(Mr. LOTT) was added as a cosponsor of S. 361, a bill to develop and maintain an integrated system of ocean and coastal observations for the Nation's coasts, oceans and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes.

S. 379

At the request of Ms. MIKULSKI, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 379, a bill to build capacity at community colleges in order to meet increased demand for community college education while maintaining the affordable tuition rates and the open-door policy that are the hallmarks of the community college system.

S. 380

At the request of Ms. COLLINS, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 380, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 384

At the request of Mr. DEWINE, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Maine (Ms. COLLINS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Vermont (Mr. LEAHY), the Senator from South Carolina (Mr. GRAHAM), the Senator from Virginia (Mr. ALLEN) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 384, a bill to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

S.J. RES. 1

At the request of Mr. ALLARD, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. RES. 20

At the request of Mr. KENNEDY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. Res. 20, a resolution designating January 2005 as ''National Mentoring Month''.

S. RES. 28

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 28, a resolution designating the year 2005 as the ''Year of Foreign Language Study''.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from Nevada (Mr. REID), the Senator from Washington (Ms. CANTWELL), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Colorado (Mr. ALLARD) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mrs. BOXER, and Mrs. CLINTON):

S. 391. A bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns; to the Committee on Rules and Administration.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Federal Election Integrity Act on behalf of myself and Senators KERRY, BOXER and CLINTON. This bill creates a direct prohibition on chief State election officials from taking part in political campaigns by amending the Federal Campaign Act of 1971.

Legislation is very much needed to eliminate an inherent conflict of interest that exists when a State's chief election administration official—the Secretary of State, the State Attorney General, or the Lieutenant Governor—is responsible for monitoring, supervising and certifying the results of a Federal election, while actively involved in the campaign of one of the candidates in that election.

I know that this is a practice engaged in by both Democratic and Republican State officials on behalf of Federal candidates, but those officials in charge of certifying Federal elections must not allowed to serve two masters—the voters and the Federal candidate. It is not right and it undermines the faith and confidence that Americans in this Nation's election system, and impugns the integrity of the State election official and the Federal candidate. The will of voters must come before the personal partisan politics.

In 2000 and again in 2004, we have witnessed two Secretaries of State capturing national press attention because of their involvement in elections where, literally, every single vote mattered.

In the 2004 presidential election, Ohio Secretary of State Ken Blackwell was co-chairman of President Bush's re-election campaign in Ohio. On December 6th, 2004, Secretary of State Blackwell certified President Bush as the winner in Ohio with an 118,775–vote lead—closer than unofficial election night results, but not close enough to trigger a mandatory recount. Recount advocates have cited numerous Election Day problems in Ohio, including long lines, a shortage of voting machines in predominantly minority neighborhoods, and suspicious vote totals for candidates in scattered precincts.

In the 2000 election, Florida Secretary of State Katherine Harris served as co-chair of President Bush's Florida campaign. President Bush's narrow victory in Florida gave him the State's 25 electoral votes necessary to win the presidency. A recount of thousands of Florida ballots and resulting court battles held up a resolution to the election for five weeks. There were reports of improprieties by Secretary of State Harris, including ballot tampering and the tampering of office computer files with Bush talking points and other supportive material.

Just recently, California Secretary of State Kevin Shelley—a Democrat—resigned due to allegations that he improperly used Federal election funds for partisan activities.

In all these cases, I am sure that the Secretaries of State were honorable public servants who made some very unpopular, difficult decisions under intense public scrutiny. But as far as the voters are considered, the Secretaries engaged in partisan political activity that tainted the results of the elections. This legislation fixes that.

Secretaries of State and other State election officials with supervisory authority over the administration of Federal elections should not be actively involved in the political campaign or management of a candidate running for Federal office in their State. The Secretary of State is the primary election administration official in 39 States; despite that, history has shown numerous Secretaries of State chairing the political campaigns of Federal candidates in their State.

There is a direct conflict of interest when an election official charged with supervising the administration of Federal elections and ensuring the fairness and accuracy of the results of Federal elections has a direct role in a Federal candidate's campaign.

Again, this is not an issue of Democrats versus Republicans. Rather, this is an issue of preserving the American people's faith and confidence in the election process. Simply put, election officials responsible for ensuring fair and accurate Federal elections should not be actively cheering for and aiding a candidate in those elections.

I ask unanimous consent that the text of the ''Federal Election Integrity Act'' be printed in the RECORD.

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

S. 391

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 ''Federal Election Integrity Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) chief State election administration officials have served on political campaigns for Federal candidates whose elections those officials will supervise;

(2) such partisan activity by the chief State election administration official, an individual charged with certifying the validity of an election, represents a fundamental conflict of interest that may prevent the official from ensuring a fair and accurate election;

(3) this conflict impedes the legal duty of chief State election administration officials to supervise Federal elections, undermines the integrity of Federal elections, and diminishes the people's confidence in our electoral system by casting doubt on the results of Federal elections;

(4) the Supreme Court has long recognized that Congress's power to regulate Congressional elections under Article I, Section 4, Clause 1 of the Constitution is both plenary and powerful; and

(5) the Supreme Court and numerous appellate courts have recognized that the broad power given to Congress over Congressional elections extends to Presidential elections.

SEC. 3. PROHIBITION ON CAMPAIGN ACTIVITIES BY ELECTION ADMINISTRATION OFFICIALS.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 319 the following new section:

''CAMPAIGN ACTIVITIES BY ELECTION OFFICIALS

''SEC. 319A. (a) PROHIBITION.—It shall be unlawful for a chief State election administration official to take an active part in political management or in a political campaign with respect to any election for Federal office over which such official has supervisory authority.

''(b) CHIEF STATE ELECTION ADMINISTRATION OFFICIAL.—The term 'chief State election administration official' means the highest State official with responsibility for the administration of Federal elections under State law.

''(c) ACTIVE PART IN POLITICAL MANAGEMENT OR IN A POLITICAL CAMPAIGN.—The term 'active part in political management or in a political campaign' means—

''(1) serving as a member of an authorized committee of candidate for Federal office;

''(2) the use of official authority or influence for the purpose of interfering with or affecting the result of an election for Federal office;

''(3) the solicitation, acceptance, or receipt of political contributions from any person on behalf of a candidate for Federal office;

''(4) the solicitation or discouragement of the participation in any political activity of any person;

''(5) engaging in partisan political activity on behalf of a candidate for Federal office; and

''(6) any other act prohibited under section 7323(b)(4) of title 5, United States Code (other than any prohibition on running for public office).''.

(b) ENFORCEMENT.—Section 309 of the Federal Election Campaign Act of 1971 (42 U.S.C. 437g) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding paragraphs (1) through (5) of subsection (a), any person who has knowledge of a violation of section 319A has occurred may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury subject to the provisions of section 1001 of title 18, United States Code. The Commission shall promptly notify any person alleged in the complaint and the candidate with respect to whom a violation is alleged, and shall give such person and such candidate an opportunity to respond. Not later than 14 days after the date on which such a complaint is filed, the Commission shall make a determination on such complaint.

''(2)(A) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A, the Commission shall require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.

''(B) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A under subparagraph (A) and that the candidate knew of the violation at the time such violation occurred, the Commission may require such candidate to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.''.

By Mr. LEVIN (for himself Mr. MCCAIN, Ms. STABENOW, Mrs. DOLE, Mr. OBAMA, Mr. GRAHAM, Mr. PRYOR, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. NELSON of Florida, Ms. LANDRIEU, and Mr. KERRY):

S. 392. A bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, during the last Session of the 108th Congress, I informed my colleagues of my intention to introduce bipartisan legislation in the 109th Congress, to authorize the awarding of the Congressional Gold Medal, collectively, to the ''Tuskegee Airmen.''

Congress has commissioned the gold medal as its highest expression of national appreciation for distinguished achievements and contributions. Today, I am pleased to be joined by Senators MCCAIN, STABENOW, DOLE, OBAMA, GRAHAM, ROCKEFELLER, PRYOR, BEN NELSON, LANDRIEU and KERRY in introducing legislation, S. 392, that would bestow this great honor on the Tuskegee Airmen, in recognition of their extraordinary courage and unwavering determination to become America's first black military airmen.

The Tuskegee Airmen were not only unique in their military record, but they inspired revolutionary reform in the armed forces, paving the way for integration of the Armed Services in the U.S. The largely college educated Tuskegee Airmen overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure. What made these men exceptional was their willingness to leave their families and put their lives on the line to defend rights that were denied them here at home. Congresswoman Helen Gahagan Douglas of California, in remarks on the floor of the U.S. House of Representatives on February 1, 1946 summed it up this way:

> The Negro soldier made his contribution in World War II . . . he has met the test of patriotism and heroism. We should be especially mindful . . . remembering that he fought and shed his blood for a freedom which he has not as yet been permitted fully to share. I wish to pay him the respect and to express the gratitude of the American people for his contribution in the greatest battle of all time the battle which decided whether or not we were to remain a free people. The names of Negro heroes in this war are everlastingly recorded among the living and the dead . . . in every combat area, on land, on sea, in the air.

Former Senator Bill Cohen, in remarks on the floor of the Senate decades later, in July of 1995, said: ''. . . I listened to the stories of the Tuskegee airmen and . . . the turmoil they experienced fighting in World War II, feeling they had to fight two enemies: one called Hitler, the other called racism in this country.''

The superior record of the Tuskegee Airmen in World War II was accomplished by individuals who accepted the challenge and proudly displayed their skill and determination in the face of racism and bigotry at home, despite their distinguished war records. Prior to the 1940s, many in the military held the sadly, mistaken view that black servicemen were unfit for most leadership roles and mentally incapable of combat aviation. Between 1924 and 1939, the Army War College commissioned a number of studies aimed at increasing the military role of blacks. According to The Air Force Magazine , Journal of the Air Force Association, March 1996, ''. . . these studies asserted that blacks possessed brains significantly smaller than those of white troops and were predisposed to lack physical courage. The reports maintained that the Army should increase opportunities for blacks to help meet manpower requirements but claimed that they should always be commanded by whites and should always serve in segregated units.''

Overruling his top generals and to his credit, President Franklin Roosevelt in 1941 ordered the creation of an all black flight training program at Tuskegee Institute. He did so one day after Howard University student Yancy Williams filed suit in Federal Court to force the Department of Defense to accept black pilot trainees. Yancy Williams had a civilian pilot's license, and received an engineering degree. Years later, ''Major Yancy Williams,'' participated in an air surveillance project created by President Eisenhower.

''We proved that the antidote to racism is excellence in performance,'' said retired Lt. Col. Herbert Carter, who started his military career as a pilot and maintenance officer with the 99th Fighter Squadron. ''Can you imagine . . . with the war clouds as heavy as they were over Europe, a citizen of the

United States having to sue his government to be accepted to training so he could fly and fight and die for his country?'' The government expected the experiment to fail and end the issue, said Carter. The mistake they made was that they forgot to tell us . . .''

The first class of cadets began in July of 1941 with thirteen men, all of whom had college degrees, some with PhD's and all had pilot's licenses. Based on the aforementioned studies, the training of the Tuskegee Airmen was an experiment established to prove that ''coloreds'' were incapable of operating expensive and complex combat aircraft.

By 1943, the first of contingent of black airmen were sent to North Africa, Sicily and Europe. Their performance far exceeded anyone's expectation. They shot down six German aircraft on their first mission, and were also the first squad to sink a battleship with only machine guns. Overall, nearly 1000 black pilots graduated from Tuskegee, 450 of whom served in combat with the last class finishing in June of 1946,. Sixty-six of the aviators died in combat, while another 33 were shot down and captured as prisoners of war. The Tuskegee Airmen were credited with 261 aircraft destroyed, 148 aircraft damaged, 15,553 combat sorties and 1,578 missions over Italy and North Africa. They destroyed or damaged over 950 units of ground transportation and escorted more than 200 bombing missions. Clearly, the experiment, as it was called, was an unqualified success. Black men could not only fly, they excelled at it, and were equal partners in America's victory.

A number of Tuskegee Airmen have lived in Michigan, including Alexander Jefferson, Washington Ross, Wardell Polk, and Walter Downs, among others. Tuskegee Airmen also trained at Michigan's Selfridge and Oscoda air fields in the early 40's. In the early 1970's, the Airmen established their first chapter in Detroit. Today there are 42 chapters located in major cities of the U.S. The chapters support young people through scholarships, sponsorships to the military academies, and flight training programs. Detroit is also the location of The Tuskegee Airmen National Museum, which is on the grounds of historic Fort Wayne. The late Coleman Young, former Mayor of the City of Detroit was trained as a navigator bombardier for the 477th bombardment group of the Tuskegee Airmen. This group was still in training when WWII ended so they never saw combat. However, the important fact is that all of those receiving flight related training—nearly 1,000—were instrumental in breaking the segregation barrier. They all had a willingness to see combat, and committed themselves to the segregated training with a purpose to defend their country.

The Tuskegee Airmen were awarded three Presidential Unit Citations,150 Distinguished Flying Crosses and Legions of Merit, along with The Red Star of Yugoslavia, 9 Purple Hearts, 14 Bronze Stars and more than 700 Air medals and clusters. It goes without question that the Tuskegee Airmen are deserving of the Congressional Gold Medal. According to existing records, I am proud to say that 155 Tuskegee Airmen originated from my State of Michigan.

In closing, I urge my colleagues in the Senate to swiftly act on this legislation, a most deserving honor and tribute to the Tuskegee Airmen. I also 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. 392

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

SECTION 1. FINDINGS.

Congress finds the following:

(1) In 1941, President Franklin D. Roosevelt overruled his top generals and ordered the creation of an all Black flight training program. President Roosevelt took this action one day after the NAACP filed suit on behalf of Howard University student Yancy Williams and others in Federal court to force the Department of War to accept Black pilot trainees. Yancy Williams had a civilian pilot's license and had earned an engineering degree. Years later, Major Yancy Williams participated in an air surveillance project created by President Dwight D. Eisenhower.

(2) Due to the rigid system of racial segregation that prevailed in the United States during World War II, Black military pilots were trained at a separate airfield built near Tuskegee, Alabama. They became known as the ''Tuskegee Airmen''.

(3) The Tuskegee Airmen inspired revolutionary reform in the Armed Forces, paving the way for full racial integration in the Armed Forces. They overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure.

(4) From all accounts, the training of the Tuskegee Airmen was an experiment established to prove that so-called ''coloreds'' were incapable of operating expensive and complex combat aircraft. Studies commissioned by the Army War College between 1924 and 1939 concluded that Blacks were unfit for leadership roles and incapable of aviation. Instead, the Tuskegee Airmen excelled.

(5) Overall, some 992 Black pilots graduated from the pilot training program of the Tuskegee Army Air Field, with the last class finishing in June 1946, 450 of whom served in combat. The first class of cadets began in July 1941 with 13 airmen, all of whom had college degrees, some with Ph.D.'s, and all of whom had pilot's licenses. One of the graduates was Captain Benjamin O. Davis Jr., a United States Military Academy graduate. Four aviation cadets were commissioned as second lieutenants, and 5 received Army Air Corps silver pilot wings.

(6) That the experiment achieved success rather than the expected failure is further evidenced by the eventual promotion of 3 of these pioneers through the commissioned officer ranks to flag rank, including the late General Benjamin O. Davis, Jr., United States Air Force, the late General Daniel ''Chappie'' James, United States Air Force, our Nation's first Black 4-star general, and Major General Lucius Theus, United States Air Force (retired).

(7) Four hundred fifty Black fighter pilots under the command of then Colonel Benjamin O. Davis, Jr., fought in World War II aerial battles over North Africa, Sicily, and Europe, flying, in succession, P-40, P-39, P-47, and P-51 aircraft. These gallant men flew 15,553 sorties and 1,578 missions with the 12th Tactical Air Force and the 15th Strategic Air Force.

(8) Colonel Davis later became the first Black flag officer of the United States Air Force, retired as a 3-star general, and was honored with a 4th star in retirement by President William J. Clinton.

(9) German pilots, who both feared and respected the Tuskegee Airmen, called them the ''Schwartze Vogelmenshen'' (or ''Black Birdmen''). White American bomber crews reverently referred to them as the ''Black Redtail Angels'', because of the bright red painted on the tail assemblies of their fighter aircraft and because of their reputation for not losing bombers to enemy fighters as they provided close escort for bombing missions over strategic targets in Europe.

(10) The 99th Fighter Squadron, after having distinguished itself over North Africa, Sicily, and Italy, joined 3 other Black squadrons, the 100th, the 301st, and the 302nd, designated as the 332nd Fighter Group. They then comprised the largest fighter unit in the 15th Air Force. From Italian bases, they destroyed many enemy targets on the ground and at sea, including a German destroyer in strafing attacks, and they destroyed numerous enemy aircraft in the air and on the ground.

(11) Sixty-six of these pilots were killed in combat, while another 32 were either forced down or shot down and captured to become prisoners of war. These Black airmen came home with 150 Distinguished Flying Crosses, Bronze Stars, Silver Stars, and Legions of Merit, one Presidential Unit Citation, and the Red Star of Yugoslavia.

(12) Other Black pilots, navigators, bombardiers and crewman who were trained for medium bombardment duty as the 477th Bomber Group (Medium) were joined by veterans of the 332nd Fighter Group to form the 477th Composite Group, flying the B-25 and P-47 aircraft. The demands of the members of the 477th Composite Group for parity in treatment and for recognition as competent military professionals, combined with the magnificent wartime records of the 99th Fighter Squadron and the 332nd Fighter Group, led to a review of the racial policies of the Department of War.

(13) In September 1947, the United States Air Force, as a separate service, reactivated the 332d Fighter Group under the Tactical Air command. Members of the 332d Fighter Group were ''Top Guns'' in the 1st annual Air Force Gunnery Meet in 1949.

(14) For every Black pilot there were 12 other civilian or military Black men and women performing ground support duties. Many of these men and women remained in the military service during the post-World War II era and spearheaded the integration of the Armed Forces of the United States.

(15) Major achievements are attributed to many of those who returned to civilian life and earned leadership positions and respect as businessmen, corporate executives, religious leaders, lawyers, doctors, educators, bankers, and political leaders.

(16) A period of nearly 30 years of anonymity for the Tuskegee Airmen was ended in 1972 with the founding of Tuskegee Airmen, Inc., in Detroit, Michigan. Organized as a non-military and nonprofit entity, Tuskegee Airmen, Inc., exists primarily to motivate and inspire young Americans to become participants in our Nation's society and its democratic process, and to preserve the history of their legacy.

(17) The Tuskegee Airmen have several memorials in place to perpetuate the memory of who they were and what they accomplished, including—

(A) the Tuskegee Airmen, Inc., National Scholarship Fund for high school seniors who excel in mathematics, but need financial assistance to begin a college program;

(B) a museum in historic Fort Wayne in Detroit, Michigan;

(C) Memorial Park at the Air Force Museum at Wright-Patterson Air Force Base in Dayton, Ohio;

(D) a statue of a Tuskegee Airman in the Honor Park at the United States Air Force Academy in Colorado Springs, Colorado; and

(E) a National Historic Site at Moton Field, where primary flight training was performed under contract with the Tuskegee Institute.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to award to the Tuskegee Airmen, on behalf of Congress, a gold medal of appropriate design honoring the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

(b) DESIGN AND STRIKING.—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 2, at a price sufficient to cover the costs of the medals, including labor, materials, dies, use of machinery, and overhead expenses.

SEC. 4. NATIONAL MEDALS.

Medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS; PROCEEDS OF SALE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, an amount not to exceed $30,000 to pay for the cost of the medals authorized under section 2.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SARBANES, and Mr. SCHUMER):

S. 393. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise to introduce the Credit Card Minimum Payment Warning Act. I thank Senators DURBIN, LEAHY, SARBANES, and SCHUMER for working with me on this legislation and for cosponsoring this bill.

I am deeply concerned about the enormous debt burdens that Americans are currently carrying. I share the concern on debts we expect from the Social Security program. Revolving Debt, mostly comprised of credit card debt, has increased from $54 billion in January 1980 to more than $780 billion in November 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately $10,000 to $12,000 in total revolving debt and has nine credit cards.

During all of 1980, only 287,570 consumers filed for bankruptcy. As consumer debt burdens have ballooned, the number of bankruptcies have increased significantly. From January through September of 2004, approximately 1.2 million consumers filed for bankruptcy, keeping pace with last year's record level.

It is imperative that we make consumers more aware of the long-term effects of their financial decisions, particularly in managing their credit card debt, so that they can avoid financial pitfalls that may lead to bankruptcy.

While it is relatively easy to obtain credit, not enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use and costs of only making the minimum payments required by credit card companies.

Our legislation will provide a wake up call for consumers. It will make it very clear what costs consumers will incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help them to make informed choices about the payments that they choose to make towards reducing their balance.

This bill requires a minimum payment warning notification on monthly statements stating that making the minimum payment will increase the amount of interest that will be paid and extend the amount of time it will take to repay the outstanding balance. The bill also requires informing consumers of how many years and months it will take to repay their entire balance if they make only the minimum payments. In addition, the total cost in interest and principal, if the consumer pays only the minimum payment, would have to be disclosed. These provisions will make individuals much more aware of the true costs of their credit card debts. The bill also requires that credit card companies provide useful information so that people can develop strategies to free themselves of credit card debt. Consumers would have to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months.

Finally, the legislation would require that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. In order to ensure that consumers are referred from the toll-free number to only trustworthy organizations, the agencies for referral would have to be approved by the Federal Trade Commission and the Federal Reserve Board as having met comprehensive quality standards. These standards are necessary because certain credit counseling agencies have abused their nonprofit, tax-exempt status and have taken advantage of people seeking assistance in managing their debts. Many people believe, sometimes mistakenly, that they can place blind trust in nonprofit organizations and that their fees will be lower than those of other credit counseling organizations. Too many individuals may not realize that the credit counseling industry does not deserve the trust that consumers often place in it.

The Credit Card Minimum Payment Warning Act has been endorsed by the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, and Consumer Action.

I urge my colleagues to support this legislation that will empower consumers by providing them with detailed personalized information to assist them in making informed choices about their credit card use and repayment. This bill makes clear the adverse consequences of uninformed choices such as making only minimum payments and provides opportunities to locate assistance to eliminate credit card debts.

I ask unanimous consent that a letter of support and fact sheet from organizations in support of the legislation be printed in the RECORD.

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

JANUARY 28, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.
Hon. PAUL S. SARBANES,
U.S. Senate,
Washington, DC.
Hon. RICHARD J. DURBIN
U.S. Senate,
Washington, DC.

DEAR SENATORS AKAKA, DURBIN AND SARBANES: The undersigned national consumer organizations write to strongly support the Credit Card Minimum Payment Warning Act. The Act would require credit card issuers to disclose more information to consumers about the costs associated with paying their bills at ever-declining minimum payment rates. The Act provides a personalized ''price tag'' so consumers can understand what are the real costs of credit card debt and avoid financial problems in the future.

Undisputed evidence links the rise in bankruptcy in recent years to the increase in consumer credit outstanding. These numbers have moved in lockstep for more than 20 years. Revolving credit, for example (most of which is credit card debt) ballooned from $214 billion in January 1990 to over $780 billion currently. As family debt increases, debt service payments on items such as interest and late fees take an ever-increasing piece of their budget. For some families, this contributes to the collapse of their budget. Bankruptcy becomes the only way out. (See the attached fact sheet for more information about the scope and impact of credit card debt.)

Credit card issuers have exacerbated the financial problems that many families have faced by lowering minimum payment amounts, from around 4 percent of the balance owed, to about 2 percent currently. This decline in the typical minimum payment is a significant reason for the rise in consumer bankruptcies in recent years. A low minimum payment often barely covers interest obligations. It convinces many borrowers that they are financially sound as long as they can meet all of their minimum payment obligations. However, those that cannot afford to make these payments often carry so much debt that bankruptcy is usually the only viable option.

This bill will provide consumers several crucial pieces of information on their monthly credit card statement:

A ''minimum payment warning'' that paying at the minimum rate will increase the amount of interest that is owed and the time it will take to repay the balance.

The number of years and months that it will take the consumer to payoff the balance at the minimum rate.

The total costs in interest and principal if the consumer pays at the minimum rate.

The monthly payment that would be required to pay the balance off in three years.

The bill also requires that credit card companies provide a toll-free number that consumers can call to receive information about credit counseling and debt management assistance. In order to assure that consumers are referred to honest, legitimate non-profit credit counselors, the bill requires the Federal Reserve to screen these agencies to ensure that they meet rigorous quality standards.

Our groups commend you for offering this very important and long-overdue piece of legislation. It provides the kind of personalized, timely disclosure information that will help debt-choked families make informed decisions and start to work their way back to financial health.

Sincerely,

TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.

SUSANNA MONTEZEMOLO,
Policy Analyst, Consumers Union.

EDMUND MIERZWINSKI,
Consumer Programs Director, U.S. Public Interest Research Group.

LINDA SHERRY,
Editorial Director, Consumer Action.

FACTS ABOUT CREDIT CARD DEBT

Revolving debt (most of which is credit card debt) has ballooned from $54 billion in January 1980 to over $780 billion currently.

	Billion
January 1980	$54
January 1984	79
January 1990	214
January 1994	313
November 2004	780.1

Source: http://www.federalreserve.gov/Releases/G19/hist/cc hist sa.html.

About one-twelfth of this debt is paid off before it incurs interest, so Americans pay interest on an annual load of about $690 billion in revolving debt.

According to the Federal Reserve, the most recent average credit card interest rate is 12.4% APR. At simple interest, with no compounding, then, consumers pay at least $85 billion annually in interest on credit card and other revolving debt.

Just about 55 percent of consumers carry debt. The rest are convenience users.

From PIRG/CFA analysis of Federal Reserve data, the average household with debt carries approximately $10,000–12,000 in total revolving debt and has approximately nine cards.

FACTS ABOUT THE EFFECT OF MINIMUM MONTHLY PAYMENTS

A household making the monthly minimum required payments on this debt (usually the greater of 2 percent of the unpaid balance or $20) at the very low average 12.4% APR (many consumers pay much higher penalty rates than this FRB-reported average) would pay $1,175 in interest just in the first year, even if these cards are cut up and not used again.

This household would pay a total of over $9,800 in interest over a period of 25 years and three months. That fact is not disclosed.

A household or consumer who merely doubled their minimum payment and paid 4% of the amount due would fare better. A household or consumer that paid 10% of the balance each month would fare much better. Here is a comparison.

Minimum payment warnings would encourage larger payments and save consumers thousands of dollars in high-priced credit card debt.

Credit card debt of $10,000 at Modest 12.4% APR	Monthly Payment (% of unpaid balance)		
	2%	4%	10%
First Year Interest =	$1,175	$1,054	$775
Total Interest Owed =	$9,834	$3,345	$1,129
Months To Pay	303	127	52
Years To Pay	25.3	10.6	4.3

Calculations by U.S. PIRG. Also see http://www.truthaboutcredit.org/lowerapr.htm for additional comparisons and amortization tables.

Giving consumers a minimum payment warning on their credit card statements is the most powerful action Congress could take to increase consumer understanding of the cost of credit card debt.

FACTS ABOUT WHO OWES CREDIT CARD DEBT

Credit card debt has risen fastest among lower-income Americans. These families saw the largest increase—a 184 percent rise in their debt—but even very high-income families had 28 percent more credit card debt in 2001 than they did in 1989. Source: Demos.

Thirty-nine percent of student loan borrowers now graduate with unmanageable levels of debt, meaning that their monthly payments are more than 8% of their monthly incomes. According to PIRG analysis of the 1999–2000 NPSAS data, in 2001, 41% of the graduating seniors carried a credit card balance, with an average balance of $3,071. Student loan borrowers were even more likely to carry credit card debt, with 48% of borrowers carrying an average credit card balance of $3,176. See ''The Burden of Borrowing,'' 2002, Tracey King, the State PIRGs, http://www.pirg.org/highered/BurdenofBorrowing.pdf.

While less likely to have credit cards than white families, data show that African-American and Hispanic families are more likely to carry debt.

	% with credit cards 2001	Cardholding % with debt 2001	Average credit card debt 2001
All families	76	55	$4,126
White families	82	51	4,381
Black families	59	84	2,950
Hispanic families	53	75	3,691

Demos calculations using 2001 Survey of Consumer Finances. See Borrowing To Make Ends Meet. Demos, http://www.demos-usa.org/pubs/borrowing_tomake_ends_meet.pdf.

SENIORS (OVER AGE 65)

Credit card debt among older Americans increased by 89 percent from 1992 to 2001. Average balances among indebted adults over 65 increased by 89 percent, to $4,041.

Seniors between 65 and 69 years old, presumably the newly-retired, saw the most staggering rise in credit card debt—217 percent—to an average of $5,844.

Female-headed senior households experienced a 48 percent increase between 1992 and 2001, to an average of $2,319.

Among seniors with incomes under $50,000 (70 percent of seniors), about one in five families with credit card debt is in debt hardhip—spending over 40 percent of their income on debt payments, including mortgage debt.

TRANSITIONERS (AGES 55–64)

Transitioners experienced a 47 percent increase in credit card debt between 1992 and 2001, to an average of $4,088.

The average credit card-indebted family in this age group now spends 31 percent of their income on debt payments, a 10 percent increase over the decade.

Mr. AKAKA. I also ask unanimous consent that the text of the Credit Card Minimum Payment Warning Act be printed in the RECORD.

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

S. 393

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 ''Credit Card Minimum Payment Warning Act of 2005''.

SEC. 2. ENHANCED CONSUMER DISCLOSURES REGARDING MINIMUM PAYMENTS.

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

''(11)(A) Information regarding repayment of the outstanding balance of the consumer under the account, appearing in conspicuous type on the front of the first page of each such billing statement, and accompanied by an appropriate explanation, containing—

''(i) the words 'Minimum Payment Warning: Making only the minimum payment will increase the amount of interest that you pay and the time it will take to repay your outstanding balance.';

''(ii) the number of years and months (rounded to the nearest month) that it would take for the consumer to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments;

''(iii) the total cost to the consumer, shown as the sum of all principal and interest payments, and a breakdown of the total costs in interest and principal, of paying that balance in full if the consumer pays only the required minimum monthly payments, and if no further advances are made;

''(iv) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made; and

''(v) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision specifying a subsequent interest rate or applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will

apply under that contractual provision, and then shall apply the adjusted interest rate, as specified in the contract. If the contract applies a formula that uses an index that varies over time, the value of such index on the date on which the disclosure is made shall be used in the application of the formula.''.

SEC. 3. ACCESS TO CREDIT COUNSELING AND DEBT MANAGEMENT INFORMATION.

(a) GUIDELINES REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission (in this section referred to as the ''Board'' and the ''Commission'', respectively) shall jointly, by rule, regulation, or order, issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for purposes of the disclosures required under section 127(b)(11) of the Truth in Lending Act, as added by this Act.

(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number include only those agencies approved by the Board and the Commission as meeting the criteria under this section.

(b) CRITERIA.—The Board and the Commission shall only approve a nonprofit budget and credit counseling agency for purposes of this section that—

(1) demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides;

(2) at a minimum—

(A) is registered as a nonprofit entity under section 501(c) of the Internal Revenue Code of 1986;

(B) has a board of directors, the majority of the members of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(C) if a fee is charged for counseling services, charges a reasonable and fair fee, and provides services without regard to ability to pay the fee;

(D) provides for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(E) provides full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, any costs of such program that will be paid by the client, and how such costs will be paid;

(F) provides adequate counseling with respect to the credit problems of the client, including an analysis of the current financial condition of the client, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(G) provides trained counselors who—

(i) receive no commissions or bonuses based on the outcome of the counseling services provided;

(ii) have adequate experience; and

(iii) have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (F);

(H) demonstrates adequate experience and background in providing credit counseling;

(I) has adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan; and

(J) is accredited by an independent, nationally recognized accrediting organization.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 394. A bill to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

(See exhibit 1.)

Mr. CORNYN. Mr. President, I rise today to introduce a bill, along with the Senator from Vermont who we will hear from shortly, that will help enhance the openness of the Federal Government. This bill is called the Open Government Act of 2005. It is a bipartisan effort to improve and update our public information laws—particularly the Freedom of Information Act.

The purpose of the bill is to arm the American people with the information they need to make certain that ours remains a government whose legitimacy is derived from the consent of the governed. This legislation will significantly expand the accessibility, accountability, and openness of the Federal Government.

Open government, of course, is one of the most basic requirements of a healthy democracy. It allows taxpayers to see where their money is going. It permits the honest exchange of information that ensures government accountability, and it upholds the ideal that government never rules without the consent of the governed. As is so often the case, Abraham Lincoln said it best:

> No man is good enough to govern another without that person's consent.

But achieving the true consent of the governed requires something more than just holding elections every couple of years. What we need is informed consent. Informed consent is impossible without open and accessible government.

It has been nearly a decade since Congress has approved major reforms to the Freedom of Information Act. The Senate Judiciary Committee has not convened an oversight hearing to examine the Freedom of Information Act compliance issue since 1992. And at that time, I believe it is clear that the growth of technology and the Internet has created a real desire among the American people to achieve direct, efficient, and open access to government information.

I thank my colleague from Vermont, the ranking member of the Judiciary Committee, who has long been a champion of these issues, for his hard work on this bill. Together our offices have spent a good deal of time meeting with open government advocates. I am proud to say this bill is supported by a broad coalition across the ideological spectrum, because I believe this legislation should not be a partisan or special interest bill. Indeed, it is not.

I ask unanimous consent that these endorsement letters from dozens of watchdog groups across the political spectrum be printed in the RECORD at the close of my remarks.

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

(See exhibit 2.)

Mr. CORNYN. Mr. President, as the Senator from Vermont said at a recent Judiciary Committee hearing:

> I have always found that every administration, Republican or Democrat, would love to keep a whole lot of things from the public. They do something they are proud of, they will send out a hundred press releases. Otherwise, they will hold it back. We have the Freedom of Information Act, which is a very good thing. It keeps both Democratic and Republican administrations in line.

I agree with that. Essentially, we are talking about human nature. It is only natural that elected officials and Government leaders want recognition for their successes but not their failures. But we, as a healthy democracy, need to know the good, the bad, and the ugly.

The news media, of course, is the main way people get information about the Government. The media pushes Government entities and elected officials, bureaucrats, and agencies to release information that the people have the right to know, occasionally exposing waste, fraud, and abuse—and hopefully more often than that letting the American people know what a good job their public officials are doing.

But we have also seen in recent years an expansion of other outlets for sharing information outside of the mainstream media to online communities, discussion groups, and blogs. I believe all these outlets can and do contribute to the health of our political democracy.

Let me make this clear. This is not just a bill for the media, lest anybody be confused. This is a bill that will benefit every man, woman, and child in the United States of America who cares about the Federal Government, cares about how the Federal Government operates, and ultimately cares about the success of this great democracy.

By reforming our information policies in order to guarantee true access by all citizens to Government records, we will revitalize the informed consent that keeps America free. The Open Government Act contains over a dozen substantive provisions, designed to achieve the following four objectives:

First, it will strengthen the Freedom of Information Act and close loopholes.

Secondly, it will help Freedom of Information Act requesters obtain timely responses to their requests.

Third, it will ensure that agencies have strong incentives to comply with the law in a timely fashion.

Fourth, it will provide Freedom of Information Act officials; that is, people within Government agencies, with all the tools, including the education, they need in order to ensure that our Government remains open and accessible.

This legislation is not just pro-openness, pro-accountability and pro-accessibility; it is also pro-Internet. It contains important congressional findings to reiterate the presumption of openness. It includes a provision for a hotline that enables citizens to track the requests and even allows tracking of those requests via the Internet. As a whole, the Open Government Act reiterates the principle that our Government is based not on the need to know but rather on the right to know.

We all recognize that America's security should never take a back seat. But nor should the claim, without justification, of national security be used as a barrier against allowing taxpayers to know how their money is being spent.

There is a broad consensus across the aisle, the political spectrum, that we currently overclassify Government documents, and that many documents and much information is placed beyond the public view without any real justification. I believe we need a system of classification that strikes the right balance between the need to classify documents in the interest of our national security and our national values of open government.

Our default position of the U.S. Government must be one of openness. If records can be open, they should be open. If there is a good reason to keep something closed, it is the Government that should bear the burden, not the other way around.

Open government is fundamentally an American issue. It is literally necessary to preserve our way of life as a self-governing people. Ensuring the accessibility, accountability, and openness of the Federal Government is a cause worthy of preservation, and I call on my colleagues to join the Senator from Vermont and I today in taking a meaningful step toward that goal.

Finally, before I yield the floor to the Senator from Vermont, let me again express my appreciation to him and his staff. They have worked very closely with my staff. This is one of those good Government initiatives that knows no party affiliation, no ideological affiliation, but is really one that is essential to the preservation of our way of life as a self-governing democracy.

EXHIBIT 1

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

Led by U.S. Senators John Cornyn and Patrick Leahy, the OPEN Government Act of 2005 is a bipartisan effort to achieve meaningful reforms to federal government information laws—including most notably the Freedom of Information Act of 1966 (''FOIA''). If enacted, the legislation would substantially enhance and expand the accessibility, accountability, and openness of the federal government. It has been nearly a decade since Congress has approved major reforms to FOIA. Moreover, the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. (The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held a FOIA oversight hearing since 1980.)

This legislation is the culmination of months of extensive discussions between the offices of Senators Cornyn and Leahy and various members of the requestor community. The bill is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries
American Civil Liberties Union
American Library Association
American Society of Newspaper Editors
Associated Press Managing Editors
Association of Health Care Journalists
Center for Democracy & Technology
Coalition of Journalists for Open Government
Committee of Concerned Journalists
Education Writers Association
Electronic Privacy Information Center
Federation of American Scientists/Project on Government Secrecy
Free Congress Foundation/Center for Privacy & Technology Policy
Freedom of Information Center, University of Missouri
The Freedom of Information Foundation of Texas
The Heritage Foundation/Center for Media and Public Policy
Information Trust
National Conference of Editorial Writers
National Freedom of Information Coalition
National Newspaper Association
National Security Archive/George Washington University
Newspaper Association of America
People for the American Way
Project on Government Oversight
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Environmental Journalists

The Act contains important Congressional findings to reiterate and reinforce the view that the Freedom of Information Act establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. The Act also contains over a dozen substantive provisions, designed to achieve the following four objectives:

(1) Strengthen FOIA and close loopholes
(2) Help FOIA requestors obtain timely responses to their requests
(3) Ensure that agencies-have strong incentives to act on FOIA requests in a timely fashion
(4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

Ensure that FOIA applies when agency recordkeeping functions are outsourced

Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation

Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information

Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association—including bloggers and other Internet-based journalists

Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests

Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation

Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request

Impose real consequences on federal agencies for missing statutory deadlines

Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure

Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

Improve personnel policies for FOIA officials to enhance agency FOIA performance

Examine the need for FOIA awareness training for federal employees

Determine appropriate funding levels needed to ensure agency FOIA compliance

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The Open Government Act of 2005.

Sec. 2. Findings. The findings reiterate the intent of Congress upon enacting the Freedom of Information Act (FOIA), 5 D.S.C. 552 as amended, and restate FOIA's presumption in favor of disclosure.

Sec. 3. Protection of Fee Status for News Media. This section amends 5 U.S.C. 552(a)(4)(A)(ii) to make clear that independent journalists are not barred from obtaining fee waivers solely because they lack an institutional affiliation with a recognized news media entity. In determining whether to grant a fee waiver, an agency shall consider the prior publication history of the requestor. If the requestor has no prior publication history and no current affiliation with a news organization, the agency shall review the requestor's plans for disseminating the requested material and whether those plans include distributing the material to a reasonably broad audience.

Sec. 4. Recovery of Attorney Fees and Litigation Costs. This section, the so-called Buckhannon fix, amends 5 U.S.C. 552(a)(4)(E) to clarify that a complainant has substantially prevailed in a FOIA lawsuit, and is eligible to recover attorney fees, if the complainant has obtained a substantial part of his requested relief through a judicial or administrative order or if the pursuit of a claim was the catalyst for the voluntary or unilateral change in position by the opposing party. The section responds to the Supreme Court's ruling in Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources, 532 U.S. 598 (2001), which eliminated the ''catalyst theory'' of attorney fee recovery under certain Federal civil rights laws. FOIA requestors have raised concerns that the holding in Buckhannon could be extended to FOIA cases. This section preserves the ''catalyst theory'' in FOIA litigation.

Sec. 5. Disciplinary Actions for Arbitrary and Capricious Rejections of Requests. FOIA currently requires that when a court finds that agency personnel have acted arbitrarily or capriciously with respect to withholding documents, the Office of Special Counsel

shall determine whether disciplinary action against the involved personnel is warranted. See 5 U.S.C. 552(a)(4)(F). This section of the bill amends FOIA to require the Attorney General to notify the Office of Special Counsel of any such court finding and to report the same to Congress. It further requires the Office of Special Counsel to report annually to Congress on any actions taken by the Special Counsel to investigate cases of this type.

Sec. 6. Time Limits for Agencies to Act on Requests. The section clarifies that the 20-day time limit on responding to a FOIA request commences on the date on which the request is first received by the agency. Further, the section states that if the agency fails to respond within the 20-day limit, the agency may not then assert any FOIA exemption under 5 U.S.C. 552(b), except under limited circumstances such as endangerment to national security or disclosure of personal private information protected by the Privacy Act of 1974, unless the agency can demonstrate, by clear and convincing evidence, good cause for failure to comply with the time limits.

Sec. 7. Individualized Tracking Numbers for Requests and Status Information. Requires agencies to establish tracking systems by assigning a tracking number to each FOIA request: notifying a requestor of the tracking number within ten days of receiving a request; and establishing a telephone or Internet tracking system to allow requestors to easily obtain information on the status of their individual requests, including an estimated date on which the agency will complete action on the request.

Sec. 8. Specific Citations in Exemptions. 5 U.S.C. 552(b)(3) states that records specifically exempted from disclosure by statute are exempt from FOIA. This section of the bill provides that Congress may not create new statutory exemptions under this provision of FOIA unless it does so explicitly. Accordingly, for any new statutory exemption to have effect, the statute must cite directly to 5 U.S.C. 552(b)(3), thereby conveying congressional intent to create a new (b)(3) exemption.

Sec. 9. Reporting Requirements. This section adds to current reporting requirements by mandating disclosure of data on the 10 oldest active requests pending at each agency, including the amount of time elapsed since each request was originally filed. This section further requires agencies to calculate and report on the average response times and range of response times of FOIA requests. (Current requirements mandate reporting on the median response time.) Finally, this section requires reports on the number of fee status requests that are granted and denied and the average number of days for adjudicating fee status determinations by individual agencies.

Sec. 10. Openness of Agency Records Maintained by a Private Entity. This section clarifies that agency records kept by private contractors licensed by the government to undertake recordkeeping functions remain subject to FOIA just as if those records were maintained by the relevant government agency.

Sec. 11. Office of Government Services. This section establishes an Office of Government Information Services within the Administrative Conference of the U.S. Within that office will be appointed a FOIA ombudsman to review agency policies and procedures, audit agency performance, recommend policy changes, and mediate disputes between FOIA requestors and agencies. The establishment of an ombudsman will not impact the ability of requestors to litigate FOIA claims, but rather will serve to alleviate the need for litigation whenever possible.

Sec. 12. Accessibility of Critical Infrastructure Information. This section requires reports on the implementation of the Critical Infrastructure Information Act of 2002, 6 U.S.C. 133. Reports shall be issued from the Comptroller General to the Congress on the number of private sector, state, and local agency submissions of CII data to the Department of Homeland Security and the number of requests for access to records. The Comptroller General will also be required to report on whether the nondisclosure of CII material has led to increased protection of critical infrastructure.

Sec. 13. Report on Personnel Policies Related to FOIA. This section requires the Office of Personnel Management to examine how FOIA can be better implemented at the agency level, including an assessment of whether FOIA performance should be considered as a factor in personnel performance reviews, whether a job classification series specific to FOIA and the Privacy Act should be considered, and whether FOIA awareness training should be provided to federal employees.

EXHIBIT 2

FEBRUARY 15, 2005.

Hon. JOHN CORNYN,
Chairman, U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights & Property Rights, Washington DC.

DEAR SENATOR CORNYN: I strongly endorse the proposed OPEN Government Act or 2005, which will strengthen the federal Freedom of Information Act (FOIA) and advance government openness.

James Madison once observed that ''[k]nowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.'' The Father of the Constitution recognized that our constitutional democracy, which is rooted in self-government, requires the informed consent of the people. I share Madison's belief, and yours, that a government of the people, by the people, and for the people must operate in full view of the people. Openness and accountability—not secrecy and concealment—are what keep democracies strong and enduring.

A commitment to open government underpins both FOIA and the Texas Public Information Act, which you interpreted and forcefully defended as the 49th Attorney General of Texas. As your successor I am proud that Texas leads the nation in promoting open government and privileged to build upon your efforts to make sure the public's business is conducted in full sunshine. As you know, the Texas Public Information Act declares that ''government is the servant and not the master of the people,'' and ''[t]he people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.''

The OPEN Government Act of 2005 will bring similar benefits to all Americans and ensure that FOIA finally lives up to its noble ideals. By closing loopholes and enabling government to be more responsive to requests for information, the OPEN Govermnent Act of 2005 will modernize FOIA's nearly 40-year-old commitment to open and accessible government.

Our system of self-government does not rest on the public's need to know, but on its fundamental right to know. Your proposed legislation will codify this venerable standard in federal law and reinforce one of our nation's first principles: open government leads inexorably to good government.

I cannot overstate my support for these important reforms and commend you for your exceptional leadership on this issue.

Sincerely,

GREG ABBOTT,
Attorney General of Texas.

AMERICAN ASSOCIATION OF LAW LIBRARIES,
WASHINGTON AFFAIRS OFFICE,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Association of Law Libraries, I commend you for your leadership in promoting access to government information by introducing the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2005. We share your belief that accessible government information is both an essential principle of a democratic society and a valuable public good.

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5000 members nationwide who respond to the legal information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public. Our mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy.

AALL believes that public inspection of government records, including electronic records, under the Freedom of Information Act (FOIA) is the foundation for citizen access to government information. The OPEN Government Act of 2005 provides important and timely amendments to FOIA. AALL supports this important legislation and we look forward to working with you to ensure its prompt enactment.

Sincerely,

MARY ALICE BAISH,
Associate Washington Affairs Representative.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of the American Civil Liberties Union and its more than 400,000 members, we are pleased to endorse the Openness Promotes Effectiveness in our National Government Act of 2005, the ''OPEN Government Act of 2005.''

As the Supreme Court has made clear, ''disclosure, not secrecy, is the dominant objective of the Act,'' Department of the Air Force v. Rose, 425 U.S. 352 (1976). Nevertheless, secrecy, not openness, all too often seems to be the dominant trend of agencies in recent times.

The OPEN Government Act includes a series of much-needed corrections to policies that have eroded the promise of the Freedom of Information Act (FOIA). These include ensuring requesters will have timely information on the status of their requests, enforceable time limits for agencies to respond to requests, news media status rules that recognize the reality of freelance journalists and the Internet, and strong incentives—including both carrots and sticks—for agency employees to improve FOIA compliance. The OPEN Government Act also includes a much needed review of the new exemption in the Homeland Security Act for critical infrastructure information.

James Madison warned against ''a popular Government without popular information,'' saying that ''a people who mean to be their own Governors, must arm themselves with the power knowledge gives.'' We strongly urge passage of the OPEN Government Act

of 2005 to help restore to the people some of that power.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
TIMOTHY H. EDGAR,
Legislative Counsel.

AMERICAN SOCIETY OF NEWSPAPER EDITORS,
Reston, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Society of Newspaper Editors (ASNE), I am writing to congratulate you on the Introduction of the ''Open Government Act.'' Since the organization was founded in 1922, ASNE's membership of directing editors of dally newspapers throughout the United States has worked to assist journalists and provide an unfettered and effective press in the service of the American people.

ASNE is proud to endorse the Open Government Act as legislation that can help us achieve these ideals. As you wrote in your recent article in the LBJ Journal of Public Affairs, ''Our national commitment to democracy and freedom is not merely some abstract notion. It is a very real and continuing effort, and an essential element of that effort is an open and accessible government'' The Open Government Act is a ringing reminder that the Freedom of Information Act (FOIA) is the cornerstone of this principle. Your bill comes at a time when many executive agencies are able to shortcut FOIA's guarantees of access to government documents while avoiding any repercussion for their actions.

We appreciate your desire to provide a meaningful enforcement mechanism for those who see that FOIA is not achieving its promise of open and accessible records for all. The bill's pragmatic focus on procedural, rather than substantive, change is noteworthy; instead of rewriting the law in a way that would promote or disfavor certain special interests, you wisely seek to bring government and citizenry together to make FOIA more efficient and effective.

ASNE applauds your efforts and joins you in urging passage of this bill in the 109th Congress.

Sincerely,

KARLA GARRETT HARSHAW,
President.

FEDERATION OF AMERICAN SCIENTISTS,
Washington, DC, February 4, 2005.

Senator JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I am writing to express the support of the Federation of American Scientists for your continuing efforts to promote openness in government, and specifically for your proposed legislation to strengthen the Freedom of Information Act (FOIA).

It is our belief that openness generally, and the FOIA in particular, have an importance that transcends the usual political divides. By making information available to our citizens, we advance the ideals of democratic self-governance that we all share.

Your proposed legislation would strengthen the FOIA in several important ways: It would reverse recent trends to use fee recovery as an impediment to FOIA processing; it would strengthen the position of requesters who are forced to pursue litigation to gain the records they seek; it would enhance and clarify the administration of the FOIA; and it would create an important new mechanism to audit agency compliance with the FOIA, among other important provisions.

Perhaps most fundamentally, your legislation marks a hopeful new resurgence of congressional attention to these fundamental issues.

Thank you for your leadership.

Sincerely,

STEVEN AFTERGOOD,
Project Director,
FAS Project on Government Secrecy.

FREE CONGRESS FOUNDATION,
Washington, DC, February 11, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: We would like to commend your introduction of the OPEN Government Act of 2005.

Conservatives believe checks and balances are essential to our system of government. One important check is to ensure that citizens and the news media have access to what the Federal Government's departments and agencies are doing. Unfortunately, as noted by Austin American Statesman reporter Chuck Lindell, too often the Federal Government's bureaucracy demonstrates no interest in replying to such requests in a timely and efficient manner. It prefers to operate in darkness, not having their actions exposed to the sunlight of public scrutiny.

Citizens have a right to know what the Federal Government is doing with their tax dollars. The fact that the Department of Agriculture and the Environmental Protection Agency can take years to answer requests for information should be disturbing to conservatives who bemoan the arrogance and unresponsiveness of Big Government. Every citizen and every news reporter is entitled to a prompt answer to their request for information.

''The buck stops here'' is a snappy soundbite, and may have once represented a workable philosophy of governing in simpler times. The reality is that in today's Washington it's hard to tell where the buck is because it is simply obscured by an unresponsive bureaucracy. Ironically, technology and increasing expectations of transparency in government render the mindset practiced by a recalcitrant bureaucracy obsolete. A measure such as the OPEN Government Act of 2005 can help level the playing field in favor of the citizenry.

Sincerely,

STEVE LILIENTHAL,
Director,
Center for Privacy & Technology Policy.

THE FREEDOM OF INFORMATION FOUNDATION OF TEXAS,
Dallas, TX, February 8, 2005.

Ms. KATHERINE GARNER,
Executive Director.

DEAR BOARD MEMBERS: United States Senator John Cornyn will introduce legislation to strengthen the Freedom of Information Act next week. Among other things, the Open Government Act of 2005 would provide meaningful deadlines for federal agencies to act on Freedom of Information requests and impose consequences on federal agencies for missing statutory deadlines. In light of the fact that some federal agencies have had requests for information pending for as long as seventeen years, the Foundation believes Senator Cornyn's proposals are much needed and overdue. The proposed legislation would also make it easier for successful litigants to recover their attorney's fees when litigation becomes necessary, strengthen reporting requirements on government agencies' FOIA compliance, establish an ombudsman to resolve FOIA complaints without the need to resort to litigation and enhance the authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure.

The Foundation therefore enthusiastically endorses Senator Cornyn's proposed legislation and encourages each of your organizations to do the same.

Sincerely,

JOEL R. WHITE.

THE HERITAGE FOUNDATION,
CENTER FOR MEDIA AND PUBLIC POLICY,
Washington, DC, February 11, 2005.

Sen. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: Insuring the continuance of our Republican liberty depends upon maintaining the right of the people to know as much as possible about what their government is doing in order to hold the public officials and employees accountable.

Protecting this accountability tool grows ever more important as the power of the federal government continues its historic growth, with its attendant tendency continually to become more and more resistant to genuine transparency. That is why a healthy Freedom of Information Act is so vital.

But while the federal government has grown exponentially since passage of the FOIA in 1966, the law's effectiveness has steadily declined as politicians and career bureaucrats with a shared interest in avoiding accountability have become increasingly skilled at exploiting loopholes, creatively interpreting administrative provisions and relying upon the paucity of legal resources available to many requestors to avoid satisfying either the letter or spirit of the statute.

Indeed, the National Security Archive's 2003 survey that found an FOIA system ''in extreme disarray.'' The Archive found that ''agency contact information on the web was often inaccurate; response times largely failed to meet the statutory standard; only a few agencies performed thorough searches, including e-mail and meeting notes; and the lack of central accountability at the agencies resulted in lost requests and inability to track progress.''

I believe the comprehensive package of reforms contained in ''The Open Government Act of 2005'' would go far in restoring the effectiveness of the FOIA as an accountability tool for the people in dealing with their government.

We must remember that transparency and accountability are the strongest antidotes to the inevitable abuses of Big Government and are thus essential guarantors of every individual's liberty and prerequisites for the maintenance of our common security.

Sincerely,

MARK TAPSCOTT,
Director.

NATIONAL NEWSPAPER ASSOCIATION,
WASHINGTON PROGRAMS,
Arlington, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington DC.

DEAR SENATOR CORNYN: The National Newspaper Association, an organization representing over 2,500 community newspapers nationwide, supports your efforts to strengthen the Freedom of Information Act. The OPEN Government Act of 2005 is a sound step toward a better FOIA.

Openness and transparency in government is vital to the proper functioning of a democratic government. Ensuring unhindered access to government information by the public is the utmost responsibility of our elected leaders, for without this access, it would be impossible for the consent of the governed to be truly informed.

The Freedom of Information Act is an important tool in achieving this lofty goal, and

it has proven to be useful to community newspapers around the country. The Act requires continual oversight from Congress to ensure the spirit of the law remains intact. Congress has neglected this duty in recent years, and we are pleased that you have undertaken efforts to rectify this neglect.

We want to emphasize that FOIA serves a function beyond providing records to requesters filing written requests. It also serves as a talisman for openness in similar state laws. It provides a framework for releasing information that is informally requested by journalists and others—a function of particular importance to community newspapers.

We will look forward to working with you as the bill is considered by the Judiciary Committee.

Sincerely,

MATTHEW PAXTON,
Chairman,
Government Relations Committee.

NEWSPAPER ASSOCIATION OF AMERICA,
Vienna, VA, February 10, 2005.

Hon. JOHN CORNYN,
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights, & Property Rights, Washington, DC.

DEAR SENATOR CORNYN: On behalf of the Newspaper Association of America (NAA), a non-profit organization representing more than 2,000 newspapers in the United States and Canada, I want to thank you for introducing the Open Government Act of 2005.

The Freedom of Information Act is premised on the belief that an informed citizenry is essential to democracy. The Open Government Act will strengthen the Freedom of Information Act and send a clear message that the openness and accessibility of the federal government is a vital part of our democratic process.

We commend you for your outstanding leadership, especially with regard to the inclusion of the provisions that would close current FOIA loopholes, prevent new ones, and restore meaningful deadlines for agency action on FOIA requests. Additionally, the legislation will make it easier for the public to access information about their government through the creation of a FOIA ombudsmen, agency FOIA hotlines, and tracking systems for FOIA requests.

Thank you again for your leadership on this important issue. We look forward to working with you and your staff in the coming months to ensure passage of the Open Government Act of 2005 in the 109th Congress.

Thanks for reading,

JOHN F. STURM,
President and CEO.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of People For the American Way (PFAW) and its more than 675,000 members and supporters, I write in support of your efforts to strengthen the Freedom of Information Act (FOIA) and promote greater public access to government records through the proposed Open Government Act of 2005 (OGA).

Open government is a vital component of this country's democratic framework, allowing citizens to learn about the activities of their government and helping ensure government accountability. FOIA, which permits public access to federal records, has helped establish the public's right to obtain government information and created a strong presumption in favor of disclosure. Serious problems have arisen with full and timely agency compliance with FOIA and its goals, however, necessitating the types of important FOIA reforms contemplated in the OGA.

In particular, PFAW is supportive of the Act's use of penalties to enforce compliance with FOIA deadlines, particularly the provision imposing a presumptive waiver of FOIA exemptions when an agency fails to meet the 20-day production deadline, and the requirement that Congress be explicit when it considers creating additional exemptions under 5 U.S.C. 552(b)(3).

We also support the provision in the bill that would permit an award of attorney fees when a nonfrivolous lawsuit has served as the catalyst for voluntary disclosure of a substantial part of a FOIA request. It is imperative that a requester—who must incur litigation costs to enforce agency compliance with the law—be able to recover attorneys' fees and litigation costs in such cases, particularly in order to discourage arbitrary and unlawful agency rejections of legitimate FOIA requests.

Finally, we believe that the various record-keeping and monitoring provisions of the Open Government Act—including monitoring of the Department of Homeland Security's use of its ''critical infrastructure information'' exemption and mandatory agency disclosure of the 10 oldest active requests—are useful and necessary to ensure the integrity of the open government process and to gather the information needed to modify and adjust our open government laws going forward.

We applaud your efforts to reaffirm the vital importance of open government in this country and believe that the Open Government Act is an encouraging first step toward that goal.

Sincerely,

RALPH G. NEAS,
President.

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

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

S. 394

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 ''Openness Promotes Effectiveness in our National Government Act of 2005'' or the ''OPEN Government Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that—

(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

(B) such consent is not meaningful unless it is informed consent; and

(C) as Justice Black noted in his concurring opinion in Barr v. Matteo (360 U.S. 564 (1959)), ''The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.'';

(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

(3) the Freedom of Information Act establishes a ''strong presumption in favor of disclosure'' as noted by the United States Supreme Court in United States Department of State v. Ray (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

(4) ''disclosure, not secrecy, is the dominant objective of the Act,'' as noted by the United States Supreme Court in Department of Air Force v. Rose (425 U.S. 352 (1976));

(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the ''need to know'' but upon the fundamental ''right to know''.

SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.

Section 552(a)(4)(A)(ii) of title 5, United States Code, is amended by adding at the end the following:

''In making a determination of a representative of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester. Prior publication history shall include books, magazine and newspaper articles, newsletters, television and radio broadcasts, and Internet publications. If the requestor has no prior publication history or current affiliation, the agency shall consider the requestor's stated intent at the time the request is made to distribute information to a reasonably broad audience.''.

SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.

Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end the following: ''For purposes of this section, a complainant has 'substantially prevailed' if the complainant has obtained a substantial part of its requested relief through a judicial or administrative order or an enforceable written agreement, or if the complainant's pursuit of a nonfrivolous claim or defense has been a catalyst for a voluntary or unilateral change in position by the opposing party that provides a substantial part of the requested relief.''.

SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.

Section 552(a)(4)(F) of title 5, United States Code, is amended—

(1) by inserting ''(i)'' after ''(F)''; and

(2) by adding at the end the following:

''(ii) The Attorney General shall—

''(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

''(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

''(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).''.

SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.

(a) TIME LIMITS.—

(1) IN GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by inserting '', and the 20-day period shall commence on the date on which the request is first received by the agency, and shall not be tolled without the consent of the party filing the request'' after ''adverse determination''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) AVAILABILITY OF AGENCY EXEMPTIONS.—

(1) IN GENERAL.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following:

''(G)(i) If an agency fails to comply with the applicable time limit provisions of this paragraph with respect to a request, the agency may not assert any exemption under subsection (b) to that request, unless disclosure—

''(I) would endanger the national security of the United States;

''(II) would disclose personal private information protected by section 552a or proprietary information; or

''(III) is otherwise prohibited by law.

''(ii) A court may waive the application of clause (i) if the agency demonstrates by clear and convincing evidence that there was good cause for the failure to comply with the applicable time limit provisions.''.

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.

(a) IN GENERAL.—Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

''(7) Each agency shall—

''(A) establish a system to assign an individualized tracking number for each request for information under this section;

''(B) not later than 10 days after receiving a request, provide each person making a request with the tracking number assigned to the request; and

''(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

''(i) the date on which the agency originally received the request; and

''(ii) an estimated date on which the agency will complete action on the request.''.

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by this section shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute—

''(A) if enacted after the date of enactment of the Openness Promotes Effectiveness in our National Government Act of 2005, specifically cites to this section; and

''(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

''(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;''.

SEC. 9. REPORTING REQUIREMENTS.

Section 552(e)(1) of title 5, United States Code, is amended—

(1) in subparagraph (F), by striking ''and'' after the semicolon;

(2) in subparagraph (G), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(H) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally filed;

''(I) the average number of days for the agency to respond to a request beginning the date on which the request was originally filed, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests; and

''(J) the number of fee status requests that are granted and denied, and the average number of days for adjudicating fee status determinations.

When reporting the total number of requests filed, agencies shall distinguish between first person requests for personal records and other kinds of requests, and shall provide a total number for each category of requests.''.

SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY A PRIVATE ENTITY.

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) 'record' and any other term used in this section in reference to information includes—

''(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

''(B) any information described under subparagraph (A) that is maintained for an agency by an entity under a contract between the agency and the entity.''.

SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended—

(1) by redesignating section 596 as section 597; and

(2) by inserting after section 595 the following:

''§ 596. Office of Government Information Services

''(a) There is established the Office of Government Information Services within the Administrative Conference of the United States.

''(b) The Office of Government Information Services shall—

''(1) review policies and procedures of administrative agencies under section 552 and compliance with that section by administrative agencies;

''(2) conduct audits of administrative agencies on such policies and compliance and issue reports detailing the results of such audits;

''(3) recommend policy changes to Congress and the President to improve the administration of section 552, including whether agencies are receiving and expending adequate funds to ensure compliance with that section; and

''(4) offer mediation services between persons making requests under section 552 and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, issue advisory opinions if mediation has not resolved the dispute.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by striking the item relating to section 596 and inserting the following:

''596. Office of Government Information Services.

''597. Authorization of appropriations.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE INFORMATION.

(a) IN GENERAL.—Not later than January 1 of each of the 3 years following the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implementation and use of section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133), including—

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

(2) the number of requests for access to records granted or denied under this section;

(3) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and

(4) an examination of whether the nondisclosure of such information has led to the increased protection of critical infrastructure.

(b) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines—

(1) whether changes to executive branch personnel policies could be made that would—

(A) provide greater encouragement to all Federal employees to fulfill their duties under section 552 of title 5, United States Code; and

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether performance of compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

(3) whether an employment classification series specific to compliance with sections 552 and 552a of title 5, United States Code, should be established;

(4) whether the highest level officials in particular agencies administering such sections should be paid at a rate of pay equal to or greater than a particular minimum rate ; and

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

Mr. LEAHY. Mr. President, I am pleased to join as a partner with the Senator from Texas in introducing the OPEN Government Act of 2005. I have devoted a considerable portion of my work in the Senate to improving Government oversight, Government openness and citizen ''right-to-know'' laws to make Government work better for the American people, and at times it has been a lonely battle. Finding dedicated allies on the other side of the aisle has proven difficult. That is why I am delighted to have a partner in JOHN CORNYN. Senator CORNYN has a distinguished record of supporting open government dating back to his days as Attorney General of Texas. In fact,

some of the provisions in the bill we introduce today are modeled after sections of the Texas Public Information Act.

I believe that we both see this effort as the first of many bipartisan steps we can take together in the new Congress. Senator CORNYN and I began to forge a partnership on improving public access to Government information well over a year ago when, during the 108th Congress, we worked with several other Senators and with the Library of Congress to improve the publicly accessible congressional information website, THOMAS. He and I also cooperated last fall in a successful effort to ensure that ''government information,'' including the application of the Freedom of Information Act, FOIA, be subject to the jurisdiction of both the Judiciary Committee and the newly constituted Homeland Security and Governmental Affairs Committee.

The bill we introduce today is a collection of commonsense modifications designed to update FOIA and improve the timely processing of FOIA requests by Federal agencies. It was drafted after a long and thoughtful process of consultation with individuals and organizations that rely on FOIA to obtain information and share it with the public, including the news media, librarians, and public interest organizations representing all facets of the political spectrum.

The OPEN Government Act reaffirms the fundamental premise of FOIA: Government information belongs to all Americans and should be subject to a presumption in favor of disclosure. James Madison said that ''a popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy or perhaps both.'' His caution rings just as true today. The public's right to know what its government is doing promotes accountability, imbues trust and contributes to our system of checks and balances.

First enacted in 1966, FOIA represents the foundation of our modern open Government laws. In 1996, I was the principal author of the Electronic Freedom of Information Act Amendments, which updated FOIA for the internet age. The bill we introduce today is the next step: a practical set of important modifications that respond to common complaints and limitations in the current system that we have heard, whether from frequent FOIA requestors, such as representatives of the press, or individual citizens who may only occasionally rely on FOIA, but who nonetheless deserve timely and comprehensive responses to their requests.

Chief among the problems with FOIA implementation is agency delay. Following the successful model of the Texas Public Information Act, this legislation imposes penalties on agencies that miss statutory deadlines to release documents and strengthens reporting requirements on FOIA compliance.

The OPEN Government Act responds to some confusion over the applicability of FOIA to agency records that are held by outside private contractors. It does this by clarifying that such records are subject to FOIA wherever they are located.

Our legislation establishes an ombudsman to mediate FOIA disputes between agencies and requestors, a step that many FOIA requestors believe will help to ameliorate the need for FOIA litigation in the Federal courts. We hope that this mechanism will work to the benefit of all parties. However, where mediation fails to resolve disputes, our bill preserves the rights of requestors to litigate under FOIA.

Our bill responds to recent Federal jurisprudence by explicitly providing for recovery of attorneys' fees under the so-called ''catalyst theory.'' That is, where a FOIA lawsuit was the catalyst for an agency determination to release documents prior to a court's entry of judgment, the plaintiff may recover attorneys' fees.

Finally, the bill requires reports on a controversial law, the Critical Infrastructure Information Act, enacted as part of the Homeland Security Act of 2002, and it protects fee-waiver status for journalists under FOIA.

Letters of support for the OPEN Government Act have been submitted by the American Association of Law Libraries, American Civil Liberties Union, American Library Association, American Society of Newspaper Editors, Associated Press Managing Editors, Association of Health Care Journalists, Center for Democracy & Technology, Coalition of Journalists for Open Government, Committee of Concerned Journalists, Education Writers Association, Electronic Privacy Information Center, Federation of American Scientists/Project on Government Secrecy, Free Congress Foundation/Center for Privacy & Technology Policy, Freedom of Information Center/University of Missouri, The Freedom of Information Foundation of Texas, The Heritage Foundation/Center for Media and Public Policy, Information Trust, National Conference of Editorial Writers, National Freedom of Information Coalition, National Newspaper Association, National Security Archive/George Washington University, Newspaper Association of America, People for the American Way, Project on Government Oversight, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, and the Society of Environmental Journalists.

The Freedom of Information Act is an invigorating mechanism that helps keep our government more open and effective and closer to the American people. FOIA has had serious setbacks in recent years that endanger its effectiveness. This legislation is a rare chance to advance the public's right to know.

I thank my colleague, the Senator from Texas, for the time and effort he has devoted to protecting the public's right to know, and I urge all members of the Senate to join us in supporting this important legislation.

By Mr. FEINGOLD:

S. 395. A bill to amend the Buy American Act to increase the requirement for American-made content, and to tighten the waiver provisions, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, today I am introducing the second in a series of bills intended to support American companies and American workers. Yesterday, I submitted S. Con. Res. 12, which would set some minimum standards for future trade agreements into which our country enters.

The bill that I am introducing today, the Buy American Improvement Act, focuses on the Federal Government's responsibility to support domestic manufacturers and workers and on the role of Federal procurement policy in achieving this goal. The reintroduction of this bill, which I first introduced in 2003, is part of my ongoing effort to find ways to stem the flow of manufacturing jobs abroad.

The Buy American Act of 1933 is the primary statute that governs Federal procurement. The name of this law accurately and succinctly describes its purpose: to ensure that the Federal Government supports domestic companies and domestic workers by buying American-made goods. This is an important law but, regrettably, it contains a number of loopholes that make it too easy for government agencies to buy foreign-made goods.

My bill, the Buy American Improvement Act, would strengthen the existing act by tightening its waiver provisions. Currently, the heads of Federal departments and agencies are given broad discretion to waive the Act and buy foreign goods. We should ensure that the Federal Government makes every effort to give Federal contracts to companies that will perform the work domestically. We should also ensure that certain types of industries do not leave the United States completely, thus making the Federal Government dependent on foreign sources for goods, such as plane or ship parts, that our military may need to acquire on short notice.

I have often heard my colleagues say on this floor that American-made goods are the best in the world. I could not agree more. Regrettably, nearly 80,000 good-paying manufacturing jobs have left my state since 2000. And the country has lost more than two-and-one-half million manufacturing jobs since January 2001, including more than 25,000 jobs last month alone. This hemorrhaging of jobs shows no signs of stopping. Congress should do more to support domestic manufacturers and their employees. One way to do this is to ensure that the Federal Government makes every effort to buy American-made goods.

There are five primary waivers to the Buy American Act, and my bill addresses four of them The first of these waivers allows an agency head to buy foreign goods if complying with the Act would be ''inconsistent with the public interest.'' I am concerned that this waiver, which includes no definition for what is ''inconsistent with the public interest,'' is actually a gaping loophole that gives too much discretion to department secretaries and agency heads. My bill would modify this waiver provision to prohibit it from being invoked by an agency or department head after a request for proposals, or RFP, has been published in the Federal Register. Once the bidding process has begun, the Federal Government should not be able to pull an RFP by saying that it is in the ''public interest'' to do so. This determination, sometimes referred to as the Buy American Act's national security waiver, should be made well in advance of placing a procurement up for bid. To do otherwise pulls the rug out from under companies that are spending valuable time and resources to prepare a bid for a Federal contract.

The Buy American Act may also be waived if the head of the agency determines that the cost of the lowest-priced domestic product is ''unreasonable,'' and a system of price differentials is used to assist in making this determination. My bill would modify this waiver to require that preference be given to the American company if that company's bid is substantially similar to the lowest foreign bid or if the American company is the only domestic source for the item to be procured.

I have a long record of supporting efforts to help taxpayers get the most bang for their buck and of opposing wasteful Federal spending. I don't think anyone can argue that supporting American jobs is ''wasteful.'' We owe it to American manufacturers and their employees to make sure they get a fair shake. I would not support awarding a contract to an American company that is price gouging, but we should make every effort to ensure that domestic sources for goods needed by the Federal Government do not dry up because American companies have been slightly underbid by foreign competitors.

The Buy American Act also includes a waiver for goods bought by the Federal Government that will be used outside of the United States. There is no question that there are occasions when the Federal Government needs to procure items quickly for use outside the United States, such as in a time of war. However, there may be items that are bought on a regular basis and used at foreign military bases or United States embassies, for example, that could reasonably be procured from domestic sources and shipped to the location where they will be used. My bill would require Federal agencies to compare the difference in cost for obtaining articles that are used on regular basis outside the U.S., or that are not needed immediately, between an overseas versus a domestic source—including the cost of shipping—before awarding the contract to the company that will do the work overseas.

The Buy American Act's domestic source requirements may also be waived if the articles to be procured are not available from domestic sources ''in sufficient and reasonably available commercial quantities and of a satisfactory quality.'' My bill would require that an agency or department head, prior to issuing such a waiver, determine whether domestic production can be initiated to meet the procurement needs and whether a comparable article, material, or supply is available domestically.

My bill would also strengthen the Buy American Act in four other ways. It would, for the first time, make the Buy American requirement applicable to the United States Congress. The current definition of a Federal agency in the Act specifically exempts the Senate, the House, and Architect of the Capitol, and activities under the direction of the Architect. I believe that Congress should lead by example and comply with the Buy American Act—a requirement that we have imposed on executive agencies.

Secondly, my bill would increase the minimum American content standard qualification under the Act from the current 50 percent to 75 percent. The definition of what qualifies as an American-made product has been a source of much debate. To me, it seems clear that American-made means manufactured in this country. This classification is a source of pride for manufacturing workers around our country. The current 50 percent standard should be raised to a minimum of 75 percent.

In addition, my bill would make permanent the expanded reporting requirement that I authored which was first enacted as part of the fiscal year 2004 omnibus spending bill and was extended as part of the fiscal year 2005 omnibus spending bill. Prior to the enactment of these provisions, only the Department of Defense was required to report to Congress on its use of Buy American waivers and purchases of foreign goods. It is virtually impossible to get hard numbers on the Federal Government's purchases of foreign- and domestic-made goods and to ensure that there is disclosure and accountability in the waiver process.

The annual report to be submitted by agency heads will be required to include the following information: the dollar value of any items purchased that were manufactured outside of the United States; an itemized list of all applicable waivers granted with respect to such items under the Buy American Act; and a summary of the total procurement funds spent by the Federal agency on goods manufactured in the United States versus on goods manufactured overseas. In addition, my bill also requires that the heads of all Federal agencies make these annual reports publicly available on the Internet.

My bill also seeks to prevent dual-use technologies from falling into the hands of terrorists or countries of concern by prohibiting the awarding of overseas contracts or sub-contracts that would require the transfer of information relating to any item that is classified as a dual-use item on the Commerce Control List unless approval for such a contract has been obtained through the Export Administration Act process. It only makes sense that we would not award contracts that require the transfer of sensitive technology without following our own export licensing process. It is possible that this technology could later be used by some countries to make their own products to sell to countries that cannot obtain such goods from the United States. This loophole in our export control laws should be closed.

Finally, my bill would require the Government Accountability Office to report to Congress with recommendations for defining the terms ''inconsistent with the public interest'' and ''unreasonable cost'' for purposes of invoking the corresponding waivers in the Act. I am concerned that both of these terms lack definitions, and that they can be very broadly interpreted by agency or department heads. GAO would require to make recommendations for statutory definitions of both of these terms, as well as for establishing a consistent waiver process that can be used by all federal agencies.

I am pleased that my legislation is supported by a broad array of business and labor groups. The groups are committed to ensuring that we have a strong domestic manufacturing base that provides good-paying, stable jobs for American workers, and they include Save American Manufacturing, the national and Wisconsin AFL–CIO, the U.S. Business and Industry Council, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers, and the United Auto Workers.

In addition to strengthening the Buy American Act, Congress should support trade agreements that do not undermine it. As I have repeatedly stated on this floor, Congress and Administrations of both parties have a dismal record of promoting trade agreements that send American jobs overseas. And many of those same flawed trade agreements have repeatedly weakened the Buy American Act and other domestic preference laws.

Last year, the Ranking Member of the Homeland Security and Governmental Affairs Committee, Mr. LIEBERMAN, and I asked the GAO to study the effect of trade agreements on domestic source requirements such as those contained in the Buy American Act. That study found that the United States government is required to give

favorable treatment to certain goods from a total of 45 countries as a result of trade agreements and reciprocal defense procurement agreements. The report notes that the United States is a party to seven trade agreements, including the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Government Procurement Agreement, that prevents the U.S. from applying domestic preference laws fully. The report also identifies 21 Department of Defense (DoD) Memoranda of Understanding that allow DoD to procure goods and services from foreign countries.

The gaping loopholes in the Buy American Act and the trade agreements and defense procurement agreements that contain additional waivers of domestic source restrictions have combined to weaken our domestic manufacturing base by allowing—and sometimes actually encouraging—the Federal Government to buy foreign-made goods. Congress can and should do more to support American companies and American workers. We must strengthen the Buy American Act and we must stop entering into bad trade agreements that send our jobs overseas and undermine our own domestic preference laws.

By strengthening Federal procurement policy, we can help to bolster our domestic manufacturers during these difficult times. As I have repeatedly noted, Congress cannot simply stand on the sidelines while tens of thousands of American manufacturing jobs have been and continue to be shipped overseas. While there may be no single solution to this problem, I believe that one way in which Congress should act is by strengthening the Buy American Act.

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

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

S. 395

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 ''Buy American Improvement Act of 2005''.

SEC. 2. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.''; and

(2) by adding at the end the following:

''(d) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 3. GAO REPORT AND RECOMMENDATIONS.

(a) SCOPE OF WAIVERS.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(1) unreasonable cost; and

(2) inconsistent with the public interest.

The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 4. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 2) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information pertaining to a dual-use item on the Commerce Control List or that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, and Mr. SUNUNU):

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; read the first time.

Mr. CRAIG. Mr. President, I am pleased to join with Senator BAUCUS in introducing the Protection of Lawful Commerce in Arms Act.

This bill addresses the abuse of our Nation's courts through predatory lawsuits against the U.S. firearms industry—suits attempting to force law-abiding businesses to pay far criminal acts by individuals beyond their control.

It's important for our colleagues to understand that the lawsuits we're talking about are not brought by victims seeing relief for same wrongs done to them by the firearms industry. Instead, they are part of a politically inspired initiative trying to force social goals through an end-run around the Congress and State legislatures.

These lawsuits are based an the notion that even though a business complies with all laws and sells a legitimate product, it should be held responsible for the misuse or illegal use of the firearm by a criminal. This isn't a legal theory—it's just the latest twist in the gun controllers' notion that it's the gun, and not the criminal, that causes crime.

The truth is that there are millions of firearms in this country today, only a tiny fraction of which have ever been used in the commission of a crime. The truth is that again and again, law-abiding firearm owners are using their guns, often without even firing a shot, to defend life and property. The truth is that the intent of the user, not the gun, determines whether that gun will be used in a crime. The trend of predatory litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence. The cost of these lawsuits threatens to drive a critical industry out of business, losing thousands of good-paying jobs in the process and jeopardizing Americans' constitutionally protected access to firearms for self defense and other lawful uses.

The Protection of Lawful Commerce in Arms Act would stop these abusive lawsuits. However, it would not insulate the firearms industry from all lawsuits or deprive legitimate victims of their day in court. Indeed, it specifically provides that actions based on the wrongful conduct of those involved in the business of manufacturing and selling firearms would not be affected by this legislation. The bill is solely directed to stopping abusive, politically driven litigation against law-abiding individuals for the misbehavior of criminals over whom they had no control.

This bill is virtually identical to legislation introduced and debated to length in the Senate during the last Congress. As my colleagues will recall, the addition of two unrelated poison pill amendments doomed final passage of that bill; however, it is worth noting that all amendments to the actual substance of that measure were defeated.

The need for this legislation is every bit as serious today as it was in the last Congress. I am proud that a number of our colleagues on both sides of the aisle asked to sponsor this bill before it was even introduced: Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, and Mr. THUNE. I thank these original cosponsors for their support.

The courts of our Nation are supposed to be forums for resolving controversies between citizens and providing relief where warranted, not a mechanism for achieving political ends that are rejected by the people's representatives in Congress and the State legislatures. I hope all our colleagues will join us in taking a measured, principled stand against this abusive litigation by supporting the Protection of Lawful Commerce in Arms Act.

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. 397

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 ''Protection of Lawful Commerce in Arms Act''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) MANUFACTURER.—The term ''manufacturer'' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term ''qualified product'' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief'' resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) SELLER.—The term ''seller'' means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term ''State'' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term ''trade association'' means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

By Mr. SANTORUM (for himself and Mr. BAYH):

S. 398. A bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I am pleased to introduce with my colleague from Indiana, Senator BAYH, important legislation to encourage the cleanup of contaminated sites commonly known as ''brownfields.'' I urge all my colleagues to join Senator BAYH and me as supporters of this legislation and ask that they actively work with us towards its enactment.

The United States Environmental Protection Agency, EPA, defines brownfields as ''abandoned, idled, or under used industrial commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination that can add cost, time, or uncertainness to redevelopment projects.''

Brownfields are not unique to my State of Pennsylvania, nor are they to Senator BAYH's State of Indiana. In every State in the Nation, there are areas blighted by run down, abandoned properties and unsightly vacant lots. They are the shut down manufacturing facilities, deserted warehouses and gas stations that are all too familiar to us. On these properties once stood vibrant and productive enterprises, but changing times and events have drained their vitality and they are now in desperate need of revitalization and redevelopment. Compounding the problem is that over the years, the activities on these sites have left the soil and water tables contaminated with environmental pollutants.

The negative social and economic effects that these sites cause on their surrounding communities are significant. There are serious financial impacts not only to the market values of the brownfield properties themselves, but also to property values in the surrounding neighborhoods. As middle class citizens are working to gain assets and potentially be able to borrow against, or even sell their homes in the future, property values become a very serious issue. A reduction of property values in brownfield neighborhoods hits hardest the families who can least afford it.

Brownfields have other serious repercussions, extending far beyond the pocketbook. The unsightliness of brownfields can lead to the characterization of entire neighborhoods as rundown and undesirable. The once vibrant spirit of these centrally located and thriving urban areas can be dampened as these eyesores drag down residents' morale and sense of connection with their community.

The U.S. Conference of Mayors and the Government Accountability Office estimate that there are over 400,000 brownfield sites across the country. According to a recent U.S. Conference of Mayors survey of 187 cities throughout the nation, redevelopment of their existing brownfields would bring additional tax revenues of up to $2 billion annually and could create hundreds of thousands of jobs.

Many brownfields are located in prime business locations near critical infrastructure, including transportation, and close to an already productive workforce. Putting these sites back into use will generate good paying jobs and affordable housing in areas where they are most needed. Rehabilitating and reusing these sites also serves to help prevent urban sprawl. We should encourage the cleanup and use of these brownfield sites rather than abandon them and instead always look to develop at new locations. A powerful example from my State of a successful brownfield revitalization effort and how it can have substantial and positive effects on a community is the city of Chester.

In the midst of a major revitalization, Chester is redeveloping its blighted and vacant waterfront district, including the former PECO power station. The city is striving to turn a former industrial site into a business center. Chester will be able to create new office space, and by working with a private developer Chester has received an initial commitment to move 2,000 jobs into the area. This initiative will help bring more business and infrastructure back to the community, adding to the area's prosperity and making Chester an even safer and more pleasant place to live.

Unfortunately, a big reason that so many brownfield properties are languishing in a state of decay and disrepair is the substantial clean up costs associated with them and the unfavorable tax treatment of those costs.

As part of the Community Renewal and Revitalization Act of 2000, Congress enacted section 198 of the Internal Revenue Code, which allowed cleanup costs to be expensed in the year they were incurred. Prior to that, these costs had to be capitalized to the land, postponing any recovery of these costs for tax purposes until the property was sold.

This expedited writeoff of clean up expenses helps a redeveloper manage the cost of rehabilitating existing properties which typically is much more expensive than developing new sites. Brownfield cleanup costs can be an imposing obstacle to redevelopment. While the price tag varies with each site, it is not unreasonable for the cleanup of a major site to cost between $500,000 and $1 million.

We in the Senate, and our colleagues in the House, were wise to enact section 198 and renew it for 2 years through the Working Families Tax Relief Act of 2004. That was a start, but more needs to be done in this area.

The bill my colleague and I are introducing today has three provisions. First, it makes section 198 a permanent provision in the Tax Code. Second, it broadens the definition of ''hazardous substances'' in section 198 to include petroleum. Finally, it repeals the provision in the law requiring the recapture of the section 198 deduction when the property is sold.

The tax policy of allowing the expensing of clean up costs should be a permanent fixture in the Tax Code. Brownfields are a long-term problem and this solution will allow us to complete this important task.

Furthermore, a shortcoming of the law passed in 2000 was the absence of petroleum as a contaminant that allowed a site to qualify as a brownfield under section 198. A large percentage of brownfields across the country are contaminated with petroleum. Extending the law to cover petroleum contamination makes much more sense and the law much more effective.

Finally, the provision in section 198 that requires a taxpayer who uses the clean up deduction to pay income tax on that amount when he or she sells the property is illogical. This sends a message to developers, that if they undertake the worthy endeavor of remediation of brownfield sites they will be subjected to substantial tax penalties for doing so. This policy is counterproductive to the efforts we are trying to encourage and it should be repealed.

The benefits of brownfields cleanup are obvious. Remediation of these sites revitalizes our neighborhoods and communities, and I urge my colleagues to support this legislation.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 399. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 400. A bill to prevent the illegal importation of controlled substances; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the U.S., authorizing States to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to customers referred to on-line doctors for a prescription.

Americans are increasingly turning to the Internet for access to affordable drugs. In 2003, consumer spending on drugs procured over the Internet exceeded $3.2 billion. Unfortunately, rogue Internet sites have proliferated and rake in millions of dollars by selling unproven, counterfeit, defective or otherwise inappropriate medications to unsuspecting consumers. Even more dangerously, these sites are profiting by selling addictive and potentially deadly controlled substances to consumers without a prescription or any physician oversight. This must stop before more individuals die or become addicted to easily obtainable narcotic drugs.

The first bill I am introducing was developed in close consultation with Senator FEINSTEIN, who is an original cosponsor. In appreciation for her role in helping write this legislation it is named after a young man from her state who died from an overdose of drugs purchased over the Internet. I am also pleased to announce that Congressmen TOM DAVIS and HENRY WAXMAN are introducing this exact measure in the House today. The issue of rogue Internet sites and the availability of controlled substances on-line is indeed a bi-partisan and bi-cameral issue.

17-year-old Ryan Haight of La Mesa, CA was an honor roll student, and avid baseball card collector about to enter college. As his mom says, ''he was a good kid.'' But in May of 2000 Ryan started hanging out with a different crowd of friends. He joined an online chat forum, which advocates the safe use of drugs, and he began buying prescription drugs from the Internet.

He used the family computer late at night and a debit card his parents gave him to buy baseball cards on Ebay. You might wonder how did a healthy 17-year-old obtain prescriptions for painkillers without a medical exam. He got them from Dr. Robert Ogle an ''online'' physician based out of Texas. With the prescriptions from Dr. Ogle, Ryan was able to order hydrocodone, morphine, Valium and Oxazepam and have them shipped via US mail right to his front door.

In February 2001, Ryan overdosed on a combination of these prescription drugs. His mother found him dead on his bedroom floor.

The Ryan Haight Internet Pharmacy Consumer Protection Act counters the growing sale of prescription drugs over the Internet without a valid prescription by one, providing new disclosure standards for Internet pharmacies; two, barring Internet sites from selling or dispensing prescription drugs to consumers who are provided a prescription solely on the basis of an online questionnaire; and three, allowing State Attorneys General to go to Federal court to shut down rogue sites.

The bill is geared to counter domestic Internet pharmacies that sell drugs without a valid prescription, not international pharmacies that sell drugs at a low cost to individuals who have a valid prescription from their U.S. doctors.

Under current law, purchasing drugs online without a valid prescription can be simple: a consumer just types the name of the drug into a search engine, quickly identifies a site selling the medication, fills in a brief questionnaire, and then clicks to purchase. The risks of self-medicating, however, can include potential adverse reactions from inappropriately prescribed medications, dangerous drug interactions, use of counterfeit or tainted products, and addiction to habit-forming substances. Several of these illegitimate sites fail to provide information about contraindications, potential adverse effects, and efficacy.

Regulating these Internet pharmacies is difficult for Federal and

State authorities. State medical and pharmacy boards have expressed the concern that they do not have adequate enforcement tools to regulate practice over the Internet. It can be virtually impossible for states to identify, investigate, and prosecute these illegal pharmacies because the consumer, prescriber, and seller of a drug may be located in different States.

The Internet Pharmacy Consumer Protection Act amends the Federal Food, Drug, and Cosmetic Act to address this problem in three steps. First, it requires Internet pharmacy web sites to display information identifying the business, pharmacist, and physician associated with the website.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.

Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a State attorney general to shut down a rogue site across the country, rather than only bar sales to consumers of his or her State.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. The Act is dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The faculty named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October of 1999, Todd's family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 3000 boxes from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer's FDN Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances are imported through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. Top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were being imported on a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seizes shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine laced product, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, filling out duplicative forms, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of inspectors to screen incoming drug packages. In fact, last year at JFK, there were as many as 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, and lack of manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I have worked with Senator GREGG to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

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

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

S. 399

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 ''Internet Pharmacy Consumer Protection Act'' or the ''Ryan Haight Act''.

SEC. 2. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter 5 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503A the following section:

''SEC. 503B. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (d)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

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

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is subject to section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(e) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(f) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503B.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503B of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF STATE AND FEDERAL LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of State or Federal laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the fiscal years 2005 through 2007.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

S. 400

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 ''Prevention of Illegally Imported Controlled Substances Act of 2005'' or ''Todd Rode Act''.

SEC. 2. DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS.

Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS

''SEC. 424. (a) IN GENERAL.—A shipment of controlled substances that is imported or offered for import into the United States in violation of section 401 and whose value is less than $10,000 shall be seized and summarily forfeited to the United States.

''(b) DESTRUCTION.—Controlled substances seized under subsection (a) shall be destroyed, subject to subsection (d). Section 801(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(b)) does not authorize the delivery of the substances pursuant to the execution of a bond, and the substances may not be exported.

''(c) NOTICE.—

''(1) PROCEDURES.—The seizure and destruction of controlled substances under subsections (a) and (b) may be carried out without notice to the importer, owner, or consignee of the controlled substances involved. Appraisement of such substances is required only to the extent sufficient to document that the substances are subject to subsection (a).

''(2) GOALS.—Procedures promulgated under paragraph (1) shall be designed toward the goal of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this subsection, a substantial majority of shipments of controlled substances subject to subsection (a) are identified and seized under such paragraph and destroyed under subsection (b).

''(d) PRESENTATION OF EVIDENCE.—Controlled substances may not be destroyed under subsection (b) to the extent that the Attorney General of the United States determines that the controlled substances should be preserved as evidence or potential evidence with respect to an offense against the United States.''.

Mrs. FEINSTEIN. Mr. President, I am pleased to join Senator Coleman again this year to re-introduce the Ryan Haight Internet Pharmacy Consumer Protection Act. Our legislation will protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug diversion and abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescriptions drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps, to ensure safety and to assist regulatory authorities in shutting down ''rogue'' Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic Web site to sell prescription drugs legally, the web site would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the Web site.

In addition, if a person wants to use the Internet to purchase their prescription drugs he or she will not be prohibited from doing so under this bill but, in order to do so, must already have a prescription for the drug that is valid in the United States prior to making the Internet purchase.

Reliance on the Internet for public health purposes and the expansion of telemedicine, particularly in rural areas, make it essential that there be at the very least a minimum standard for what qualifies as an acceptable medical relationship between patients and their physicians.

According to the American Medical Association, a health care practitioner who offers a prescription for a patient he or she has never seen before, based solely on an online questionnaire, generally does not meet the appropriate medical standard of care.

Let me illustrate the situation facing our country today. If a physician's office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can do, it would look something like this: a physician opens a physical office, asks a patient to fill out a medical history questionnaire in the lobby and give his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patients' height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient's questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes it to the physician, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs everyday all across the United States. The National Association of Boards of Pharmacy estimates that there are around 500 identifiable rogue pharmacy Web sites operating on the Internet.

According to the Federation of State Medical Boards, 31 States and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say: ''no person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .''

I believe California's law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down an Internet site operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who have valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, California in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his home on February 12, 2001.

His parents found a bottle of Vicodin in his room with a label from an out-of-State pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents' consent, Ryan had been obtaining controlled substances, some from an Internet site in Oklahoma. It only took a few months before Ryan's life was ended by an overdose on a cocktail of painkillers.

Ryan's story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager's computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, oftentimes cost-saving drugs.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and State medical and pharmacy boards can ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State attorneys general the authority they need to shut down rogue Internet pharmacies operating in other states.

I urge my colleagues to support this bill.

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD):

S. 401. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President, today, Senator SPECTER and I and others introduce the Medicaid Community-Based Attendant Services and Supports Act of 2003 (MiCASSA). This legislation is needed to truly bring people with disabilities into the mainstream of society and provide equal opportunity for employment and community activities.

We anticipate that there will be some discussions of so called ''reform'' of the Medicaid system in this Congress. The Medicaid program is a critical source of services and supports for millions of Americans with disabilities. Any attempt to cap resources or decrease the availability of services under that program will meet strong opposition from myself and others.

But there is one area where Medicaid should be improved. Services should be expanded to increase access to personal attendant services. In order to work or live in their own homes, Americans with Disabilities and older Americans need access to community-based services and supports. Unfortunately, under current Federal Medicaid policy, the deck is stacked in favor of living in an institutional setting. Federal law requires that states cover nursing homes in their Medicaid programs. But there is no similar requirement for attendant services. The purpose of our bill is to level the playing field and give eligible individuals equal access to community-based services and supports they need.

The Medicaid Community Attendant Services and Supports Act will accomplish four goals.

First, the bill amends Title XIX of the Social Security Act to provide a new Medicaid plan benefit that would give individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendant services and supports.

Second, for a limited time, States would have the opportunity to receive additional funds to support community attendant services and supports and for certain administrative activities. Each State currently gets federal money for their Medicaid program based on a set percentage. This percentage is the Medicaid match rate. This bill would increase that percentage to provide some additional funding to States to help them reform their long term care systems.

Third, the bill provides States with financial assistance to support ''real choice systems change initiatives'' that include specific action steps to increase the provision of home and community based services.

Finally, the bill establishes a demonstration project to evaluate service coordination and cost sharing approaches with respect to the provision of services and supports for individuals with disabilities under the age of 65 who are dually eligible for Medicaid and Medicare.

Although some states have already recognized the benefits of home and community based services, they are unevenly distributed and only reach a small percentage of eligible individuals. Every State offers services under home and community based waiver programs, but they only serve a capped number of individuals. Some states also are now providing the personal care optional benefit through their Medicaid program, but others do not.

Those left behind are often needlessly institutionalized because they cannot access community alternatives. A person with a disability's civil right to be integrated into his or her community should not depend on his or her address. In Olmstead v. LC, the Supreme Court recognized that needless institutionalization is a form of discrimination under the Americans With Disabilities Act. We in Congress have a responsibility to help States meet their obligations under Olmstead.

This MICASSA legislation is designed to do just that and make the promise of the ADA a reality. It will help rebalance the current Medicaid long term care system, which spends a disproportionate amount on institutional services. For example, in 2003, 67 percent of long term care Medicaid dollars were spent on institutional care, compared to 33 percent community based care.

And that means that individuals do not have equal access to community based care throughout this country. An individual should not be asked to move to another state in order to avoid needless segregation. They also should not be moved away from family and friends because their only choice is an institution.

Federal Medicaid policy should reflect the consensus reached in the ADA that Americans with Disabilities should have equal opportunity to contribute to our communities and participate in our society as full citizens. That means no one has to sacrifice their full participation in society because they need help getting out of the house in the morning or assistance with personal care or some other basic service.

I applaud the President's New Freedom Initiative for People with Disabilities and believe that this legislation helps promote the goals of that initiative. I will be reintroducing the Money Follows the Person legislation that is part of the New Freedom Initiative and believe that MICASSA and Money Follows the Person complement each other. Together these two bills could substantially reform long term services in this country.

Community based attendant services and supports allow people with disabilities to lead independent lives, have jobs, and participate in the community. Some will become taxpayers, some will get an education, and some will participate in recreational and civic activities. But all will experience a chance to make their own choices and govern their own lives.

This bill will open the door to full participation by people with disabilities in our workplaces, our economy, and our American Dream, and I urge

all my colleagues to support us on this issue. I want to thank Senator SPECTER for his leadership on this issue and his commitment to improving access to home and community based services for people with disabilities. I would also like to thank Senators KENNEDY, KERRY, BIDEN, DAYTON, LANDRIEU, CORZINE, SCHUMER, LAUTENBERG, LIEBERMAN and DODD for joining me in this important initiative.

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. 401

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 ''Medicaid Community-Based Attendant Services and Supports Act of 2005''.

(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.
TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT
Sec. 101. Coverage of community-based attendant services and supports under the medicaid program.
Sec. 102. Enhanced FMAP for ongoing activities of early coverage States that enhance and promote the use of community-based attendant services and supports.
Sec. 103. Increased Federal financial participation for certain expenditures.
TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING
Sec. 201. Grants to promote systems change and capacity building.
Sec. 202. Demonstration project to enhance coordination of care under the medicare and medicaid programs for non-elderly dual eligible individuals.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Long-term services and supports provided under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) must meet the ability and life choices of individuals with disabilities and older Americans, including the choice to live in one's own home or with one's own family and to become a productive member of the community.

(2) Research on the provision of long-term services and supports under the medicaid program (conducted by and on behalf of the Department of Health and Human Services) has revealed a significant funding bias toward institutional care. Only about 33 percent of long term care funds expended under the medicaid program, and only about 11 percent of all funds expended under that program, pay for services and supports in home and community-based settings.

(3) In the case of medicaid beneficiaries who need long term care, the only long-term care service currently guaranteed by Federal law in every State is nursing home care. Only 30 States have adopted the benefit option of providing personal care services under the medicaid program. Although every State has chosen to provide certain services under home and community-based waivers, these services are unevenly available within and across States, and reach a small percentage of eligible individuals. In fiscal year 2003, only 7 States spent 50 percent or more of their medicaid long term care funds under the medicaid program on home and community-based care.

(4) The goals of the Nation properly include providing families of children with disabilities, working-age adults with disabilities, and older Americans with—

(A) a meaningful choice of receiving long-term services and supports in the most integrated setting appropriate to their needs;

(B) the greatest possible control over the services received and, therefore, their own lives and futures; and

(C) quality services that maximize independence in the home and community, including in the workplace.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reform the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to provide equal access to community-based attendant services and supports.

(2) To provide financial assistance to States as they reform their long-term care systems to provide comprehensive statewide long-term services and supports, including community-based attendant services and supports that provide consumer choice and direction, in the most integrated setting appropriate.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1902(a)(10)(D) of the Social Security Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

(1) by inserting ''(i)'' after ''(D)'';

(2) by adding ''and'' after the semicolon; and

(3) by adding at the end the following new clause:

''(ii) subject to section 1936, for the inclusion of community-based attendant services and supports for any individual who—

''(I) is eligible for medical assistance under the State plan;

''(II) with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage of such intermediate care facility is provided under the State plan); and

''(III) chooses to receive such services and supports;''.

(b) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1936 as section 1937; and

(B) by inserting after section 1935 the following:

''COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS

''SEC. 1936. (a) REQUIRED COVERAGE.—

''(1) IN GENERAL.—Not later than October 1, 2009, a State shall provide through a plan amendment for the inclusion of community-based attendant services and supports (as defined in subsection (g)(1)) for individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

''(2) ENHANCED FMAP AND ADDITIONAL FEDERAL FINANCIAL SUPPORT FOR EARLIER COVERAGE.—Notwithstanding section 1905(b), during the period that begins on October 1, 2005, and ends on September 30, 2009, in the case of a State with an approved plan amendment under this section during that period that also satisfies the requirements of subsection (c) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance in the form of community-based attendant services and supports provided to individuals described in section 1902(a)(10)(D)(ii) in accordance with this section on or after the date of the approval of such plan amendment.

''(b) DEVELOPMENT AND IMPLEMENTATION OF BENEFIT.—In order for a State plan amendment to be approved under this section, a State shall provide the Secretary with the following assurances:

''(1) ASSURANCE OF DEVELOPMENT AND IMPLEMENTATION COLLABORATION.—That the State has developed and shall implement the provision of community-based attendant services and supports under the State plan through active collaboration with—

''(A) individuals with disabilities;

''(B) elderly individuals;

''(C) representatives of such individuals; and

''(D) providers of, and advocates for, services and supports for such individuals.

''(2) ASSURANCE OF PROVISION ON A STATEWIDE BASIS AND IN MOST INTEGRATED SETTING.—That community-based attendant services and supports will be provided under the State plan to individuals described in section 1902(a)(10)(D)(ii) on a statewide basis and in a manner that provides such services and supports in the most integrated setting appropriate for each individual eligible for such services and supports.

''(3) ASSURANCE OF NONDISCRIMINATION.—That the State will provide community-based attendant services and supports to an individual described in section 1902(a)(10)(D)(ii) without regard to the individual's age, type of disability, or the form of community-based attendant services and supports that the individual requires in order to lead an independent life.

''(4) ASSURANCE OF MAINTENANCE OF EFFORT.—That the level of State expenditures for optional medical assistance that—

''(A) is described in a paragraph other than paragraphs (1) through (5), (17) and (21) of section 1905(a) or that is provided under a waiver under section 1915, section 1115, or otherwise; and

''(B) is provided to individuals with disabilities or elderly individuals for a fiscal year, shall not be less than the level of such expenditures for the fiscal year preceding the fiscal year in which the State plan amendment to provide community-based attendant services and supports in accordance with this section is approved.

''(c) REQUIREMENTS FOR ENHANCED FMAP FOR EARLY COVERAGE.—In addition to satisfying the other requirements for an approved plan amendment under this section, in order for a State to be eligible under subsection (a)(2) during the period described in that subsection for the enhanced FMAP for early coverage under subsection (a)(2), the State shall satisfy the following requirements:

''(1) SPECIFICATIONS.—With respect to a fiscal year, the State shall provide the Secretary with the following specifications regarding the provision of community-based attendant services and supports under the plan for that fiscal year:

''(A)(i) The number of individuals who are estimated to receive community-based attendant services and supports under the plan during the fiscal year.

''(ii) The number of individuals that received such services and supports during the preceding fiscal year.

''(B) The maximum number of individuals who will receive such services and supports under the plan during that fiscal year.

''(C) The procedures the State will implement to ensure that the models for delivery of such services and supports are consumer controlled (as defined in subsection (g)(2)(B)).

''(D) The procedures the State will implement to inform all potentially eligible individuals and relevant other individuals of the availability of such services and supports under this title, and of other items and services that may be provided to the individual under this title or title XVIII.

''(E) The procedures the State will implement to ensure that such services and supports are provided in accordance with the requirements of subsection (b)(1).

''(F) The procedures the State will implement to actively involve individuals with disabilities, elderly individuals, and representatives of such individuals in the design, delivery, administration, and evaluation of the provision of such services and supports under this title.

''(2) PARTICIPATION IN EVALUATIONS.—The State shall provide the Secretary with such substantive input into, and participation in, the design and conduct of data collection, analyses, and other qualitative or quantitative evaluations of the provision of community-based attendant services and supports under this section as the Secretary deems necessary in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible.

''(d) QUALITY ASSURANCE PROGRAM.—

''(1) STATE RESPONSIBILITIES.—In order for a State plan amendment to be approved under this section, a State shall establish and maintain a quality assurance program with respect to community-based attendant services and supports that provides for the following:

''(A) The State shall establish requirements, as appropriate, for agency-based and other delivery models that include—

''(i) minimum qualifications and training requirements for agency-based and other models;

''(ii) financial operating standards; and

''(iii) an appeals procedure for eligibility denials and a procedure for resolving disagreements over the terms of an individualized plan.

''(B) The State shall modify the quality assurance program, as appropriate, to maximize consumer independence and consumer control in both agency-provided and other delivery models.

''(C) The State shall provide a system that allows for the external monitoring of the quality of services and supports by entities consisting of consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others.

''(D) The State shall provide for ongoing monitoring of the health and well-being of each individual who receives community-based attendant services and supports.

''(E) The State shall require that quality assurance mechanisms appropriate for the individual be included in the individual's written plan.

''(F) The State shall establish a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports.

''(G) The State shall obtain meaningful consumer input, including consumer surveys, that measure the extent to which an individual receives the services and supports described in the individual's plan and the individual's satisfaction with such services and supports.

''(H) The State shall make available to the public the findings of the quality assurance program.

''(I) The State shall establish an ongoing public process for the development, implementation, and review of the State's quality assurance program.

''(J) The State shall develop and implement a program of sanctions for providers of community-based services and supports that violate the terms or conditions for the provision of such services and supports.

''(2) FEDERAL RESPONSIBILITIES.—

''(A) PERIODIC EVALUATIONS.—The Secretary shall conduct a periodic sample review of outcomes for individuals who receive community-based attendant services and supports under this title.

''(B) INVESTIGATIONS.—The Secretary may conduct targeted reviews and investigations upon receipt of an allegation of neglect, abuse, or exploitation of an individual receiving community-based attendant services and supports under this section.

''(C) DEVELOPMENT OF PROVIDER SANCTION GUIDELINES.—The Secretary shall develop guidelines for States to use in developing the sanctions required under paragraph (1)(J).

''(e) REPORTS.—The Secretary shall submit to Congress periodic reports on the provision of community-based attendant services and supports under this section, particularly with respect to the impact of the provision of such services and supports on—

''(1) individuals eligible for medical assistance under this title;

''(2) States; and

''(3) the Federal Government.

''(f) NO EFFECT ON ABILITY TO PROVIDE COVERAGE UNDER A WAIVER.—

''(1) IN GENERAL.—Nothing in this section shall be construed as affecting the ability of a State to provide coverage under the State plan for community-based attendant services and supports (or similar coverage) under a waiver approved under section 1915, section 1115, or otherwise.

''(2) ELIGIBILITY FOR ENHANCED MATCH.—In the case of a State that provides coverage for such services and supports under a waiver, the State shall not be eligible under subsection (a)(2) for the enhanced FMAP for the early provision of such coverage unless the State submits a plan amendment to the Secretary that meets the requirements of this section.

''(g) DEFINITIONS.—In this title:

''(1) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

''(A) IN GENERAL.—The term 'community-based attendant services and supports' means attendant services and supports furnished to an individual, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

''(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual's representative;

''(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility or an intermediate care facility for the mentally retarded;

''(iii) under an agency-provider model or other model (as defined in paragraph (2)(C)); and

''(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual's representative.

''(B) INCLUDED SERVICES AND SUPPORTS.—Such term includes—

''(i) tasks necessary to assist an individual in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions;

''(ii) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related functions;

''(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

''(iv) voluntary training on how to select, manage, and dismiss attendants.

''(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), such term does not include—

''(i) the provision of room and board for the individual;

''(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

''(iii) assistive technology devices and assistive technology services;

''(iv) durable medical equipment; or

''(v) home modifications.

''(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.—Such term may include expenditures for transitional costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

''(2) ADDITIONAL DEFINITIONS.—

''(A) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' includes eating, toileting, grooming, dressing, bathing, and transferring.

''(B) CONSUMER CONTROLLED.—The term 'consumer controlled' means a method of providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the community-based attendant services and supports, regardless of who acts as the employer of record.

''(C) DELIVERY MODELS.—

''(i) AGENCY-PROVIDER MODEL.—The term 'agency-provider model' means, with respect to the provision of community-based attendant services and supports for an individual, a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

''(ii) OTHER MODELS.—The term 'other models' means methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

''(D) HEALTH-RELATED FUNCTIONS.—The term 'health-related functions' means functions that can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

''(E) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term 'instrumental activities of daily living' includes meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone and other media, and traveling around and participating in the community.

''(F) INDIVIDUAL'S REPRESENTATIVE.—The term 'individual's representative' means a parent, a family member, a guardian, an advocate, or an authorized representative of an individual.''.

(c) CONFORMING AMENDMENTS.—

(1) MANDATORY BENEFIT.—Section 1902(a)(10)(A) of the Social Security Act (42

U.S.C. 1396a(a)(10)(A)) is amended, in the matter preceding clause (i), by striking ''(17) and (21)'' and inserting ''(17), (21), and (28)''.

(2) DEFINITION OF MEDICAL ASSISTANCE.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) by striking ''and'' at the end of paragraph (27);

(B) by redesignating paragraph (28) as paragraph (29); and

(C) by inserting after paragraph (27) the following:

''(28) community-based attendant services and supports (to the extent allowed and as defined in section 1936); and''.

(3) IMD/ICFMR REQUIREMENTS.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting ''and (28)'' after ''(24)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section (other than the amendment made by subsection (c)(1)) take effect on October 1, 2005, and apply to medical assistance provided for community-based attendant services and supports described in section 1936 of the Social Security Act furnished on or after that date.

(2) MANDATORY BENEFIT.—The amendment made by subsection (c)(1) takes effect on October 1, 2009.

SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF EARLY COVERAGE STATES THAT ENHANCE AND PROMOTE THE USE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b), is amended—

(1) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively;

(2) in subsection (a)(1), by striking ''subsection (g)(1)'' and inserting ''subsection (i)(1)'';

(3) in subsection (a)(2), by inserting '', and with respect to expenditures described in subsection (d), the Secretary shall pay the State the amount described in subsection (d)(1)'' before the period;

(4) in subsection (c)(1)(C), by striking ''subsection (g)(2)(B)'' and inserting ''subsection (i)(2)(B)''; and

(5) by inserting after subsection (c), the following:

''(d) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR EARLY COVERAGE STATES THAT MEET CERTAIN BENCHMARKS.—

''(1) IN GENERAL.—Subject to paragraph (2), for purposes of subsection (a)(2), the amount and expenditures described in this subsection are an amount equal to the Federal medical assistance percentage, increased by 10 percentage points, of the expenditures incurred by the State for the provision or conduct of the services or activities described in paragraph (3).

''(2) EXPENDITURE CRITERIA.—A State shall—

''(A) develop criteria for determining the expenditures described in paragraph (1) in collaboration with the individuals and representatives described in subsection (b)(1); and

''(B) submit such criteria for approval by the Secretary.

''(3) SERVICES AND ACTIVITIES DESCRIBED.—For purposes of paragraph (1), the services and activities described in this subparagraph are the following:

''(A) One-stop intake, referral, and institutional diversion services.

''(B) Identifying and remedying gaps and inequities in the State's current provision of long-term services, particularly those services that are provided based on such factors as age, disability type, ethnicity, income, institutional bias, or other similar factors.

''(C) Establishment of consumer participation and consumer governance mechanisms, such as cooperatives and regional service authorities, that are managed and controlled by individuals with significant disabilities who use community-based services and supports or their representatives.

''(D) Activities designed to enhance the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports.

''(E) Continuous improvement activities that are designed to ensure and enhance the health and well-being of individuals who rely on community-based attendant services and supports, particularly activities involving or initiated by consumers of such services and supports or their representatives.

''(F) Family support services to augment the efforts of families and friends to enable individuals with disabilities of all ages to live in their own homes and communities.

''(G) Health promotion and wellness services and activities.

''(H) Provider recruitment and enhancement activities, particularly such activities that encourage the development and maintenance of consumer controlled cooperatives or other small businesses or microenterprises that provide community-based attendant services and supports or related services.

''(I) Activities designed to ensure service and systems coordination.

''(J) Any other services or activities that the Secretary deems appropriate.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2005.

SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b) and amended by section 102, is amended by inserting after subsection (d) the following:

''(e) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.—

''(1) ELIGIBILITY FOR PAYMENT.—

''(A) IN GENERAL.—In the case of a State that the Secretary determines satisfies the requirements of subparagraph (B), the Secretary shall pay the State the amounts described in paragraph (2) in addition to any other payments provided for under section 1903 or this section for the provision of community-based attendant services and supports.

''(B) REQUIREMENTS.—The requirements of this subparagraph are the following:

''(i) The State has an approved plan amendment under this section.

''(ii) The State has incurred expenditures described in paragraph (2).

''(iii) The State develops and submits to the Secretary criteria to identify and select such expenditures in accordance with the requirements of paragraph (3).

''(iv) The Secretary determines that payment of the applicable percentage of such expenditures (as determined under paragraph (2)(B)) would enable the State to provide a meaningful choice of receiving community-based services and supports to individuals with disabilities and elderly individuals who would otherwise only have the option of receiving institutional care.

''(2) AMOUNTS AND EXPENDITURES DESCRIBED.—

''(A) EXPENDITURES IN EXCESS OF 150 PERCENT OF BASELINE AMOUNT.—The amounts and expenditures described in this paragraph are an amount equal to the applicable percentage, as determined by the Secretary in accordance with subparagraph (B), of the expenditures incurred by the State for the provision of community-based attendant services and supports to an individual that exceed 150 percent of the average cost of providing nursing facility services to an individual who resides in the State and is eligible for such services under this title, as determined in accordance with criteria established by the Secretary.

''(B) APPLICABLE PERCENTAGE.—The Secretary shall establish a payment scale for the expenditures described in subparagraph (A) so that the Federal financial participation for such expenditures gradually increases from 70 percent to 90 percent as such expenditures increase.

''(3) SPECIFICATION OF ORDER OF SELECTION FOR EXPENDITURES.—In order to receive the amounts described in paragraph (2), a State shall—

''(A) develop, in collaboration with the individuals and representatives described in subsection (b)(1) and pursuant to guidelines established by the Secretary, criteria to identify and select the expenditures submitted under that paragraph; and

''(B) submit such criteria to the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2005.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CAPACITY BUILDING.

(a) AUTHORITY TO AWARD GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants to eligible States to carry out the activities described in subsection (b).

(2) APPLICATION.—In order to be eligible for a grant under this section, a State shall submit to the Secretary an application in such form and manner, and that contains such information, as the Secretary may require.

(b) PERMISSIBLE ACTIVITIES.—A State that receives a grant under this section may use funds provided under the grant for any of the following activities, focusing on areas of need identified by the State and the Consumer Task Force established under subsection (c):

(1) The development and implementation of the provision of community-based attendant services and supports under section 1936 of the Social Security Act (as added by section 101(b) and amended by sections 102 and 103) through active collaboration with—

(A) individuals with disabilities;

(B) elderly individuals;

(C) representatives of such individuals; and

(D) providers of, and advocates for, services and supports for such individuals.

(2) Substantially involving individuals with significant disabilities and representatives of such individuals in jointly developing, implementing, and continually improving a mutually acceptable comprehensive, effectively working statewide plan for preventing and alleviating unnecessary institutionalization of such individuals.

(3) Engaging in system change and other activities deemed necessary to achieve any or all of the goals of such statewide plan.

(4) Identifying and remedying disparities and gaps in services to classes of individuals with disabilities and elderly individuals who are currently experiencing or who face substantial risk of unnecessary institutionalization.

(5) Building and expanding system capacity to offer quality consumer controlled community-based services and supports to individuals with disabilities and elderly individuals, including by—

(A) seeding the development and effective use of community-based attendant services

and supports cooperatives, independent living centers, small businesses, microenterprises and similar joint ventures owned and controlled by individuals with disabilities or representatives of such individuals and community-based attendant services and supports workers;

(B) enhancing the choice and control individuals with disabilities and elderly individuals exercise, including through their representatives, with respect to the personal assistance and supports they rely upon to lead independent, self-directed lives;

(C) enhancing the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports;

(D) engaging in a variety of needs assessment and data gathering;

(E) developing strategies for modifying policies, practices, and procedures that result in unnecessary institutional bias or the overmedicalization of long-term services and supports;

(F) engaging in interagency coordination and single point of entry activities;

(G) providing training and technical assistance with respect to the provision of community-based attendant services and supports;

(H) engaging in—

(i) public awareness campaigns;

(ii) facility-to-community transitional activities; and

(iii) demonstrations of new approaches; and

(I) engaging in other systems change activities necessary for developing, implementing, or evaluating a comprehensive statewide system of community-based attendant services and supports.

(6) Ensuring that the activities funded by the grant are coordinated with other efforts to increase personal attendant services and supports, including—

(A) programs funded under or amended by the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1860);

(B) grants funded under the Families of Children With Disabilities Support Act of 2000 (42 U.S.C. 15091 et seq.); and

(C) other initiatives designed to enhance the delivery of community-based services and supports to individuals with disabilities and elderly individuals.

(7) Engaging in transition partnership activities with nursing facilities and intermediate care facilities for the mentally retarded that utilize and build upon items and services provided to individuals with disabilities or elderly individuals under the medicaid program under title XIX of the Social Security Act, or by Federal, State, or local housing agencies, independent living centers, and other organizations controlled by consumers or their representatives.

(c) CONSUMER TASK FORCE.—

(1) ESTABLISHMENT AND DUTIES.—To be eligible to receive a grant under this section, each State shall establish a Consumer Task Force (referred to in this subsection as the ''Task Force'') to assist the State in the development, implementation, and evaluation of real choice systems change initiatives.

(2) APPOINTMENT.—Members of the Task Force shall be appointed by the Chief Executive Officer of the State in accordance with the requirements of paragraph (3), after the solicitation of recommendations from representatives of organizations representing a broad range of individuals with disabilities, elderly individuals, representatives of such individuals, and organizations interested in individuals with disabilities and elderly individuals.

(3) COMPOSITION.—

(A) IN GENERAL.—The Task Force shall represent a broad range of individuals with disabilities from diverse backgrounds and shall include representatives from Developmental Disabilities Councils, Mental Health Councils, State Independent Living Centers and Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports.

(B) INDIVIDUALS WITH DISABILITIES.—A majority of the members of the Task Force shall be individuals with disabilities or representatives of such individuals.

(C) LIMITATION.—The Task Force shall not include employees of any State agency providing services to individuals with disabilities other than employees of entities described in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.).

(d) ANNUAL REPORT.—

(1) STATES.—A State that receives a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant in such form and manner as the Secretary may require.

(2) SECRETARY.—The Secretary shall submit to Congress an annual report on the grants made under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2006 through 2008.

(2) AVAILABILITY.—Amounts appropriated to carry out this section shall remain available without fiscal year limitation.

SEC. 202. DEMONSTRATION PROJECT TO ENHANCE COORDINATION OF CARE UNDER THE MEDICARE AND MEDICAID PROGRAMS FOR NON-ELDERLY DUAL ELIGIBLE INDIVIDUALS.

(a) DEFINITIONS.—In this section:

(1) NON-ELDERLY DUALLY ELIGIBLE INDIVIDUAL.—The term ''non-elderly dually eligible individual'' means an individual who—

(A) has not attained age 65; and

(B) is enrolled in the medicare and medicaid programs established under titles XVIII and XIX, respectively, of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) PROJECT.—The term ''project'' means the demonstration project authorized to be conducted under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) AUTHORITY TO CONDUCT PROJECT.—The Secretary shall conduct a project under this section for the purpose of evaluating service coordination and cost-sharing approaches with respect to the provision of community-based services and supports to non-elderly dually eligible individuals.

(c) REQUIREMENTS.—

(1) NUMBER OF PARTICIPANTS.—Not more than 5 States may participate in the project.

(2) APPLICATION.—A State that desires to participate in the project shall submit an application to the Secretary, at such time and in such form and manner as the Secretary shall specify.

(3) DURATION.—The project shall be conducted for at least 5, but not more than 10 years.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—Not later than 1 year prior to the termination date of the project, the Secretary, in consultation with States participating in the project, representatives of non-elderly dually eligible individuals, and others, shall evaluate the impact and effectiveness of the project.

(2) REPORT.—The Secretary shall submit a report to Congress that contains the findings of the evaluation conducted under paragraph (1) along with recommendations regarding whether the project should be extended or expanded, and any other legislative or administrative actions that the Secretary considers appropriate as a result of the project.

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

Mr. SPECTER. Mr. President, I have sought recognition to join Senator TOM HARKIN, my colleague and distinguished ranking member of the Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, in introducing the ''Medicaid Attendant Care Services and Supports Act of 2005.'' This creative proposal addresses a glaring gap in Federal health coverage, and assists one of our Nation's most vulnerable populations, persons with disabilities.

In an effort to improve the delivery of care and the comfort of those with long-term disabilities, this vital legislation would allow for reimbursement for community-based attendant care services, in lieu of institutionalization, for eligible individuals who require such services based on functional need, without regard to the individual's age or the nature of the disability. Under this proposal, Medicaid would provide States funding to offer and allow individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendants.

The most recent data available tell us that 8.9 million individuals receive care for disabilities under the Medicaid program. The number of disabled who are currently enrolled in Medicaid and would apply for this improved benefit has been estimated at 2 million, a substantial number due largely to the preference of home and community-based care over institutional care. Currently, each State gets Federal money for their Medicaid program based on a Medicaid match rate. This bill would temporarily increase the Medicaid matching percentage providing States with additional funding to reform their long term care systems and implement this benefit.

Let me speak briefly about why such a change in Medicaid law is so desperately needed. The Supreme Court held in Olmstead v. L.C., 119 S. Ct. 2176 (1999), that the Americans with Disabilities Act, ADA, requires States, under some circumstances, to provide community-based treatment to persons with mental disabilities rather than placing them in institutions. This decision and several lower court decisions have pointed to the need for a structured Medicaid attendant-care services benefit in order to meet obligations under the ADA. Disability advocates strongly support this legislation, arguing that the lack of Medicaid community-based services options is discriminatory and unhealthful for disabled individuals. Virtually every major disability advocacy group supports this bill, including ADAPT, the Arc, the National Council on Independent Living, Paralyzed Veterans of America,

and the National Spinal Cord Injury Association.

Senator HARKIN and I recognize that such a shift in the Medicaid program is a huge undertaking—but feel that it is a vitally important one. We are introducing this legislation today in an attempt to move ahead with the consideration of crucial disability legislation and to provide a starting point for debate. The time has come for concerted action in this arena.

I urge the Congressional leadership, including the appropriate committee chairmen, to move forward in considering this legislation, and take the significant next step forward in achieving the objective of providing individuals with disabilities the freedom to live in their own communities.

By Mr. REID:

S. 404. A bill to make a technical correction relating to the land conveyance authorized by Public Law 108–67; to the Committee on Energy and Natural Resources.

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

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

S. 404

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

SECTION 1. WASHOE TRIBE OF NEVADA AND CALIFORNIA LAND CONVEYANCE.

Section 2 of Public Law 108–67 (117 Stat. 880) is amended by striking ''the parcel'' and all that follows and inserting ''a portion of Lots 3 and 4, as shown on the United States and Encumbrance Map revised January 10, 1991, for the Toiyabe National Forest, Ranger District Carson –1, located in the S½ of NW¼ and N½ of SW¼ of the SE¼ of sec. 27, T. 15N, R. 18E, Mt. Diablo Base and Meridian, comprising 24.3 acres.''.

By Mr. REID (for himself and Mr. ENSIGN):

S. 405. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today, for myself and Senator ENSIGN, to introduce legislation to establish a public heliport facility in Clark County, NY.

The purpose of this bill is simple: It would convey about a third of a square mile of public land managed by the Bureau of Land Management to Clark County for dedicated use as a heliport. The land is located just south of the Henderson city limits and east of Interstate 15.

The establishment of this heliport will help eliminate the ongoing conflict between air tour operators whose overflights of the Grand Canyon represent a classic component of the Las Vegas visitor experience and residents in the west-central and southwestern parts of the Las Vegas Valley whose every day lives are adversely affected by helicopter noise.

Local officials are committed to establishing a heliport within the Las Vegas Valley. The county and local municipalities have previously considered a site, currently in use as a go-kart track, near Interstate 15 near Henderson. The drawback of developing this site is that tours originating from this location would fly over the most sensitive parts of the Sloan Canyon National Conservation Area, with no restrictions on routing or elevation. Sloan Canyon itself—one of the richest petroglyph sites in the Mohave Desert—would be subject to regular overflights. That outcome would be entirely legal, entirely predictable and entirely regrettable.

In 2002, I worked closely with Senator ENSIGN, Congresswoman BERKLEY, Congressman GIBBONS and local advocates to protect the Sloan Canyon area and its unique cultural resources. Through our combined efforts we created the Sloan Canyon National Conservation Area and the McCullough Mountains Wilderness, I am proud of these efforts and today I offer this legislation as a further effort to protect the precious resources that we worked to safeguard in 2002.

The bill I am introducing in the Senate today, and which I offered in the 108th Congress, would not prohibit helicopter overflights of the Sloan Canyon National Conservation Area. But it does ensure that such flights steer clear of the most sensitive and special cultural resources and minimize the impact on the majestic bighorn sheep and other wildlife that live in the McCullough Mountains.

My legislation stipulates that any helicopter flight originating from and/or landing at this heliport would be required by law to fly within a set path—between 3 and 5 miles north of the southernmost boundary of the Sloan Canyon National Conservation Area—and at a minimum height—at least 500 to 1000 feet above ground level while in the NCA. Further, it requires that every such flight contribute 3 dollars per passenger to a special fund dedicated to the protection of the cultural, wilderness, and wildlife resources in Nevada.

These provisions justify conveying the land to Clark County at no cost because they provide a stable, long-term source of funding in excess of the market value of the land and because the conveyance and use are in the public interest.

It was my pleasure to introduce this bill during the last Congress. My fellow Senators, particularly the Chairman and Ranking member of the Senate Energy and Natural Resources Committee, were generous in their support of this measure, allowing us to hold a prompt hearing. I am hopeful that my distinguished colleagues will work with me to complete work on this important legislation during the current session.

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. 405

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

SECTION 1. CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the Las Vegas Valley in the State of Nevada is the fastest growing community in the United States;

(2) helicopter tour operations are conflicting with the needs of long-established residential communities in the Valley; and

(3) the designation of a public heliport in the Valley that would reduce conflicts between helicopter tour operators and residential communities is in the public interest.

(b) PURPOSE.—The purpose of this Act is to provide a suitable location for the establishment of a commercial service heliport facility to serve the Las Vegas Valley in the State of Nevada while minimizing and mitigating the impact of air tours on the Sloan Canyon National Conservation Area and North McCullough Mountains Wilderness.

(c) DEFINITIONS.—In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Sloan Canyon National Conservation Area established by section 604(a) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2010).

(2) COUNTY.—The term ''County'' means Clark County, Nevada.

(3) HELICOPTER TOUR.—

(A) IN GENERAL.—The term ''helicopter tour'' means a commercial helicopter tour operated for profit.

(B) EXCLUSION.—The term ''helicopter tour'' does not include a helicopter tour that is carried out to assist a Federal, State, or local agency.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) WILDERNESS.—The term ''Wilderness'' means the North McCullough Mountains Wilderness established by section 202(a)(13) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2000).

(d) CONVEYANCE.—As soon as practicable after the date of enactment of this Act, the Secretary shall convey to the County, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (e).

(e) DESCRIPTION OF LAND.—The parcel of land to be conveyed under subsection (d) is the parcel of approximately 229 acres of land depicted as tract A on the map entitled ''Clark County Public Heliport Facility'' and dated May 3, 2004.

(f) USE OF LAND.—

(1) IN GENERAL.—The parcel of land conveyed under subsection (d)—

(A) shall be used by the County for the operation of a heliport facility under the conditions stated in paragraphs (2) and (3); and

(B) shall not be disposed of by the County.

(2) IMPOSITION OF FEES.—

(A) IN GENERAL.—Any operator of a helicopter tour originating from or concluding at the parcel of land described in subsection (e) shall pay to the Clark County Department of Aviation a $3 conservation fee for each passenger on the helicopter tour if any portion of the helicopter tour occurs over the Conservation Area.

(B) DISPOSITION OF FUNDS.—Any amounts collected under subparagraph (A) shall be deposited in a special account in the Treasury of the United States, which shall be available to the Secretary, without further appropriation, for the management of cultural,

wildlife, and wilderness resources on public land in the State of Nevada.

(3) FLIGHT PATH.—Except for safety reasons, any helicopter tour originating or concluding at the parcel of land described in subsection (e) that flies over the Conservation Area shall not fly—

(A) over any area in the Conservation Area except the area that is between 3 and 5 miles north of the latitude of the southernmost boundary of the Conservation Area;

(B) lower than 1,000 feet over the eastern segments of the boundary of the Conservation Area; or

(C) lower than 500 feet over the western segments of the boundary of the Conservation Area.

(4) REVERSION.—If the County ceases to use any of the land described in subsection (d) for the purpose described in paragraph (1)(A) and under the conditions stated in paragraphs (2) and (3)—

(A) title to the parcel shall revert to the United States, at the option of the United States; and

(B) the County shall be responsible for any reclamation necessary to revert the parcel to the United States.

(g) ADMINISTRATIVE COSTS.—The Secretary shall require, as a condition of the conveyance under subsection (d), that the County pay the administrative costs of the conveyance, including survey costs and any other costs associated with the transfer of title.

By Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ):

S. 406. A bill to amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, as Chair of the Committee on Small Business and Entrepreneurship, I rise to introduce the Small Business Health Fairness Act of 2005. I am joined in this bipartisan effort by Senators TALENT, BOND, BYRD, DOLE, MCCAIN, HUTCHISON, COLEMAN, VITTER and MARTINEZ.

This bill creates Association Health Plans (AHPs), also called Small Business Health Plans, that give small businesses the same market based advantages and leverage that large employers and unions currently enjoy when providing health insurance to their employees.

AHPs directly address one of the most critical issues facing small businesses nationwide: the crisis small businesses face trying to provide health insurance for their employees. No other issue has been mentioned so frequently or by so many of the small businesses with whom I have met since I became Chair. While the problem has been growing for years, the outcry has built so that now it is indeed a loud chorus of small businesses desperate for relief and demanding that something be done.

Without exception, every small business person who has approached me has asked me to do something about the crushing burden from increased health insurance costs. The anecdotal accounts that I have heard have been confirmed by reports detailing how much health insurance costs are increasing across the board for all employers and especially for small businesses.

The Kaiser Family Foundation has reported that health insurance premiums increased between the spring of 2003 and spring of 2004 by 11.2 percent. This is the fourth such year of double digit increases and follows increases of 13.9 percent, 12.9 percent and 10.9 percent. In contrast, overall inflation during the last three years was 2.3 percent, 2.2 percent and 1.6 percent, wage gains for non-supervisory workers were similarly stable at 2.2 percent, 3.1 percent and 3.2 percent, respectively. This is an astonishing trend.

Not only are the costs for employers increasing, but these are now being passed onto the employees. As a result, the amount of premium employees pay for family coverage has increased almost 64 percent over the past 4 years, from $1,619 to $2,661. As I have heard from many small businesses, increases in insurance costs often mean employees do not get the benefit of salary and wage increases. Employers are rewarding employees with raises and then requiring them to pay more of their health insurance. These employers are disheartened that they are giving a raise with one hand and then turning around and taking it away with the other.

The Kaiser report also shows that this year, firms with 3 to 199 workers had premium increases of 9.1 percent and the smallest firms with 3 to 9 workers averaged 12.4 percent increases. So we see that as bad as things have gotten they're worse for the smallest businesses who are the source of as much as 75 percent of our country's new jobs. In my meetings with small businesses, they invariably report increases far greater than even these percentages, generally 30 percent, 40 percent or more.

The increase in these costs can not be dismissed as just another cost of doing business and absorbed or passed on to customers, because we know small businesses often have lower profit margins for their goods and services than other businesses. These skyrocketing costs often mean the difference between the business expanding or struggling to survive.

The high cost of health insurance can even make the difference in whether a small business creates new jobs. Small businesses have told me that the high cost of providing health care is preventing small businesses from adding more employees because they can not afford the additional health insurance expenses. In other cases, employers are turning to temporary or part time employees, again to avoid paying outrageous health insurance costs.

The result of these higher costs is that, according to the U.S. Census Bureau, in 2003 there were 45 million people without insurance, 1.4 million more than the year before and 3.8 million since 2001. This is being attributed to a decrease in the number of people covered by insurance through their employers—down 61 percent in 2004. Disturbingly, the Kaiser study says that only 52 percent of firms with 3 to 9 employees offer health benefits. Indeed, sometimes I wonder how small businesses can provide insurance at all. The fact that so many do is testimony to their recognition of how essential this is to their employees, and their determination to offer this benefit even in the face of constantly skyrocketing costs.

Last year's Kaiser report suggests that the greater increase in premiums for traditionally insured plans of 15.6 percent versus self insured plans at 12.4 percent ''may indicate that part of the rise in health care premiums is due to insurers expanding their underwriting gains.'' They also say that one of the factors driving the high rate of premium growth appears to be ''insurers' efforts to emphasize profitability in their pricing.''

What these statements really mean is that insurance companies are getting as much as they can out of their small business customers because they know these customers have no other options. Large employers, unlike small businesses, have competition for their business because they have many employees through whom to spread the risks. This makes them attractive to insurance companies who compete for their business.

Large employers also have the option of self insuring under ERISA which is only practical for employers who are large enough to afford the costs. This approach, though, offers significant savings by eliminating the administrative costs of the middle man—the insurance companies. A study by SBA's Office of Advocacy has shown that these plans have administrative costs as much as 30 percent lower.

Small businesses from my home state of Maine have made it clear that they have only one choice for their health care. Even when they band together in local purchasing pools, they are unable to attract any other insurance carriers to provide them with less expensive and more flexible options. Right after small businesses tell me how high their rates are they tell me how they have no choices and in some cases are even lucky to have anyone offering them any coverage at all.

In response to this health care crisis facing the small business community, I am introducing the Small Business Health Fairness Act of 2005.

This bill creates national Association Health Plans which allow small businesses to pool their employees together under the auspices of their bona fide associations to get the same bulk purchasing and administrative efficiencies already enjoyed by large employers and unions with their health care plans. It builds on the success of the ERISA self

insurance plans used by large employers and the Taft-Hartley plans available to union employers. These two types of plans currently provide health benefits for 72 million people, more than half of the 130 million total people who get their health insurance through their employer.

It is ludicrous that we have a two tiered health insurance system in this country where one group of employers—large ones and those who are union employers—get preferential treatment over those who create over 75 percent of the new jobs. I am at a loss to understand why small businesses should be denied the same advantages that these other employers already have. This is a matter of basic fairness.

AHPs will be able to offer less expensive plans, and also greater flexibility because they will be exempt from the myriad state benefit regulations. Associations will be able to design their plans to meet the needs of their members and their employees. By administering one national plan, it will further reduce the administrative costs instead of trying to administer a plan subject to the mandates of each state.

Even though the benefit mandates will not be in effect, associations will need to design their plans so that enough members participate in them to attract the necessary employees to make them work. This means that they will naturally provide a full range of benefits similar to what many states currently require. In many cases, the plans offered by large employers and unions, which are also exempt from the state benefit mandates, are the most generous plans available. People will often stay in those jobs specifically to keep their health care coverage.

The bill would also provide extensive new protections to ensure that the health care coverage is there when employees need it. Associations sponsoring these plans would need to be established for at least three years for purposes other than providing health insurance—this is intended to prevent the current epidemic of fraud and abuse that is occurring through sham associations who take money from unsuspecting small businesses and then cease to exist when someone files a claim.

In addition, self-funded AHPs would be required to have sufficient funds in reserve, specific stop-loss insurances, indemnification insurance, and other funding and certification requirements to make sure the insurance coverage would be available when needed. None of these requirements apply to any of the plans currently regulated by the Department of Labor, either the large employer plans under the Employee Retirement Income Security Act (ERISA), or the union plans under the Taft-Hartley Act.

Yet, the opponents of this bill have mis-characterized it in ways that make it sound like this would be the worst thing in the world for small businesses.

They have said that this bill would lead to ''cherry picking''—where AHPs would only take young healthy people. There is language in the bill which explicitly states that an association which offers a plan must offer it to all of their members, and a member who participates in the plan must offer the plan to every employee. Violation of these requirements is subject to enforcement by the Department of Labor under ERISA.

They have said that the Department of Labor would not be able to handle their responsibilities under this bill. The Department of Labor is already overseeing 275,000 similarly structured plans. We do not hear employees complain about these plans, or that they are failing and leaving subscribers without coverage. The additional plans from AHPs would not add that much of a burden to their operations and the Secretary of Labor has testified before the Small Business Committee that sufficient resources would be available to make sure the Department fulfilled its obligations.

Opponents have claimed that AHPs would not be subject to any solvency protections or other insurance regulations. This is flat out not true. The bill specifies detailed solvency protections that self funded AHPs would have to implement which are far beyond anything current self funded large employer plans have to implement. In fact those plans are not required to have any solvency protections. Insurance companies that would provide the coverage for fully insured AHPs would continue to be subject to state solvency requirements, as well as other state protections in the same way as they are now.

Opponents of this bill are basically saying that small businesses do not need more options and that they should be satisfied with the few that they have. They want to preserve the status quo which does nothing for small businesses. This bill would create competition in the small group market where there currently is none. If we expect our small employers to provide health insurance to their employees, we must pass AHP legislation to give them the same advantages enjoyed by large employers and union employers.

Giving small businesses better and more affordable options for their health care will also have an impact on the larger problem of the uninsured. The latest Census Bureau figures indicate that in 2003 approximately 45 million people had no health insurance. We also know that about 60 percent of these uninsured work for a small business, or are in a family of someone who works for a small business. The CBO has estimated that 600,000 people would go from being uninsured to being insured if AHPs were available. There are other studies that show this number could be more like 4.5 million and possibly as high as 8.5 million. What is clear is that giving small businesses AHPs as an option will mean that more of them who currently do not offer health insurance will be able to provide this benefit to their employees and their families.

This bill is supported by a large coalition of small business interests with approximately 12 million employers who represent about 80 million employees. President Bush included AHPs in the State of the Union and has made this part of his agenda for providing more health care options and helping small businesses. During the campaign he called for passage of this bill on almost a daily basis. And he continues to call for its passage. Our Majority Leader has indicated his support for taking up this bill. The House has passed the bill several times with strong bipartisan support and will pass it again this year. Significantly, the Senate Task Force on the Uninsured included AHPs among its recommendation for increasing coverage. The time has come to get this bill through the Senate. We must pass AHPs this session.

In the time I have been Chair of the Small Business Committee, I have come to understand even more that the entrepreneurial spirit burns bright throughout our nation. There are millions of people who seek a better life and personal satisfaction through starting and running small businesses. These folks are not looking for a handout, or preferential treatment. They are merely looking to us to recognize the absolutely essential role they play in our economy and to be treated accordingly and fairly. If we want more jobs, and better family lives, we must give small businesses the support they are seeking.

While this bill has passed the House with bipartisan support on several occasions, it has not been considered in the Senate. I intend to change that. I will work with Senator ENZI as the new chair of the HELP Committee, Senate Leaders, and others to find ways and develop enhancements to get this bill through the Senate. If there are changes that can be made, I am willing to consider them.

I believe we will see movement on this issue this Congress, and I look forward to working with my colleagues to bring relief and assistance to our nation's small businesses.

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. 406

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Small Business Health Fairness Act of 2005''.

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

Sec. 1. Short title and table of contents.
Sec. 2. Rules governing association health plans.

Sec. 3. Clarification of treatment of single employer arrangements.
Sec. 4. Enforcement provisions relating to association health plans.
Sec. 5. Cooperation between Federal and State authorities.
Sec. 6. Effective date and transitional and other rules.

SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

"PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

"SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3) shall be deemed to be a sponsor described in this subsection.

"SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

''(b) STANDARDS.—Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify such plan as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met (or, upon the date on which the plan is to commence operations, will be met) with respect to the plan.

''(c) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(d) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of association health plans under this part.

''(e) CLASS CERTIFICATION FOR FULLY INSURED PLANS.—The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority shall provide for the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

''(f) CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—An association health plan which offers one or more benefit options which do not consist of health insurance coverage may be certified under this part only if such plan consists of any of the following:

''(1) A plan which offered such coverage on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(2) A plan under which the sponsor does not restrict membership to one or more trades and businesses or industries and whose eligible participating employers represent a broad cross-section of trades and businesses or industries.

''(3) A plan whose eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfecting and pest control; financial services; fishing; foodservice establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; medical laboratories; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or business or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

"SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to an association health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

"SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor;

''(B) the sponsor; or

''(C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the beneficiaries of individuals described in subparagraph (A).

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

''(1) the affiliated member was an affiliated member on the date of certification under this part; or

''(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member has not maintained or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

''(c) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

''(i) setting contribution rates based on the claims experience of the plan; or

''(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act), subject to the requirements of section 702(b) relating to contribution rates.

''(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

''(4) MARKETING REQUIREMENTS.—

''(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small employers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

''SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if—

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

''(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess /stop loss insurance provided with respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess /stop loss insurance, and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS /STOP LOSS INSURANCE.—The applicable authority may

provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess /stop loss insurance provided with respect to such plan or plans.

''(e) ALTERNATIVE MEANS OF COMPLIANCE.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to fully meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may be in the form of a contract of indemnification, lien, bonding, insurance, letter of credit, recourse under applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

''(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

''(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

''(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

''(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

''(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS /STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be—

''(A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or

''(B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary)

the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the Secretary) to maintain in force excess /stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—There is established on the books of the Treasury a fund to be known as the 'Association Health Plan Fund'. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund under subparagraph (B).

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS /STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS /STOP LOSS INSURANCE.—The term 'aggregate excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(2) SPECIFIC EXCESS /STOP LOSS INSURANCE.—The term 'specific excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract in connection with such covered individual;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

''(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to satisfy by reason of a termination pursuant to section 809(b) (relating to mandatory termination);

''(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

''(3) which allows for payment of premiums by any third party on behalf of the insured plan.

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

''(1) IN GENERAL.—Within 90 days after the date of the enactment of the Small Business Health Fairness Act of 2005, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among persons invited to membership on the Working Group at least one of each of the following:

''(A) A representative of the National Association of Insurance Commissioners.

''(B) A representative of the American Academy of Actuaries.

''(C) A representative of the State governments, or their interests.

''(D) A representative of existing self-insured arrangements, or their interests.

''(E) A representative of associations of the type referred to in section 801(b)(1), or their interests.

''(F) A representative of multiemployer plans that are group health plans, or their interests.

"SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

''(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a

qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

''(C) CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.—A statement of actuarial opinion signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subparagraph (B). The income statement shall identify separately the plan's administrative expenses and claims.

''(D) COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.—A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with the operation of the plan.

''(E) OTHER INFORMATION.—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this subsection, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

"SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

"SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

''(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess /stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806, the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recovering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

"SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

''(b) POWERS AS TRUSTEE.—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

''(1) to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

''(2) to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

''(3) to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

''(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

''(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

''(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

''(c) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment as trustee, the Secretary shall give notice of such appointment to—

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

''(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

''(d) ADDITIONAL DUTIES.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall have the duties of a fiduciary for purposes of this title.

''(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

''(f) JURISDICTION OF COURT.—

''(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

''(2) VENUE.—An action under this section may be brought in the judicial district where the sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

''(g) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel as may be necessary in connection with the Secretary's service as trustee under this section.

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Fairness Act of 2005.

''(b) CONTRIBUTION TAX.—For purposes of this section, the term 'contribution tax' imposed by a State on an association health plan means any tax imposed by such State if—

''(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the plan from participating employers located in such State or from such individuals;

''(2) the rate of such tax does not exceed the rate of any tax imposed by such State on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

''(3) such tax is otherwise nondiscriminatory; and

''(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess /stop loss insurance (as defined in section 806(g)(1)), specific excess /stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1).

''(4) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with an association health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor,

''(B) in the case of a sponsor with members which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

''(C) in the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, a person eligible to be a member of the sponsor or one of its member associations.

''(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

''(b) RULES OF CONSTRUCTION.—

''(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'participating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended—

(A) in clause (i)(II), by striking ''and'' at the end;

(B) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(C) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(4) Section 514(e) of such Act (as redesignated by paragraph (2)(C)) is amended—

(A) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of the Small Business Health Fairness Act of 2005 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(d) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(e) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(f) REPORT TO CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2010, the Secretary of Labor shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(g) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''801. Association health plans.
''802. Certification of association health plans.
''803. Requirements relating to sponsors and boards of trustees.
''804. Participation and coverage requirements.
''805. Other requirements relating to plan documents, contribution rates, and benefit options.
''806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
''807. Requirements for application and related requirements.
''808. Notice requirements for voluntary termination.
''809. Corrective actions and mandatory termination.
''810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
''811. State assessment authority.
''812. Definitions and rules of construction.''.

SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.

Section 3(40)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of 2 or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of 2 or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.

(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''Sec. 501.''; and

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

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which

are reached pursuant to labor-management negotiations under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i), shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(b) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

''(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification, a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

''(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

''(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

''(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

''(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.''.

(c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

''(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

''(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.''.

SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect one year after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this Act within one year after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

Mr. BOND. Mr. President, with approximately 45 million uninsured Americans, expanding access to quality, affordable health care should be a top priority for the Senate. We hear about the cost explosion that insurance companies are imposing on small businesses and how small business owners are now finding it virtually impossible to provide the health insurance coverage that they, as well as their employees, need. No one is harder hit by large premium increases than small business—studies indicate more than 60 percent of these uninsured Americans either work for a small business or are dependent upon someone who does. As health care costs skyrocket and place more and more small business employees in jeopardy of losing their health benefits, it becomes more important that Congress turn its attention to the uninsured and act in a swift and bipartisan manner to address this problem.

Today we are here to offer hope to the millions of uninsured. Today we are here to talk about a solution that can help millions of small business employees access the same type of health care that their counterparts in large corporations and unions already enjoy.

The solution to this problem is to allow small businesses across the country to pool together and access health insurance through their membership with a bona fide trade or professional organization. This will provide small businesses the same opportunities as other large insurance purchasers. These Association Health Plans, AHPs, would reduce costs through greater economies of scale to spread costs and risk, increase group bargaining power with large insurance companies, and generate more insurance options for small businesses.

AHPs are not a new idea. They have been talked about, bandied about, argued about and compromised about for almost a decade. And during that period, what was once thought to be a manageable problem—became the crisis that we have today. Had we passed AHP legislation, we would not be seeing the problems we see today for small business.

The principle underpinning AHPs is simple. This is the same principle that makes it cheaper to buy your soda by the case instead of by individual cans. Bulk purchasing is why large companies and unions can get better rates for their employees than small businesses and it is about time that we bring Fortune 500 style health benefits to the Nation's Main Street small businesses and their employees.

In the words of President Bush, ''It makes no sense in America, to isolate small businesses as little health care islands unto themselves.'' AHPs will mean more coverage for the employees of these companies, especially their families and children.

It is time that we take control and find a way to curtail the explosive costs of health care. Small businesses deserve a chance to channel these funds toward other needs, such as expanding and creating more jobs for the

economy. Association Health Plans will level the playing field and break down the barriers that prevent small businesses from providing health insurance.

I commend Senator SNOWE for taking the lead on this critical issue and for using her position as chairwomen of the Small Business Committee to advance the number one health care priority of the small business community. With the support of President Bush, the Department of Labor, the Small Business Administration, and a broad and diverse coalition of over 100 groups, I hope that this bill will more quickly.

For the sake of small businesses throughout this country, their employees, and their families we must pass AHP legislation. We must bring fortune 500 health care to small business. The time to act is now. I thank Senators SNOWE and TALENT for their leadership, dedication and commitment on behalf of small business, and I look forward to working with them to pass Association Health Plans legislation in the Senate.

By Mr. DEWINE (for himself, Mr. DODD, Mr. HAGEL, Mr. WARNER, Mr. CORZINE, Mr. LIEBERMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. JEFFORDS, and Mr. SALAZAR):

S. 408. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today, along with my good friend and colleague Senator DODD, to reintroduce the Sober Truth on Preventing Underage Drinking Act—also known as the STOP Underage Drinking Act. I thank Senator DODD for his commitment to this issue, as well as our colleagues on the House side—Representatives ROYBAL-ALLARD, WOLF, OSBORNE, DELAURO, and WAMP for working so diligently with us to draft this bill. It is a good bill—a carefully crafted, bipartisan, bi-cameral piece of legislation.

I also want to thank the additional Senate co-sponsors of this legislation—Senators HAGEL, WARNER, LIEBERMAN, LAUTENBERG, LANDRIEU, CORZINE, JEFFORDS, and SALAZAR. I thank them for their support. They know that underage drinking is a serious, and often deadly, problem for our Nation's children and youth and that we have to do something about it.

In September 2003, I chaired a HELP Subcommittee hearing about underage drinking. As we discussed at that hearing, it is well known that underage drinking is a significant problem for youth in this country. We've known that for a very long time.

We know that underage drinking often contributes to the four leading causes of deaths among 15 to 20 year olds—that 69 percent of youths who died in alcohol-related traffic fatalities in the year 2000 involved young drinking drivers and that in 1999, nearly 40 percent of people under the age of 21 who were victims of drownings, burns, and falls tested positive for alcohol. We also know that alcohol has been reported to be involved in 36 percent of homicides, 12 percent of male suicides, and 8 percent of female suicides involving people under 21.

How did we get here. These statistics are frightening. Too many American kids are drinking regularly, and they are drinking in quantities that can be of great, long-term harm. As a nation, we clearly haven't done enough to address this problem. We haven't done enough to acknowledge how prevalent and widespread teenage drinking is in this country. We haven't done enough to let parents know that they, too, are a part of this problem and can be a part of the solution.

We talk about drugs and the dangers of drug use, as we should, but the reality is that we, as a society, have become complacent about the problem of underage drinking. This has to change. The culture has to change.

One way to begin changing this culture is with the STOP Underage Drinking Act. Our legislation has four major areas of policy development:

First, there is a federal coordination and reporting provision. This title would create an Interagency Coordinating Committee to coordinate the efforts and expertise of various federal agencies to combat underage drinking. It would be chaired by the Secretary of Health and Human Services and would include other agencies and departments, such as the Department of Education, the Office of Juvenile Justice and Delinquency Prevention, and the Federal Trade Commission. This title also would mandate an annual report to Congress from the Interagency Committee on their efforts to combat underage drinking, as well as an annual report card on State efforts to combat the problem. Two million dollars annually would be appropriated under this section.

Second, the bill contains an authorization for an adult-oriented national media campaign against underage drinking. This title would provide $1 million in fiscal years 2006 and 2007 to authorize a national media campaign for which the Ad Council has received start up funding. The campaign is expected to launch in August of this year.

Third, the bill would support new intervention programs to prevent underage drinking. This section of the bill would provide $5 million for enhancement grants to the Drug Free Communities program to be directed at the problem of underage drinking. This title also would create a program which would provide competitive grants to states, non-profit entities, and institutions of higher education to create state-wide coalitions to prevent underage drinking. These grants will work to change the culture of underage drinking at our Nation's institutions of higher education and their surrounding communities. This program would be funded at $5 million annually, as well.

Finally, our bill contains a section devoted to research. This title would provide $6 million for increased federal research and data collection on underage drinking, including reporting on the types and brands of alcohol that kids use and the short-term and long-term impacts of underage drinking upon adolescent brain development.

Again, I thank Senator DODD for working with me on this issue here in the Senate, and I look forward to continuing to work with my colleagues in the House and Senate to pass this very important bill.

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. 408

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 ''Sober Truth on Preventing Underage Drinking Act'', or the ''STOP Underage Drinking Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—SENSE OF CONGRESS

Sec. 101. Sense of Congress.

TITLE II—INTERAGENCY COORDINATING COMMITTEE; ANNUAL REPORT CARD

Sec. 201. Establishment of interagency coordinating committee to prevent underage drinking.
Sec. 202. Annual report card.
Sec. 203. Authorization of appropriations.

TITLE III—NATIONAL MEDIA CAMPAIGN

Sec. 301. National media campaign to prevent underage drinking.

TITLE IV—INTERVENTIONS

Sec. 401. Community-based coalition enhancement grants to prevent underage drinking.
Sec. 402. Grants directed at reducing higher-education alcohol abuse.

TITLE V—ADDITIONAL RESEARCH

Sec. 501. Additional research on underage drinking.
Sec. 502. Authorization of appropriations.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Drinking alcohol under the age of 21 is illegal in each of the 50 States and the District of Columbia. Enforcement of current laws and regulations in States and communities, such as minimum age drinking laws, zero tolerance laws, and laws and regulations which restrict availability of alcohol, must supplement other efforts to reduce underage drinking.

(2) Data collected annually by the Department of Health and Human Services shows that alcohol is the most heavily used drug by children in the United States, and that—

(A) more youths consume alcoholic beverages than use tobacco products or illegal drugs;

(B) by the end of the eighth grade, 45.6 percent of children have engaged in alcohol use,

and by the end of high school, 76.6 percent have done so; and

(C) the annual societal cost of underage drinking is estimated at $53 to $58 billion.

(3) Data collected by the Department of Health and Human Services and the Department of Transportation indicate that alcohol use by youth has many negative consequences, such as immediate risk from acute impairment; traffic fatalities; violence; suicide; and unprotected sex.

(4) Research confirms that the harm caused by underage drinking lasts beyond the underage years. Compared to persons who wait until age 21 or older to start drinking, those who start to drink before age 14 are, as adults, four times more likely to become alcohol dependent; seven times more likely to be in a motor vehicle crash because of drinking; and more likely to suffer mental and physical damage from alcohol abuse.

(5) Alcohol abuse creates long-term risk developmentally and is associated with negative physical impacts on the brain.

(6) Research indicates that adults greatly underestimate the extent of alcohol use by youths, its negative consequences, and its use by their own children. The IOM report concluded that underage drinking cannot be successfully addressed by focusing on youth alone. Ultimately, adults are responsible for young people obtaining alcohol by selling, providing, or otherwise making it available to them. Parents are the most important channel of influence on their children's underage drinking, according to the IOM report, which also recommends a national adult-oriented media campaign.

(7) Research shows that public service health messages, in combination with community-based efforts, can reduce health-damaging behavior. The Department of Health and Human Services and the Ad Council have undertaken a public health campaign targeted at parents to combat underage alcohol consumption. The Ad Council estimates that, for a typical public health campaign, it receives an average of $28 million per year in free media through its 28,000 media outlets nationwide.

(8) A significant percentage of the total alcohol consumption in the United States each year is by underage youth. The Substance Abuse and Mental Health Services Administration reports that the percentage is over 11 percent.

(9) Youth are exposed to a significant amount of alcohol advertising through a variety of media. Some studies indicate that youth awareness of alcohol advertising correlates to their drinking behavior and beliefs.

(10) According to the Center on Alcohol Marketing and Youth, in 2002, the alcoholic beverage industry spent $927,900,000 on product advertising on television, and $24,700,000 on television advertising designed to promote the responsible use of alcohol. For every one television ad discouraging underage alcohol use, there were 215 product ads.

(11) Alcohol use occurs in 76 percent of movies rated G or PG and 97 percent of movies rated PG-13. The Federal Trade Commission has recommended restricting paid alcohol beverage promotional placements to films rated R or NC-17.

(12) Youth spend 9 to 11 hours per week listening to music, and 17 percent of all lyrics contain alcohol references; 30 percent of those songs include brand-name mentions.

(13) Studies show that adolescents watch 20 to 27 hours of television each week, and 71 percent of prime-time television episodes depict alcohol use and 77 percent contain some reference to alcohol.

(14) College and university presidents have cited alcohol abuse as the number one health problem on college and university campuses.

(15) According to the National Institute on Alcohol Abuse and Alcoholism, two of five college students are binge drinkers; 1,400 college students die each year from alcohol-related injuries, a majority of which involve motor vehicle crashes; more than 70,000 students are victims of alcohol-related sexual assault; and 500,000 students are injured under the influence of alcohol each year.

(16) According to the Center on Alcohol Marketing and Youth, in 2002, alcohol producers spent a total of $58 million to place 6,251 commercials in college sports programs, and spent $27.7 million advertising during the NCAA men's basketball tournament, which had as many alcohol ads (939) as the Super Bowl, World Series, College Bowl Games and the National Football League's Monday Night Football broadcasts combined (925).

(17) The IOM report recommended that colleges and universities ban alcohol advertising and promotion on campus in order to demonstrate their commitment to discouraging alcohol use among underage students.

(18) According to the Government Accountability Office (''GAO''), the Federal Government spends $1.8 billion annually to combat youth drug use and $71 million to prevent underage alcohol use.

(19) The GAO concluded that there is a lack of reporting about how these funds are specifically expended, inadequate collaboration among the agencies, and no central coordinating group or office to oversee how the funds are expended or to determine the effectiveness of these efforts.

(20) There are at least three major, annual, government funded national surveys in the United States that include underage drinking data: the National Household Survey on Drug Use and Health, Monitoring the Future, and the Youth Risk Behavior Survey. These surveys do not use common indicators to allow for direct comparison of youth alcohol consumption patterns. Analyses of recent years' data do, however, show similar results.

(21) Research shows that school-based and community-based interventions can reduce underage drinking and associated problems, and that positive outcomes can be achieved by combining environmental and institutional change with theory-based health education—a comprehensive, community-based approach.

(22) Studies show that a minority of youth who need treatment for their alcohol problems receive such services. Further, insufficient information exists to properly assist clinicians and other providers in their youth treatment efforts.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term ''binge drinking'' means a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 gm percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours.

(2) The term ''heavy drinking'' means five or more drinks on the same occasion in the past 30 days.

(3) The term ''frequent heavy drinking'' means five or more drinks on at least five occasions in the last 30 days.

(4) The term ''alcoholic beverage industry'' means the brewers, vintners, distillers, importers, distributors, and retail outlets that sell and serve beer, wine, and distilled spirits.

(5) The term ''school-based prevention'' means programs, which are institutionalized, and run by staff members or school-designated persons or organizations in every grade of school, kindergarten through 12th grade.

(6) The term ''youth'' means persons under the age of 21.

(7) The term ''IOM report'' means the report released in September 2003 by the National Research Council, Institute of Medicine, and entitled ''Reducing Underage Drinking: A Collective Responsibility''.

TITLE I—SENSE OF CONGRESS

SEC. 101. SENSE OF CONGRESS.

It is the sense of the Congress that:

(1) A multi-faceted effort is needed to more successfully address the problem of underage drinking in the United States. A coordinated approach to prevention, intervention, treatment, and research is key to making progress. This Act recognizes the need for a focused national effort, and addresses particulars of the Federal portion of that effort.

(2) States and communities, including colleges and universities, are encouraged to adopt comprehensive prevention approaches, including—

(A) evidence-based screening, programs and curricula;

(B) brief intervention strategies;

(C) consistent policy enforcement; and

(D) environmental changes that limit underage access to alcohol.

(3) Public health and consumer groups have played an important role in drawing the Nation's attention to the health crisis of underage drinking. Working at the Federal, State, and community levels, and motivated by grass-roots support, they have initiated effective prevention programs that have made significant progress in the battle against underage drinking.

(4) The alcohol beverage industry has developed and paid for national education and awareness messages on illegal underage drinking directed to parents as well as consumers generally. According to the industry, it has also supported the training of more than 1.6 million retail employees, community-based prevention programs, point of sale education, and enforcement programs. All of these efforts are aimed at further reducing illegal underage drinking and preventing sales of alcohol to persons under the age of 21. All sectors of the alcohol beverage industry have also voluntarily committed to placing advertisements in broadcast and magazines where at least 70 percent of the audiences are expected to be 21 years of age or older. The industry should continue to monitor and tailor its advertising practices to further limit underage exposure, including the use of independent third party review. The industry should continue and expand evidence-based efforts to prevent underage drinking.

(5) Public health and consumer groups, in collaboration with the alcohol beverage industry, should explore opportunities to reduce underage drinking.

(6) The entertainment industries have a powerful impact on youth, and they should use rating systems and marketing codes to reduce the likelihood that underage audiences will be exposed to movies, recordings, or television programs with unsuitable alcohol content, even if adults are expected to predominate in the viewing or listening audiences.

(7) Objective scientific evidence and data should be generated and made available to the general public and policy makers at the local, state, and national levels to help them make informed decisions, implement judicious policies, and monitor progress in preventing childhood/adolescent alcohol use.

(8) The National Collegiate Athletic Association, its member colleges and universities, and athletic conferences should affirm a commitment to a policy of discouraging alcohol use among underage students and

other young fans by ending all alcohol advertising during radio and television broadcasts of collegiate sporting events.

TITLE II—INTERAGENCY COORDINATING COMMITTEE; ANNUAL REPORT CARD

SEC. 201. ESTABLISHMENT OF INTERAGENCY COORDINATING COMMITTEE TO PREVENT UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services, in collaboration with the Federal officials specified in subsection (b), shall establish an interagency coordinating committee focusing on underage drinking (referred to in this section as the ''Committee'').

(b) OTHER AGENCIES.—The officials referred to in subsection (a) are the Secretary of Education, the Attorney General, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Defense, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Director of the National Institute on Alcohol Abuse and Alcoholism, the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the National Institute on Drug Abuse, the Assistant Secretary for Children and Families, the Director of the Office of National Drug Control Policy, the Administrator of the National Highway Traffic Safety Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Chairman of the Federal Trade Commission, and such other Federal officials as the Secretary of Health and Human Services determines to be appropriate.

(c) CHAIR.—The Secretary of Health and Human Services shall serve as the chair of the Committee.

(d) DUTIES.—The Committee shall guide policy and program development across the Federal Government with respect to underage drinking.

(e) CONSULTATIONS.—The Committee shall actively seek the input of and shall consult with all appropriate and interested parties, including public health research and interest groups, foundations, and alcohol beverage industry trade associations and companies.

(f) ANNUAL REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, on behalf of the Committee, shall annually submit to the Congress a report that summarizes—

(A) all programs and policies of Federal agencies designed to prevent underage drinking;

(B) the extent of progress in reducing underage drinking nationally;

(C) data that the Secretary shall collect with respect to the information specified in paragraph (2); and

(D) such other information regarding underage drinking as the Secretary determines to be appropriate.

(2) CERTAIN INFORMATION.—The report under paragraph (1) shall include information on the following:

(A) Patterns and consequences of underage drinking.

(B) Measures of the availability of alcohol to underage populations and the exposure of this population to messages regarding alcohol in advertising and the entertainment media.

(C) Surveillance data, including information on the onset and prevalence of underage drinking.

(D) Any additional findings resulting from research conducted or supported under section 501.

(E) Evidence-based best practices to both prevent underage drinking and provide treatment services to those youth who need them.

SEC. 202. ANNUAL REPORT CARD.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall, with input and collaboration from other appropriate Federal agencies, States, Indian tribes, territories, and public health, consumer, and alcohol beverage industry groups, annually issue a ''report card'' to accurately rate the performance of each state in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking. The report card shall include ratings on outcome measures for categories related to the prevalence of underage drinking in each State.

(b) OUTCOME MEASURES.—

(1) IN GENERAL.—The Secretary shall develop, in consultation with the Committee established in section 201, a set of outcome measures to be used in preparing the report card.

(2) CATEGORIES.—In developing the outcome measures, the Secretary shall develop measures for categories related to the following:

(A) The degree of strictness of the minimum drinking age laws and dram shop liability statutes in each State.

(B) The number of compliance checks within alcohol retail outlets conducted measured against the number of total alcohol retail outlets in each State, and the results of such checks.

(C) Whether or not the State mandates or otherwise provides training on the proper selling and serving of alcohol for all sellers and servers of alcohol as a condition of employment.

(D) Whether or not the State has policies and regulations with regard to Internet sales and home delivery of alcoholic beverages.

(E) The number of adults in the State targeted by State programs to deter adults from purchasing alcohol for minors.

(F) The number of youths, parents, and caregivers who are targeted by State programs designed to deter underage drinking.

(G) Whether or not the State has enacted graduated drivers licenses and the extent of those provisions.

(H) The amount that the State invests, per youth capita, on the prevention of underage drinking, further broken down by the amount spent on—

(i) compliance check programs in retail outlets, including providing technology to prevent and detect the use of false identification by minors to make alcohol purchases;

(ii) checkpoints;

(iii) community-based, school-based, and higher-education-based programs to prevent underage drinking;

(iv) underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and

(v) other State efforts or programs as deemed appropriate.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $2,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE III—NATIONAL MEDIA CAMPAIGN

SEC. 301. NATIONAL MEDIA CAMPAIGN TO PREVENT UNDERAGE DRINKING.

(a) SCOPE OF THE CAMPAIGN.—The Secretary of Health and Human Services shall continue to fund and oversee the production, broadcasting, and evaluation of the Ad Council's national adult-oriented media public service campaign.

(b) REPORT.—The Secretary of Health and Human Services shall provide a report to the Congress annually detailing the production, broadcasting, and evaluation of the campaign referred to in subsection (a), and to detail in the report the effectiveness of the campaign in reducing underage drinking, the need for and likely effectiveness of an expanded adult-oriented media campaign, and the feasibility and the likely effectiveness of a national youth-focused media campaign to combat underage drinking.

(c) CONSULTATION REQUIREMENT.—In carrying out the media campaign, the Secretary of Health and Human Services shall direct the Ad Council to consult with interested parties including both the alcohol beverage industry and public health and consumer groups. The progress of this consultative process is to be covered in the report under subsection (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $1,000,000 for each of the fiscal years 2006 and 2007, and such sums as may be necessary for each subsequent fiscal year.

TITLE IV—INTERVENTIONS

SEC. 401. COMMUNITY-BASED COALITION ENHANCEMENT GRANTS TO PREVENT UNDERAGE DRINKING.

(a) AUTHORIZATION OF PROGRAM.—The Director of the Office of National Drug Control Policy shall award ''enhancement grants'' to eligible entities to design, test, evaluate and disseminate strategies to maximize the effectiveness of community-wide approaches to preventing and reducing underage drinking.

(b) PURPOSES.—The purposes of this section are, in conjunction with the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.), to—

(1) reduce alcohol use among youth in communities throughout the United States;

(2) strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments;

(3) enhance intergovernmental cooperation and coordination on the issue of alcohol use among youth;

(4) serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community that first demonstrates a long-term commitment to reducing alcohol use among youth;

(5) disseminate to communities timely information regarding state-of-the-art practices and initiatives that have proven to be effective in reducing alcohol use among youth; and

(6) enhance, not supplant, local community initiatives for reducing alcohol use among youth.

(c) APPLICATION.—An eligible entity desiring an enhancement grant under this section shall submit an application to the Director at such time, and in such manner, and accompanied by such information as the Director may require. Each application shall include—

(1) a complete description of the entity's current underage alcohol use prevention initiatives and how the grant will appropriately enhance the focus on underage drinking issues; or

(2) a complete description of the entity's current initiatives, and how it will use this grant to enhance those initiatives by adding a focus on underage drinking prevention.

(d) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (c). Grants under this section shall not exceed $50,000 per year, and may be awarded for each year the entity is funded as per subsection (f).

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this section shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section, the term ''eligible entity'' means an organization that is currently eligible to receive grant funds under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

(g) ADMINISTRATIVE EXPENSES.—Not more than 6 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

SEC. 402. GRANTS DIRECTED AT REDUCING HIGHER-EDUCATION ALCOHOL ABUSE.

(a) AUTHORIZATION OF PROGRAM.—The Secretary shall award grants to eligible entities to enable the entities to reduce the rate of underage alcohol use and binge drinking among students at institutions of higher education.

(b) APPLICATIONS.—An eligible entity that desires to receive a grant under this Act shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall include—

(1) a description of how the eligible entity will work to enhance an existing, or where none exists to build a, statewide coalition;

(2) a description of how the eligible entity will target underage students in the State;

(3) a description of how the eligible entity intends to ensure that the statewide coalition is actually implementing the purpose of this Act and moving toward indicators described in section (d);

(4) a list of the members of the statewide coalition or interested parties involved in the work of the eligible entity;

(5) a description of how the eligible entity intends to work with State agencies on substance abuse prevention and education;

(6) the anticipated impact of funds provided under this Act in reducing the rates of underage alcohol use;

(7) outreach strategies, including ways in which the eligible entity proposes to—

(A) reach out to students;

(B) promote the purpose of this Act;

(C) address the range of needs of the students and the surrounding communities; and

(D) address community norms for underage students regarding alcohol use; and

(8) such additional information as required by the Secretary.

(c) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (b).

(d) ACCOUNTABILITY.—On the date on which the Secretary first publishes a notice in the Federal Register soliciting applications for grants under this section, the Secretary shall include in the notice achievement indicators for the program authorized under this section. The achievement indicators shall be designed—

(1) to measure the impact that the statewide coalitions assisted under this Act are having on the institutions of higher education and the surrounding communities, including changes in the number of alcohol incidents of any kind (including violations, physical assaults, sexual assaults, reports of intimidation, disruptions of school functions, disruptions of student studies, mental health referrals, illnesses, or deaths);

(2) to measure the quality and accessibility of the programs or information offered by the statewide coalitions; and

(3) to provide such other measures of program impact as the Secretary determines appropriate.

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this Act shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means a State, institution of higher education, or nonprofit entity.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATEWIDE COALITION.—The term ''statewide coalition'' means a coalition that—

(A) includes—

(i) institutions of higher education within a State; and

(ii) a nonprofit group, a community underage drinking prevention coalition, or another substance abuse prevention group within a State; and

(B) works toward lowering the alcohol abuse rate by targeting underage students at institutions of higher education throughout the State and in the surrounding communities.

(6) SURROUNDING COMMUNITY.—The term ''surrounding community'' means the community—

(A) that surrounds an institution of higher education participating in a statewide coalition;

(B) where the students from the institution of higher education take part in the community; and

(C) where students from the institution of higher education live in off-campus housing.

(g) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE V—ADDITIONAL RESEARCH

SEC. 501. ADDITIONAL RESEARCH ON UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services shall collect data on, and conduct or support research on, underage drinking with respect to the following:

(1) The short and long-range impact of alcohol use and abuse upon adolescent brain development and other organ systems.

(2) Comprehensive community-based programs or strategies and statewide systems to prevent underage drinking, across the underage years from early childhood to young adulthood, including programs funded and implemented by government entities, public health interest groups and foundations, and alcohol beverage companies and trade associations.

(3) Improved knowledge of the scope of the underage drinking problem and progress in preventing and treating underage drinking.

(4) Annually obtain more precise information than is currently collected on the type and quantity of alcoholic beverages consumed by underage drinkers, as well as information on brand preferences of these drinkers and their exposure to alcohol advertising.

(b) CERTAIN MATTERS.—The Secretary of Health and Human Services shall carry out activities toward the following objectives with respect to underage drinking:

(1) Testing every unnatural death of persons ages 12 to 20 in the United States for alcohol involvement, including suicides, homicides, and unintentional injuries such as falls, drownings, burns, poisonings, and motor vehicle crash deaths.

(2) Obtaining new epidemiological data within the National Epidemiological Study on Alcoholism and Related Conditions and other national or targeted surveys that identify alcohol use and attitudes about alcohol use during pre- and early adolescence, including second-hand effects of adolescent alcohol use such as date rapes, violence, risky sexual behavior, and prenatal alcohol exposure.

(3) Developing or identifying successful clinical treatments for youth with alcohol problems.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out section 501 $6,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

MR. DODD. Mr. President, I rise today with my colleague, Senator MIKE DEWINE, to reintroduce legislation designed to prevent our nation's children and youth from succumbing to the dangers associated with underage alcohol use. The legislation that we introduce today, the STOP, Sober Truth On Preventing, Underage Drinking Act, will greatly strengthen our Nation's ability to combat the too often deadly consequences associated with underage drinking.

An initial examination, of the problems presented by underage drinking is truly alarming. Alcohol is the most commonly used drug among America's youth. More young people drink alcohol than smoke tobacco or use marijuana combined. In 2002, 20 percent of eighth graders had drunk alcohol in the previous 30 days. Forty-nine percent of high school seniors are drinkers, and 29 percent report having had five or more drinks in a row, or binged in the past two weeks.

Tragically, we know that this year underage drinking will directly lead to more than 3,500 deaths, more than two million injuries, 1,200 babies born with fetal alcohol syndrome and more than 50,000 youths treated for alcohol dependence. We also know that the social costs associated with underage drinking total close to $53 billion annually, including $19 billion from automobile accidents and $29 billion from associated violent crime.

And while no one can argue with the tragic loss of life and significant financial costs associated with underage drinking, too few of us think of the equally devastating loss of potential that occurs when our children begin to drink. Research indicates that children who begin drinking do so at only 12 years of age. We also know that children that begin drinking at such an early age develop a predisposition for alcohol dependence later in life. Such early experimentation can have devastating consequences and derail a child's potential just as she or he is starting out on the path to adulthood. The consumption of alcohol by our children can literally rob them of their future.

The truly alarming and devastating effects of underage alcohol use are

what initially led Senator DEWINE and I to begin work to address this important issue. Since that time we have worked extensively with Representatives ROYBAL-ALLARD, WOLF, DELAURO, OSBOURNE and WAMP to craft the broad legislative initiative that we introduce today.

The STOP Underage Drinking Act creates the framework for a multifaceted, comprehensive national campaign to prevent underage drinking. Specifically, the legislation includes four major areas of policy development. First, the STOP Underage Drinking Act authorizes $2 million to establish an Interagency Coordinating Committee to coordinate all federal agency efforts and expertise designed to prevent underage drinking. Chaired by the Secretary of Health and Human Services, this committee will be required to report to the Congress on an annual basis the extent to which federal efforts are addressing the urgent need to curb underage drinking.

I am particularly pleased that one of the many items in this annual report to Congress will provide for the public health monitoring of the amount of alcohol advertising reaching our children. I have become increasingly concerned about the degree to which alcohol advertisements appear to target our Nation's children. It is my hope that the monitoring called for by this legislation will expose any unethical advertising practices that reach children. We must do all that we can to ensure that our children are not exposed to harmful and deceptive alcohol promotions.

In addition to the federal coordination of federal underage drinking prevention efforts, the STOP Underage Drinking Act additionally authorizes $1 million to fund an adult-oriented National Media Campaign against Underage Drinking. Research indicates that most children who drink obtain the alcohol from their parents or from other adults. The National Media Campaign against underage drinking will specifically seek to educate those who provide our children with alcohol about the dangers inherent in underage alcohol use. This media campaign will build upon the valuable underage drinking prevention efforts already underway by the Ad Council, whose campaigns average an estimated $28 million in donated media from media outlets nationwide.

The legislation additionally authorizes $10 million to provide states, not-for-profit groups and institutions of higher education the ability to create statewide coalitions to prevent underage drinking and alcohol abuse by college and university students. This section will also provide alcohol-specific enhancement grants through the Drug Free Communities program.

Lastly, the STOP Underage Drinking Act authorizes $6 million to expand research to assess the health effects of underage drinking on adolescent development, including its effect on the brain. This effort will additionally increase federal data collection on underage drinking, including reporting on the types and brands of alcohol that kids consume.

I want to convey my belief that this legislation truly offers a historical, first step toward addressing the national tragedy represented by underage drinking. I pledge to work strenuously toward passing the STOP Underage Drinking Act and building on its strong foundation and I ask for the support of my colleagues for this critically important initiative.

By Mr. COLEMAN (for himself, Mr. DEWINE, and Mr. ALEXANDER):

S. 409. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, today I am pleased to introduce the Federal Youth Coordination Act with my good friends, Senator MIKE DEWINE and Senator LAMAR ALEXANDER.

The idea for this legislation emanated from the 2003 White House Task Force for Disadvantaged Youth report that indicated Federal youth programs were spread across 12 different departments and agencies. It identified 150 programs that served children and youth up to age 21, but also discovered several of these programs were no longer in existence.

Today, there is a real need for strong role models in our communities to help at-risk youth. As a parent, I know there are a number of things that influence and shape our children's lives and unfortunately sometimes there are more negative things than positive. Youth programs help combat the negative influences and help restore hope, provide guidance, and help kids stay on the right track. While we have the resources to help our kids, a lack of coordination among youth programs has limited the full potential we have to change lives. Our bill will unleash that potential and bring our youth groups to full strength.

The Federal Youth Coordination Act will bring efficiency and accountability to federal youth policy by developing a Federal Youth Development Council. Composed of Department Secretaries, youth serving organizations and youth themselves, the Council will coordinate existing federal programs, research and other initiatives, enabling a more comprehensive approach to serving the nation's young people.

The purpose of the Council is not to eliminate existing programs, nor to create new ones. The Council will ensure communication among youth serving agencies, assess the needs of youth, set quantifiable goals and objectives for federal youth programs and develop a coordinated plan to achieve those goals. This approach is also cost-effective. The Council will only cost about $1.5 million, and the cost-savings that will be achieved through improved efficiency and reduced duplication of efforts will easily recoup those costs.

This legislation has bipartisan support and the strong support of our nation's youth serving organizations including the Boy Scouts of America, the Girl Scouts of America, the Boys & Girls Clubs of America, the YMCA and the Child Welfare League of America. I hope the Senate will be able to act on this important legislation early this year to ensure our kids have the support they need.

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. 409

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 ''Federal Youth Coordination Act''.

SEC. 2. ESTABLISHMENT AND MEMBERSHIP.

(a) MEMBERS AND TERMS.—There is established the Federal Youth Development Council (in this Act referred to as the ''Council'') composed of—

(1) the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Health and Human Services, Secretary of Housing and Urban Development, the Secretary of Education, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Defense, the Secretary of Homeland Security, the Director of National Drug Control Policy, the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, the Director of the U.S.A. Freedom Corps, the Deputy Assistant to the President and Director of the Office of Faith-Based and Community Initiatives, and the Chief Executive Officer of the Corporation for National and Community Service, and other Federal officials as directed by the President, to serve for the life of the Council; and

(2) such additional members as the President, in consultation with the majority and minority leadership of the House of Representatives and the Senate, shall appoint from among representatives of faith-based organizations, community based organizations, child and youth focused foundations, universities, non-profit organizations, youth service providers, State and local government, and youth in disadvantaged situations, to serve for terms of 2 years and who may be reappointed by the President for a second 2-year term.

(b) CHAIRPERSON.—The Chairperson of the Council shall be designated by the President.

(c) MEETINGS.—The Council shall meet at the call of the Chairperson, not less frequently than 4 times each year. The first meeting shall be not less than 6 months after the date of enactment of this Act.

SEC. 3. DUTIES OF THE COUNCIL.

The duties of the Council shall be—

(1) to ensure communication among agencies administering programs designed to serve youth, especially those in disadvantaged situations;

(2) to assess the needs of youth, especially those in disadvantaged situations, and those who work with youth, and the quantity and quality of Federal programs offering services, supports, and opportunities to help

youth in their educational, social, emotional, physical, vocational, and civic development;

(3) to set objectives and quantifiable 5-year goals for such programs;

(4) to make recommendations for the allocation of resources in support of such goals and objectives;

(5) to identify target populations of youth who are disproportionately at risk and assist agencies in focusing additional resources on them;

(6) to develop a plan, including common indicators of youth well-being, and assist agencies in coordinating to achieve such goals and objectives;

(7) to assist Federal agencies, at the request of one or more such agency, in collaborating on model programs and demonstration projects focusing on special populations, including youth in foster care, migrant youth, projects to promote parental involvement, and projects that work to involve young people in service programs;

(8) to solicit and document ongoing input and recommendations from—

(A) youth, especially those in disadvantaged situations, by forming an advisory council of youth to work with the Council;

(B) national youth development experts, parents, faith and community-based organizations, foundations, business leaders, youth service providers, and teachers;

(C) researchers; and

(D) State and local government officials; and

(9) to work with Federal agencies to conduct high-quality research and evaluation, identify and replicate model programs, and provide technical assistance, and, subject to the availability of appropriations, to fund additional research to fill identified needs.

SEC. 4. ASSISTANCE OF STAFF.

(a) DIRECTOR AND STAFF.—The Chairperson, in consultation with the Council, shall employ and set the rate of pay for a Director and any necessary staff to assist in carrying out its duties.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Council, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Council to assist it in carrying out its duties under this Act.

SEC. 5. POWERS OF THE COUNCIL.

(a) MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(b) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Council, the Administrator of General Services shall provide to the Council, on a reimbursable basis, the administrative support services necessary for the Council to carry out its responsibilities under this Act.

SEC. 6. ASSISTANCE TO STATES.

(a) IN GENERAL.—Subject to the availability of appropriations, the Council may provide technical assistance and make grants to States to support State councils for coordinating State youth efforts.

(b) APPLICATIONS.—Applicants for grants must be States. Applications for grants under this section shall be submitted at such time and in such form as determined by the Council.

(c) PRIORITY.—Priority for grants will be given to States that—

(1) have already initiated an interagency coordination effort focused on youth;

(2) plan to work with at least 1 locality to support a local youth council for coordinating local youth efforts;

(3) demonstrate the inclusion of nonprofit organizations, including faith-based and community-based organizations, in the work of the State council; and

(4) demonstrate the inclusion of young people, especially those in disadvantaged situations, in the work of the State council.

SEC. 7. REPORT.

Not later than 1 year after the Council holds its first meeting, and on an annual basis for a period of 4 years thereafter, the Council shall transmit to the President and to Congress a report of the findings and recommendations of the Council. The report shall—

(1) include a comprehensive compilation of recent research and statistical reporting by various Federal agencies on the overall wellbeing of youth;

(2) include the assessment of the needs of youth and those who serve them, the goals and objectives, the target populations of at-risk youth, and the plan called for in section 3;

(3) report on the link between quality of service provision, technical assistance and successful youth outcomes and recommend ways to coordinate and improve Federal training and technical assistance, information sharing, and communication among the various programs and agencies serving youth;

(4) include recommendations to better integrate and coordinate policies across agencies at the Federal, State, and local levels, including recommendations for legislation and administrative actions;

(5) include a summary of actions the Council has taken at the request of Federal agencies to facilitate collaboration and coordination on youth serving programs and the results of those collaborations, if available; and

(6) include a summary of the input and recommendations from the groups identified in section 3(8).

SEC. 8. TERMINATION.

The Council shall terminate 60 days after transmitting its fifth and final report pursuant to section 6.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal years 2005 through 2009 such sums as may be necessary to carry out this Act.

By Mr. McCAIN:

S. 410. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine; to the Committee on Finance.

Mr. McCAIN. Mr. President, the recent ''Orange Revolution'' in Ukraine marked a huge victory for the advancement of democracy in the world. The Ukrainian people made clear that they would not stand idle as a corrupt regime sought to deny them their democratic rights. Now that the people of Ukraine have seized control of their destiny, the United States must stand ready to assist them as they do the hard work of consolidating democracy. The Jackson-Vanik amendment is, with respect to Ukraine, now anachronistic and inappropriate. Therefore, I am pleased to introduce legislation that would terminate it.

The bill would authorize the President to terminate the application of Jackson-Vanik, Title IV of the Trade Act of 1974, to Ukraine. Ukraine would then be eligible to receive permanent normal trade relations (PNTR) tariff status in its trade with the United States. I am pleased to note that Representatives HYDE and LANTOS will be introducing an identical bill in the House.

Beyond any benefits to our bilateral trading relationship, lifting Jackson-Vanik for Ukraine constitutes an important symbol of Ukraine's new democracy and its relationship with the United States. I led a delegation of four Senators and six representatives to Kiev last week; where we met with President Yuschenko, Prime Minister Tymoshenko, and students who led protests in Independence Square. I was struck by the great enthusiasm for democracy and freedom that has taken hold in Ukraine, and I wish the new leaders all the best a they begin the challenge of governing. I pledged to them that I would work toward the lifting of Jackson-Vanik on Ukraine, and today I am happy to take the first step toward that end.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 411. A bill to amend title XVIII of the Social Security Act to improve the provisions of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise today to again join my colleague, Senator CANTWELL, in introducing the MediFair Act of 2005. My bill will restore fairness to the Medicare program and provide greater equity for health providers participating in Medicare. Most importantly, it will open doors of care to more seniors and the disabled in my State.

Today, in Washington state, unfair Medicare reimbursement rates are causing doctors to limit their care for Medicare beneficiaries. Throughout my State, seniors and the disabled are having a hard time finding a doctor who will accept new Medicare patients.

Unfortunately, the Medicare Modernization Act, enacted in 2003, creates even greater inequities for my State. Prior to enactment, Washington State was 41st in per beneficiary reimbursement costs. When fully implemented, this legislation will push Washington State to 45th in per beneficiary costs. This growing inequity places health care providers in my State at an economic disadvantage and further limits access to health care for Washington patients.

My bill will reduce the regional inequities that have resulted in vastly different levels of care and access to care by ensuring that every state receives at least the national average of per beneficiary spending. This measure will encourage more doctors to accept Medicare patients and will also guarantee that seniors are not penalized when they choose to retire in the State of Washington. The regional inequities in Medicare reimbursement have created a very different program for my seniors, one that offers them fewer benefits.

In addition to ensuring that no state receives less than the national average, my legislation will encourage healthy outcomes and the efficient use of Medicare payments. The current Medicare structure punishes health care providers who practice efficient health care and who produce higher levels of healthy outcomes. Physicians and hospitals in my state are proud of the pioneering role they have played in providing high quality, cost-effective medicine. Unfortunately, instead of being rewarded for their exceptional service, they are being punished with unfair Medicare payments that only cover a fraction of their actual costs.

I applaud recent efforts by the Centers for Medicare and Medicaid Services (CMS) to direct Medicare resources to performance-based medicine. I believe this effort to reward providers who practice performance-based health care is an important step forward. It's a wise investment to shift Medicare from a disease-based program, which rewards over utilization and medical errors, to a prevention-based program that encourages healthy outcomes based on performance. It will mean better care for seniors and will slow the hemorrhaging of Medicare dollars. I am hopeful that CMS will expand these efforts.

Performance-based medicine will also begin to close the gap in Medicare reimbursement. We must invest in this new approach and begin to make changes system wide. In the 2003 Medicare Modernization Act, we worked to close the gap between rural and urban providers. I believe it is time to take the next step. When doctors and hospitals work to improve outcomes and lower utilization rates they should not be punished with unfair Medicare payments.

I want to acknowledge the lead sponsor of the MediFair bill in the House, Congressman ADAM SMITH, as well as the other House cosponsors, Congressman BAIRD, Congressman MCDERMOTT, Congressman DICKS, Congressman INSLEE, and Congressman LARSEN.

I ask unanimous consent that the text of 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. 411

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 ''MediFair Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Regional inequities in medicare reimbursement has created barriers to care for seniors and the disabled.

(2) The regional inequities in medicare reimbursement penalize States that have cost-effective health care delivery systems and rewards those States with high utilization rates and that provide inefficient care.

(3) Over a lifetime, those inequities can mean as much as a $50,000 difference in the cost of care provided per beneficiary.

(4) Regional inequities have resulted in creating very different medicare programs for seniors and the disabled based on where they live.

(5) Because the Medicare+Choice rate is based on the fee-for-service reimbursement rate, regional inequities have allowed some medicare beneficiaries access to plans with significantly more benefits including prescription drugs. Beneficiaries in States with lower reimbursement rates have not benefitted to the same degree as beneficiaries in other parts of the country.

(6) Regional inequities in medicare reimbursement have created an unfair competitive advantage for hospitals and other health care providers in States that receive above average payments. Higher payments mean that those providers can pay higher salaries in a tight, competitive market.

(7) Regional inequities in medicare reimbursement can limit timely access to new technology for beneficiaries in States with lower reimbursement rates.

(8) Regional inequities in medicare reimbursement, if left unchecked, will reduce access to medicare services and impact healthy outcomes for beneficiaries.

(9) Regional inequities in medicare reimbursement are not just a rural versus urban problem. Many States with large urban centers are at the bottom of the national average for per beneficiary costs.

SEC. 3. IMPROVING FAIRNESS OF PAYMENTS TO PROVIDERS UNDER THE MEDICARE FEE-FOR-SERVICE PROGRAM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''IMPROVING PAYMENT EQUITY UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM

''SEC. 1898. (a) ESTABLISHMENT OF SYSTEM.—Notwithstanding any other provision of law, the Secretary shall establish a system for making adjustments to the amount of payment made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B.

''(b) SYSTEM REQUIREMENTS.—

''(1) INCREASE FOR STATES BELOW THE NATIONAL AVERAGE.—Under the system established under subsection (a), if a State average per beneficiary amount for a year is less than the national average per beneficiary amount for such year, then the Secretary (beginning in 2006) shall increase the amount of applicable payments in such a manner as will result (as estimated by the Secretary) in the State average per beneficiary amount for the subsequent year being equal to the national average per beneficiary amount for such subsequent year.

''(2) REDUCTION FOR CERTAIN STATES ABOVE THE NATIONAL AVERAGE TO ENHANCE QUALITY CARE AND MAINTAIN BUDGET NEUTRALITY.—

''(A) IN GENERAL.—The Secretary shall ensure that the increase in payments under paragraph (1) does not cause the estimated amount of expenditures under this title for a year to increase or decrease from the estimated amount of expenditures under this title that would have been made in such year if this section had not been enacted by reducing the amount of applicable payments in each State that the Secretary determines has—

''(i) a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) healthy outcome measurements or quality care measurements that indicate that a reduction in applicable payments would encourage more efficient use of, and reduce overuse of, items and services for which payment is made under this title.

''(B) LIMITATION.—The Secretary shall not reduce applicable payments under subparagraph (A) to a State that—

''(i) has a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) has healthy outcome measurements or quality care measurements that indicate that the applicable payments are being used to improve the access of beneficiaries to quality care.

''(3) DETERMINATION OF AVERAGES.—

''(A) STATE AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine a State average per beneficiary amount for each State which shall be equal to the Secretary's estimate of the average amount of expenditures under the original medicare fee-for-service program under parts A and B for the year for a beneficiary enrolled under such parts that resides in the State.

''(B) NATIONAL AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine the national average per beneficiary amount which shall be equal to the average of the State average per beneficiary amount determined under subparagraph (A) for the year.

''(4) DEFINITIONS.—In this section:

''(A) APPLICABLE PAYMENTS.—The term 'applicable payments' means payments made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B to beneficiaries enrolled under such parts that reside in the State.

''(B) STATE.—The term 'State' has the meaning given such term in section 210(h).

''(c) BENEFICIARIES HELD HARMLESS.—The provisions of this section shall not affect—

''(1) the entitlement to items and services of a beneficiary under this title, including the scope of such items and services; or

''(2) any liability of the beneficiary with respect to such items and services.

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Medicare Payment Advisory Commission, shall promulgate regulations to carry out this section.

''(2) PROTECTING RURAL COMMUNITIES.—In promulgating the regulations pursuant to paragraph (1), the Secretary shall give special consideration to rural areas.''.

SEC. 4. MEDPAC RECOMMENDATIONS ON HEALTHY OUTCOMES AND QUALITY CARE.

(a) RECOMMENDATIONS.—The Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) shall develop recommendations on policies and practices that, if implemented, would encourage—

(1) healthy outcomes and quality care under the medicare program in States with respect to which payments are reduced under section 1898(b)(2) of such Act (as added by section 3); and

(2) the efficient use of payments made under the medicare program in such States.

(b) SUBMISSION.—Not later than the date that is 9 months after the date of enactment of this Act, the Commission shall submit to Congress the recommendations developed under subsection (a).

By Mr. DORGAN (for himself and Mr. INOUYE):

S. 412. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

Mr. DORGAN. Mr. President, I rise today to introduce a bill that would reauthorize the Native American Programs Act. This Act provides authority

for the social and economic development grants that are so critical to Indian Country. Senator INOUYE joins me in sponsoring this measure.

The Native American Programs Act of 1974 is administered by the Administration for Native Americans (ANA) within the Department of Health and Human Services. The purpose of the Act is to promote economic and social self-sufficiency by assisting Native American institutions and tribal governments to exercise control and decision making over their own resources; to foster the development of stable, diversified local tribal economies and economic activities that provide jobs, promote economic well-being, and reduce dependency on public funds and social services; and to support access, control and coordination of services and programs that safeguard the health and well-being of native people that are essential to their communities.

The ANA awards annual grants to tribal entities on a competitive basis and provides many native communities with critical startup funds for social, governance, economic, environmental, and cultural programs that are developed by the communities themselves. The program addresses key needs for native communities by helping them begin and expand businesses, enhancing tribal ability to promote natural environments, and preserving and restoring native languages. The Native American Programs Act supports Native American self-governance in the development of economic, social, and governance capacities of Native American communities.

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. 412

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

SECTION 1. NATIVE AMERICAN PROGRAMS ACT OF 1974.

(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2006 through 2010; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2006 through 2010.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

(c) REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

''SEC. 811A. REPORTS.

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, Mr. MCCAIN, Mr. CHAFEE, Mrs. MURRAY, Mr. JEFFORDS, Mr. DURBIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. LAUTENBERG, Mrs. BOXER, Ms. CANTWELL, Mr. AKAKA, and Mr. REED):

S.J. Res. 5. A joint resolution expressing the sense of Congress that the United States should act to reduce greenhouse gas emissions; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today to offer a resolution with Senators SNOWE, MCCAIN, CHAFEE, MURRAY, JEFFORDS, DURBIN, LIEBERMAN, LEAHY, LAUTENBERG, BOXER, CANTWELL, AKAKA and REED that urges the Administration to participate in international negotiations and actively reduce our greenhouse gas emissions that contribute to global warming.

The Kyoto Protocol goes into effect today. More than 140 nations, including all 25 members of the European Union, Russia and China, have ratified the agreement to reduce man-made emissions of greenhouse gases.

The United States, which accounts for about one-fourth of the greenhouse gases believed responsible for global warming, has refused to ratify the treaty.

Thirty-five of the world's thirty-eight industrialized countries—except for the United States, Australia, and Monaco—have ratified this important treaty.

This means that industrialized nations are bound to cut their combined greenhouse gases by 5 percent below 1990 levels between 2008 and 2012.

The United States is missing an important opportunity to protect our planet's environment by not ratifying the Protocol.

I believe this is a huge mistake.

There is emerging consensus that global warming is real.

According to the National Academy of Sciences, ''Since the 1900s global average temperature and atmospheric carbon dioxide concentration have increased dramatically, particularly compared to their levels in the 900 preceding years.''

Scientists now agree on three main Facts about global warming.

Fact 1: The Earth is warming.

Fact 2: The primary cause of this warming is man-made activities, especially fossil fuel consumption.

Fact 3: If we don't act now to reduce emissions, the problem will only get worse.

We have already begun to see the impacts of climate change: four hurricanes of significant force pounded the state of Florida in a six week period last fall. The storms formed over an area of the ocean where surface temperatures have increased an average of 17 degrees over the past decade.

Eskimos are being forced inland in Alaska as their native homes on the coastline are melting into the sea.

Glaciers are beginning to disappear in Glacier National Park in Montana. In 100 years, the Park has gone from having 150 glaciers to fewer than 30. And the 30 that remain are two-thirds smaller than they once were.

In California, water supplies are threatened by smaller snowpacks in the Sierra Nevada. Record snowfalls this winter have provided hope for this summer but the region still could face drought or floods unless temperatures stay cold enough to maintain the snowpack and average snowfall continues for the rest of the precipitation season.

If we take strong action to reduce greenhouse gas emissions, there will be 27 percent snowpack remaining in the Sierras at the end of the century.

However, if we do nothing to reduce our greenhouse gas emissions, there will only be 11 percent snowpack left in the Sierras at the end of the century.

The San Diego based Scripps Institution of Oceanography, a preeminent center for marine science research, will release a study later this week showing that global warming will likely have serious ramifications in the very near future, including: a water crisis in the western United States in the next 20 years due to smaller snowpacks.

The disappearance of the glaciers in the Andes in Peru in as little as 10 years, leaving the population without an adequate water supply during the summer.

The melting of two-thirds of the glaciers in western China by 2050, seriously diminishing the water supply for the region's 300 million inhabitants.

Further, the UN Comprehensive Assessment of Freshwater Resources of the World estimates that by 2025, around 5 billion people, out of a total

world population of 8 billion, will not have access to adequate water supplies.

And concern about the effects of climate change is mounting around the world.

Scientists fear that an ''ecological catastrophe'' is developing in Tibet with the melting of the region's glaciers as a result of global warming.

Glaciers in West Antarctica are thinning twice as fast as they did in the 1990s

The mean air temperature has risen 4–5 degrees in Alaska in the past three decades causing glaciers to melt and the coastline to recede.

Peru's Quelccaya ice cap, the largest in the tropics, could be gone by 2100 if it continues to melt at its current rate—contracting more than 600 feet a year in some places.

In addition, according to National Geographic, ''the famed snows of Kilimanjaro have melted more than 80 percent since 1912. Glaciers in the Garhwal Himalaya in India are retreating so fast that researchers believe that most central and eastern Himalayan glaciers could virtually disappear by 2035. Arctic sea ice has thinned significantly over the past half century, and its extent has declined by about 10 percent in the past 30 years. Greenland's ice sheet is shrinking.''

The Pew Center for Climate Change reports strong evidence of global warming in the United States. The findings included: the red fox has shifted its habitat northward, where it is encroaching on the Arctic fox's range.

Southern, warm-water fish have begun to infiltrate waters off Monterey, California, which were previously dominated by colder-water species.

The Alaskan tundra, which has for thousands of years been a depository for carbon dioxide, has begun to release more of the gas into the air than it removes because warmer winters are causing stored plant matter to decompose.

There have been documented trends in which the natural timing of animal or insect life cycles changed and the plants on which they depended did not. Many Southern species of butterflies have disappeared entirely over the past century as their range contracted.

According to the International Climate Change Taskforce, of which Senator SNOWE is a Co-Chair, if the earth's average temperature increases by more than 2 degres Celsius, or 3.6 degrees Fahrenheit, the world could face substantial agricultural losses, countless people at risk of water shortages, and widespread adverse health impacts such as malaria.

Even more critically, if the temperature rises more than 3.6 degrees Fahrenheit, we could be at risk for catastrophic/weather events. For instance, we would risk losing the West Antarctic and Greenland ice sheets, which could raise sea levels, shut down the Gulf Stream, and destroy the world's forests.

Climate change is real. Its impacts are already being felt. If emissions keep growing at projected levels, greenhouse gases in our atmosphere will reach levels unknown since the time of the dinosaurs during the lifetimes of children born today.

That is why my colleagues and I have introduced this resolution that: Urges the Administration to engage in international discussions on post-Kyoto greenhouse gas reductions.

Calls upon the Administration to take action NOW to reduce emissions domestically.

Encourages the United States to keep global average temperatures from increasing more than 3.6 degrees Fahrenheit over pre-industrial levels.

As the world's largest emitter of greenhouse gases, it is the responsibility of the United States to lead by example. By not ratifying the Kyoto Protocol, we have sent a harsh message to the world that the largest emitter and contributor to global warming refuses to participate in a worldwide program aimed at reducing greenhouse gases.

But fortunately, even though the federal government has refused to acknowledge global warming, many States have recognized that in spite of the federal government's inaction, action must be taken.

Nearly 40 States have developed their own climate plans.

A emission trading system is emerging in the Northeast that will require large power plants from Maine to Delaware to reduce their carbon emissions.

Eighteen States and Washington, DC have enacted renewable portfolio standards. They include Arizona, California, Colorado, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Texas, and Wisconsin.

California has enacted legislation that will reduce greenhouse gas emissions from vehicle tailpipes—it is expected that the Northeastern States and Canada will also follow California's lead.

Yet without concerted Federal action, the United States will not be able to achieve real, significant greenhouse gas reductions.

As the world's largest greenhouse gas emitter, we must act now to reduce the impacts of climate change and save the environment for future generations.

The Kyoto Protocol ends in 2012. Though the Protocol ends, the United States needs to lead and move to negotiate a post-Kyoto framework. There are many things we can do. For example, we can: use our forests and our farmland as a depository for carbon to prevent it from being released into the atmosphere; develop new technologies such as clean coal, renewable energy, and hydrogen vehicles; make better use of existing technologies such as hybrid vehicles and energy efficient buildings, appliances, and power generation; and use market-based programs, such as cap and trade, to reduce emissions with the least harm to economy.

Being a responsible steward of the climate is more than just taking steps to pollute less. It also requires participating in international negotiations on the policies the world will need to achieve significant, long-term reductions in greenhouse gas emissions.

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

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

S.J. RES. 5

Whereas in May 1992, the Senate gave advice and consent to the ratification of the United Nations Framework Convention on Climate Change with the intent of reducing global manmade emissions of greenhouse gases, which committed the United States (along with other developed countries) to a nonbinding target of containing emissions levels at 1990 rates by 2000;

Whereas the United Nations Framework Convention on Climate Change was signed by President George Herbert Walker Bush and took effect in March 1994;

Whereas in December 1997, at the United Nations Framework Convention on Climate Change conference of the parties, the Kyoto Protocol, which set targets for reductions in the greenhouse gas emissions of industrialized countries, was established based on principles described in the 1992 framework agreement;

Whereas on February 16, 2005, the Kyoto Protocol will take effect, at which time more than 30 industrialized countries will be legally bound to meet quantitative targets for reducing or limiting the greenhouse gas emissions of those countries, an international carbon trading market will be established through an emissions trading program (which was originally proposed by the United States and enables any industrialized country to buy or sell emissions credits), and the clean development mechanism, which provides opportunities to invest in projects in developing countries that limit emissions while promoting sustainable development, will begin full operation;

Whereas 141 nations (including Canada, China, the European Union, India, Japan, and Russia) have ratified the Kyoto Protocol;

Whereas the United States is the only member of the Group of 8 that has not ratified the Kyoto Protocol;

Whereas, according to the National Academy of Sciences, ''Greenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise . . . Human-induced warming and associated sea level rises are expected to continue through the 21st century.'';

Whereas the Administrator of the Environmental Protection Agency stated that ''Scientists know for certain that human activities are changing the composition of Earth's atmosphere. Increasing levels of greenhouse gases, like carbon dioxide, in the atmosphere since pre-industrial times have been well documented. There is no doubt this atmospheric buildup of carbon dioxide and other greenhouse gases is largely the result of human activities.'';

Whereas major scientific organizations (including the American Association for the Advancement of Science, the American Meteorological Society, and the American Geophysical Union) have issued statements acknowledging the compelling scientific evidence of human modification of climate;

Whereas in 2001, the Intergovernmental Panel on Climate Change estimated that global average temperatures have risen by approximately 1 degree Fahrenheit in the past century;

Whereas the report entitled ''Our Changing Planet: The U.S. Climate Change Science Program for Fiscal Years 2004 and 2005'' states that ''Atmospheric concentrations of carbon dioxide and methane have been increasing for about two centuries as a result of human activities and are now higher than they have been for over 400,000 years.'';

Whereas according to the Arctic climate impact assessment published in November 2004, the Arctic is warming almost twice as fast as the rest of the planet, and winter temperatures in Alaska have increased approximately 5 to 7 degrees Fahrenheit over the past 50 years;

Whereas scientists at the Hadley Centre for Climate Prediction and Research in the United Kingdom have estimated that man-made climate change has already doubled the risk of heat waves, such as the heat wave that caused more than 15,000 deaths in Europe in 2003;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'', held in Exeter, England, from February 1, 2005, through February 3, 2005, predicted that an increase in temperature of 1.8 degrees Fahrenheit (which could occur within 25 years) would cause a decline in food production, water shortages, and a net loss of gross domestic product in some developing countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 3.6 degrees Fahrenheit (which could occur before 2050) could cause a substantial loss of Arctic Sea ice, widespread bleaching of coral reefs, an increased frequency of forest fires, and rivers to become too warm to support trout and salmon, and, in developing countries, would cause an increased risk of hunger, water shortages that would affect an additional 1,500,000,000 people, and significant losses of gross domestic product in some countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 5.4 degrees Fahrenheit (which could occur before 2070) would cause irreversible damage to the Amazon rainforest, destruction of many coral reefs, a rapid increase in hunger, large losses in crop production in certain regions, which could affect as many as 5,500,000,000 people, and water shortages that would affect an additional 3,000,000,000 people;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of greater than 5.4 degrees Fahrenheit (which could occur after 2070) would cause certain regions to become unsuitable for food production, and have a substantial effect on the global gross domestic product;

Whereas in the United States, multiple mechanisms (including market cap and trade programs) exist to carry out mitigation of climate change, sequestration activities in agricultural sectors, and development of new technologies such as clean coal and hydrogen vehicles; and

Whereas, because the United States has critical economic and other interests in international climate policy, it is in the best interest of the United States to play an active role in any international discussion on climate policy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That it is the sense of Congress that the United States should demonstrate international leadership and responsibility regarding reducing the health, environmental, and economic risks posed by climate change by—

(1) carrying out reasonable and responsible actions to ensure significant and meaningful reductions in emissions of all greenhouse gases;

(2) generating climate-friendly technologies by enacting and implementing policies and programs to address all greenhouse gas emissions to promote sustained economic growth;

(3) participating in international negotiations under the United Nations Framework Convention on Climate Change to achieve significant, long-term, cost-effective reductions in global greenhouse gas emissions; and

(4) supporting the establishment of a long-term objective to prevent the global average temperature from increasing by greater than 3.6 degrees Fahrenheit above preindustrial levels.

SEC. 2. The Secretary of State is authorized to and shall engage in efforts with other federal agencies to lead international negotiations to mitigate impacts of global warming.

SUBMITTED RESOLUTIONS—MONDAY, FEBRUARY 14, 2005

SENATE RESOLUTION 52—HONORING SHIRLEY CHISHOLM FOR HER SERVICE TO THE NATION AND EXPRESSING CONDOLENCES TO HER FAMILY, FRIENDS, AND SUPPORTERS ON HER DEATH

Mrs. CLINTON (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 52

Whereas Shirley Chisholm was born Shirley Anita St. Hill on November 30, 1924, in Brooklyn, New York, to Charles and Ruby St. Hill, immigrants from British Guyana and Barbados;

Whereas in 1949, Shirley Chisholm was a founding member of the Bedford-Stuyvesant Political League;

Whereas in 1960, she established the Unity Democratic Club, which was instrumental in mobilizing black and Hispanic voters;

Whereas in 1964, Chisholm ran for a New York State Assembly seat and won;

Whereas in 1968, Chisholm became the first African-American woman elected to Congress, representing New York's Twelfth Congressional District;

Whereas as a member of Congress, Chisholm was an advocate for civil rights, women's rights, and the poor;

Whereas in 1969, Shirley Chisholm, along with other African-American members of Congress, founded the Congressional Black Caucus;

Whereas on January 25, 1972, Chisholm announced her candidacy for President and became the first African-American to be considered for the presidential nomination by a major national political party;

Whereas although Chisholm did not win the nomination at the 1972 Democratic National Convention in Miami, she received the votes of 151 delegates;

Whereas Shirley Chisholm served 7 terms in the House of Representatives before retiring from politics in 1982;

Whereas Shirley Chisholm was a dedicated member of Delta Sigma Theta Sorority and received the sorority's highest award, the Mary Church Terrell Award, in 1977 for her political activism and contributions to the Civil Rights Movement;

Whereas Shirley Chisholm was a model public servant and an example for African-American women, and her strength and perseverance serve as an inspiration for all people striving for change; and

Whereas on January 1, 2005, Shirley Chisholm died at the age of 80: Now, therefore, be it

Resolved, That the Senate—

(1) honors Shirley Chisholm for her service to the Nation, her work to improve the lives of women and minorities, her steadfast commitment to demonstrating the power of compassion, and her dedication to justice and equality; and

(2) expresses its deepest condolences to her family, friends, and supporters.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 55—RECOGNIZING THE CONTRIBUTIONS OF THE LATE ZHAO ZIYANG TO THE PEOPLE OF CHINA

Mr. GRAHAM (for himself, Mr. LUGAR, Mr. BIDEN, Mr. BROWNBACK, and Mr. DORGAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 55

Whereas leading reformist and former Chinese Communist Party Secretary General, Zhao Ziyang, died under house arrest in China on January 17, 2005, at the age of 85;

Whereas Zhao implemented important agricultural, industrial, and economic reforms in China and rose to the prominent positions of premier and Secretary General within the Communist Party despite criticisms of his capitalist ideals;

Whereas, in the early summer of 1989, students gathered in Tiananmen Square to voice their support for democracy and to protest the Communist government that continues to deny them that democracy;

Whereas Secretary General Zhao advised against the use of military force to end the pro-democracy protests in Tiananmen Square;

Whereas, on May 19, 1989, in Tiananmen Square, Zhao warned the tens of thousands of students clamoring for democracy that the authorities were approaching and urged them to return to their homes; an action that illustrated his sympathy for their cause;

Whereas Zhao was consequently relieved of all leadership responsibilities following his actions in Tiananmen Square that summer and was placed under house arrest for the remaining years of his life;

Whereas the Government of China remained indecisive regarding a ceremony for Zhao for several days before allowing a relatively modest ceremony at the Babaoshan Revolutionary Cemetery in Beijing, where Zhao was cremated on January 29, 2005;

Whereas the Government of China's fear of civil unrest resulted in the prohibition of political dissidents and others from the funeral, and the thousands who were in attendance were surrounded in an intimidating environment without adequate time to mourn and grieve;

Whereas news of Zhao's death was announced only in a brief notice by the Communist government and was forbidden to be covered by the radio or national television, while eulogies were erased by censors from memorial websites;