**TITLE V—GENERAL PROVISIONS****SEC. 501. QUALIFICATION REQUIREMENTS FOR GOVERNORS.**

(a) IN GENERAL.—Section 202(a) of title 39, United States Code, is amended by striking “(a)” and inserting “(a)(1)” and by striking the fourth sentence and inserting the following: “The Governors shall represent the public interest generally, and at least 4 of the Governors shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size; for purposes of this sentence, an organization or corporation shall be considered to be of substantial size if it employs at least 50,000 employees. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.”.

(b) CONSULTATION REQUIREMENT.—Section 202(a) of title 39, United States Code, is amended by adding at the end the following:

“(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.”.

(c) RESTRICTION.—Section 202(b) of title 39, United States Code, is amended by striking “(b)” and inserting “(b)(1)”, and by adding at the end the following:

“(2)(A) Notwithstanding any other provision of this section, in the case of the office of the Governor the term of which is the first one scheduled to expire at least 4 months after the date of the enactment of this paragraph—

“(i) such office may not, in the case of any person commencing service after that expiration date, be filled by any person other than an individual chosen from among persons nominated for such office with the unanimous concurrence of all labor organizations described in section 206(a)(1); and

“(ii) instead of the term that would otherwise apply under the first sentence of paragraph (1), the term of any person so appointed to such office shall be 3 years.

“(B) Except as provided in subparagraph (A), an appointment under this paragraph shall be made in conformance with all provisions of this section that would otherwise apply.”.

(d) APPLICABILITY.—The amendment made by subsection (a) shall not affect the appointment or tenure of any person serving as a Governor of the Board of Governors of the United States Postal Service pursuant to an appointment made before the date of the enactment of this Act, or, except as provided in the amendment made by subsection (c), any nomination made before that date; however, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment. The requirement set forth in the fourth sentence of section 202(a)(1) of title 39, United States Code (as amended by subsection (a)) shall be met beginning not later than 9 years after the date of the enactment of this Act.

**SEC. 502. OBLIGATIONS.**

(a) PURPOSES FOR WHICH OBLIGATIONS MAY BE ISSUED.—The first sentence of section 205(a)(1) of title 39, United States Code, is amended by striking “title.” and inserting “title, other than any of the purposes for which the corresponding authority is available to the Postal Service under section 2011.”.

(b) INCREASE RELATING TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS.—The third sentence of section 205(a)(1) of title 39, United States Code, is amended by striking “\$2,000,000,000” and inserting “\$3,000,000,000”.

(c) INCREASE IN MAXIMUM OUTSTANDING OBLIGATIONS ALLOWABLE.—Paragraph (2) of section 205(a) of title 39, United States Code, is amended—

(1) by striking “and” at the end of subparagraph (B); and

(2) by striking subparagraph (C) and inserting the following:

“(C) \$15,000,000,000 for each of fiscal years 1992 through 2002; and

“(D) \$25,000,000,000 for fiscal year 2003 and each fiscal year thereafter.”.

(d) LIMITATIONS ON OBLIGATIONS OUTSTANDING.—

(1) IN GENERAL.—Subsection (a) of section 205 of title 39, United States Code, is amended by adding at the end the following:

“(3) For purposes of applying the respective limitations under this subsection, the aggregate amount of obligations issued by the Postal Service which are outstanding as of any one time, and the net increase in the amount of obligations outstanding issued by the Postal Service for the purpose of capital improvements or for the purpose of defraying operating expenses of the Postal Service in any fiscal year, shall be determined by aggregating the relevant obligations issued by the Postal Service under this section with the relevant obligations issued by the Postal Service under section 2011.”.

(2) CONFORMING AMENDMENT.—The second sentence of section 205(a)(1) of title 39,

United States Code, is amended by striking “any such obligations” and inserting “obligations issued by the Postal Service which may be”.

(e) AMOUNTS WHICH MAY BE PLEDGED, ETC.—

(1) OBLIGATIONS TO WHICH PROVISIONS APPLY.—The first sentence of section 205(b) of title 39, United States Code, is amended by striking “such obligations,” and inserting “obligations issued by the Postal Service under this section.”.

(2) ASSETS, REVENUES, AND RECEIPTS TO WHICH PROVISIONS APPLY.—Subsection (b) of section 205 of title 39, United States Code, is amended by striking “(b)” and inserting “(b)(1)”, and by adding at the end the following:

“(2) Notwithstanding any other provision of this section—

“(A) the authority to pledge assets of the Postal Service under this subsection shall be available only to the extent that such assets are not related to the provision of competitive products (as determined under section 2011(h) or, for purposes of any period before accounting practices and principles under section 2011(h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e)); and

“(B) any authority under this subsection relating to the pledging or other use of revenues or receipts of the Postal Service shall be available only to the extent that they are not revenues or receipts of the Competitive Products Fund.”.

**SEC. 503. PRIVATE CARRIAGE OF LETTERS.**

(a) IN GENERAL.—Section 601 of title 39, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) A letter may also be carried out of the mails when—

“(1) the amount paid for the private carriage of the letter is at least the amount equal to 6 times the rate then currently charged for the 1st ounce of a single-piece first class letter;

“(2) the letter weighs at least 12½ ounces; or

“(3) such carriage is within the scope of services described by regulations of the United States Postal Service (as in effect on July 1, 2001) that purport to permit private carriage by suspension of the operation of this section (as then in effect).

“(c) Any regulations necessary to carry out this section shall be promulgated by the Postal Regulatory Commission.”.

(b) EFFECTIVE DATE.—This section shall take effect on the date as of which the regulations promulgated under section 3633 of title 39, United States Code (as amended by section 202) take effect.

**SEC. 504. RULEMAKING AUTHORITY.**

Paragraph (2) of section 401 of title 39, United States Code, is amended to read as follows:

“(2) to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title.”.

**SEC. 505. NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS, ETC.**

(a) NONINTERFERENCE WITH COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this Act or any amendment made by this Act shall restrict, expand, or otherwise affect any of the rights, privileges, or benefits of either employees of or labor organizations representing employees of the United States Postal Service under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations within the

United States Postal Service, or any collective bargaining agreement.

(b) FREE MAILING PRIVILEGES CONTINUE UNCHANGED.—Nothing in this Act or any amendment made by this Act shall affect any free mailing privileges accorded under section 3217 or sections 3403 through 3406 of title 39, United States Code.

#### SEC. 506. BONUS AUTHORITY.

Title 39, United States Code, is amended by adding after section 3686 (as added by section 406(b)) the following:

##### “§ 3687. Bonus authority

“(a) IN GENERAL.—The Postal Service may establish one or more programs to provide bonuses or other rewards to officers and employees of the Postal Service to achieve the objectives of this chapter.

“(b) WAIVER OF LIMITATION ON COMPENSATION.—

“(1) IN GENERAL.—Under any such program, the Postal Service may award a bonus or other reward in excess of the limitation set forth in the last sentence of section 1003(a), if such program has been approved under paragraph (2).

“(2) APPROVAL PROCESS.—If the Postal Service wishes to have the authority, under any program described in subsection (a), to award bonuses or other rewards in excess of the limitation referred to in paragraph (1)—

“(A) the Postal Service shall make an appropriate request to the Postal Regulatory Commission, in such form and manner as the Commission requires; and

“(B) the Postal Regulatory Commission shall approve any such request if it finds that the program is likely to achieve the objectives of this chapter.

“(3) REVOCATION AUTHORITY.—If the Postal Regulatory Commission finds that a program previously approved under paragraph (2) is not achieving the objectives of this chapter, the Commission may revoke or suspend the authority of the Postal Service to continue such program until such time as appropriate corrective measures have, in the judgment of the Commission, been taken.

“(c) REPORTING REQUIREMENT RELATING TO BONUSES OR OTHER REWARDS.—Included in its comprehensive statement under section 2401(e) for any period shall be—

“(1) the name of each person receiving a bonus or other reward during such period which would not have been allowable but for the provisions of subsection (a)(2);

“(2) the amount of the bonus or other reward; and

“(3) the amount by which the limitation referred to in subsection (a)(2) was exceeded as a result of such bonus or other reward.”.

#### TITLE VI—ENHANCED REGULATORY COMMISSION

##### SEC. 601. REORGANIZATION AND MODIFICATION OF CERTAIN PROVISIONS RELATING TO THE POSTAL REGULATORY COMMISSION.

(a) TRANSFER AND REDESIGNATION.—Title 39, United States Code, is amended—

(1) by inserting after chapter 4 the following:

#### “CHAPTER 5—POSTAL REGULATORY COMMISSION

“Sec.

- “501. Establishment.
- “502. Commissioners.
- “503. Rules; regulations; procedures.
- “504. Administration.

##### “§ 501. Establishment

“The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.

##### “§ 502. Commissioners

“(a) The Postal Regulatory Commission is composed of 5 Commissioners, appointed by

the President, by and with the advice and consent of the Senate. The Commissioners shall be chosen solely on the basis of their technical qualifications, professional standing, and demonstrated expertise in economics, accounting, law, or public administration, and may be removed by the President only for cause. Each individual appointed to the Commission shall have the qualifications and expertise necessary to carry out the enhanced responsibilities accorded Commissioners under the Postal Accountability and Enhancement Act. Not more than 3 of the Commissioners may be adherents of the same political party.

“(b) No Commissioner shall be financially interested in any enterprise in the private sector of the economy engaged in the delivery of mail matter.

“(c) A Commissioner may continue to serve after the expiration of his term until his successor has qualified, except that a Commissioner may not so continue to serve for more than 1 year after the date upon which his term otherwise would expire under subsection (f).

“(d) One of the Commissioners shall be designated as Chairman by, and shall serve in the position of Chairman at the pleasure of, the President.

“(e) The Commissioners shall by majority vote designate a Vice Chairman of the Commission. The Vice Chairman shall act as Chairman of the Commission in the absence of the Chairman.

“(f) The Commissioners shall serve for terms of 6 years.”;

(2) by striking, in subchapter I of chapter 36 (as in effect before the amendment made by section 201(c)), the heading for such subchapter I and all that follows through section 3602; and

(3) by redesignating sections 3603 and 3604 as sections 503 and 504, respectively, and transferring such sections to the end of chapter 5 (as inserted by paragraph (1)).

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall not affect the appointment or tenure of any person serving as a Commissioner on the Postal Regulatory Commission (as so redesignated by section 604) pursuant to an appointment made before the date of the enactment of this Act or any nomination made before that date, but, when any such office becomes vacant, the appointment of any person to fill that office shall be made in accordance with such amendment.

(c) CLERICAL AMENDMENT.—The analysis for part I of title 39, United States Code, is amended by inserting after the item relating to chapter 4 the following:

##### “5. Postal Regulatory Commission .. 501”

##### SEC. 602. AUTHORITY FOR POSTAL REGULATORY COMMISSION TO ISSUE SUBPOENAS.

Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding at the end the following:

“(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

“(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title—

“(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

“(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

“(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(4) For purposes of this subsection, the term ‘covered person’ means an officer, employee, agent, or contractor of the Postal Service.

“(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission pursuant to a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

“(2) No officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

“(A) use such information for purposes other than the purposes for which it is supplied; or

“(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

“(3) Paragraph (2) shall not prevent information from being furnished under any process of discovery established under this title in connection with a proceeding under this title. The Commission shall, by regulations based on rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for any information furnished under the preceding sentence.”.

#### SEC. 603. APPROPRIATIONS FOR THE POSTAL REGULATORY COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (d) of section 504 of title 39, United States Code (as so redesignated by section 601) is amended to read as follows:

“(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission’s expenses, including expenses for facilities, supplies, compensation, and employee benefits.”.

##### “(b) BUDGET PROGRAM.—

(1) IN GENERAL.—The next to last sentence of section 2009 of title 39, United States Code, is amended to read as follows: “The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title.”.

(2) CONFORMING AMENDMENT.—Section 2003(e)(1) of title 39, United States Code, is

amended by striking the first sentence and inserting the following: “The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated pursuant to section 504(d); and (C) all expenses of the Office of Inspector General, subject to the availability of amounts appropriated pursuant to section 8G(f) of the Inspector General Act of 1978.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 2002.

(2) SAVINGS PROVISION.—The provisions of title 39, United States Code, that are amended by this section shall, for purposes of any fiscal year before the first fiscal year to which the amendments made by this section apply, continue to apply in the same way as if this section had never been enacted.

**SEC. 604. REDESIGNATION OF THE POSTAL RATE COMMISSION.**

(a) AMENDMENTS TO TITLE 39, UNITED STATES CODE.—Title 39, United States Code, is amended in sections 404, 503–504 (as so redesignated by section 601), 1001, 1002, by striking “Postal Rate Commission” each place it appears and inserting “Postal Regulatory Commission”;

(b) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended in sections 104(1), 306(f), 2104(b), 3371(3), 5314 (in the item relating to Chairman, Postal Rate Commission), 5315 (in the item relating to Members, Postal Rate Commission), 5514(a)(5)(B), 7342(a)(1)(A), 7511(a)(1)(B)(ii), 8402(c)(1), 8423(b)(1)(B), and 8474(c)(4) by striking “Postal Rate Commission” and inserting “Postal Regulatory Commission”.

(c) AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.—Section 101(f)(6) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking “Postal Rate Commission” and inserting “Postal Regulatory Commission”.

(d) AMENDMENT TO THE REHABILITATION ACT OF 1973.—Section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)) is amended by striking “Postal Rate Office” and inserting “Postal Regulatory Commission”.

(e) AMENDMENT TO TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking “Postal Rate Commission” and inserting “Postal Regulatory Commission”.

(f) OTHER REFERENCES.—Whenever a reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, document, or other record of the United States to the Postal Rate Commission, such reference shall be considered a reference to the Postal Regulatory Commission.

**TITLE VII—INSPECTORS GENERAL**

**SEC. 701. INSPECTOR GENERAL OF THE POSTAL REGULATORY COMMISSION.**

(a) IN GENERAL.—Paragraph (2) of section 8G(a) of the Inspector General Act of 1978 is amended by inserting “the Postal Regulatory Commission,” after “the United States International Trade Commission.”.

(b) ADMINISTRATION.—Section 504 of title 39, United States Code (as so redesignated by section 601) is amended by adding after subsection (g) (as added by section 602) the following:

“(h)(1) Notwithstanding any other provision of this title or of the Inspector General Act of 1978, the authority to select, appoint, and employ officers and employees of the Office of Inspector General of the Postal Regu-

latory Commission, and to obtain any temporary or intermittent services of experts or consultants (or an organization of experts or consultants) for such Office, shall reside with the Inspector General of the Postal Regulatory Commission.

“(2) Except as provided in paragraph (1), any exercise of authority under this subsection shall, to the extent practicable, be in conformance with the applicable laws and regulations that govern selections, appointments and employment, and the obtaining of any such temporary or intermittent services, within the Postal Regulatory Commission.”.

(c) DEADLINE.—No later than 180 days after the date of the enactment of this Act—

(1) the first Inspector General of the Postal Regulatory Commission shall be appointed; and

(2) the Office of Inspector General of the Postal Regulatory Commission shall be established.

**SEC. 702. INSPECTOR GENERAL OF THE UNITED STATES POSTAL SERVICE TO BE APPOINTED BY THE PRESIDENT.**

(a) DEFINITIONAL AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 is amended—

(1) in paragraph (1)—

(A) by striking “and” before “the chief executive officer of the Resolution Trust Corporation”; and

(C) by inserting “the Postmaster General;” after “Social Security Administration;” and

(2) in paragraph (2)—

(A) by striking “or” before “the Veterans’ Administration”; and

(B) by inserting “the United States Postal Service,” after “Social Security Administration.”.

(b) SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE.—The Inspector General Act of 1978 is amended—

(1) by redesignating sections 8G (as amended by section 701(a)), 8H, and 8I as sections 8H through 8J, respectively; and

(2) by inserting after section 8F the following:

**“SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE**

“SEC. 8G. (a) Notwithstanding the last two sentences of section 3(a), the Inspector General of the United States Postal Service shall report to and be under the general supervision of the Postmaster General, but shall not report to, or be subject to supervision by, any other officer or employee of the United States Postal Service or its Board of Governors. No such officer or employee (including the Postmaster General) or member of such Board shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

“(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

“(c) Any report required to be transmitted by the Postmaster General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such section, to the Committee on Government Reform of the House of Rep-

resentatives and the Committee on Governmental Affairs of the Senate.

“(d) Notwithstanding any provision of paragraph (7) or (8) of section 6(a), the Inspector General of the United States Postal Service may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the United States Postal Service.

“(e) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

“(f) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

“(g) As used in this section, ‘Board of Governors’ and ‘Board’ each has the meaning given it by section 102 of title 39, United States Code.”.

(c) AUDITS OF THE POSTAL SERVICE.—

(1) AUDITS.—Subsection (e) of section 2008 of title 39, United States Code, is amended to read as follows:

“(e)(1) At least once each year beginning with the fiscal year commencing after the date of the enactment of the Postal Accountability and Enhancement Act, the financial statements of the Postal Service (including those used in determining and establishing postal rates) shall be audited by the Inspector General or by an independent external auditor selected by the Inspector General.

“(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

“(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the Postmaster General.”.

(2) RESULTS OF INSPECTOR GENERAL’S AUDIT TO BE INCLUDED IN ANNUAL REPORT.—Section 2402 of title 39, United States Code, is amended by inserting after the first sentence the following: “Each report under this section shall include, for the most recent fiscal year for which a report under section 2008(e) is available (unless previously transmitted under the following sentence), a copy of such report.”.

(3) COORDINATION PROVISIONS.—Section 2008(d) of title 39, United States Code, is amended—

(A) by striking “(d) Nothing” and inserting “(d)(1) Except as provided in paragraph (2), nothing”; and

(B) by adding at the end the following:

“(2) An audit or report under paragraph (1) may not be obtained without the prior written approval of the Inspector General.”.

(4) SAVINGS PROVISION.—For purposes of any fiscal year preceding the first fiscal year commencing after the date of the enactment of this Act, the provisions of title 39, United States Code, shall be applied as if the amendments made by this subsection had never been enacted.

(d) REPORTS.—Section 3013 of title 39, United States Code, is amended by striking “Postmaster General” each place it appears and inserting “Chief Postal Inspector”.

## (e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RELATING TO THE INSPECTOR GENERAL ACT OF 1978.—(A) Subsection (a) of section 8H of the Inspector General Act of 1978 (as amended by section 701(a) and redesignated by subsection (b) of this section) is further amended—

(i) in paragraph (2) by striking “the Postal Regulatory Commission, and the United States Postal Service;” and inserting “and the Postal Regulatory Commission;” and

(ii) in paragraph (4) by striking “except that” and all that follows through “Code);” and inserting “except that, with respect to the National Science Foundation, such term means the National Science Board.”

(B)(i) Subsection (f) of section 8H of such Act (as so redesignated) is repealed.

(ii) Subsection (c) of section 8H of such Act (as so redesignated) is amended by striking “Except as provided under subsection (f) of this section, the” and inserting “The”.

(C) Section 8J of such Act (as so redesignated) is amended—

(i) by striking all after “8D,” and before “of this Act” and inserting “8E, 8F, 8G, or 8I”; and

(ii) by striking “8G(a)” and inserting “8H(a)”.

(2) RELATING TO TITLE 39, UNITED STATES CODE.—(A) Subsection (e) of section 202 of title 39, United States Code, is repealed.

(B) Paragraph (4) of section 102 of such title 39 (as amended by section 101) is amended to read as follows:

“(4) ‘Inspector General’ means the Inspector General of the United States Postal Service, appointed under section 3(a) of the Inspector General Act of 1978.”.

(C) The first sentence of section 1003(a) of such title 39 is amended by striking “chapters 2 and 12 of this title, section 8G of the Inspector General Act of 1978, or other provision of law,” and inserting “chapter 2 or 12 of this title, subsection (b) or (c) of section 1003 of this title, or any other provision of law.”.

(D) Section 1003(b) of such title 39 is amended by striking “respective” and inserting “other”.

(E) Section 1003(c) of such title 39 is amended by striking “included” and inserting “includes”.

(3) RELATING TO THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—Section 304C(b)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d(b)(1)) is amended by striking “8G” and inserting “8H”.

(4) RELATING TO THE ENERGY POLICY ACT OF 1992.—Section 160(a) of the Energy Policy Act of 1992 (42 U.S.C. 8262f(a)) is amended (in the matter before paragraph (1)) by striking all that follows “(5 U.S.C. App.)” and before “shall—”.

(f) EFFECTIVE DATE; ELIGIBILITY OF PRIOR INSPECTOR GENERAL.—

## (1) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or subsection (c), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

## (B) SPECIAL RULES.—

(i) IN GENERAL.—If the position of Inspector General of the United States Postal Service is occupied on the date of enactment of this Act (other than by an individual serving due to a vacancy arising in that position before the expiration of his or her predecessor’s term), then, for purposes of the period beginning on such date of enactment and ending on January 5, 2004, or, if earlier, the date on which such individual ceases to serve in that position, title 39, United States Code, and the Inspector General Act of 1978 shall be applied as if the amendments made by this section had not been enacted, except—

(I) for those made by subsections (c) and (d); and

(II) as provided in clause (ii).

## (ii) AUTHORIZATION OF APPROPRIATIONS.—

(I) IN GENERAL.—Notwithstanding any other provision of this paragraph, subsection (f) of section 8G of the Inspector General Act of 1978 (as amended by this section) shall be effective for purposes of fiscal years beginning on or after October 1, 2002.

(II) SAVINGS PROVISION.—For purposes of the fiscal year ending on September 30, 2002, funding for the Office of Inspector General of the United States Postal Service shall be made available in the same manner as if this Act had never been enacted.

(2) ELIGIBILITY OF PRIOR INSPECTOR GENERAL.—Nothing in this Act shall prevent any individual who has served as Inspector General of the United States Postal Service at any time before the date of the enactment of this Act from being appointed to that position pursuant to the amendments made by this section.

## TITLE VIII—EVALUATIONS

## SEC. 801. DEFINITION.

For purposes of this title, the term “Board of Governors” has the meaning given such term by section 102 of title 39, United States Code.

## SEC. 802. ASSESSMENTS OF RATEMAKING, CLASSIFICATION, AND OTHER PROVISIONS.

(a) IN GENERAL.—The Postal Regulatory Commission shall, at least every 5 years, submit a report to the President and the Congress concerning—

(1) the operation of the amendments made by the Postal Accountability and Enhancement Act; and

(2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

(b) POSTAL SERVICE VIEWS.—A report under this section shall be submitted only after reasonable opportunity has been afforded to the Postal Service to review such report and to submit written comments thereon. Any comments timely received from the Postal Service under the preceding sentence shall be attached to the report submitted under subsection (a).

(c) SPECIFIC INFORMATION REQUIRED.—The Postal Regulatory Commission shall include, as part of at least its first report under subsection (a), the following:

(1) COST-COVERAGE REQUIREMENT RELATING TO COMPETITIVE PRODUCTS COLLECTIVELY.—With respect to section 3633 of title 39, United States Code (as amended by this Act)—

(A) a description of how such section has operated; and

(B) recommendations as to whether or not such section should remain in effect and, if so, any suggestions as to how it might be improved.

(2) COMPETITIVE PRODUCTS FUND.—With respect to the Postal Service Competitive Products Fund (under section 2011 of title 39, United States Code, as amended by section 401), in consultation with the Secretary of the Treasury—

(A) a description of how such Fund has operated;

(B) any suggestions as to how the operation of such Fund might be improved; and

(C) a description and assessment of alternative accounting or financing mechanisms that might be used to achieve the objectives of such Fund.

(3) ASSUMED FEDERAL INCOME TAX ON COMPETITIVE PRODUCTS FUND.—With respect to section 3634 of title 39, United States Code (as amended by this Act), in consultation with the Secretary of the Treasury—

(A) a description of how such section has operated; and

(B) recommendations as to whether or not such section should remain in effect and, if so, any suggestions as to how it might be improved.

## SEC. 803. STUDY ON EQUAL APPLICATION OF LAWS TO COMPETITIVE PRODUCTS.

(a) IN GENERAL.—The Federal Trade Commission shall prepare and submit to the President and Congress, within 1 year after the date of the enactment of this Act, a comprehensive report identifying Federal and State laws that apply differently to products of the United States Postal Service in the competitive category of mail (within the meaning of section 102 of title 39, United States Code, as amended by section 101) and similar products provided by private companies.

(b) RECOMMENDATIONS.—The Federal Trade Commission shall include such recommendations as it considers appropriate for bringing such legal discrimination to an end.

(c) CONSULTATION.—In preparing its report, the Federal Trade Commission shall consult with the United States Postal Service, the Postal Regulatory Commission, other Federal agencies, mailers, private companies that provide delivery services, and the general public, and shall append to such report any written comments received under this subsection.

## SEC. 804. GREATER DIVERSITY IN POSTAL SERVICE EXECUTIVE AND ADMINISTRATIVE SCHEDULE MANAGEMENT POSITIONS.

(a) STUDY.—The Board of Governors shall study and, within 1 year after the date of the enactment of this Act, submit to the President and Congress a report concerning the extent to which women and minorities are represented in supervisory and management positions within the United States Postal Service. Any data included in the report shall be presented in the aggregate and by pay level.

(b) PERFORMANCE EVALUATIONS.—The United States Postal Service shall, as soon as practicable, take such measures as may be necessary to ensure that, for purposes of conducting performance appraisals of supervisory or managerial employees, appropriate consideration shall be given to meeting affirmative action goals, achieving equal employment opportunity requirements, and implementation of plans designed to achieve greater diversity in the workforce.

## SEC. 805. CONTRACTS WITH WOMEN, MINORITIES, AND SMALL BUSINESSES.

The Board of Governors shall study and, within 1 year after the date of the enactment of this Act, submit to the President and the Congress a report concerning the number and value of contracts and subcontracts the Postal Service has entered into with women, minorities, and small businesses.

## SEC. 806. RATES FOR PERIODICALS.

(a) IN GENERAL.—The United States Postal Service, acting jointly with the Postal Regulatory Commission and the General Accounting Office, shall study and submit to the President and Congress a report concerning—

(1) the quality, accuracy, and completeness of the information used by the Postal Service in determining the direct and indirect postal costs attributable to periodicals; and

(2) any opportunities that might exist for improving efficiencies in the collection, handling, transportation, or delivery of periodicals by the Postal Service, including any pricing incentives for mailers that might be appropriate.

(b) RECOMMENDATIONS.—The report shall include recommendations for any administrative action or legislation that might be appropriate.

**SEC. 807. ASSESSMENT OF CERTAIN RATE DEFICIENCIES.**

(a) IN GENERAL.—Within 12 months after the date of the enactment of this Act, the Office of Inspector General of the United States Postal Service shall study and submit to the President, the Congress, and the United States Postal Service, a report concerning the administration of section 3626(k) of title 39, United States Code.

(b) SPECIFIC REQUIREMENTS.—The study and report shall specifically address the adequacy and fairness of the process by which assessments under section 3626(k) of title 39, United States Code, are determined and appealable, including—

(1) whether the Postal Regulatory Commission or any other body outside the Postal Service should be assigned a role; and

(2) whether a statute of limitations should be established for the commencement of proceedings by the Postal Service thereunder.

**TITLE IX—MISCELLANEOUS; TECHNICAL AND CONFORMING AMENDMENTS****SEC. 901. EMPLOYMENT OF POSTAL POLICE OFFICERS.**

Section 404 of title 39, United States Code, as amended by sections 102 and 908(f), is further amended by adding at the end the following:

“(f)(1) The Postal Service may employ guards for all buildings and areas owned or occupied by the Postal Service or under the charge and control of the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act cited in paragraph (2), and, as to such property, the Postmaster General (or his designee) may take any action that the Administrator of General Services (or his designee) may take under section 2 or 3 of such Act, attaching thereto penalties under the authority and within the limits provided in section 4 of such Act.

“(2) The Act cited in this paragraph is the Act of June 1, 1948 (62 Stat. 281), commonly known as the ‘Protection of Public Property Act’.”.

**SEC. 902. DATE OF POSTMARK TO BE TREATED AS DATE OF APPEAL IN CONNECTION WITH THE CLOSING OR CONSOLIDATION OF POST OFFICES.**

(a) IN GENERAL.—Section 404(b) of title 39, United States Code, is amended by adding at the end the following:

“(6) For purposes of paragraph (5), any appeal received by the Commission shall—

“(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

“(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).”.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall apply with respect to any determination to close or consolidate a post office which is first made available, in accordance with paragraph (3) of section 404(b) of title 39, United States Code, after the end of the 3-month period beginning on the date of the enactment of this Act.

**SEC. 903. PROVISIONS RELATING TO BENEFITS UNDER CHAPTER 81 OF TITLE 5, UNITED STATES CODE, FOR OFFICERS AND EMPLOYEES OF THE FORMER POST OFFICE DEPARTMENT.**

(a) IN GENERAL.—Section 8 of the Postal Reorganization Act (39 U.S.C. 1001 note) is amended by inserting “(a)” after “8.” and by adding at the end the following:

“(b) For purposes of chapter 81 of title 5, United States Code, the Postal Service shall, with respect to any individual receiving benefits under such chapter as an officer or employee of the former Post Office Department, have the same authorities and responsibilities as it has with respect to an officer or employee of the Postal Service receiving such benefits.”.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 2001.

**SEC. 904. OBSOLETE PROVISIONS.**

(a) REPEAL.—

(1) IN GENERAL.—Chapter 52 of title 39, United States Code, is repealed.

(2) CONFORMING AMENDMENTS.—(A) Section 5005(a) of title 39, United States Code, is amended—

(i) by striking paragraph (1), and by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(ii) in paragraph (3) (as so designated by clause (i)) by striking “(as defined in section 5201(6) of this title)”. (B) Section 5005(b) of such title 39 is amended by striking “(a)(4)” each place it appears and inserting “(a)(3)”.

(C) Section 5005(c) of such title 39 is amended by striking “by carrier or person under subsection (a)(1) of this section, by contract under subsection (a)(4) of this section, or” and inserting “by contract under subsection (a)(3) of this section or”.

(b) ELIMINATING RESTRICTION ON LENGTH OF CONTRACTS.—(1) Section 5005(b)(1) of title 39, United States Code, is amended by striking “(or where the Postal Service determines that special conditions or the use of special equipment warrants, not in excess of 6 years)” and inserting “(or such length of time as may be determined by the Postal Service to be advisable or appropriate)”.

(2) Section 5402(c) of such title 39 is amended by striking “for a period of not more than 4 years”.

(3) Section 5605 of such title 39 is amended by striking “for periods of not in excess of 4 years”.

(c) CLERICAL AMENDMENT.—The analysis for part V of title 39, United States Code, is amended by repealing the item relating to chapter 52.

**SEC. 905. EXPANDED CONTRACTING AUTHORITY.**

(a) AMENDMENT TO TITLE 39, UNITED STATES CODE.—

(1) CONTRACTS WITH AIR CARRIERS.—Subsection (d) of section 5402 of title 39, United States Code, is amended to read as follows:

“(d)(1) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate air transportation, including the rates therefor, either through negotiations or competitive bidding.

“(2) Notwithstanding subsections (a) through (c), the Postal Service may contract with any air carrier or foreign air carrier for the transportation of mail by aircraft in foreign air transportation, including the rates therefor, either through negotiations or competitive bidding, except that—

“(A) any such contract may be awarded only to (i) an air carrier holding a certificate required by section 41101 of title 49 or an exemption therefrom issued by the Secretary of Transportation, (ii) a foreign air carrier holding a permit required by section 41301 of title 49 or an exemption therefrom issued by the Secretary of Transportation, or (iii) a combination of such air carriers or foreign air carriers (or both);

“(B) mail transported under any such contract shall not be subject to any duty-to-carry requirement imposed by any provision of subtitle VII of title 49 or by any certificate, permit, or corresponding exemption authority issued by the Secretary of Transportation under that subtitle;

“(C) every contract that the Postal Service awards to a foreign air carrier under this paragraph shall be subject to the continuing requirement that air carriers shall be afforded the same opportunity to carry the mail of the country to and from which the mail is transported and the flag country of the foreign air carrier, if different, as the Postal Service has afforded the foreign air carrier; and

“(D) the Postmaster General shall consult with the Secretary of Defense concerning actions that affect the carriage of military mail transported in foreign air transportation.

“(3) Paragraph (2) shall not be interpreted as suspending or otherwise diminishing the authority of the Secretary of Transportation under section 41310 of title 49.”.

(2) DEFINITIONS.—Subsection (e) of section 5402 of title 39, United States Code, is amended to read as follows:

“(e) For purposes of this section, the terms ‘air carrier’, ‘air transportation’, ‘foreign air carrier’, ‘foreign air transportation’, ‘interstate air transportation’, and ‘mail’ shall have the meanings given such terms in section 41012 of title 49.”.

(b) AMENDMENTS TO TITLE 49, UNITED STATES CODE.—

(1) AUTHORITY OF POSTAL SERVICE TO PROVIDE FOR INTERSTATE AIR TRANSPORTATION OF MAIL.—Section 41901(a) of title 49, United States Code, is amended to read as follows:

“(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in air transportation under this chapter and under chapter 54 of title 39.”.

(2) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902(b)(1) of title 49, United States Code, is amended by inserting before the semicolon at the end the following: “(other than foreign air transportation of mail)”. (3) PRICES FOR FOREIGN TRANSPORTATION OF MAIL.—Section 41907 of title 49, United States Code, is amended—

(A) by striking “(a) LIMITATIONS.”; and (B) by striking subsection (b).

(4) CONFORMING AMENDMENTS.—Sections 41107, 41901(b)(1), 41902(a), 41903(a), and 41903(b) of title 49, United States Code, are amended by striking “in foreign air transportation or”.

**SEC. 906. INVESTMENTS.**

Subsection (c) of section 2003 of title 39, United States Code, is amended—

(1) by striking “(c) If” and inserting “(c)(1) Except as provided in paragraph (2), if”; and

(2) by adding at the end the following: “(2)(A) Nothing in this section shall be considered to authorize any investment in any obligations or securities of a commercial entity.”.

“(B) For purposes of this paragraph, the term ‘commercial entity’ means any corporation, company, association, partnership, joint stock company, firm, society, or other similar entity, as further defined under regulations prescribed by the Postal Regulatory Commission.”.

**SEC. 907. REPEAL OF SECTION 5403.**

(a) IN GENERAL.—Section 5403 of title 39, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The analysis for chapter 54 of title 39, United States Code, is amended by repealing the item relating to section 5403.

**SEC. 908. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) REDUCED RATES.—Section 3626 of title 39, United States Code, is amended—

(1) in subsection (a)—

(A) by striking all before paragraph (4) and inserting the following:

“(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail

or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

“(2) For the purpose of this subsection, the term ‘regular-rate category’ means any class of mail or kind of mailer, other than a class or kind referred to in section 2401(c).”; and

(B) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively;

(2) in subsection (g) by adding at the end the following:

“(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

“(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

“(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

“(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.”;

(3) in subsection (j)(1)(D)—

(A) by striking “and” at the end of subclause (I); and

(B) by adding after subclause (II) the following:

“(III) clause (i) shall not apply to space advertising in mail matter that otherwise qualifies for rates under former section 4452(b) or 4452(c) of this title, and satisfies the content requirements established by the Postal Service for periodical publications.”; and

(4) by adding at the end the following:

“(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).”.

(b) REIMBURSEMENT.—Section 3681 of title 39, United States Code, is amended by striking “section 3628” and inserting “sections 3662 through 3664”.

(c) SIZE AND WEIGHT LIMITS.—Section 3682 of title 39, United States Code, is amended to read as follows:

#### §3682. Size and weight limits

“The Postal Service may establish size and weight limitations for mail matter in the market-dominant category of mail consistent with regulations the Postal Regulatory Commission may prescribe under section 3622. The Postal Service may establish size and weight limitations for mail matter in the competitive category of mail consistent with its authority under section 3632.”.

(d) REVENUE FOREGONE, ETC.—Title 39, United States Code, is amended—

(1) in section 503 (as so redesignated by section 601) by striking “this chapter.” and inserting “this title.”; and

(2) in section 2401(d) by inserting “(as last in effect before enactment of the Postal Ac-

countability and Enhancement Act)” after “3626(a)”; and after “3626(a)(3)(B)(ii)”.

(e) APPROPRIATIONS AND REPORTING REQUIREMENTS.—

(1) APPROPRIATIONS.—Subsection (e) of section 2401 of title 39, United States Code, is amended—

(A) by striking “Committee on Post Office and Civil Service” each place it appears and inserting “Committee on Government Reform”; and

(B) by striking “Not later than March 15 of each year.” and inserting “Each year.”.

(2) REPORTING REQUIREMENTS.—Sections 2803(a) and 2804(a) of title 39, United States Code, are amended by striking “2401(g)” and inserting “2401(e)”.

(f) AUTHORITY TO FIX RATES AND CLASSES GENERALLY; REQUIREMENT RELATING TO LETTERS SEALED AGAINST INSPECTION.—Section 404 of title 39, United States Code (as amended by section 102) is further amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting after subsection (a) the following:

“(b) Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

“(c) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.”.

(g) LIMITATIONS.—Section 3684 of title 39, United States Code, is amended by striking all that follows “any provision” and inserting “of this title.”.

(h) MISCELLANEOUS.—Title 39, United States Code, is amended—

(1) in section 410(b), by moving the left margin of paragraph (10) 2 ems to the left;

(2) in section 1005(d)(2)—

(A) by striking “subsection (g) of section 5532.”; and

(B) by striking “8344,” and inserting “8344”;

(3) in the analysis for part III, by striking the item relating to chapter 28 and inserting the following:

#### 28. Strategic Planning and Performance Management ..... 2801;

(4) in subsections (h)(2) and (i)(2) of section 3001, by moving the left margin of subparagraph (C) of each 2 ems to the left;

(5) in section 3005(a)—

(A) in the matter before paragraph (1), by striking all that follows “nonmailable” and precedes “(h),” and inserting “under section 3001(d),”; and

(B) in the sentence following paragraph (3), by striking all that follows “nonmailable” and precedes “(h),” and inserting “under such section 3001(d),”;

(6) in section 3210(a)(6)(C), by striking the matter after “if such mass mailing” and before “than 60 days” and inserting “is postmarked fewer”;

(7) in section 3626(a), by moving the left margin of paragraphs (3), (5), and (6) (as so redesignated by subsection (a)(1)(B), and including each subparagraph thereunder (if any)) 2 ems to the left;

(8) by striking the heading for section 3627 and inserting the following:

#### §3627. Adjusting free rates

; and

(9) in section 5402(g)(1), by moving the left margin of subparagraph (D) (including each clause thereunder) 2 ems to the left.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. KENNEDY, Mr. FEINGOLD, and Mr. BINGAMAN):

S. 1286. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Madam President, today I am introducing the Seniors Safety Act of 2003, a bill to protect older Americans from crime. I am pleased to have Senators DASCHLE, KENNEDY, FEINGOLD, and BINGAMAN as cosponsors for this anti-crime bill.

The Seniors Safety Act is a comprehensive bill that addresses the most prevalent crimes perpetrated against seniors, including health care fraud, nursing home abuse, telemarketing fraud—and bribery, graft and fraud in pension and employee benefit plans. In addition, this legislation would help seniors obtain restitution if their pension plans are defrauded.

Older Americans are the most rapidly growing population group in our society, making them an even more attractive target for criminals. The Department of Health and Human Services has predicted that the number of older Americans will grow from 13 percent of the U.S. population in 2000 to 20 percent by 2030. In Vermont, seniors comprise about 12 percent of the population, a number that is expected to increase to 20 percent by 2025.

Crime against seniors has remained stubbornly resistant over the last decade. According to a 2000 Justice Department study, more than 90 percent of crimes committed against older Americans were property crimes, with theft the most common. As our Nation addressed our violent crime problem, we did not take a comprehensive approach to deterring the crimes that so affect the elderly, like telemarketing fraud, health care fraud, and pension fraud. The Seniors Safety Act provides such a comprehensive approach, and I urge the Senate to pass it.

The Seniors Safety Act instructs the U.S. Sentencing Commission to review current sentencing guidelines and, if appropriate, amend the guidelines to include the age of a crime victim as a criteria for determining whether a sentencing enhancement is proper. The bill also requires the Commission to review sentencing guidelines for health care benefit fraud, increases statutory penalties both for fraud resulting in serious injury or death and for bribery

and graft in connection with employee benefit plans, and increases criminal and civil penalties for defrauding pension plans.

Telemarketing fraud is one crime that disproportionately harms Americans over age 50. The Seniors Safety Act seeks to fight the perpetrators of fraud—schemes that often succeed in swindling seniors of their life savings. Some of these schemes are directed from outside the United States, making criminal prosecution more difficult.

The Act would provide the Attorney General with a new and substantial tool to prevent telemarketing fraud—the power to block or terminate service to telephone facilities that are being used to defraud innocent people. The Justice Department could use this authority to disrupt telemarketing fraud schemes directed from foreign sources by cutting off the swindlers' telephone service. Even if the criminals acquire a new telephone number, temporary interruptions will prevent some seniors from being victimized.

The bill also establishes a "Better Business Bureau"-style clearinghouse at the Federal Trade Commission to provide seniors, their families, and others who may be concerned about a telemarketer with information about prior law enforcement actions against the particular company. In addition, the FTC would refer seniors and other consumers who believe they have been swindled to the appropriate law enforcement authorities.

Criminal activity that undermines the safety and integrity of pension plans and health benefit programs threatens all Americans, but most especially those seniors who have relied on promised benefits in planning their retirements. Seniors who have worked faithfully and honestly for years should not reach their retirement years only to find that the funds they relied upon were stolen.

The Seniors Safety Act would add to the arsenal that federal prosecutors can draw upon to prevent and punish fraud against retirement plans. Specifically, the Act would create new criminal and civil penalties for defrauding pension plans or obtaining money or property from such plans by means of false or fraudulent pretenses. In addition, the Act would enhance penalties for bribery and graft in connection with employee benefit plans. The only people enjoying the benefits of pension plans should be the people who have worked hard to fund those plans, not crooks who get the money by fraud.

Health care spending consists of about 15 percent of the gross national product, or more than \$1 trillion each year. Estimated losses due to fraud and abuse are astronomical. A December 1998 report by the National Institute of Justice, NIJ, states that these losses "may exceed 10 percent of annual health care spending, or \$100 billion per year."

As more health care claims are processed electronically, more sophisti-

cated computer-generated fraud schemes are surfacing. Some of these schemes generate thousands of false claims designed to pass through automated claims processing to payment, and result in the theft of millions of dollars from federal and private health care programs. Fraud against Medicare, Medicaid and private health plans increases the financial burden on taxpayers and beneficiaries alike. In addition, some forms of fraud may result in inadequate medical care, harming patients' health as well. Unfortunately, the NIJ reports that many health care fraud schemes "deliberately target vulnerable populations, such as the elderly or Alzheimer's patients, who are less willing or able to complain or alert law enforcement."

We saw a dramatic increase in criminal convictions for health care fraud cases during the 1990s. These cases included convictions for submitting false claims to Medicare, Medicaid, and private insurance plans; fraudulent billings by foreign doctors; and needless prescriptions for durable medical equipment by doctors in exchange for kickbacks from manufacturers.

We can and must do more. The Seniors Safety Act would allow the Attorney General to bring injunctive actions to stop false claims and illegal kickback schemes involving federal health care programs. The bill would also provide law enforcement authorities with additional investigatory tools to uncover, investigate, and prosecute health care offenses in both criminal and civil proceedings.

In addition, whistle-blowers who tip off law enforcement officers about health care fraud would be authorized under the Seniors Safety Act to seek court permission to review information obtained by the government to enhance their assistance in False Claims Act lawsuits. Such qui tam, or whistleblower, suits have dramatically enhanced the government's ability to uncover health care fraud. The Act would allow whistle-blowers and their qui tam suits to become even more effective.

Finally, the Act would extend anti-fraud and anti-kickback safeguards to the Federal Employees Health Benefits program. These are all important steps that will help cut down on the enormous health care fraud losses.

As life expectancies continue to increase, long-term care planning specialists estimate that over 40 percent of those turning 65 eventually will need nursing home care, and that 20 percent of those seniors will spend five years or more in homes. Indeed, many of us already have experienced having our parents, family members or other loved ones spend time in a nursing home. We owe it to them and to ourselves to give the residents of nursing homes the best and safest care they can get.

The Justice Department has cited egregious examples of nursing homes that pocketed Medicare funds instead of providing residents with adequate

care. In one case, five patients died as a result of the inadequate provision of nutrition, wound care and diabetes management by three Pennsylvania nursing homes. Yet another death occurred when a patient, who was unable to speak, was placed in a scalding tub of 138-degree water.

This Act provides additional peace of mind to nursing home residents and their families by providing federal law enforcement with the authority to investigate and prosecute operators of nursing homes for willfully engaging in patterns of health and safety violations in the care of nursing home residents. The Act also protects whistle-blowers from retaliation for reporting such violations.

This title of the Seniors Safety Act would authorize the Attorney General to use forfeited funds to pay restitution to victims of fraudulent activity, and authorize the courts to require the forfeiture of proceeds from retirement-related offenses. In addition, it would exempt false claims actions from being stayed in bankruptcy proceedings and ensure that debts due to the United States from false claims actions are not dischargeable in bankruptcy.

We all deserve to age with dignity and free of the threat of abuse or fraud. No one can guarantee that this will happen, but the Senior Safety Act can be a powerful new tool to help crack down on those who prey upon older Americans. This effort is about all of us and our families.

These are problems that have persisted too long. It is past the time for the Senate to act. I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1286

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the "Seniors Safety Act of 2003".

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

Sec. 1. Short title; table of contents.  
Sec. 2. Findings and purposes.  
Sec. 3. Definitions.

**TITLE I—COMBATING CRIMES AGAINST SENIORS**

Sec. 101. Enhanced sentencing penalties based on age of victim.  
Sec. 102. Study and report on health care fraud sentences.  
Sec. 103. Increased penalties for fraud resulting in serious injury or death.  
Sec. 104. Safeguarding pension plans from fraud and theft.  
Sec. 105. Additional civil penalties for defrauding pension plans.  
Sec. 106. Punishing bribery and graft in connection with employee benefit plans.

**TITLE II—PREVENTING TELEMARKETING FRAUD**

Sec. 201. Centralized complaint and consumer education service for victims of telemarketing fraud.  
Sec. 202. Blocking of telemarketing scams.

**TITLE III—PREVENTING HEALTH CARE FRAUD**

Sec. 301. Injunctive authority relating to false claims and illegal kick-back schemes involving Federal health care programs.

Sec. 302. Authorized investigative demand procedures.

Sec. 303. Extending antifraud safeguards to the Federal employee health benefits program.

Sec. 304. Grand jury disclosure.

Sec. 305. Increasing the effectiveness of civil investigative demands in false claims investigations.

**TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES**

Sec. 401. Short title.

Sec. 402. Nursing home resident protection.

**TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS**

Sec. 501. Use of forfeited funds to pay restitution to crime victims and regulatory agencies.

Sec. 502. Victim restitution.

Sec. 503. Bankruptcy proceedings not used to shield illegal gains from false claims.

Sec. 504. Forfeiture for retirement offenses.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) **FINDINGS.**—Congress makes the following findings:

- (1) The number of older Americans is rapidly growing in the United States. According to the 2000 census, 21 percent of the United States population is 55 years of age or older.
- (2) In 1997, 7 percent of victims of serious violent crime were 50 years of age or older.
- (3) In 1997, 17.7 percent of murder victims were 55 years of age or older.

(4) According to the Department of Justice, persons 65 years of age and older experienced approximately 2,700,000 crimes a year between 1992 and 1997.

(5) Older victims of violent crime are almost twice as likely as younger victims to be raped, robbed, or assaulted at or in their own homes.

(6) Approximately half of all Americans who are 50 years of age or older are afraid to walk alone at night in their own neighborhoods.

(7) Seniors over 50 years of age reportedly account for 37 percent of the estimated \$40,000,000,000 in losses each year due to telemarketing fraud.

(8) A 1996 American Association of Retired Persons survey of people 50 years of age and older showed that 57 percent were likely to receive calls from telemarketers at least once a week.

(9) In 1998, Congress enacted legislation to provide for increased penalties for telemarketing fraud that targets seniors.

(10) It has been estimated that—

(A) approximately 43 percent of persons turning 65 years of age can expect to spend some time in a long-term care facility; and

(B) approximately 20 percent can expect to spend 5 years or more in a such a facility.

(11) In 1997, approximately \$82,800,000,000 was spent on nursing home care in the United States and over half of this amount was spent by the Medicaid and Medicare programs.

(12) Losses to fraud and abuse in health care reportedly cost the United States an estimated \$100,000,000,000 in 1996.

(13) The Inspector General for the Department of Health and Human Services has estimated that about \$12,600,000,000 in improper Medicare benefit payments, due to inadvertent mistake, fraud, and abuse were made during fiscal year 1998.

(14) Incidents of health care fraud and abuse remain common despite awareness of the problem.

(b) **PURPOSES.**—The purposes of this Act are to—

- (1) combat nursing home fraud and abuse;
- (2) enhance safeguards for pension plans and health care programs;
- (3) develop strategies for preventing and punishing crimes that target or otherwise disproportionately affect seniors by collecting appropriate data—
  - (A) to measure the extent of crimes committed against seniors; and
  - (B) to determine the extent of domestic and elder abuse of seniors; and
  - (4) prevent and deter criminal activity, such as telemarketing fraud, that results in economic and physical harm against seniors, and ensure appropriate restitution.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) **CRIME.**—The term “crime” means any criminal offense under Federal or State law.

(2) **NURSING HOME.**—The term “nursing home” means any institution or residential care facility defined as such for licensing purposes under State law, or if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary of Health and Human Services, pursuant to section 1908(e) of the Social Security Act (42 U.S.C. 1396g(e)).

(3) **SENIOR.**—The term “senior” means an individual who is more than 55 years of age.

**TITLE I—COMBATING CRIMES AGAINST SENIORS****SEC. 101. ENHANCED SENTENCING PENALTIES BASED ON AGE OF VICTIM.**

(a) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the “Commission”) shall review and, if appropriate, amend section 3A1.1(a) of the Federal sentencing guidelines to include the age of a crime victim as one of the criteria for determining whether the application of a sentencing enhancement is appropriate.

(b) **REQUIREMENTS.**—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious economic and physical harms associated with criminal activity targeted at seniors due to their particular vulnerability;

(2) consider providing increased penalties for persons convicted of offenses in which the victim was a senior in appropriate circumstances;

(3) consult with individuals or groups representing seniors, law enforcement agencies, victims organizations, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that may justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

(c) **REPORT.**—Not later than December 31, 2004, the Commission shall submit to Congress a report on issues relating to offenses described in subsection (a), which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for offenses involving seniors.

**SEC. 102. STUDY AND REPORT ON HEALTH CARE FRAUD SENTENCES.**

(a) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the “Commission”) shall review and, if appropriate, amend the Federal sentencing guidelines and the policy statements of the Commission with respect to persons convicted of offenses involving fraud in connection with a health care benefit program (as defined in section 24(b) of title 18, United States Code).

(b) **REQUIREMENTS.**—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud;

(2) consider providing increased penalties for persons convicted of health care fraud in appropriate circumstances;

(3) consult with individuals or groups representing victims of health care fraud, law enforcement agencies, the health care industry, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) **REPORT.**—Not later than December 31, 2004, the Commission shall submit to Congress a report on issues relating to offenses described in subsection (a), which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for those offenses.

**SEC. 103. INCREASED PENALTIES FOR FRAUD RESULTING IN SERIOUS INJURY OR DEATH.**

Sections 1341 and 1343 of title 18, United States Code, are each amended by inserting before the last sentence the following: “If the violation results in serious bodily injury (as defined in section 1365), such person shall be fined under this title, imprisoned not more than 20 years, or both, and if the violation results in death, such person shall be fined under this title, imprisoned for any term of years or life, or both.”

**SEC. 104. SAFEGUARDING PENSION PLANS FROM FRAUD AND THEFT.**

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

**“§ 1351. Fraud in relation to retirement arrangements**

“(a) **DEFINITION.**—

“(1) **RETIREMENT ARRANGEMENT.**—In this section, the term ‘retirement arrangement’ means—

“(A) any employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

“(B) any qualified retirement plan within the meaning of section 4974(c) of the Internal Revenue Code of 1986;

“(C) any medical savings account described in section 220 of the Internal Revenue Code of 1986; or

“(D) a fund established within the Thrift Savings Fund by the Federal Retirement Thrift Investment Board pursuant to subchapter III of chapter 84 of title 5.

“(2) CERTAIN ARRANGEMENTS INCLUDED.—The term ‘retirement arrangement’ shall include any arrangement that has been represented to be an arrangement described in any subparagraph of paragraph (1) (whether or not so described).

“(3) EXCEPTION FOR GOVERNMENTAL PLAN.—Except as provided in paragraph (1)(D), the term ‘retirement arrangement’ shall not include any governmental plan (as defined in section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32))).

“(b) PROHIBITION AND PENALTIES.—Whoever executes, or attempts to execute, a scheme or artifice—

“(1) to defraud any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; or

“(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; shall be fined under this title, imprisoned not more than 10 years, or both.

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), the Attorney General may investigate any violation of, and otherwise enforce, this section.

“(2) EFFECT ON OTHER AUTHORITY.—Nothing in this subsection may be construed to preclude the Secretary of Labor or the head of any other appropriate Federal agency from investigating a violation of this section in relation to a retirement arrangement subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or any other provision of Federal law.”.

(b) TECHNICAL AMENDMENT.—Section 24(a)(1) of title 18, United States Code, is amended by inserting “1351,” after “1347.”.

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

“1351. Fraud in relation to retirement arrangements.”.

#### SEC. 105. ADDITIONAL CIVIL PENALTIES FOR DEFRAUDING PENSION PLANS.

(a) IN GENERAL.—

(1) ACTION BY ATTORNEY GENERAL.—Except as provided in subsection (b)—

(A) the Attorney General may bring a civil action in the appropriate district court of the United States against any person who engages in conduct constituting an offense under section 1351 of title 18, United States Code, or conspiracy to violate such section 1351; and

(B) upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty in an amount equal to the greatest of—

(i) the amount of pecuniary gain to that person;

(ii) the amount of pecuniary loss sustained by the victim; or

(iii) not more than—

(I) \$50,000 for each such violation in the case of an individual; or

(II) \$100,000 for each such violation in the case of a person other than an individual.

(2) NO EFFECT ON OTHER REMEDIES.—The imposition of a civil penalty under this subsection does not preclude any other statutory, common law, or administrative remedy available by law to the United States or any other person.

(b) EXCEPTION.—No civil penalty may be imposed pursuant to subsection (a) with respect to conduct involving a retirement arrangement that—

(1) is an employee pension benefit plan subject to title I of the Employee Retirement Income Security Act of 1974; and

(2) for which the civil penalties may be imposed under section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132).

(c) DETERMINATION OF PENALTY AMOUNT.—

In determining the amount of the penalty under subsection (a), the district court may consider the effect of the penalty on the violator or other person’s ability to—

(1) restore all losses to the victims; or

(2) provide other relief ordered in another civil or criminal prosecution related to such conduct, including any penalty or tax imposed on the violator or other person pursuant to the Internal Revenue Code of 1986.

#### SEC. 106. PUNISHING BRIBERY AND GRAFT IN CONNECTION WITH EMPLOYEE BENEFIT PLANS.

(a) IN GENERAL.—Section 1954 of title 18, United States Code, is amended to read as follows:

#### “§ 1954. Bribery and graft in connection with employee benefit plans

“(a) DEFINITIONS.—In this section—

“(1) the term ‘employee benefit plan’ means any employee welfare benefit plan or employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

“(2) the terms ‘employee organization’, ‘administrator’, and ‘employee benefit plan sponsor’ mean any employee organization, administrator, or plan sponsor, as defined in title I of the Employment Retirement Income Security Act of 1974; and

“(3) the term ‘applicable person’ means—

“(A) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan;

“(B) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan;

“(C) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan;

“(D) a person who, or an officer, counsel, agent, or employee of an organization that, provides benefit plan services to such plan; or

“(E) a person with actual or apparent influence or decisionmaking authority in regard to such plan.

“(b) BRIBERY AND GRAFT.—Whoever—

“(1) being an applicable person, receives or agrees to receive or solicits, any fee, kickback, commission, gift, loan, money, or thing of value, personally or for any other person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan;

“(2) directly or indirectly, gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value, to any applicable person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan; or

“(3) attempts to give, accept, or receive any thing of value with the intent to be corruptly influenced in violation of this section; shall be fined under this title, imprisoned not more than 5 years, or both.

“(c) EXCEPTIONS.—Nothing in this section may be construed to apply to any—

“(1) payment to, or acceptance by, any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as an applicable person; or

“(2) payment to, or acceptance in good faith by, any employee benefit plan sponsor, or person acting on behalf of the sponsor, of anything of value relating to the decision or action of the sponsor to establish, terminate, or modify the governing instruments of an employee benefit plan in a manner that does not violate—

“(A) title I of the Employee Retirement Income Security Act of 1974;

“(B) any regulation or order promulgated under title I of the Employee Retirement Income Security Act of 1974; or

“(C) any other provision of law governing the plan.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 95 of title 18, United States Code, is amended by striking the item relating to section 1954 and inserting the following:

“1954. Bribery and graft in connection with employee benefit plans.”.

#### TITLE II—PREVENTING TELEMARKETING FRAUD

#### SEC. 201. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF TELEMARKETING FRAUD.

(a) CENTRALIZED SERVICE.—

(1) REQUIREMENT.—The Federal Trade Commission shall, after consultation with the Attorney General, establish procedures to—

(A) log the receipt of complaints by individuals who claim that they have been the victim of fraud in connection with the conduct of telemarketing (as that term is defined in section 2325 of title 18, United States Code, as amended by section 202(a) of this Act);

(B) provide to individuals described in subparagraph (A), and to any other persons, if requested, information on telemarketing fraud, including—

(i) general information on telemarketing fraud, including descriptions of the most common telemarketing fraud schemes;

(ii) information on means of referring complaints on telemarketing fraud to appropriate law enforcement agencies, including the Director of the Federal Bureau of Investigation, the attorneys general of the States, and the national toll-free telephone number on telemarketing fraud established by the Attorney General; and

(iii) information, if available, on any record of civil or criminal law enforcement action for telemarketing fraud against a particular company for which a specific request has been made; and

(C) refer complaints described in subparagraph (A), as appropriate, to law enforcement authorities, including State consumer protection agencies or entities, for potential action.

(2) COMMENCEMENT.—The Federal Trade Commission shall commence carrying out the service not later than 1 year after the date of enactment of this Act.

(b) FRAUD CONVICTION DATA.—

(1) ENTRY OF INFORMATION ON CONVICTIONS INTO FTC DATABASE.—The Attorney General shall provide information on the corporations and companies that are the subject of civil or criminal law enforcement action for telemarketing fraud under Federal and State

law to the Federal Trade Commission in such electronic format as will enable the Federal Trade Commission to automatically enter the information into a database maintained in accordance with subsection (a).

(2) INFORMATION.—The information described in paragraph (1) shall include a description of the type and method of the fraud scheme that prompted the law enforcement action against each such corporation or company.

(3) USE OF DATABASE.—The Attorney General shall make information in the database available to the Federal Trade Commission for purposes of providing information as part of the service under subsection (a).

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

**SEC. 202. BLOCKING OF TELEMARKETING SCAMS.**

(a) EXPANSION OF SCOPE OF TELEMARKETING FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES.—Section 2325(1) of title 18, United States Code, is amended by striking “telephone calls” and inserting “wire communications utilizing a telephone service”.

(b) BLOCKING OR TERMINATION OF TELEPHONE SERVICE ASSOCIATED WITH TELEMARKETING FRAUD.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

**“§ 2328. Blocking or termination of telephone service**

“(a) DEFINITIONS.—In this section:

“(1) REASONABLE NOTICE TO THE SUBSCRIBER.—

“(A) IN GENERAL.—The term ‘reasonable notice to the subscriber’, in the case of a subscriber of a common carrier, means any information necessary to provide notice to the subscriber that—

“(i) the wire communications facilities furnished by the common carrier may not be used for the purpose of transmitting, receiving, forwarding, or delivering a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud in connection with the conduct of telemarketing; and

“(ii) such use constitutes sufficient grounds for the immediate discontinuance or refusal of the leasing, furnishing, or maintaining of the facilities to or for the subscriber.

“(B) INCLUDED MATTER.—The term includes any tariff filed by the common carrier with the Federal Communications Commission that contains the information specified in subparagraph (A).

“(2) WIRE COMMUNICATION.—The term ‘wire communication’ has the same meaning given that term in section 2510(1).

“(3) WIRE COMMUNICATIONS FACILITY.—The term ‘wire communications facility’ means any facility (including instrumentalities, personnel, and services) used by a common carrier for purposes of the transmission, receipt, forwarding, or delivery of wire communications.

“(b) BLOCKING OR TERMINATING TELEPHONE SERVICE.—If a common carrier subject to the jurisdiction of the Federal Communications Commission is notified in writing by the Attorney General, acting within the jurisdiction of the Attorney General, that any wire communications facility furnished by that common carrier is being used or will be used by a subscriber for the purpose of transmitting or receiving a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, in connection with the conduct of telemarketing, the com-

mon carrier shall discontinue or refuse the leasing, furnishing, or maintaining of the facility to or for the subscriber after reasonable notice to the subscriber.

“(c) PROHIBITION ON DAMAGES.—No damages, penalty, or forfeiture, whether civil or criminal, shall be found or imposed against any common carrier for any act done by the common carrier in compliance with a notice received from the Attorney General under this section.

“(d) RELIEF.—

“(1) IN GENERAL.—Nothing in this section may be construed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court, that—

“(A) the leasing, furnishing, or maintaining of a facility should not be discontinued or refused under this section; or

“(B) the leasing, furnishing, or maintaining of a facility that has been so discontinued or refused should be restored.

“(2) SUPPORTING INFORMATION.—In any action brought under this subsection, the court may direct that the Attorney General present evidence in support of the notice made under subsection (b) to which such action relates.”.

“(2) CONFORMING AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following:

“2328. Blocking or termination of telephone service.”.

**TITLE III—PREVENTING HEALTH CARE FRAUD**

**SEC. 301. INJUNCTIVE AUTHORITY RELATING TO FALSE CLAIMS AND ILLEGAL KICKBACK SCHEMES INVOLVING FEDERAL HEALTH CARE PROGRAMS.**

“(a) IN GENERAL.—Section 1345(a) of title 18, United States Code, is amended—

“(1) in paragraph (1)—

“(A) in subparagraph (B), by striking “, or” and inserting a semicolon;

“(B) in subparagraph (C), by striking the period at the end and inserting “; or”; and

“(C) by adding at the end the following:

“(D) committing or about to commit an offense under section 1128B of the Social Security Act (42 U.S.C. 1320a-7b);”; and

“(2) in paragraph (2), by inserting “a violation of paragraph (1)(D),” before “a banking”.

“(b) CIVIL ACTIONS.—

“(1) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended by adding at the end the following:

“(g) CIVIL ACTIONS.—

“(1) IN GENERAL.—The Attorney General may bring an action in the appropriate district court of the United States to impose upon any person who carries out any activity in violation of this section with respect to a Federal health care program a civil penalty of not more than \$50,000 for each such violation, or damages of 3 times the total remuneration offered, paid, solicited, or received, whichever is greater.

“(2) EXISTENCE OF VIOLATION.—A violation exists under paragraph (1) if 1 or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

“(3) PROCEDURES.—An action under paragraph (1) shall be governed by—

“(A) the procedures with regard to subpoenas, statutes of limitations, standards of proof, and collateral estoppel set forth in section 3731 of title 31, United States Code; and

“(B) the Federal Rules of Civil Procedure.

“(4) NO EFFECT ON OTHER REMEDIES.—Nothing in this section may be construed to affect the availability of any other criminal or civil remedy.

“(h) INJUNCTIVE RELIEF.—The Attorney General may commence a civil action in an appropriate district court of the United States to enjoin a violation of this section, as provided in section 1345 of title 18, United States Code.”.

“(2) CONFORMING AMENDMENT.—The heading of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended by inserting “AND CIVIL” after “CRIMINAL”.

**SEC. 302. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.**

Section 3486 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “, or any allegation of fraud or false claims (whether criminal or civil) in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f))),” after “Federal health care offense” each place it appears; and

(2) by adding at the end the following:

“(f) PRIVACY PROTECTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any record (including any book, paper, document, electronic medium, or other object or tangible thing) produced pursuant to a subpoena issued under this section that contains personally identifiable health information may not be disclosed to any person, except pursuant to a court order under subsection (e)(1).

“(2) EXCEPTIONS.—A record described in paragraph (1) may be disclosed—

“(A) to an attorney for the Government for use in the performance of the official duty of the attorney (including presentation to a Federal grand jury);

“(B) to government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the Government to assist an attorney for the Government in the performance of the official duty of that attorney to enforce Federal criminal law;

“(C) as directed by a court preliminarily to, or in connection with, a judicial proceeding;

“(D) as permitted by a court at the request of a defendant in an administrative, civil, or criminal action brought by the United States, upon a showing that grounds may exist for a motion to exclude evidence obtained under this section; or

“(E) at the request of an attorney for the Government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law.

“(3) MANNER OF COURT ORDERED DISCLOSURES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if a court orders the disclosure of any record described in paragraph (1), the disclosure—

“(i) shall be made in such manner, at such time, and under such conditions as the court may direct; and

“(ii) shall be undertaken in a manner that preserves the confidentiality and privacy of individuals who are the subject of the record.

“(B) EXCEPTION.—If disclosure is required by the nature of the proceedings, the attorney for the Government shall request that the presiding judicial or administrative officer enter an order limiting the disclosure of the record to the maximum extent practicable, including redacting the personally identifiable health information from publicly disclosed or filed pleadings or records.

“(4) DESTRUCTION OF RECORDS.—Any record described in paragraph (1), and all copies of that record, in whatever form (including electronic), shall be destroyed not later than 90 days after the date on which the record is produced, unless otherwise ordered by a

court of competent jurisdiction, upon a showing of good cause.

“(5) EFFECT OF VIOLATION.—Any person who knowingly fails to comply with this subsection may be punished as in contempt of court.

“(g) PERSONALLY IDENTIFIABLE HEALTH INFORMATION DEFINED.—In this section, the term ‘personally identifiable health information’ means any information, including genetic information, demographic information, and tissue samples collected from an individual, whether oral or recorded in any form or medium, that—

“(1) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

“(2) either—

“(A) identifies an individual; or

“(B) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.”.

**SEC. 303. EXTENDING ANTIFRAUD SAFEGUARDS TO THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.**

Section 1128B(f)(1) of the Social Security Act (42 U.S.C. 1320a-7b(f)(1)) is amended by striking “(other than the health insurance program under chapter 89 of title 5, United States Code)”.

**SEC. 304. GRAND JURY DISCLOSURE.**

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

“(c) GRAND JURY DISCLOSURE.—Subject to section 3486(f), upon ex parte motion of an attorney for the Government showing that a disclosure in accordance with that subsection would be of assistance to enforce any provision of Federal law, a court may direct the disclosure of any matter occurring before a grand jury during an investigation of a Federal health care offense (as defined in section 24(a) of this title) to an attorney for the Government to use in any investigation or civil proceeding relating to fraud or false claims in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f))).”.

**SEC. 305. INCREASING THE EFFECTIVENESS OF CIVIL INVESTIGATIVE DEMANDS IN FALSE CLAIMS INVESTIGATIONS.**

Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)(1), in the second sentence, by inserting “, except to the Deputy Attorney General or to an Assistant Attorney General” before the period at the end; and

(2) in subsection (i)(2)(C), by adding at the end the following: “Disclosure of information to a person who brings a civil action under section 3730, or the counsel of that person, shall be allowed only upon application to a United States district court showing that such disclosure would assist the Department of Justice in carrying out its statutory responsibilities.”.

**TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES**

**SEC. 401. SHORT TITLE.**

This title may be cited as the “Nursing Home Resident Protection Act of 2002”.

**SEC. 402. NURSING HOME RESIDENT PROTECTION.**

(a) PROTECTION OF RESIDENTS IN NURSING HOMES AND OTHER RESIDENTIAL HEALTH CARE FACILITIES.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

**“§ 1352. Pattern of violations resulting in harm to residents of nursing homes and related facilities**

“(a) DEFINITIONS.—In this section:

“(1) ENTITY.—The term ‘entity’ means—

“(A) any residential health care facility (including facilities that do not exclusively provide residential health care services);

“(B) any entity that manages a residential health care facility; or

“(C) any entity that owns, directly or indirectly, a controlling interest or a 50 percent or greater interest in 1 or more residential health care facilities including States, localities, and political subdivisions thereof.

“(2) FEDERAL HEALTH CARE PROGRAM.—The term ‘Federal health care program’ has the same meaning given that term in section 1128B(f) of the Social Security Act.

“(3) PATTERN OF VIOLATIONS.—The term ‘pattern of violations’ means multiple violations of a single Federal or State law, regulation, or rule or single violations of multiple Federal or State laws, regulations, or rules, that are widespread, systemic, repeated, similar in nature, or result from a policy or practice.

“(4) RESIDENTIAL HEALTH CARE FACILITY.—The term ‘residential health care facility’ means any facility (including any facility that does not exclusively provide residential health care services), including skilled and unskilled nursing facilities and mental health and mental retardation facilities, that—

“(A) receives Federal funds, directly from the Federal Government or indirectly from a third party on contract with or receiving a grant or other monies from the Federal Government, to provide health care; or

“(B) provides health care services in a residential setting and, in any calendar year in which a violation occurs, is the recipient of benefits or payments in excess of \$10,000 from a Federal health care program.

“(5) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

“(b) PROHIBITION AND PENALTIES.—Whoever knowingly and willfully engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility or facilities, and that results in significant physical or mental harm to 1 or more of such residents, shall be punished as provided in section 1347, except that any organization shall be fined not more than \$2,000,000 per residential health care facility.

“(c) CIVIL PROVISIONS.—

“(1) IN GENERAL.—The Attorney General may bring an action in a district court of the United States to impose on any individual or entity that engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility, and that results in physical or mental harm to 1 or more such residents—

“(A) a civil penalty; or

“(B) in the case of—

“(i) an individual (other than an owner, operator, officer, or manager of such a residential health care facility), not more than \$10,000;

“(ii) an individual who is an owner, operator, officer, or manager of such a residential health care facility, not more than \$100,000 for each separate facility involved in the pattern of violations under this section;

“(iii) a residential health care facility, not more than \$1,000,000 for each pattern of violations; or

“(iv) an entity, not more than \$1,000,000 for each separate residential health care facility involved in the pattern of violations owned or managed by that entity.

“(2) OTHER APPROPRIATE RELIEF.—If the Attorney General has reason to believe that an individual or entity is engaging in or is about to engage in a pattern of violations that would affect the health, safety, or care of individuals residing in a residential health care facility, and that results in or has the potential to result in physical or mental harm to 1 or more such residents, the Attorney General may petition an appropriate district court of the United States for appropriate equitable and declaratory relief to eliminate the pattern of violations.

“(3) PROCEDURES.—In any action under this subsection—

“(A) a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States;

“(B) the action may not be brought more than 6 years after the date on which the violation occurred;

“(C) the United States shall be required to prove each charge by a preponderance of the evidence;

“(D) the civil investigative demand procedures set forth in the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) and regulations promulgated pursuant to that Act shall apply to any investigation; and

“(E) the filing or resolution of a matter shall not preclude any other remedy that is available to the United States or any other person.

“(d) PROHIBITION AGAINST RETALIATION.—Any person who is the subject of retaliation, either directly or indirectly, for reporting a condition that may constitute grounds for relief under this section may bring an action in an appropriate district court of the United States for damages, attorneys’ fees, and other relief.”.

(b) AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.—Section 3486(a)(1) of title 18, United States Code, as amended by section 302 of this Act, is amended by inserting “, act or activity involving section 1352 of this title” after “Federal health care offense”.

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

“1352. Pattern of violations resulting in harm to residents of nursing homes and related facilities.”.

**TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS**

**SEC. 501. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS AND REGULATORY AGENCIES.**

Section 981(e) of title 18, United States Code, is amended—

(1) in each of paragraphs (3), (4), and (5), by striking “in the case of property referred to in subsection (a)(1)(C),” and inserting “in the case of property forfeited in connection with an offense resulting in a pecuniary loss to a financial institution or regulatory agency,”;

(2) in paragraph (7), by striking “In the case of property referred to in subsection (a)(1)(D)” and inserting “in the case of property forfeited in connection with an offense relating to the sale of assets acquired or held by any Federal financial institution or regulatory agency, or person appointed by such agency, as receiver, conservator, or liquidating agent for a financial institution”.

**SEC. 502. VICTIM RESTITUTION.**

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

“(r) VICTIM RESTITUTION.—

“(1) SATISFACTION OF ORDER OF RESTITUTION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a defendant may not use property subject to forfeiture under this section to satisfy an order of restitution.

“(B) EXCEPTION.—If there are 1 or more identifiable victims entitled to restitution from a defendant, and the defendant has no assets other than the property subject to forfeiture with which to pay restitution to the victim or victims, the attorney for the Government may move to dismiss a forfeiture allegation against the defendant before entry of a judgment of forfeiture in order to allow the property to be used by the defendant to pay restitution in whatever manner the court determines to be appropriate if the court grants the motion. In granting a motion under this subparagraph, the court shall include a provision ensuring that costs associated with the identification, seizure, management, and disposition of the property are recovered by the United States.

“(2) RESTORATION OF FORFEITED PROPERTY.—

“(A) IN GENERAL.—If an order of forfeiture is entered pursuant to this section and the defendant has no assets other than the forfeited property to pay restitution to 1 or more identifiable victims who are entitled to restitution, the Government shall restore the forfeited property to the victims pursuant to subsection (i)(1) once the ancillary proceeding under subsection (n) has been completed and the costs of the forfeiture action have been deducted.

“(B) DISTRIBUTION OF PROPERTY.—On a motion of the attorney for the Government, the court may enter any order necessary to facilitate the distribution of any property restored under this paragraph.

“(3) VICTIM DEFINED.—In this subsection, the term ‘victim’—

“(A) means a person other than a person with a legal right, title, or interest in the forfeited property sufficient to satisfy the standing requirements of subsection (n)(2) who may be entitled to restitution from the forfeited funds pursuant to section 9.8 of part 9 of title 28, Code of Federal Regulations (or any successor to that regulation); and

“(B) includes any person who is the victim of the offense giving rise to the forfeiture, or of any offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.”.

**SEC. 503. BANKRUPTCY PROCEEDINGS NOT USED TO SHIELD ILLEGAL GAINS FROM FALSE CLAIMS.**

(a) CERTAIN ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the commencement or continuation of an action under section 3729 of title 31, United States Code, does not operate as a stay under section 105(a) or 362(a)(1) of title 11, United States Code.

(2) CONFORMING AMENDMENT.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (17), by striking “or” at the end;

(B) in paragraph (18), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(19) the commencement or continuation of an action under section 3729 of title 31.”.

(b) CERTAIN DEBTS NOT DISCHARGEABLE IN BANKRUPTCY.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

“(f) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) does not discharge a debtor from a debt owed for violating section 3729 of title 31.”.

(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

**“§ 111. False claims**

“No transfer on account of a debt owed to the United States for violating section 3729 of title 31, or under a compromise order or other agreement resolving such a debt may be avoided under section 544, 545, 547, 548, 549, 553(b), or 742(a).”.

(2) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“111. False claims.”.

**SEC. 504. FORFEITURE FOR RETIREMENT OF FENSES.**

(a) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding at the end the following:

“(9) CRIMINAL FORFEITURE.—

“(A) IN GENERAL.—The court, in imposing a sentence on a person convicted of a retirement offense, shall order the person to forfeit property, real or personal, that constitutes or that is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

“(B) RETIREMENT OFFENSE DEFINED.—In this paragraph, if a violation, conspiracy, or solicitation relates to a retirement arrangement (as defined in section 1351 of title 18, United States Code), the term ‘retirement offense’ means a violation of—

“(i) section 664, 1001, 1027, 1341, 1343, 1351, 1951, 1952, or 1954 of title 18, United States Code; or

“(ii) section 411, 501, or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111, 1131, 1141).”.

(b) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

“(I) Any property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of criminal conspiracy to violate, or solicitation to commit a crime of violence involving, a retirement offense (as defined in section 982(a)(9)(B)).”.

By Mr. DOMENICI:

S. 1287. A bill to amend section 502(a)(5) of the Higher Education Act of 1965 regarding the definition of a Hispanic-serving institution; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Madam President, I rise today to introduce a bill that will amend Title V of the Higher Education Act. Specifically, this bill will eliminate the “50 percent” low-income assurance constraint currently required for Hispanic Serving Institutions to be eligible for grants under Title V of the Higher Education Act.

Title V of the Higher Education Act is the primary vehicle used to target urgently needed funds to Hispanic Serving Institutions so that they can strengthen and expand their institutional capacity. Grants under this section can be used by higher education institutions to improve academic quality, institutional management, and financial stability. These grants are essential to institutions that provide and increase the number of educational opportunities available to Hispanic students.

Under current guidelines, in order to qualify for a grant under Title V, an institution must have at least 25 percent full time, Hispanic undergraduate student enrollment, and not less than 50

percent of its Hispanic student population must be low income. Title V grants are awarded for 5 years, with a minimum two year wait out period after the termination of a grant period before eligibility to apply for another grant. During fiscal year 2002, 191 institutions were awarded grants.

Title V’s current “50 percent” low-income assurance requirement is an unnecessary bureaucratic regulation that constrains Hispanic Serving Institutions abilities to implement programs designed to provide long range solutions to Hispanic higher education challenges. Currently, there are no government authorized means to collect student financial data, and, although some information can be extrapolated from student financial aid forms, it is not enough information to complete the Title V forms.

The bill I am introducing today will improve the HSI eligibility requirements by allowing applicants for Title V funding to satisfy the 50 percent low-income Hispanic student population criterion with appropriate evidence of student eligibility for Title IV, need-based, aid. The revised Title V section will retain the requirement that to be eligible for title V funds, an institution must have an enrollment of needy students. However, rather than conditioning grant qualification upon the cumbersome requirement that institutions prove 50 percent of their Hispanic students are low income, it will allow institutions to qualify for Title V money if 50 percent of the students are receiving need-based assistance under title IV or a substantial percentage of the students are receiving Pell Grants.

The Higher Education Act of 1965 was signed into law for the purpose of increasing access to higher education for all citizens of the United States and of strengthening the capacity of higher education institutions to better serve their communities. The reauthorization of the Higher Education Act during the 108th Congress presents a powerful opportunity for the nation to address the higher education needs of the nation’s Hispanic-Serving Institutions, which serve the largest concentrations of Hispanic higher education students in the United States.

Hispanic Serving Institutions provide the quality education essential to full participation in today’s society. Many students in my home state of New Mexico have benefited from the academic excellence that Hispanic Serving Institutions seek to provide. Title V grants are intended to provide assistance to these less advantaged, developing institutions. However, by convoluting the application process, Congress is preventing these institutions from applying for grants and obstructing their development.

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

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

S. 1287

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

**SECTION 1. DEFINITION OF A HISPANIC-SERVING INSTITUTION.**

Section 502(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)) is amended—

- (1) in subparagraph (A), by inserting “and” after the semicolon;
- (2) in subparagraph (B), by striking “; and” and inserting a period; and
- (3) by striking subparagraph (C).

By Mr. CHAMBLISS (for himself and Mr. MILLER):

S. 1288. A bill to amend title XVIII of the Social Security Act to exclude brachytherapy devices from the prospective payment system for outpatient hospital services under the medicare program; to the Committee on Finance.

Mr. CHAMBLISS. Madam President, I rise today to introduce legislation, along with my colleague Senator MILLER of Georgia, that would amend the Medicare portion of the Social Security Act to exclude brachytherapy devices from the prospective payment system for outpatient hospital services under the Medicare Program. Currently, the number of devices reimbursed by Medicare is one set number and non-specific to the prostate cancer patient.

Prostate cancer accounts for 43 percent of all cancers found in men—more than triple the rate of lung cancer. The American Cancer Society estimates that nearly 221,000 men in the United States will be diagnosed with prostate cancer in 2003 and approximately 27,000 of these men will die as a result. The American Cancer Society also estimates that about 5,700 men diagnosed will be from Georgia and nearly 700 of them may die. This legislation will help some of these men fight and survive this indiscriminate killer. Over 130,000 men and their sons nationwide have been treated with brachytherapy Theraseeds to date.

Brachytherapy is an important form of radiation treatment for prostate cancer in which radioactive “seeds” are implanted into the patient. While there are several ways to treat prostate cancer, patients need the freedom to choose the treatment that best suits them and their situation. Tremendous variations exist that may effect the clinical requirements for cancer patients using brachytherapy theraseeds, including variations in the types of radioactive isotopes, as well as the number and radioactive intensity of the seeds. The brachytherapy community indicates that these variations result in considerable differences in total brachytherapy costs among patients, varying from several hundred dollars to over \$10,000 per patient. Prostate brachytherapy is different from many other clinical interventions because of the dramatic variability in the type, number and radioactivity of brachytherapy seeds needed to treat

each patient. This variability is due to differences in the clinical presentation from patient to patient, including the type, staging, and size of a patient’s cancer. This variability also results in a broad range of costs per patient. This legislation will allow a more fair reimbursement for physicians who are using brachytherapy to treat prostate cancer patients. This bill will also allow Medicare patients to receive another type of therapy when making decisions and dealing with the reality of being diagnosed with prostate cancer.

I encourage all of my colleagues to support this piece of legislation so that men suffering with prostate cancer will have more coverage under Medicare should they choose brachytherapy for their treatment.

**SUBMITTED RESOLUTIONS**

**SENATE RESOLUTION 174—DESIGNATING THURSDAY, NOVEMBER 20, 2003, AS “FEED AMERICA THURSDAY”**

Mr. HATCH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 174

Whereas Thanksgiving Day celebrates the spirit of selfless giving and an appreciation for family and friends;

Whereas the spirit of Thanksgiving Day is a virtue upon which our Nation was founded;

Whereas 33,000,000 Americans, including 13,000,000 children, continue to live in households that do not have an adequate supply of food;

Whereas almost 3,000,000 of those children experience hunger; and

Whereas selfless sacrifice breeds a genuine spirit of Thanksgiving, both affirming and restoring fundamental principles in our society: Now, therefore, be it

*Resolved*, That the Senate

(1) designates Thursday, November 20, 2003, as “Feed America Thursday”; and

(2) requests that the President issue a proclamation calling upon the people of the United States to sacrifice 2 meals on Thursday, November 20, 2003, and to donate the money that they would have spent on food to a religious or charitable organization of their choice for the purpose of feeding the hungry.

**SENATE RESOLUTION 175—DESIGNATING THE MONTH OF OCTOBER 2003, AS “FAMILY HISTORY MONTH”**

Mr. HATCH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 175

Whereas it is the family, striving for a future of opportunity and hope, that reflects our Nation’s belief in community, stability, and love;

Whereas the family remains an institution of promise, reliance, and encouragement;

Whereas we look to the family as an unwavering symbol of constancy that will help us discover a future of prosperity, promise, and potential;

Whereas within our Nation’s libraries and archives lie the treasured records that detail the history of our Nation, our States, our communities, and our citizens;

Whereas individuals from across our Nation and across the world have embarked on a genealogical journey by discovering who their ancestors were and how various forces shaped their past;

Whereas an ever-growing number in our Nation and in other nations are collecting, preserving, and sharing genealogies, personal documents, and memorabilia that detail the life and times of families around the world;

Whereas 54,000,000 individuals belong to a family where someone in the family has used the Internet to research their family history;

Whereas individuals from across our Nation and across the world continue to research their family heritage and its impact upon the history of our Nation and the world;

Whereas approximately 60 percent of Americans have expressed an interest in tracing their family history;

Whereas the study of family history gives individuals a sense of their heritage and a sense of responsibility in carrying out a legacy that their ancestors began;

Whereas as individuals learn about their ancestors who worked so hard and sacrificed so much, their commitment to honor their ancestors’ memory by doing good is increased;

Whereas interest in our personal family history transcends all cultural and religious affiliations;

Whereas to encourage family history research, education, and the sharing of knowledge is to renew the commitment to the concept of home and family; and

Whereas the involvement of National, State, and local officials in promoting genealogy and in facilitating access to family history records in archives and libraries are important factors in the successful perception of nationwide camaraderie, support, and participation: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates the month of October 2003, as “Family History Month”; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

**AMENDMENTS SUBMITTED & PROPOSED**

SA 929. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed by him to the bill S. 1, to amend title XVIII of the Social Security Act to make improvements in the medicare program, to provide prescription drug coverage under the medicare program, and for other purposes; which was ordered to lie on the table.

SA 930. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1, *supra*; which was ordered to lie on the table.

SA 931. Ms. STABENOW (for herself, Mrs. BOXER, Mr. GRAHAM, of Florida, Mr. ROCKEFELLER, Mr. HARKIN, Ms. CANTWELL, Mr. KERRY, Mr. BINGAMAN, Mr. REED, Mrs. CLINTON, Ms. MIKULSKI, Mr. LEVIN, Mr. KOHL, Mr. DODD, Mr. LIEBERMAN, Mr. REID, Mr. DAYTON, and Mr. JOHNSON) proposed an amendment to the bill S. 1, *supra*.

SA 932. Mr. ENZI (for himself and Mr. PRYOR) proposed an amendment to the bill S. 1, *supra*.

SA 933. Mr. BINGAMAN proposed an amendment to the bill S. 1, *supra*.

SA 934. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, *supra*; which was ordered to lie on the table.

SA 935. Mrs. LINCOLN submitted an amendment intended to be proposed by her to the bill S. 1, *supra*; which was ordered to lie on the table.