Central American Relief Act; considered and passed.

By Mr. THURMOND:
S. 1568. A bill to amend the Soldiers' and Sailors' Civil Relief Act of 1940 to protect the voting rights of military personnel, and for other purposes; considered and passed.

By Mr. BACHUS:
S. 1567. A bill to suspend until January 1, 2001, the duty on 2,6- Dimethyl-m-Dioxan-4-ol Acetate; to the Committee on Finance.

By Mr. HAYDEN:
S. 1568. A bill to provide for the rescheduling of fumitrazepam into schedule 1 of the Controlled Substances Act, and for other purposes; to the Committee on the Judiciary.

By Mr. LOTT:
S. Con. Res. 39. A joint resolution to provide for the convening of the second session of the One Hundred Fifth Congress; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. LOTT:
S. Res. 156. A resolution authorizing the President of the Senate, the President of the Senate pro tempore, the Majority Leader, and the Minority Leaders to make certain appointments after the sine die adjournment of the present session; considered and agreed to.

By Mr. LOTT (for himself and Mr. DASCHLE):
S. Res. 157. A resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

S. Res. 158. A resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. LOTT:
S. Res. 159. A resolution to commend the exemplary leadership of the Democratic Leader; considered and agreed to.

By Mr. DASCHLE:
S. Res. 160. A resolution to commend the exemplary leadership of the Majority Leader; considered and agreed to.

By Mr. LOTT:
S. Res. 161. A resolution to amend Senate Resolution 48; considered and agreed to.

By Mr. LOTT (for himself and Mr. DASCHLE):
S. Res. 162. A resolution to authorize testimony and representation of Senate employees in United States v. Blackley; considered and agreed to.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, Mr. WELLSTONE, Mr. LEVIN, Mr. DODD, Mr. TERRIELLI, Mr. REED, Mr. DURBIN, Ms. MIKULSKI, and Mr. KENNEDY):
S. Res. 163. A resolution expressing the sense of the Senate on the 100th anniversary of the birth of Dorothy Day and designating the week of November 8, 1997, through November 14, 1997, as "National Week of Recognition for Dorothy Day and Those Whom She Served"; considered and agreed to.

By Mr. LOTT:
S. Con. Res. 88. A concurrent resolution to adjourn during the first session of the One Hundred Fifth Congress; considered and agreed to.

By Mr. JEFFORDS:
S. Con. Res. 89. A concurrent resolution to correct the enrollment of the bill S. 886; considered and agreed to.

By Mr. D'AMATO:
S. Con. Res. 70. A concurrent resolution to correct a technical error in the enrollment of the bill S. 1026; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURNS:
S. 1526. A bill to authorize an exchange of lands between the Secretary of Agriculture and Secretary of the Interior and the Big Sky Lumber Co.; to the Committee on Energy and Natural Resources.

THE GALLATIN LAND CONSOLIDATION ACT OF 1997

Mr. BURNS. Madam President, I am introducing draft legislation to complete the third phase of the Gallatin Land Consolidation Act. As Congress winds down to the final hours of this session it has become increasingly important to show Montanans that we are committed to completing this act.

In Montana many folks who have small problems with the details of the proposed agreement between Big Sky Lumber and the U.S. Forest Service. Also at stake are the exceptional natural resources of the Taylors Fork area. Their removal is absolutely owned and face an uncertain future. By showing the private landowners that Congress is, in fact, committed to completing this exchange, the environmental value of Taylors Fork will be preserved.

Taylors Fork is a migration corridor for wildlife which leave Yellowstone National Park for winter range in Montana. With legislation I am committed to preserving Taylors Fork as close to a natural state as possible.

I am confident that by working together, the Montana congressional delegation will be able to resolve the outstanding land use issues in the Bridger-Bangtail area. I also believe we can resolve the concerns of the timber small business set-aside.

This bill is a placeholder. There are many details that need to be included. The deadline for ensuring the Taylors Fork lands remain included in the agreement is December 31 of this year. My intent with this bill is to satisfy the deadline to preserve our option on Taylors Fork and to provide a forum for Montanans to begin to comment on the details of the package. I look forward to moving ahead with Senator HACUS and Senator Russell and completing the original act of 1993 in the next session of Congress.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. WYDEN, Mrs. FEINSTEIN, and Mr. TORRICELLI):
S. 1529. A bill to enhance Federal enforcement of hate crimes; for other purposes; and for the Committee on the Judiciary.

THE HATE CRIMES PREVENTION ACT OF 1998

Mr. KENNEDY. Madam President, it is a privilege to join Senators SPECTER and Senator WYDEN in introducing the Hate Crimes Prevention Act of 1998. Last Monday, President Clinton convened a historic White House Conference on Hate Crimes. This conference brought together community leaders, law enforcement officials, religious and academic leaders, parents, and victims for a national dialogue on how to reduce hate violence in our society.

I commend President Clinton for his leadership on this important issue. Few crimes tear at the fabric of society more than hate crimes. They injure the immediate victims, but they also injure the entire community—and sometimes the entire nation. It is entirely appropriate to use the full power of the federal government to combat them.

This bill is the product of careful consultation with the Department of Justice, constitutional scholars, law enforcement officials, and many organizations with a long and distinguished history of involvement in combating hate crimes, including the Anti-Defamation League, the National Organization for Women, the National Black Women's Political Caucus, the National Women's Law Center, the Human Rights Campaign, the National Coalition Against Domestic Violence, and the American Psychological Association. President Clinton strongly supports the bill, and we look forward to working closely with the administration to ensure its passage.

Hate crimes are on the rise throughout America. The Federal Bureau of Investigation documented 8,000 hate crimes in 1995, a 33-percent increase over 1994. The Justice Department has documented 15,000 hate crimes actually understate the true number of hate crimes, because reporting is voluntary and not all law enforcement agencies report such crimes.

The National Asian Pacific American Legal Consortium recently released its 1997 Audit of anti-Asian violence. Their report documented a 17-percent increase in hate crimes against Asian-Americans. The National Gay and Lesbian Task Force documented a 6-percent decrease in hate crimes against gay, lesbian, and bisexual citizens in the 1996. Eighty-two percent of hate crimes based on religion in 1995 were anti-Semitic.

Gender motivated violence occurs at alarming rates. The Leadership Conference on Civil Rights recently issued a report on hate crimes which correctly noted that "society is beginning to realize that many assaults against women are not 'random' acts of violence but are actually bias-related crimes.

The rising incidence of hate crimes is simply intolerable. Yet, our current Federal laws are inadequate to deal with this violent bigotry. The Justice Department is forced to fight the battles against hate crimes with one hand tied behind its back.

There are two principal gaps in existing law that prevent federal prosecutors from adequately responding to hate crimes. First, the principal federal hate crimes law, 18 United States Code 245, contains anachronistic and onerous jurisdictional requirements that frequently make it impossible for
This bipartisan bill is based on a common conviction that this country still has work to do in rooting out hatred, prejudice and the violence they generate. Hate crimes—the threat or use of force to injure, intimidate or interfere with another person solely because of the person’s race, color, religion or national origin—cannot be tolerated in our society. That point has already been enshrined in law and passage of the Hate Crimes Statistics Reporting Act, followed by the Hate Crimes Penalty Enhancement Act in 1993 and the 1996 resolution condemning church burnings.

Our bill simply seeks to offer the same protection to victims of gay bashing, woman beating and crimes against people with disabilities that has already been offered to victims of bias crimes based on racial and ethnic discrimination.

Today, the perpetrator who hurls a brick at someone because he is Asian-American can be prosecuted under Federal law. The one who attacks gay men to “teach them a lesson” cannot. The perpetrator who burns a black church can be convicted or defined as prosecuted under Federal law. The one who targets people in wheelchairs or blind people cannot. This legislation would erase that double standard from the books. Hate crimes are all the same, and they are all wrong. I urge my colleagues to join us in moving forward with this important legislation when we return here next year.

By Mr. HATCH:

S. 1530. A bill to resolve ongoing tobacco litigation, to reform the civil justice system responsible for adjudicating tort claims against companies that manufacture tobacco products, and to establish a national tobacco policy for the United States that will decrease youth tobacco use and reduce the marketing of tobacco products to young Americans; to amend existing law.

THE PLACING RESTRICTIONS ON TOBACCO’S ENDANGERMENT OF CHILDREN AND TEENS ACT

Mr. HATCH. Mr. President, perhaps the most important legacy this Congress can leave for future generations is implementation of a strong plan to curb tobacco use, and especially its use by children and teens.

Quite simply, something needs to be done to get tobacco out of the hands of children—or perhaps more accurately, out of the lungs and mouths of children.

The numbers of children who smoke cigarettes and use other tobacco products such as snuff and chewing tobacco are truly alarming. And these numbers are on the rise.

According to the Centers for Disease Control and Prevention, most youths who take up tobacco products begin between the ages of 13 and 15. It is astounding to find that 40% of children have tried smoking by age 16.

Again according to the CDC, nearly 6,000 kids a day try their first cigarette, and 3,000 of them will continue to smoke. One-thousand of them will die from smoking.

At the Judiciary Committee’s October 29 hearing, Dr. Frank Chaloupka, a renowned researcher who has spent the last decade studying the effect of price and availability of tobacco products, told us that “there is an alarming upward trend in youth cigarette smoking over the past several years. Between 1993 and 1996, for example, the number of high school seniors who smoke grew by 14%, the number of 10th grade smokers rose by 23%, and the number of eighth grade smokers increased 26%.”

During the time between the issuance of the first Surgeon General’s report in 1964 and 1990, the number of kids smoking was on the decline. Unfortunately, at that time, the number of children who try tobacco products started to rise.

Nearly all first use of tobacco occurs before high school graduation, which suggests to me that if that first use can be prevented, we can weaken future generations off these harmful tobacco products.

We also know that adolescents with lower levels of school achievement, those with friends who use tobacco, and children with lower self-images are more likely to use tobacco. Experts have found no proven correlation between socioeconomic status and smoking.

An element that is compelling to me as Chairman of the Judiciary Committee is the fact that tobacco use is associated with alcohol and illicit drug use and is generally the first substance used by young people who enter a sequence of drug use.

Public health experts have found a number of factors associated with youth smoking. Among them are: the availability of cigarettes; the widespread perception that tobacco use is the norm; peer and sibling attitudes; and lack of parental support.

Unfortunately, what many young people fail to appreciate is that cigarette smoking at an early age causes significant health problems during childhood and adolescence, and increased risk factors for adult health problems as well.

Smoking reduces the rate of lung growth and maximum lung functioning. Young smokers are less likely to be fit. In fact, the more and the longer they smoke, the less healthy they are. Adolescent smokers are more likely to have overall diminished health, not to mention shortness of breath, coughing and wheezing.

THE HEALTH EFFECTS OF SMOKING

We all know that tobacco is unhealthy. Just how unhealthy is hard to imagine.

According to a 1988 Surgeon General’s report, the nicotine in tobacco is an addictive substance or cobigu.

Cigarette smoking is the leading cause of premature death and disease in the United States.
Each year, smoking kills more Americans than alcohol, heroin, crack, automobile and airplane accidents, homicide, suicides, and AIDS—combined. Cigarettes also have a huge impact on fire fatalities in the United States. In 1992, fire-related smoking deaths were responsible for the most 22% of all residential fires, resulting in over 1,000 deaths and over 3,200 injuries.

And, Mr. President, too many Americans smoke.

According to the CDC, one-quarter of the adult population—almost 50 million persons—regularly smoke cigarettes. In my home state of Utah, there are 30,000 youth smokers, grades 7-12, and 163,000 adult smokers. The Utah Department of Health has found that over 90% of current adult Utah smokers began smoking before age 18; 60% started before age 16. And I would note that it is note legal to smoke in Utah until age 18.

And, so, it has been established that tobacco products are harmful, that children continue to use them despite that fact, and that cigarettes can provide the gateway through which our youth pass to even more harmful behaviors such as hard drug use.

CURBING TOBACCO USE

How can we reverse these trends? Many in the Congress have heeded the public health community’s advice that increases in the price of tobacco products are the most important way that youth tobacco use can be curbed.

According to testimony that Dr. Chaloupka presented to us, for each 10% increase in price, there is corresponding overall reduction in youth cigarette consumption of about 13%. For adult smoking, Dr. Chaloupka has found, a 10% price increase only corresponds to a 3% decrease in smoking.

As Dr. Chaloupka relates, there are several factors which cause teenagers to be more responsive to cigarette prices, including: their lack of disposable income; the effect of peer pressure; the tendency of youth to deny the future; and the addictive nature of tobacco products.

The important thing about a price increase is not that it keep smokers from buying cigarettes, it is that it can help keep people from starting to smoke. If we can keep a teen from smoking, we may very well be keeping an adult from smoking. The important thing to keep in mind is that this is an exponential increase in risk based on when you start smoking. The earlier you start, the worse it is for your health.

Kids who smoke start out smoking less and then build up. After a few years, they are pack a day smokers. The national average for smokers is 19 cigarettes a day, one fewer than a pack.

Much has been debated about the effect of advertising on smoking. The plain fact is that kids prefer to smoke the most advertised brands. One study indicates that 85% of kids smoke the top three advertised brands, wherever as only about a third of adults smoke those brands.

We also know that children are three times more affected by advertising expenditures than adults (in terms of brand preference). Research is unclear on whether advertising damages the First Amendment rights of the children. And, quite simply, Advertising is getting kids to start smoking. Movies, TV and peer pressure seem to be key factors, but kids deny that.

These facts lead me to conclude that it is in the national interest for us to undertake a campaign which will discourage the advertising of tobacco products to children and youth. In so doing, however, we must be mindful of the Constitution’s First Amendment freedom of speech protections.

In fact, we also need to take advantage of the power that media hold over youth, and undertake counter-advertising on tobacco products. Public health experts advise me that there is good evidence that counter-advertising has a measurable and positive effect on teen smoking. The U.S. has never had a national counter-advertising campaign.

Restrictions on youth access are also an important part of the no-teen-smoking equation. While there is not a solid body of evidence on this issue, it is important to note that Florida has an aggressive policy on enforcement of laws against youth smoking, and they now have a success rate of 10% for youths who try to buy tobacco products illegally vs. a 50% national average.

An equally important factor is the influence of the family in developing an atmosphere in which kids don’t want to smoke. That is something we will never be able to legislate, any more than we can legislate against teen pregnancy. However, we can help families develop the skills and have the information they need to create as favorable a no-tobacco climate as possible in their home.

For example, we know that the more directed information kids receive, the less likely they are to smoke. We also know that kids are very attuned to hypocrical messages. For example, if a school has a no-smoking policy, but the teachers smoke, that can have a very detrimental effect.

WORK BY THE STATE ATTORNEYS GENERAL

Against that backdrop, a very courageous cadre of State Attorneys General began filing suits against the tobacco industry. However, it was not until 1990, and as the result of negotiations approved by Congress through implementing legislation, offers our Nation a once-in-a-generation opportunity to reduce teen smoking and to undertake a major anti-tobacco, anti-addiction initiative never before thought possible.

At this point, it would be useful to give a brief summary of the proposal that has been submitted to the Congress.

As proposed by the 40 State Attorneys General on June 20, 1997, this global tobacco settlement would require participating tobacco companies to pay $368.5 billion (not including attorneys’ fees) over a 25-year period, the major of which will go to fund a major new national anti-tobacco initiative. Part of the money would also be used to establish an industry fund that would be used to pay damage claims and treatment and health costs to smokers.

During negotiations on the June 20 proposal, parties agreed there would be significant new restrictions on tobacco advertising. It would be banned outright on billboards, in store promotions and displays, and over the Internet. Use of the human images, such as the Marlboro Man, and cartoon characters, such as Joe Camel, would be prohibited. The tobacco companies would also be banned from sponsoring sports events or selling or distributing clothing that bears the corporate logo or trademark. The sale of cigarettes from
vending machines would be banned, and self-service displays would be restricted. Cigarette and other tobacco packages must carry strong warning labels concerning the ill effects of cigarettes (such as, its use causes cancer) that cover 25% of the packages. The tobacco companies would have to pay for the anti-tobacco advertising campaigns.

Parties to the agreement would consent to the FDA’s jurisdiction over nicotine and would have the authority to reduce nicotine levels over time. The FDA, however, could not eliminate nicotine from cigarettes before 2009. Furthermore, as part of the settlement, tobacco companies would have to demonstrate a 30 percent decline of aggregate cigarette and smokeless tobacco use by minors within 5 years, a 50 percent reduction within 7 years, and a 60 percent reduction within 10 years. Punitive damages, awards would be assessed against the tobacco companies up to $2 billion a year.

In return, future class-action lawsuits involving tobacco company liability would be settled. This would settle all the lawsuits brought by 40 States and Puerto Rico seeking to recover Medicaid funds spent treating smokers. Also settled would be one State class action against industry and 16 others seeking certification. Current class actions, therefore, would be settled, unless they are reduced to final judgment prior to the enactment of legislation implementing the agreement. Claimants who opt out of existing class actions would be permitted to sue for compensatory damages individually, but the total annual award would be capped at $5 billion. These amounts would be paid from the industry fund. In return for a payment (to be used as part of the industry fund), restrictive sales, advertising, and promotion would be banned. Nevertheless, claimants could seek punitive damages for conduct taking place after the settlement is adopted and implementing legislation is passed.

This is an overview of the settlement, as explained to the Judiciary Committee at our June 26 hearing.

Even a cursory examination of the settlement presents Congress with a clear question: should we seize the opportunity to undertake a serious new national war on tobacco by implementing certain liability reforms in exchange for enhanced FDA regulation, substantial industry payments, and, in short, a successful settlement?

JUDICIARY COMMITTEE CONSIDERATION

Our Committee has examined this in great detail, during four hearings. At our second hearing, in July, we heard testimony from two constitutional experts, who advised the Committee on the constitutionality of the settlement, including its advertising provisions. That testimony was extremely valuable in both reassuring me that legislation could be written which would pass constitutional muster, and in guiding me on how an appropriate legislative framework should be crafted.

But as important as the legal issues are, we must never lose sight of the fact that this proposed settlement must be a public health document, a public health statement, a commitment on the part of our country.

At our third hearing, the Committee heard additional testimony from public health experts about the proposed settlement.

I recall with great clarity a very vivid statement made by Dr. Lonnie Bristow, the immediate past president of the American Medical Association and the only physician to participate in the global settlement discussions, who said this settlement has the potential to produce greater public health benefits than the polio vaccine.

In apprising the Committee about the enormous potential of the public health provisions contained in the settlement, Dr. Bristow recommended that our public health agenda with respect to smoking be guided by three ultimate objectives: first, reducing the number of children who start smoking, second, reducing the number of existing smokers who will die from their addiction; and third, making the industry pay for the damage it has done.

Dr. Bristow also addressed the fundamental question of who will benefit from the proposed settlement, relating that the American Cancer Society has estimated one million children will be saved from premature death if certain key provisions of the settlement are implemented. These include enforcement of proof-of-age laws, requiring point-of-purchase sales, mandatory licensing of retailers, dramatic restrictions on advertising, and stronger warning labels.

And so, it appears to me that the elements are there for development of a new national tobacco policy which will make unprecedented gains in public health. The question is whether this Senate General’s Advisory Committee, or shall I say this Senate, is sufficiently endowed to make the tough decisions, with all the attendant political implications, in order to codify the settlement and move us toward a substantial new commitment to improving public health.

Three years ago, on the 30th anniversary of the first Surgeon General’s Advisory Committee on Smoking and Health report, I received a letter from seven past Surgeon Generals of the United States, representing the Administrations of both Eisenhower and Bush. In that letter, the Surgeon Generals said:

While the scientific evidence is overwhelming and indisputable, significant policy changes in how this product is manufactured, sold, distributed, labeled, advertised and promoted have been slow in coming. There has been little federal leadership for policy changes for the last 30 years. It seems incomprehensible in the public health community that this nation’s single most preventable cause of death is also its least regulated.

That’s changed.

As past Surgeons General of the United States we have had great hopes that a day would come before the year 2000 when we will achieve the goal of a smoke-free society. However, it is very clear from the past 30 years that such a goal will not be achieved unless there is federal leadership and a commitment to change theTTTNG health and welfare of the American public.

And now the question before this body is whether we are willing to accelerate our efforts and rise up to the challenge offered us by the Surgeons General. If ever there were to be such a time, it is now.

I believe that the June 29 proposal offers us the solid basis for such a national initiative.

I think it behooves the Congress to seize upon that initiative, to improve it where we can without jeopardizing any of its basic components, and to pass legislation immediately upon our return in January.

That task will not be easy. Since the settlement has provisions that span the jurisdiction of more than half the Senate committees, it will be a monumental procedural undertaking.

Nevertheless, after my considerable study of this issue, I have concluded it is in the national interest to approve the settlement, and I intend to do everything I can to move us toward the public health goals it offers.

INTRODUCTION OF THE PROTECT ACT

Accordingly, I am today introducing legislation I have drafted as a discussion vehicle and with which I hope will engender the public debate we need on all the fine points of this massive issue so that we are ready to move legislation upon our return.

I expect this bill to be a “lightening rod,” a draft work product which can be refined over the next 2 months.

The proposed global tobacco settlement is incredibly complex. Drafting this legislation has required 101 decisions, many of them interrelated.

I am willing, indeed eager, to work with interested parties to refine this legislation as it moves forward. What I am not willing to do, however, is further delay action on what could be the most important opportunity to advance public health in decades.

I have entitled the legislation I introduce today the “PROTECT Act,” or “Placing Restraints on Tobacco’s Endangerment of Children and Teens Act.”

I consider this to be a “settlement plus” bill. It retains and, indeed, strengthens the major provisions of the settlement; but, it does so in a carefully balanced way which I believe will not only pass constitutional muster but also could be enacted.

Let me be clear about what this bill is.

I consider this to be a discussion draft, a vehicle for the dialogue we must have about this important issue during the next 2 months when Congress is not in session and when we are able to consult with our constituents back home.

At the outset, let me say that I have aimed for a consensus document, a
piece of legislation which bridges the divide over contentious issues in a way that is legislatively viable.

Because it starts with this as a goal, I am painfully aware that this bill will totally please no one. Interest groups, by their very definition, advocate a particular position. Enactment of a tobacco settlement bill will require us to meld many of those positions, to develop a consensus around the center.

As a consensus document put out for discussion purposes, it is my intention that the PROTECT Act would be a useful departure point for future, productive discussions. I am also cognizant of the anti-tobacco groups’ interest in seeing a piece of legislation that does its utmost to discourage tobacco use. I would like to do that as well.

That is my primary goal.

I say that not only as a Senator who represents a State which has the lowest smoking rates in the country, not only as a member of a Church which condemns the use of tobacco, but also as a Senator who has devoted the majority of his career to the public health.

Yet, many anti-tobacco groups may be disappointed because this bill is not as stringent as they would like. But I urge those who might believe this to keep an open mind. I think they will find that, in many cases, my bill is more stringent than the AG’s proposal. I urge those who might believe this to keep in mind our primary goal of helping future generations of children. The only way to do that is to approve legislation, which necessitates legislation which is approving. That is my goal— to get a good bill enacted. A bill that is “perfect” from the point of view of one side or the other cannot be enacted; it must be a consensus.

For that reason, the bill must also contain the legal reform provisions put forward by the AG and the industry’s attorneys’ general. Those liability provisions were agreed to not only the industry, but also by the representatives of 40 states, by the public health community, and some members of the plaintiff’s bar.

We should not fool ourselves into believing that such a massive anti-tobacco policy as is embodied in either the AG’s proposal or the PROTECT Act can be enacted absent the liability provisions agreed to in June.

Yes, I recognize that to keep the pressure on for as anti-tobacco bill as we can. But if we are to enact this bill next year, which is my goal, we must be realistic. There are very few legislatively days left, believe it or not.

GENERAL DESCRIPTION OF PROTECT ACT

Accordingly, I have drafted my bill as a global tobacco settlement, which mirrors in many ways the key components of the proposal put before us on June 20. Unlike other bills introduced thus far this session, it is a comprehensive bill.

It contains all of the elements of the June 20 document, embodying the critical balance among the punitive, the preventive, and the realistic. It combines strong penalties on the tobacco industry with strict regulation of tobacco products by the FDA, implementation of a major national anti-tobacco, anti-addiction campaign, and defined liability protections for the tobacco industry.

The PROTECT Act requires substantial industry payments to fund state and federal public health activities, contains restrictions on tobacco advertising aimed at youth, and provides continuing oversight of the industry through a strong “look-back” provision.

In addition, the PROTECT Act improves on the state attorneys general June 20 settlement, in a number of key areas:

First, industry payments over 25 years will total $398.3 billion. Of those payments, $95 billion will represent the punitive damages for the tobacco industry’s past reprehensible conduct. These funds are devoted toward a National Institutes of Health Trust Fund for biomedical research, similar to the legislation drafted by our colleagues Senator Connie Mack and Senator Tom Harkin.

Second, I have inserted a strong provision to preclude youth access to tobacco products, sponsored by our colleague Senator Gordon Smith. Since the States have a substantive role in enforcing the laws precluding youth smoking, I urge every State to adopt the receipt of the public health funds contained in this bill contingent on enforcement of those youth anti-tobacco provisions.

Third, to address a concern expressed by members on both sides of the aisle, as well as the President, this bill provides transitional assistance to farmers modeled after the legislation introduced by Agriculture Committee Chairman Dick Lugar, combined with educational assistance for training employees taken from the “LEAF” Act, drafted by Senators McConnell, Ford, Faircloth, and Helms. There is much to commend both of these bills, and I look forward to working with proponents of each to refine further these provisions as the legislation moves forward.

Fourth, a National Institutes of Health [NIH] Trust Fund is established with funds paid by tobacco companies for the settlement of punitive damages for the tobacco industry’s past reprehensible conduct. Funds will be devoted toward research related to diseases associated with tobacco use, such as cancer, lung, cardiovascular and stroke—similar to Mack-Harkin. This fund would provide an additional $95 billion for biomedical research, a goal which clearly must rank at the top of our national agenda in this day of emerging medical discoveries.

In earlier versions of this legislation, I had considered making these punitive damages tax deductible. However, upon further reflection about the precedent this would set in tax law, and the fact that the June 20 proposal was intended to be tax deductible, the bill I am introducing today does not contain that provision at this time.

Fifth, my legislation contains a substantial new program to enhance significantly Indian health care efforts, particularly related to tobacco use.

These provisions will be provided to each state by a formula agreed upon by the Attorneys General Allocation Subcommittee on September 16. My bill does not treat these payments to the states as Medicaid recoveries per se, and instead, my bill would lift the Medicaid provisions, which otherwise would be provided to States for anti-smoking, anti-addiction efforts. States will receive $186 billion directly. These funds will be allocated based on the agreement of the State attorneys general. States will be able to use whatever portion of the funds that would have been attributable to their State Medicaid match with no strings whatsoever. The portion that would be attributable to the Federal Medicaid match must be used for delineated health-related anti-tobacco programs. None of these funds are considered to be part of the Medicaid program, however. The Federal anti-tobacco program, administered by HHS, will provide an additional $32 billion to States, half of which will be administered through a block grant program.

Seventh, in a departure from the AG’s agreement and the FDA rule, which regulates tobacco as a restricted medical device, the bill treats tobacco products as their own class and as unapproved drugs. However, the bill provides the FDA with substantial new authority over tobacco products, including the authority to control their composition through reductions or eliminations of all constituents. Unlike the AG agreement, though, which gives FDA the authority to ban tobacco products after 12 years, my proposal allows the Secretary to make that recommendation in any year, but it cannot be implemented unless approved by Congress.

Eighth, the “look-back” surcharge on tobacco manufacturers has been significantly strengthened with penalties more than doubled and the cap on payments removed. The Secretary may assess all or part of a penalty, totally at her discretion.

Ninth, after funding is provided for a limited program on tobacco-related asbestos liability, transitional agricultural assistance, and the new Indian health program, my bill divides the remaining funding in half. Fifty percent will be provided to the Federal Government for our new war on tobacco addiction and tobacco use. Fifty percent will be provided to the States for anti-tobacco programs.

These funds will be provided to each state by a formula agreed upon by the Attorneys General Allocation Subcommittee on September 16. My bill does not treat these payments to the states as Medicaid recoveries per se, and instead, my bill would lift the Medicaid provisions, which otherwise would be provided to the States for anti-tobacco programs.

My bill would contain that provision at this time.
been attributable to their Medicaid matching rate, and use those funds with absolutely no restrictions. The portion of the funds which would have represented the Federal share under Medicaid, generally the larger share, must be used for certain anti-tobacco public health purposes delineated in the bill. I want to take the opportunity today to discuss many of these areas in more detail.

**National Tobacco Settlement Trust Fund**

The bill establishes a Trust Fund—termed the “National Tobacco Settlement Trust Fund.” This is the apparatus that takes the inflow of proceeds made by the participating tobacco manufacturers and makes payments to the states and various federal health programs.

Here is how the fund works: The participating manufacturers must deposit $363.3 billion in the Trust Fund. Of this amount, $363 billion reflects settlement for compensatory damages and $16 billion for the settlement of punitive damages for bad acts of the tobacco industry prior to the legislative settlement of the claims.

These amounts are deposited into two separate accounts for use to pay back the states for Medicaid expenditures and a federal account to fund health and tobacco anti-cessation programs. A detailed expenditure table is provided in the bill which earmarks where the payments are being made.

These payments represent a licensing fee, of which $10 billion is paid “up front” to the Trust Fund by the participating tobacco manufacturers and the remainder will be paid in annual amounts stipulated in the bill. The bill thereafter sets the base amount licensing fee that the participating manufacturers must pay to the Trust Fund for the 25 year base period.

The bill also provides for penalties and the possible loss of the civil liability protections of the Act if the participating manufacturers default on payments.

The U.S. Attorney General shall administer the Trust and the Secretaries of Treasury and Health and Human Services shall be co-trustees. To ensure that each participant of the tobacco settlement has a fair say, an advisory board is created to advise the Trustees in the administration of the Trust Fund and to be appointed by the House and Senate majority and minority leadership, and one member each representing the state attorneys general, the tobacco industry, the health industry, and the Castano plaintiffs’ class.

**National Tobacco Protocol**

The bill establishes a Protocol—in essence a binding contract among the federal government, the States, the participating tobacco manufacturers, and the Castano private class.

The primary purpose of the Protocol is to effectuate the consent decrees, which terminate the underlying tobacco suits. To receive the civil liability protections of the bill, the participating manufacturers must sign the Protocol. This works as a powerful incentive for the participating members of the tobacco industry to abide by the restrictions contained in the protocol.

Basically, the Protocol establishes restrictions on advertising by industry and includes general and specific restrictions, format and content requirements for labeling and advertising, and sets a ban on nontobacco items and services, contents and games of chance, and sponsorship of events.

Because these restrictions raise serious First Amendment concerns, and to avoid years of litigation that would surely tie up the implementation of the bill, we have placed these restrictions in the Protocol contract provision.

More specifically, here is how the Protocol works.

To be eligible for liability protection, each participating tobacco manufacturer must sign the protocol and thus contractually agree to the provisions restricting their tobacco advertising.

The Protocol will also bind the manufacturer’s distributors and retailers to agree to the restrictions by requiring that in any distribution or sales contract between the parties the restrictions will become material terms.

If a tobacco manufacturer, or one of his distributors or retailers, violates any provision contained in the Protocol, liability protection for the manufacturer will be lost. The restrictions on advertising include prohibitions on outdoor advertising, in the use of human and cartoon figures, on advertising in the Internet, on point of sale advertising, and in sporting events. Advertising is also subject to brand name, types of media, and FDA restrictions.

As I stated, the restrictions were placed in the Protocol because current statutory restrictions on tobacco advertising contained in a FDA final rule, and in other proposed legislation, raise serious constitutional questions.

It remains unclear whether such statutory restrictions violate the First Amendment’s guarantee of freedom of speech. And this doubt invites years of litigation to determine whether or not the statutory restrictions are constitutional.

Rather than open the door to endless litigation, which could delay the implementation of the restrictions for years, the parties agreed that these restrictions are contractual. Because the Protocol is a binding and enforceable contractual agreement between the interested parties, a challenge to the constitutionality of the restrictions is avoided. This belief, the most weight and most effective approach in dealing with tobacco advertising restrictions.

As a type of commercial speech, tobacco advertising is entitled to some, but not full, First Amendment protection. The law provides that commercial speech may be regulated, even if it advertises an illegal product or service, and unlike fully protected speech, may be banned if it is unfair or deceptive. Even when it advertises a legal product and is not unfair or deceptive, the government may regulate commercial speech more than it may regulate fully protected speech. This is the case of tobacco advertising.

In May 1996, in *Liquormart, Inc. v. Robertson*, the Supreme Court increased the protection that the Supreme Court in its Central Hudson test guarantees to commercial speech by making clear that a total prohibition on the “dissemination of truthful, non-misleading commercial messages for reasons unrelated to the preservation of a fair bargaining process” will be subject to a stricter review than a regulation designed to “protect consumers from misleading, deceptive, or aggressive sales practices.”

This case may evidence a trend on the part of the Supreme Court’s part to increase the First Amendment protection it accords to commercial speech. If this trend continues, a court is more likely to find that restrictions on tobacco—legal product—is subject to stricter scrutiny than the traditional antifraud type commercial free speech cases, particularly when the tobacco advertising is truthful and nondeceptive.

The Protocol also contains a provision establishing an arbitration panel to determine the legal fees for the tobacco settlement and caps such awards to 5 percent of the amounts annually paid to the Trust Fund, any remainder to be paid the next fiscal year. The attorney general fees are to be paid by the manufacturers and are not to be counted against the Trust Fund fees and deposits.

Finally, the Protocol may be enforced by the Attorney General, the State attorneys general, and the private signatories in the applicable courts.

**The Consent Decrees**

The primary purpose of this section is to settle existing claims against the participating tobacco manufacturers. Once signed by the parties (federal and state governments, the Castano class private litigants, and the participating tobacco manufacturers) as an enforceable contract, the consent decree becomes effective on the date of the bill’s enactment and allows for three important things: (1) a state receives Settlement Trust funding; (2) a manufacturer achieves liability protection; and (3) the Castano claims are settled.

The consent decrees require the parties to agree to various restrictions, including restrictions on tobacco advertising, and on trade associations and lobbying, the disclosure of tobacco smoke constituents and nontobacco ingredients in tobacco products, the disclosure of important health documents, the dismissals of the various underlying tobacco suits, requirements for warning labels and other packaging restrictions, the medical messages and package warnings that make payments for the benefit of the States, the private litigants, and the general public.
S12582

CONGRESSIONAL RECORD — SENATE

November 13, 1997

Pursuant to the consent decrees, the parties waive their right to bring constitutional claims. It also provides that the provisions are severable. The Attorney General must approve the consent decrees, and a state may bring an action to enforce provisions contained in the consent decrees, if appropriate. Civil Liability Provisions.

In exchange for payments and other concessions, of which I already spoke, the tobacco manufacturers will gain certain benefits from the bill. These benefits which have given the tobacco companies the incentive to enter into the Protocol and consent decrees were drawn from the June 20 announcement of the Attorney General’s agreement, one of the most hotly contested areas of the proposed settlement concerns the provision addressing the Federal Government’s authority to regulate tobacco products.

As the current chairman of the committee, I have reservation about embarking down a path that appears to turn the world upside down and gut the normal safety and efficacy requirements as applied to medical devices by creating an exception that swallows the rule. Using the restricted device law—a law whose purpose is to regulate a class of products that require special control to keep an inherently dangerous product on the market troubles me. I am not certain what kind of precedent this will be but I fear that it will be significant and of questionable necessity and benefit. As I understand it, the only product that has been regulated under the restricted device provisions of the law are hearing aids. I am not sure why some apparently feel a compelling need to equate the treatment of cigarettes with hearing aids. I don’t share this enthusiasm.

Judging by some of the public rhetoric since the June 20 announcement of the protocol and consent decree, I must adopt provisions in its state code which mirror the benefits granted to participating tobacco companies and it will adopt provisions in its state code which mirror the benefits granted to participating tobacco companies to keep in this bill. On annual basis, the Attorney General will certify each state which is eligible to receive funds.

Fourth, the bill includes a cap on the amount of funds that can be paid out on individual claims each year. The cap is one-third of the total annual payments that are due from all the participating tobacco manufacturers. The excess over the cap and the excess of any individual claim over $1 billion will be paid in the following year. Eighty percent of those payments to individuals will be credited toward payments due to the fund. These provisions were all drawn from the June 20th proposal and are drafted to be identical to that agreement.

Finally, as an enforcement mechanism, if a tobacco company which has signed the protocol and consent decree is delinquent in payment by more than 12 months, the benefits granted under this bill will no longer apply. The bill also contains enforcement mechanisms for material breaches of the protocol and consent decree. I must point out that some tobacco companies that refuse to sign the protocol and consent decrees— are not eligible to receive the civil liability protections in the bill.

With regard to a state’s eligibility to receive funds under this bill, it is relatively simple. A state must dismiss any claims it has pending against the participating tobacco companies and it must adopt provisions in its state code which mirror the benefits granted to participating tobacco companies in this bill. On an annual basis, the Attorney General will certify each state which is eligible to receive funds.

Frankly, I am of the school that unfettered FDA authority is a bad idea. As a conservative, the notion of giving any Federal agency unfettered authority is not a good idea.

Anyone who argues for the principle of the so-called FDA's authority apparently has not even read FDA's organic statute, the Federal, Food, Drug, and Cosmetic Act. This important law has its origins in the 1906 Pure Food and Drugs Act safeguards our Nation’s supply of food, drugs, cosmetic, medical, and biological devices. The purpose of this law contains 254 pages of “fetters” on the FDA. And this does not even include the many pages of additional “fetters” placed on FDA in the Public Health Service Act provisions relating to the regulation of biologicals.

Frankly, I am not sure that many other executive agencies have as many fetters placed upon it as FDA. And that is a good thing. FDA performs such critical public health missions as approving new drugs and medical devices.

In a democratic society it is only reasonable to expect that the American public—which has some much at stake with respect to FDA’s decisions—will require its elected representatives to pass laws that said that FDA has plenary, unfettered power over drugs and devices.

As I said earlier, the real question to tobacco products is not if but what precise authority we give FDA over these products. Frankly, I am of the school that unfettered FDA authority is a bad idea. In a democratic society it is only reasonable to expect that the American public—which has some much at stake with respect to FDA’s decisions will require its elected representatives to pass laws that said that FDA has plenary, unfettered power over drugs and devices.

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In a democratic society it is only reasonable to expect that the American public—which has some much at stake with respect to FDA’s decisions will require its elected representatives to pass laws that said that FDA has plenary, unfettered power over drugs and devices.
One thing that I do know is that whatever happens at the court of appeals, the loser will likely appeal its decision.

This will take time, time in which more and more young children will start a lifetime addiction to tobacco products which will lead to illness and premature death.

Regardless of the outcome of this litigation, I am convinced that this Congress has a public duty to act, and act now.

Title IV of my bill describes in detail what I think is the appropriate way for FDA to regulate tobacco products.

First of all, let me start by taking my hat off to FDA and the Department of Health and Human Services under the leadership of Secretary Shalala for its creativity of using the existing food and drug laws in fashioning its final rules on youth tobacco.

In many ways, these regulations created what that makes it possible for the negotiators to sit at the table and bring us the settlement proposal that we are considering today. So I take my hat off to the negotiators as well.

As fully explained in the preamble to the final rule and accompanying legal justification, one of the major reasons why FDA regulated tobacco products as restricted medical devices was because of the relative inflexibility of the drug laws versus the flexibility of the medical device laws.

We all know that this question is before the Fourth Circuit, and we expect the leadership of Secretary Shalala for its central role in getting the FDA and the Federal Food, Drug, and Cosmetic Act. Let us take interest in FDA prevailing in court in this current litigation to put that litigation aside as you read my FDA language and consider what law you would write if you were confronted with the current drug and device paradigms.

I salute those many public health groups and officials who have brought the antitobacco use battle so far in the last few years.

Let us start from a clean blackboard. I believe that my approach is preferable than to continue to stretch a perhaps already overstretched statute.

If any in this body believe that my proposal will cause the tobacco industry to tell me how. If some believe it is too lenient here and too rigid there, I hope they will respond with fixes, not with shouts.

I look forward to this aspect to the debate because of my long term interest in the FDA and the Federal Food, Drug, and Cosmetic Act. Let us take particular care in crafting this language and do so in a way that does not distract FDA from its core missions, including its central role in getting the latest in medical technology to the American public.

THE PRICE OF TOBACCO PRODUCTS

Another issue of keen concern to the public health community is the price of tobacco products. Earlier this year, I joined with several of my colleagues on both sides of the aisle to propose the Child Health Insurance and Lower Deficit Act, the CHILD bill. That bill, most of which has now been enacted as part of the Balanced Budget Act, made huge strides in insuring children with health care services, and it was predicated on a 43 cents increase in the excise tax on cigarettes.

We had a bipartisan coalition under the best of circumstances, and in the end, our 43 cents was whittled down to 10 cents phased up to 15 cents.

In that climate, I do not think it is reasonable for anyone to expect that this Congress will enact a cigarette excise tax of $1 or more.

I do, believe, however, that there is consensus that it would be an important public health goal for the price of cigarettes and other tobacco products to be raised significantly to discourage youth consumption.

It is possible to do that without an excise tax, and that is what my bill does. Under my proposal, which predicated payments upon a Federal licensing fee, I estimate that when fully phased in year six, cigarette prices will go up an additional $1.00 per pack at the manufacturer level, which will be reflected in a retail level of $1.50 or more.

Economists have found that markups by cigarette manufacturers are always accompanied by increases down the distribution chain, including state excise tax increases. Thus, for purposes of this debate, I think it is critical that we discuss potential price increases in net terms, rather than the manufacturer markup.

There is an important reason to implement the agreement through a licensing payment, as opposed to a tax. Law enforcement officials have noted that the closer the price rise is to the source of the cigarettes, the less opportunity there is for diversion.

For example, if this bill were predicated on an excise tax, manufacturer sales to distributors would not reflect the higher price, and there would be ample opportunity for diversion into the black market of the cheaper goods.

In sum, I believe that my proposal will bring the price of cigarettes to a high level and do so in a way that discourages black market diversion.

Another issue of keen concern to the Congress are the tobacco farmers, most of whom could be displaced if this legislation is successful.

AGRICULTURAL PROVISIONS

Mr. President, we cannot forget about our country’s tobacco farmers. Even though the tobacco farmers have the most to lose from the tobacco settlement, they were completely left out of that settlement.

Tobacco farms in this country are often small family run businesses, and in many cases, the entire economic foundation of a community is tied up in the production or processing of tobacco.

As many of my colleagues in the Senate know, I would probably be the last person to stand up and defend the tobacco industry or our nation’s tobacco program. I feel strongly, though, that we should not turn our backs on tobacco farmers and their communities at a time when many will be harmed as a consequence of the tobacco settlement.
Senator Lugar, the Chairman of the Senate Agriculture Committee, has introduced a bill that would end the tobacco program while providing payments and other assistance to tobacco farmers over a three-year transition period. His proposal differs from the pattern established by the 1996 farm bill, by getting the government out of the farming business and by making temporary assistance available to farmers as they adjust to the free market.

Senator Lugar's bill adds additional grants and assistance for tobacco farmers and workers employed in the processing of tobacco. However, Senator Fonda's bill maintains the tobacco program largely intact.

Frankly, Mr. President, I believe our tobacco communities have tough challenges ahead of them. For that reason, I have combined what I think are the best parts of each of these two bills into the PROTECT Act to ensure that we care for our nation's tobacco farmers and our tobacco dependent communities.

My bill establishes a Tobacco Transition Account, funded through the Trust Fund. The Transition Account will provide buyout payments to tobacco quota owners, who will lose their quotas, and assistance payments to farmers who lease their quotas from these owners. In addition, the PROTECT Act creates Farmer Opportunity Grants. These will be available to eligible family members of tobacco farmers to help pay for higher education. Eligibility requirements for Farmer Opportunity Grants will be similar to those of the Pell Grant program.

Mr. President, we should also remember the workers in the tobacco processing industry who could be displaced as a result of the tobacco settlement. The LEAF Act sets up the Tobacco Worker Transition program. Patterned after the NAFTA Trade Adjustment Assistance program, the Tobacco Worker Transition program will provide assistance to displaced workers and help them receive job retraining.

Finally, Mr. President, the PROTECT Act will provide a total of $300 million over three years in block grants to affected states for economic assistance. Governors will be able to use these grants to help rural areas with tobacco dependent communities make the transition to broader based economies and to the free market.

NATIVE AMERICAN HEALTH PROVISIONS

Let me next turn toward another component of my legislation which relates to American Indians and Alaska Natives.

Tobacco use and abuse are significant health issues in Indian country. Native Americans smoke more than any other ethnic group, more than two-fold for Indian men, and more than four-fold for Indian women over non-Indians. The Centers for Disease Control estimate that 40 percent of all adult American Indians and Alaska Natives smoke an average of 25 or more cigarettes daily. Moreover, according to the Indian Health Service (IHS) lung cancer remains the leading cause of cancer mortality. The IHS further reports that in some parts of the country 80 percent of Indian high school seniors smoke or chew tobacco. The statistics further show that smoking by American Indians is actually increasing while it is on the decline among other groups.

Clearly, the implementation of this global tobacco settlement, measures must be taken to address the unique problems Indian country faces with the use and regulation of tobacco products.

Accordingly, my bill contains several Indian specific provisions that ensure tribal governments will have the regulatory authority to address issues of particular concern to tribal health officials while maintaining the interest of the tribe in its sovereign authority over activities occurring on its reservation.

These provisions have been developed, in part, on recommendations made at an October 6, 1997, oversight hearing on the tobacco settlement by the Committee on Indian Affairs on which I serve.

Let me also add that I welcome additional input from Indian country on these important provisions. Overall, my provisions are designed to recognize the unique interests of Indian country in the implementation of the act as well as provide assistance to improve the health status of native Americans.

Specifically, my bill makes clear that the provisions of the act relating to the manufacture, distribution and sale of tobacco products will apply on Indian lands as defined in section 1151 of title 18 of the U.S. Code.

The fundamental precept of the Indian provisions is that tribal governments have the right to participate in the implementation of the provisions of the act.

The Secretary of HHS, in consultation with the Secretary of the Interior, will be required to develop regulations to permit tribes to implement the licensing requirements of the act in the same manner by which the States are accorded this authority.

Indian tribes will also be considered as a State for purposes of receiving public funds in order to carry out the provisions of the act and in accordance with a plan submitted and approved by the Secretary.

Indian tribes are permitted flexibility to utilize these funds to meet the unique health needs of their members and as long as their programs meet the fundamental health requirements of the act.

The amount of public health payment funds for tribes will be determined by the Secretary based on the proportion of the total number of Indians residing on a reservation in a State as compared to the total population of the State. Moreover, a State may not impose obligations or requirements relating to the application of this act to Indian tribes.

Tobacco use remains a significant health factor for Indians and the costs associated for patient care and treatment are extremely high in Indian country. Millions of dollars for tobacco related illnesses.

Accordingly, my bill establishes a supplemental fund for the IHS to augment the Tribal Diabetes Program providing health care services to Indians. A $5 billion account is established to be allotted to the IHS in increments of $200 million annually for 25 years.

ANTITRUST PROVISION

Let me also discuss another issue briefly. The proposed settlement is predicated upon the tobacco companies receiving immunity from antitrust laws in a number of limited areas. For example, in order to determine the price increase that will be passed on to consumers due to the settlement licensing fee. Another area in which such antitrust clarification will be needed is in enforcement of the protocol which accompanies the settlement legislation.

In introducing the bill today, I want to acknowledge that this language may need to be refined and tightened up. I do not intend to give the tobacco companies blanket antitrust immunity. That would be totally unwarranted.

As Chairman of both the Judiciary Subcommittee on Antitrust, Senator Mike DeWine and Herb Kohl, the chairman and ranking member of the Judiciary Subcommittee on Antitrust, to further polish this language. They have indicated their willingness to work with me on this issue, and I appreciate their expertise and assistance.

ASBESTOS

There exists medical evidence that tobacco use is a contributory factor in asbestos-related diseases and injuries. This bill contains a program to provide limited compensation for individuals who are exposed to asbestos and whose condition proven to have been exacerbated by tobacco use. The asbestos program is administered by the Secretary of Labor, who will establish standards whereby it can be demonstrated that tobacco is a significant factor in the cause of asbestos-related diseases. This program would be funded at $200 million per year and would complement the existing system for payments related to asbestos.

CLOSING

As I close, I would like to make one final observation. Three thousand kids a day start smoking; countless others start using smokeless tobacco products like snuff.

These children are becoming addicted to powerful tobacco products which can only harm them. The scientific evidence is clear.

I am extremely cognizant of the fact that there is a long history of legal use of tobacco products in this country.

Millions have used them; millions do use them.
I am trying to strike a delicate balance here: That of allowing adults to continue to use these products as they choose, but of discouraging it whenever we can and helping those who are addicted wean themselves from these powerful tobacco products.

But most importantly, we have to renew our efforts aimed at teen tobacco use. The funds provided in the global tobacco settlement will allow us to set that course.

Let me say right now that I fully anticipate criticism of my proposal from those who are afraid it is too large, and perhaps too bureaucratic.

To them I would say that the value of this proposal is in its size. We need to show that we are serious about stopping kids from smoking. We need to penalize the tobacco industry as part of that effort.

I have tried to rely upon the existing administrative structure wherever possible in the implementation of my plan, in order to have a better way to run the program, I welcome their advice.

But to those who would advocate a smaller program, let me share my serious concerns about lowering the amount the tobacco industry has already agreed to pay.

I would also have serious concerns about raising the amount and using the funds for unrelated purposes. This is not the pot of money under the rainbow which will allow us to fund 80’s-era left-leaning (or right-leaning) programs. This is a tobacco settlement which will provide us with significant new funding for new war on tobacco. A war to save our children.

My bill differs markedly from the others that have been introduced in that it is comprehensive, it includes all the components of the settlement in one piece of legislation, and it makes all the hard choices necessary to delineate how a settlement will operate. Further, it is drafted to be constitutional.

Many have begun to criticize my bill before they have even read it. It happened with the CHILD bill. It will happen again.

But to those who wish to sling barbs at my bill, I urge you to study it carefully. It is not the Kennedy bill. And, by the way, it was never intended to be. It is not the Lautenberg bill, nor the McCain bill.

It is a discussion draft intended to embrace, and improve, the proposed global tobacco settlement recommended to the Congress by 40 states this June. I welcome any suggestions for improvements which may be offered to my bill. That is why I am putting this legislation in use in 2003 and 2004; a 35% reduction from the baseline year, will be a 25% reduction in use in 2003 and 2004; a 50% decrease in 2005, 2006 and 2007; and a 60% reduction thereafter. For smokeless tobacco, the national goals, measured from the baseline year, will be a 25% reduction in use in 2003 and 2004; a 35% reduction in 2005, 2006, and 2007; and a 45% reduction thereafter.

Section 3. GOALS AND PURPOSES. Sets forth the goals and purposes of the legislation, including decreasing tobacco use by youth and adults, enhancing biomedical research efforts, setting forth Federal standards for smoking in public establishments, establishing the authority of the Food and Drug Administration to regulate tobacco products, providing transitional assistance to farmers, and reforming tobacco litigation practices.

Section 4. NATIONAL GOALS FOR THE REDUCTION IN UNDERAGE TOBACCO USE. Sets out national goals for reduction in youth tobacco use. For cigarettes, the national goals, measured from the baseline year, will be a 30% reduction in use in 2003 and 2004; a 50% decrease in 2005, 2006 and 2007; and a 60% reduction thereafter. For smokeless tobacco, the national goals, measured from the baseline year, will be a 25% reduction in use in 2003 and 2004; a 35% reduction in 2005, 2006, and 2007; and a 45% reduction thereafter.

Section 5. DEFINITIONS. Defines pertinent terms used in the bill.

Section 101. ESTABLISHMENT OF TRUST FUND. Creates a National Tobacco Settlement Trust Fund that will receive payments from tobacco manufacturers according to a schedule set out in the bill. Over the next 25 years, deposits will be $398 billion, of which $95 billion are considered punitive damages and will be used to fund a biomedical research trust.

The National Tobacco Settlement Trust Fund will be administered by the Attorney General, the Secretary of Health and Human Services, the Director of the Food and Drug Administration, and the Secretary of the Treasury. The Trustees will invest excess balances of the Trust Fund in income-producing investments. The Authority Board is capped. Receipts and disbursements from the Trust Fund will not be included in the annual budget, and cannot be transferred to the general fund of the Treasury.

Section 102. PAYMENT SCHEDULE. As a condition of receiving the liability provision contained in the settlement, manufacturers must execute a protocol with the Secretary of Health and Human Services, each respective state attorney general, and Castano litigants, sign consent decrees with States and Castano plaintiffs, and deposit an initial $10 billion payment into the Trust Fund. In addition, to be eligible for the liability protections, manufacturers must make payments according to a schedule listed in the bill. The Trustees are authorized to adjust those continuing payments in two cases: 1) an annual inflation adjustment; 2) a volume adjustment which could either increase or reduce the base payments. The amount that each participating manufacturer will pay will be based on a formula under the protocol appended to the agreement.

Section 103. ADMINISTRATIVE PROVISIONS. The Attorney General will hold the Trust Fund and will report annually to the relevant congressional committees on the financial condition of the Trust Fund. The Trustees will invest excess balances of the Fund in interest-bearing obligations of the U.S. and proceed therefrom will become a part of the account. Members of the Trustees’ advisory board shall serve without compensation, although travel expenses will be reimbursed, and overall, the advisory board is capped. Receipts and disbursements from the Trust Fund will not be included in the annual budget, and cannot be transferred to the general fund of the Treasury.

Section 104. ENFORCEMENT. Any participating manufacturer which fails to make payments required by the Act will be subject to daily fines. If the manufacturer has not made the required payment within one year, the manufacturer will be considered non-participating, will lose the liability protections contained in the agreement, and become ineligible from becoming a participating manufacturer in the future.
TITLE II—NATIONAL PROTOCOL AND LIABILITY PROVISIONS

SUBCHAPTER A—PROTOCOL RESTRICTIONS ON ADVERTISING

Section 201. REQUIREMENT. To be eligible for participation in the Protocol, each participating manufacturer must agree to comply with the requirements contained in Subtitle C, each tobacco manufacturer shall enter into a binding and enforceable contract ("the Protocol") in each state, with the Attorney General of the state and representatives of the Castano litigants. As part of the protocol, a participating manufacturer shall agree to the following: (a) to prohibit, in whole or in part, the sale, distribution, and advertising to black text on white background, except in certain cases such as vending areas not visible from the outside and advertising in newspapers. Further, parties using audio or video formats agree to certain limitations with respect to advertising of tobacco products both in terms of number of advertisements and format, except in adult-only stores and tobacco outlets.

Section 214. AGREEMENT ON FORMAT AND CONTENT REQUIREMENTS FOR LABELING AND ADVERTISING. Parties agreeing to the Protocol will use a trade name for a non-tobacco product as the trade or brand name for a cigarette. For example, tobacco products used in vending machines will use a non-tobacco trademark, logo or other identifier of tobacco products. They agree not to use human images or cartoon characters in tobacco-related advertising, labeling or promotional materials, and not to advertise tobacco products on the Internet. Parties also agree not to limit the media in which tobacco products will be advertised and will not prohibit placement of tobacco products in television programs, motion pictures, videos or video game machines.

Section 218. AGREEMENT TO PROVIDE LEGAL PROTECTION TO SUBLICENSEES AND RETAILERS. The Attorney General agrees to sell or otherwise distribute tobacco products to an Indian tribe or tribal organization under the same terms and conditions as the manufacturer imposes on others. The Agreement requires the Attorney General to utilize funds from the Trust Fund in an amount based on the proportion of the market share of the sales of the firm. Each non-participating manufacturer agrees to pay to the Trust Fund for the current year an amount equal to 150% of the amount paid in the previous year.

Section 221. AGREEMENT TO PROVIDE LEGAL PROTECTION TO SUBLICENSEES. The following provisions will be considered part of the Protocol. Parties agreeing to prohibit advertising of tobacco products in all formats agree to certain limitations with respect to advertising of tobacco products both in terms of number of advertisements and format, except in adult-only stores and tobacco outlets.

Section 223. GENERAL RESTRICTIONS. Parties agreeing to the Protocol will not use a trade or brand name of a non-tobacco product as the trade or brand name for a cigarette. For example, tobacco products used in vending machines will use a non-tobacco trademark, logo or other identifier of tobacco products. They agree not to offer any gift or item in connection with the purchase of a tobacco product. Parties agreeing to the Protocol shall not sponsor any athletic, musical, artistic or other social/cultural event in which identifiers of tobacco products are used, except in certain cases such as vending areas not visible from the outside and advertising in newspapers. Further, parties using audio or video formats agree to certain limitations with respect to advertising of tobacco products both in terms of number of advertisements and format, except in adult-only stores and tobacco outlets.

Section 227. ATTORNEY FEES AND EXPENSES. Within 30 days of enactment, an arbitration panel will be appointed by the Trustees, the participating manufacturers, and State Attorneys General participating in the June 20, 1997 memorandum of understanding and the Castano litigants. The arbitration panel will establish procedures for its operation. The panels are authorized to award fees and expenses, and make awards based on enumerated criteria subject to an annual cap which is equal to 5% of the amount paid by the manufacturer in the previous year.

Section 228. LIMITATIONS WITH RESPECT TO INDIAN COUNTRY. Participating manufacturers agree not to conduct any activity within Indian country that is not consistent with the Act, and agrees to sell or otherwise distribute tobacco products to an Indian tribe or tribal organization under the same terms and conditions as the manufacturer imposes on others.

Section 231. FEDERAL ENFORCEMENT OF THE PROTOCOL. Sets forth the terms and conditions under which the Attorney General may bring civil actions, including imposition of stiff penalties, to enforce the Protocol. The Attorney General may enter into contracts with state agencies to assist in enforcement. The Attorney General is authorized to utilize funds from the Trust Fund for performance of her duties under this section.

Section 232. STATE ENFORCEMENT OF THE PROTOCOL. The chief law enforcement officer of a state may bring actions to enforce the Protocol if the alleged violation is not subject to federal enforcement. The State must first give the Attorney General 30 days’ notice before commencing such a proceeding, and the State may not bring a proceeding if the Attorney General is diligently prosecuting or has settled a proceeding related to the alleged violation.

Section 233. PRIVATE ENFORCEMENT OF PROTOCOL. A participating manufacturer may also seek a declaratory judgment in Federal court to enforce its rights and obligations under the Act, and may also bring a civil action against other participating manufacturers to enforce or restrain breaches of the Protocol. If no such actions may be commenced, however, if the Attorney General or applicable State is already pursuing an action on the same alleged breach.

Section 234. REMOVAL. The Act allows removal to Federal court of state claims which seek to enforce the Protocol.

TITLE C—LIABILITY PROVISIONS

Section 251. DEFINITIONS. Defines pertinent terms used in Subtitle C.

Chapter 1—Immunity and Liability for Past Conduct

Section 255. APPLICATION OF CHAPTER. This chapter is the sole enforcement mechanism for the liability provisions against any participating manufacturer which have not reached final judgment or settlement by the effective date of this act. Any court judgment entered subsequent to this bill’s enactment shall include express language subjecting the judgment to the act. No bond, penalty, or increased interest shall be required in connection with an appeal of any judgment arising under this act.

Section 256. LIMITED IMMUNITY. All pending actions against participating manufacturers whether by a State or local government entity, as a class action, or as a civil action based on add-on or defense, are hereby terminated. All participating manufacturers thereby immune from any future action brought by a State or local governmental entity, as a class action,
or as a civil action based on tobacco addiction or dependence. Individual personal injury claims arising from the use of tobacco are preserved.

Section 256. CIVIL LIABILITY FOR FUTURE CONDUCT. This section applies to all actions permitted under section 256 for conduct before enactment. Punitive damages are prohibited.

All actions must be brought by individuals and may not be consolidated without consent of the plaintiffs. The only means to remove an action is if a defendant removes it to Federal court. Participating manufacturers must jointly share in civil liability for damages, including special provision for states jointly and severally liable with non-participating manufacturers; and actions involving participating and non-participating manufacturers shall be severable with respect to each plaintiff and defendants, their heirs, and third-party payers who are bringing individual claims for tobacco-related injuries and third-party payers whose claims are not based on subrogation that were pending on June 9, 1997. Defendants under this section are participating manufacturers, their successors or assigns, any future subsidiaries, or any corporation suit designated to survive a defunct subsidiary. Vicarious liability for agents applies. Subsequent development of reduced risk tobacco products or discovery will be exempted from the aggregate annual cap of 1/3 of annual payments required of all signatories for the year involved. Excess amounts shall be paid in the following years. Each annual payment shall not exceed $1,000,000, unless all judgments in the first year can be paid without exceeding the aggregate annual cap. Defendants shall bear their own attorneys' fees and costs.

Section 258. CIVIL LIABILITY FOR FUTURE CONDUCT. This section applies to all actions previously permitted under section 256 for conduct after enactment. Sections 257(c) and (e) through (I) shall apply to actions under this section. Third-party payor claims not based on subrogation shall not be commenced under this section. There is no prohibition for punitive damages under this section.

Section 259. PARTICIPATING MANUFACTURERS. This title shall not apply to non-signatories to the Protocol and participating manufacturers who are 12 months delinquent in payments due pursuant to the act.

Section 260. PAYMENT OF JUDGMENTS AND SETTLEMENTS. A participating manufacturer may seek injunctive relief in federal court to stop a state court from enforcing a judgment which is unenforceable under this chapter. The federal court shall issue an injunction prohibiting further mass payments if the manufacturer demonstrates that the judgment or settlement is unenforceable under this chapter.

Section 261. ELIGIBILITY OF STATE. A state shall be eligible to receive funds under this act if (1) by the effective date of the act it adopts sections 256 through 259 as unqualified state law and any defendant in a civil action under this act shall have a right to a prompt interlocutory appeal to the highest court of the state to enforce the requirements of state law; and (2) it with or without disavowal dismisses any claims required to be dismissed under section 256.

Within 6 months of the effective date of this act and provision of all state legislatures whose legislature do not meet within that time frame), and annually thereafter, the AG shall certify that each state eligible to receive funds has complied with this section—shall certify that each state eligible to receive funds has complied with this section—shall certify that each state eligible to receive funds has complied with this section—shall certify that each state eligible to receive funds has complied with this section. Payment of judgments or settlements shall not exceed $1,000,000, unless all payments for cigarettes of $5 billion for the first five years after passage; of $2.5 billion thereafter. For smokeless tobacco products, the potential lookback penalties will be $15 million per applicable percentage point for each of the first five percentage points by which the goal is not met; the surcharge that could apply would be $20 million for each of the next five percentage points by which the goal is not met; and $30 million per percentage point for the amount that the goal is not met by eleven or more percentage points. In the case of smokeless tobacco products, the potential lookback penalties will be $15 million per applicable percentage point for each of the first five percentage points by which the goal is not met. The potential surcharge that could apply would be $30 million and $45 million for the next two percentage point increments.

Five years after the surcharge provisions are applicable (the eleventh year after passage), the surcharge payments will be reduced for cigarettes, the surcharge payment will be $250 million for each of the first five percentage points that the goal is not met and $500 million for each additional percentage point by which the goal is not met. For smokeless tobacco products, the corresponding surcharge amounts will be $30 million and $60 million, respectively. This country's goal toward achievement of the national goal is $300 million for each of the next five percentage points by which the goal is not met. The potential surcharge that could apply would be $90 million and $45 million for the next two percentage point increments.

Any surcharge imposed under this section is the joint and several obligation of all participating manufacturers (subject to the abatement provisions contained in section
of 1⁄80 per percentage point. (E.g., if cigarette exceeded payments will be reduced by a factor cigarettes, for each percentage point by tion provides that for payments related to cigarettes and a 45% reduction for smokeless use dropped by 80% from the base year in a sultion goals are exceeded (a 60% reduction for ultimate national tobacco product use reduc tion of the Secretary’s decision may be view of the Secretary’s decision may be made on criteria described in this section. She will make her decision based on criteria described in this section. She may abate all or part of the surcharge, but this is totally at her discretion. Judicial review of the Secretary’s decision may be sought.) Section 317. INCENTIVES FOR EXCEEDING THE NATIONAL TOBACCO PRODUCTS USE REDUCTION GOALS. In any year, including the first five program years, that the ultimate national tobacco product use reduction goals are exceeded (a 60% reduction for cigarette consumption for smokeless tobacco products, tobacco manufacturers will be assessed reduced payments. This section provides for payments related to cigarette use, by percentage point by which the 60% reduction goal has been ex exceeded payments will be reduced by a factor of ½ per percentage point. (E.g., if cigarette use dropped by the base year, the payment would be reduced by 2080%’s, or 2.5%). The corresponding factor for smokeless tobacco products is 1/110 per percentage point that the 45% goal is exceeded. TITLE IV—HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS SUBTITLE A—GENERAL AUTHORITY Section 401. Amendments to Definitions Contained in the Federal Food, Drug, and Cosmetic Act. This title grants clear jurisdic tion over tobacco products and establishes the framework for the Secretary of Health and Human Service, acting through the Food and Drug Administration, to oversee a new comprehensive regulatory system for tobacco products. “Tobacco product” and other similar definitions are defined for the first time in the FDA’s basic regulatory statute, the Federal Food, Drug, and Cosmetic Act. This section adds two important new prohibited activities. The Secretary is authorized to regulate illegal to manufacture and market tobacco products that do not comply with the new Tobacco Products chapter, Chapter IX. The bill amends the definition of “drug” to give FDA authority to regulate tobacco products as unapproved drugs if they do not comply with new Chapter IX. No change is made in the definition of “medical device,” other than to add “nicotine-containing tobacco products” to the definition. Section 900. Definitions. This section defines the term “cigarette,” “cigarette tobacco,” “nicotine,” “tobacco,” “smokeless tobacco,” “nicotine tobacco additive,” and “tobacco product” will be added to the FD&C Act. Sec. 901. Statement of General Duties. The Secretary shall make a report to the Congress on the status and trends of tobacco use, and the development and evaluation of short-term and long-term health effects of tobacco use, and the health consequences associated with the use of tobacco products. Sec. 902. Tobacco Product Health Risk Management Standards. This section directs the Secretary to issue regulations, through routine notice and comment rulemaking procedures, to establish health risk management standards for tobacco products that reduce the health risks associated with tobacco use, and provides for the public disclosure of the ingredients of to bacco products. Such regulations will grant the Secretary the authority to issue regulations that assess and manage the risks presented by nicotine and other tobacco-specific components of tobacco products, or to ban tobacco products after the Secretary considers relevant fac tors. These factors include: reduction of public health risks; health care system is provided with effective and accessible treatments to current consumers of tobacco products; the potential creation of a significant market for contraband tobacco products; and, the technological feasibility of manufacturers to modify existing products. Secretarial actions to ban tobacco products will require approval from both chambers of the United States Congress. Sec. 903. Good Manufacturing Practice Standards for Tobacco Products. The Secretary shall issue regulations that specify the good manufacturing practices (GMP) for tobacco products. Such regulations will pro vide for inspections of manufacturing facilities and management controls used for the manuf acturing of tobacco products. The GMP regulations will contain requirements for the registration and inspection of tobacco product manufacturing establishments. The GMP regulations promulgated by the Secretary shall provide for the emphasis residue levels and will provide for an advisory committee to recommend to the Secretary whether to approve, consistent with the public health, petitions for variances to the established residue level standards. The GMP requirements established by the Secretary shall include record keeping and reporting standards for tobacco products. Sec. 904. Tobacco Product Labeling, Warning, and Packaging Standards. Section 904 requires the Secretary to require tobacco product manufacturers to label tobacco products with clear, prominent, and conspicuous warnings and statements. Section 904 provides format and type-size requirements and stipulates rotation schedules for new warnings and statements. The Secretary shall require that the tobacco product warnings and statements be submitted to the Secretary for approval, and the Secretary shall notify the tobacco product manufacturers if the approved tobacco product warnings and statements do not comply with the FDA’s requirements. Sec. 905. Reduced Risk Tobacco Products. This section requires the Secretary to require that the tobacco product manufacturers provide on a voluntary basis for the development and commercial distribution of reduced risks tobacco products. Under section 905 the Secretary shall provide guidelines that encourage the risk reduction and lessen the health risks of tobacco products. The Secretary is authorized to issue regulations that require manufacturers of tobacco products to reduce the risks associated with tobacco products. The Secretary is authorized to issue regulations that require manufacturers of tobacco products to reduce the risks associated with tobacco products. The Secretary is authorized to issue regulations that require manufacturers of tobacco products to reduce the risks associated with tobacco products. The Secretary is authorized to issue regulations that require manufacturers of tobacco products to reduce the risks associated with tobacco products.
used for outreach, and efforts which are made to coordinate the new programs with existing Federal and State programs. The state must also collect necessary data and maintain the Tobacco Block Grant Program. The Secretary must provide the State with a plan, and the State must provide the Trustees with an assessment of the plan, including the effectiveness of the plan in reducing the number of children who use tobacco products. In addition, the Trustees will provide an annual report on operations of the plan.

In order to retain the otherwise-Federal share of the funds for anti-tobacco programs in coordination with existing Federal public health and social services programs, including child nutrition programs, maternal and child health, the State Children’s Health Insurance Program, Head Start, school lunch, Indian Health Service, Community Health Centers, Ryan White, and social services block grant. States may also use these funds for smoking cessation programs that reimburse for medications or other therapeutic techniques, and anti-tobacco education programs, including counter-advertising campaigns.

**SUBTITLE B—PUBLIC HEALTH PROGRAMS**

Section 521. National Institutes of Health Trust Fund for Health Research. A National Institutes of Health Trust Fund for Health Research is established which reflects the settlement of punitive damages for past reprehensible behavior of the tobacco industry. This punitive damages fund will be funded from the National Settlement Trust Fund, and overall funding will amount to $95 billion over the first 25 years. In year 5 and thereafter, a billion annual payment will be available under this section, subject to any required adjustments due to inflation, sales volume adjustments, and look-back penalties.

Section 521(e) requires the Director of the National Institutes of Health, in consultation with leading experts, to devise a National Tobacco and Other Abused Substances Research Agenda. Funds provided under this section are expended as follows: NIH Director’s Discretionary Fund, 2%; Research Facilities 3%; Research Programs and Centers, 1%; national cancer research and demonstration centers under section 414 of the Public Health Service Act, 10%; remaining 85% shall be allocated to the established Institutes, Centers, and Divisions of NIH in the same proportion as the annual appropriations bill for NIH. Eligible research expenditures are stipulated in section 521(d)(2) and include diseases associated with tobacco use including cancer, cardiovascular diseases, and stroke.

Section 522. National Anti-Tobacco Product Consumption and Tobacco Product Cessation Public Health Program. Under this section, the Secretary will fund activities authorized by this section to offset HHS’ administrative costs attributable to the new regulatory responsibilities placed on the Food and Drug Administration under this Act. In carrying out this section, the Secretary may act under the general authorities provided under section 303 of the Public Health Service Act. The Secretary must consult with and seek priority recommendations made by the Casanto class action plaintiffs. This section requires the Secretary to undertake substantial public education program, including the development and dissemination of materials that alert, in the most appropriate and effective fashion, the public, with a special emphasis on materials and techniques that are targeted to young Americans. The Secretary is also directed to make a special effort to inform current adult users of tobacco products of the health benefits of ceasing use of these products. Among the public education and information techniques authorized by this section is a publicly financed nationally directed counter-advertising campaign. The Secretary is also directed to develop and make available a model state tobacco use and tobacco cessation program.

Section 522 directs the Secretary to make available the funds available under this section to states in the form of vountary anti-tobacco use and tobacco cessation program block grants. Block grant activities for this block grant will be the same as those specified under 522(e). To the extent possible, the Secretary will harmonize the program management under sections 520 and 522. The formula for the block grant will be devised by the Secretary but shall include such relevant factors as the number of children residing in the state.

**TITLE VI—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE**

Section 601. DEFINITIONS. Defines pertinent terms used in this section.

Section 602. SMOKE-FREE ENVIRONMENT POLICY. Requires a public facility to implement a smoke-free environment policy, which prohibits tobacco use within the facility or its immediate vicinity of the facility’s entrance. Requires the policy to be posted in a clear and prominent manner. Exceptions are made when a building is owned by a Specially Designated Smoked Area. No exception would be granted for restaurants, prisons, and congressional office buildings. The Secretary is authorized to establish special rules for schools and other facilities serving children.

Section 603. PREEMPTION. Precludes preemption of any other Federal, State, or local law in this area.

Section 604. REGULATIONS. Sets a 6-month period to promulgate the title’s regulations.

Section 605. EFFECTIVE DATE. Sets an effective date of 6 months after the date the title is signed into law. Any penalty for a violation of the Act is applicable as of the date of Act’s enactment, whichever is later.

**TITLE VII—PUBLIC DISCLOSURE OF HEALTH RESEARCH**

Section 701. PURPOSE. Sets the purpose of this title to disclose previously nonpublic or confidential documents by tobacco product manufacturers.

Section 702. NATIONAL TOBACCO DOCUMENT DEPOSITORY. Establishes a National Tobacco Document Depository which will be used as a resource for litigants, public health groups, and other interested parties and will be governed by regulations prescribed in the statute. The title also creates a Tobacco Documents Dispute Resolution Panel, to be composed of 3 Federal Judges appointed by the Congress, and outlines the Panel’s structure, including its basis for determining a dispute, its final decision rule, and its decision process. The Panel will also develop procedures for the Panel to establish a procedure for accelerated review and for a Special Masters.

Section 703. ENFORCEMENT. Allows the Attorney General to bring a proceeding before the Tobacco Documents Dispute Resolution Panel with appropriate notice requirements and civil penalty levels.

**TITLE VIII—AGRICULTURAL TRANSITION PROVISIONS**

Section 801. SHORT TITLE: “Tobacco Transition Act.”

Section 802. PURPOSES. Terminates the federal tobacco production and purchase program and compensations to quota owners and tobacco farmers. Provides economic assistance to affected counties through block grants to affected states.

Section 803. DEFINITIONS. Defines pertinent terms used in Title VIII.

**SUBTITLE A—TOBACCO PRODUCTION TRANSITION**

**CHAPTER 1—TOBACCO TRANSITION CONTRACTS**

Section 811. TOBACCO TRANSITION ACCOUNT. Establishes the Tobacco Transition Account within the Treasury of the United States through this account, compensation will be made to quota owners and tobacco farmers. Economic assistance and block grants to affected states will also be provided through the Transition Account.

Section 812. OFFER AND TERMS OF TOBACCO TRANSITION CONTRACTS. The Secretary of Agriculture shall offer to buy tobacco quotas from owners through a three-year payment period. All restrictions on the production and marketing of tobacco will be lifted in 1998, ending the tobacco quota program.

Section 813. ELEMENTS OF CONTRACTS. Within 90 days after enactment of this legislation, the Secretary to offer contracts to quota owners until June 31, 1999. Buyout payments and transition payments shall start at the beginning of the 1999 marketing year and end at the end of the 2001 marketing year.

Section 814. BUYOUT PAYMENTS TO OWNERS. During the three-year transition period, buyout payments will be made to quota owners as a compensation for the lost value they experience associated with the quantity of their quotas. The payment will be determined by multiplying $8.00 by the average annual quantity of quota owned during the 1995–1997 crop years.

Section 815. TRANSITION PAYMENTS TO PRODUCERS. Provides assistance to farmers who do not own quotas but who leased from quota owners during three of the last four years. Transition payments only apply to the leased portion of the recipient’s crop and will constitute a compensation to the producer for lost revenue caused by this act. Payments shall be multiplied by 40% of the average annual quantity of tobacco produced during the three years of the transition period.
Section 821. FARMER OPPORTUNITY GRANTS. Amends the Higher Education Act of 1965 to establish a grant program for tobacco farmers and their families to pay for higher education. Grants will be made in the sum of $1,700 per year, rising to $2,900 annually by 2019. Academic eligibility requirements will mirror the standards regulating Pell Grants. Receipt of a Farmer Opportunity Grant will not affect a student's eligibility to receive other income-based assistance.

CHAPTER 2—RURAL ECONOMIC ASSISTANCE Block Grants

Section 821. Rural Economic Assistance Block Grants. For each of the three years of the transition period, 1999 through 2001, the Secretary is authorized to provide grants to Indian tribes to help them prevent deforestation of Indian country that is prohibited under the Protocol. A state may not impose obligations or requirements related to the application of this Act to Indian tribes and organizations.

Recognizing that tobacco use remains a significant health risk, and that cigarette smoking is more prevalent for men than for women, the Secretary is authorized to provide grants to Indian tribes to help them prevent deforestation of Indian country that is prohibited under the Protocol. A state may not impose obligations or requirements related to the application of this Act to Indian tribes and organizations.

Mr. President, I am pleased to join with the distinguished Senator from the State of Mississippi, Senator Cochran, in introducing the Migratory Bird Treaty Reform Act, which I believe it is legislation all of our colleagues should support.

As members of the Migratory Bird Treaty Commission, Senator Cochran and I recognize the importance of protecting and conserving migratory bird populations and habitat.

Eighty years ago, Congress enacted the Migratory Bird Treaty Act, which implemented the 1916 Convention for the Protection of Migratory Birds between Great Britain, for Canada, and the United States. Since then, the United States, Mexico, and the former Soviet Union have signed similar international agreements. The Convention and the Act are designed to protect and manage migratory birds and regulate the taking of that renewable resource.

They have had a positive impact, and we have maintained viable migratory bird populations despite the loss of natural habitat because of human activities.

Since passage of the Migratory Bird Treaty Act and development of the regulatory program, several issues have been raised and resolved. One has not—the issue concerning the hunting of migratory birds ‘by the aid of baiting, or on or over any baited area.”

The doctrine has developed in the federal courts by which the intent or knowledge of a person hunting migratory birds on a baited field is not an issue. If bait is present, and the hunter is there, he is guilty under the doctrine of strict liability. It is not relevant that the hunter did not know or could not have known bait was present. I question the basic fairness of this rule.

Mr. President, I do not want anyone to follow this federal court. It is my view, I support the Migratory Bird Treaty Act. We must protect our migratory bird resources from overexploitation. I would not weaken the Act’s protections.

The Migratory Bird Treaty Reform Act is to address the baiting issue. It is the result of months of negotiation by the International Association of Fish and Wildlife Agencies’ Ad Hoc Committee on Baiting. The Committee has representatives from each of the migratory flyways, Ducks Unlimited, The National Wildlife Federation, and the National Association of Wildlife Officers Association.

This legislation, no person may take migratory birds by the aid of bait, or on or over bait, where that person knew or should have known the bait was present. It removes the strict liability interpretation presently followed by the federal courts. It establishes a standard that permits a determination of the actual guilt of the defendant. If the facts show the hunter knew or should have known of the bait, liability, which includes fines and possible incarceration, is imposed. However, if the facts show the hunter could not have reasonably known bait was present, the court would not impose liability or assess penalties. This is a question of fact determined by the court based on the evidence presented.

This legislation would require the U.S. Fish and Wildlife Service to publish, in the Federal Register, a notice for public comment defining what is a normal agricultural operation for that geographic area. The Service would make this determination after consultation with state and federal agencies and an opportunity for public comment. The purpose of this provision is to provide guidance to landowners, farmers, wildlife managers, law enforcement officials, and hunters so they know what a normal agricultural operation is for their region.

The goal of the Migratory Bird Treaty Reform Act is to provide guidance to landowners, farmers, wildlife managers, hunters, law enforcement officials, and the courts on the restrictions.
on the taking of migratory birds. It accomplishes that without weakening the intent of current restrictions on the method and manner of taking migratory birds; nor do the proposed provisions weaken protection of the resources.

Mr. President, I urge my colleagues to join us in supporting this important legislation, and I ask unanimous consent that the full text of this legislation be printed in the RECORD.

The following no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1533

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 “Migratory Bird Treaty Act Reform Act”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The Migratory Bird Treaty Act was enacted in 1918 to implement the 1916 Convention on the Protection of Migratory Birds between the United States and Great Britain (for Canada). The Act was later amended to reflect similar agreements with Mexico, Japan, and the former Soviet Union.

(2) Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior is authorized to promulgate regulations specifying when, how, and whether migratory birds may be hunted.

(3) Contained within these regulations are prohibitions on certain methods of hunting migratory birds, to better manage and conserve this resource. These prohibitions, many of which were recommended by sportsmen, have been in place for over 60 years and have received broad acceptance among the hunting community with one principal exception relating to the application and interpretation of the prohibitions on the hunting of migratory game birds by the aid of baiting, or on or over any baited area.

(4) The prohibitions regarding the hunting of migratory game birds by the aid of baiting, or on or over any baited area, have been fraught with interpretive difficulties on the part of law enforcement, the hunting community, and courts of law. Hunters who desire to comply with the regulations have been subject to citation for violations of the regulations due to the lack of clarity, inconsistent interpretations, and enforcement. The baiting restrictions have been the subject of multiple congressional hearings and a law enforcement advisory commission.

(5) Restrictions on the hunting of migratory game birds by the aid of baiting, or on or over any baited area, must be clarified in a manner that recognizes the national and international importance of protecting the migratory resources while ensuring consistency and appropriate enforcement including the principles of “fair chase”.

SEC. 3. CLARIFYING HUNTING PROHIBITIONS.

Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) is amended—

(1) by striking “All guns,” and inserting “(a)”) after “SEC. 3;” and

(2) by adding at the end the following:

“(b) No person shall be—

“(i) take any migratory game bird by the aid of baiting, or on or over any baited area, where the person knows or reasonably should have known that the area is a baited area; or

“(ii) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.

“(2) Nothing in this subsection prohibits any of the following:

“(A) The taking of any migratory game bird, including waterfowl, from a blind or other place of concealment camouflaged with natural vegetation.

“(B) The taking of any migratory game bird, including waterfowl, on or over—

“(i) standing crops, including aquatic vegetation planted for nonagricultural purposes (planted millet), or altering other vegetation (as specified in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes; or

“(ii) gathering, collecting, or concentrating natural vegetation, planted millet, or other vegetation (as specified in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes, following alteration or harvest of the vegetation.

“(C) The term ‘baiting’ means the intention or unintentional placement of salt, grain, or other feed capable of attracting migratory game birds, in such a quantity and in such a manner as to serve as an attractant to such birds to, on, or over an area where they are attempting to take them, by—

“(I) placing, exposing, depositing, distributing, or scattering salt, grain, or other feed; or

“(II) redistributing grain or other feed after it is harvested or removed from the site where grown.

“(D) The term ‘accepted soil stabilization practices’ means techniques that are—

“(i) used by agricultural operators in the area for agricultural purposes; and

“(ii) approved by the State fish and wildlife agency after consultation with the Cooperative State Research, Education, and Extension Service, the Natural Resources Conservation Service, and the United States Fish and Wildlife Service.

“(E) The term ‘accepted soil stabilization practices’ means techniques that are—

“(i) used in the area solely for soil stabilization purposes, including erosion control; and

“(ii) approved by the State fish and wildlife agency after consultation with the State Cooperative State Research, Education, and Extension Service, the State Office of the Natural Resources Conservation Service, and the United States Fish and Wildlife Service.

“(F) With respect only to planted millet or other vegetation (as designated in migratory bird hunting regulations issued by the Secretary of the Interior) planted for nonagricultural purposes, the term ‘planted’—

“(I) subject to clause (ii), means sown with seeds that have been harvested; and

“(ii) does not include alteration of mature stands of planted millet or of such other vegetation planted for nonagricultural purposes.

“(G) The term ‘migratory game bird’ means any migratory bird included in the term ‘migratory game birds’ under part 20.11 of title 56, Code of Federal Regulations, as in effect October 3, 1997.’’. 

SEC. 4. PENALTIES.

Section 6(c) of the Migratory Bird Treaty Act (16 U.S.C. 707(c)) is amended as follows:

(1) By striking “All guns,” and inserting “(1) Except as provided in paragraph (2), all guns;”

(2) By adding the following at the end:

“(2) In lieu of seizing any personal property not crucial to the prosecution of the alleged offense, the Secretary of the Interior shall permit the owner or operator of the personal property to post bond or other collateral pending the disposition of any proceeding under this Act.”.

By Mr. TORRICELLI:

S. 1534. A bill to amend the Higher Education Act of 1965 to delay the commencement of the student loan repayment period for certain students called to active duty in the Armed Forces; to the Committee on Labor and Human Resources.
Mr. TORRICELLI: Mr. President, I rise today to introduce the Veterans' Student Loan Deferment Act of 1997. This important legislation will amend the Higher Education Act to preserve the 6-month grace period for repayment of federal student loans for reservists who have been called into active duty.

Throughout my career as a public official, I have always supported the brave men and women who serve our nation in the Reserve Components. These forces represent all 50 States and four territories, and truly embody our forefathers' vision of the American citizen-soldier. Reservists are active participants in the full spectrum of U.S. military operations, from the smallest of contingencies to full-scale theater war, and no major operation can be successful without them.

However, under current law, students who receive orders to serve with our military in places like Bosnia are returning home to discover that they have lost the six month grace period on their federal student loans and must begin making repayments immediately. I believe it is patently unfair and inconsistent with our increased reliance on the Reserve Forces to call upon these students to serve in harm's way and, at the same time, to keep the clock running on the six month grace period for paying back student loans.

Enactment of my legislation would permit additional peanuts to also be used for sale to the Department of Defense, as well as to other federal, state or local government agencies, including for use in the school lunch program.

Mr. President, the federal peanut program is an anachronism. Born in the 1930's during an era of massive change and dislocation in agriculture, the program is sorely out of place in today's vibrant agricultural sector. While other farm commodities are seeking new export opportunities abroad, building new markets and helping to improve our national balance of trade; the peanut industry is building new barriers to protect its rapidly diminishing industry. Certainly imports are a factor, but the true threat to America's peanut farmer is the very quota system that he so stubbornly protects. Industry statistics show that quotas across county and state lines. It is important to note that this legislation will not provide these veterans with any special treatment or benefit. My legislation simply states that the repayment status on their student loans will be the same when they return home as when they left for service.

It is very strongly that students should not be punished for serving in the Reserves, and believe that when they are called to serve our country, their focus should be on the mission, not on the status of their student loans. I am proud to offer this legislation on behalf of the hundreds of thousands of Reservists in the United States, and look forward to working with my colleagues to ensure its passage. 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. 1594

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

SECTION 1. DELAY IN COMMENCEMENT OF REPAYMENT PERIOD.

(a) FEDERAL STAFFORD LOANS AND FEDERAL DIRECT STAFFORD/FORD LOANS.—Section 428(b)(7) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)(7)) is amended by adding at the end the following:

"(b) There shall be excluded from the 6-month period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload as described in subparagraph (A)(1) any period not to exceed 3 years during which a borrower who is a member of the Reserve component of the Armed Forces named in section 10101 of title 10, United States Code, is called or ordered to active duty for a period of more than 30 days (as defined in section 101(d)(2) of such title)."

(b) FEDERAL PERKINS LOANS.—Section 466(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(d)(c)) is amended by adding at the end the following:

"(7) There shall be excluded from the 90-day period that begins on the date on which a student ceases to carry at least one-half the normal full-time academic workload as described in paragraph (1)(A) any period not to exceed 3 years during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code, is called or ordered to active duty for a period of more than 30 days (as defined in section 101(d)(2) of such title)."

By Mr. SANTORUM (for himself, Mr. LAUTENBERG, Mr. DEWINE, Mr. CHAFEE, Mr. COATS, Mr. GREGG, Mr. FEINGOLD, and Mr. SPECTER):

S. 1595. A bill to provide marketing quotas and a market transition program for the 1997 through 2001 crops of quota and additional peanuts, to terminate marketing quotas for the 2002 and subsequent crops of peanuts, and to terminate nonrecourse loans available to peanut producers for the 2002 and subsequent crops of peanuts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE PEANUT PROGRAM IMPROVEMENT ACT OF 1997

Mr. SANTORUM. Mr. President, I rise to introduce legislation that will phase out the peanut quota program over 6 years, with the quota system being eliminated beginning in crop year 2002. I am joined in this effort by my colleague from New Jersey, Mr. LAUTENBERG, as well as other original cosponsors.

Under our legislation, the price support for peanuts grown for edible consumption is gradually reduced each year from the current support price of $610 per ton to $445 per ton beginning in crop year 2001. In the year 2002 and ensuing years, there would be no quotas on peanuts and the Secretary of Agriculture would be required to make non-recourse loans available to all peanut farmers at 85 percent of their estimated market value at the beginning of the new crop year as well as a reasonable carryover to permit orderly marketing at the end of the crop year.

This program must be changed. As sponsors of this measure, however, my colleagues and I recognize that the peanut program cannot be repealed overnight. That is why we are proposing a fair transition period to enable farmers and lenders to adjust their expectations to the marketplace. Following completion of the phase-out period, the peanut program will operate like most other agricultural commodities.

I am pleased that Senators DEWINE, CHAFEE, COATS, GREGG, and FEINGOLD have joined Senator LAUTENBERG and I as original sponsors of this measure, and I encourage my colleagues to support swift enactment of this important legislation.
By Mr. TORRICELLI (for himself and Ms. SNOWE).

S. 1536. A bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care, and to otherwise provide for research and information concerning osteoporosis and related bone diseases; to the Committee on Labor and Human Resources.

THE EARLY DETECTION AND PREVENTION OF OSTEOPOROSIS AND RELATED BONE DISEASES ACT OF 1997

Mr. TORRICELLI. Mr. President, I rise today to introduce the Early Detection and Prevention of Osteoporosis and Related Bone Diseases Act of 1997 along with my colleague from Maine, Ms. SNOWE.

Osteoporosis and other related bone diseases pose a major public health threat. More than 28 million Americans, 80 percent of whom are women, suffer from or are "at risk" for osteoporosis. Between three and four million Americans suffer from related bone diseases like Paget's disease or osteogenesis imperfecta. Today, in the United States, 10 million individuals already have osteoporosis and 18 million more have low bone mass, placing them at increased risk.

Osteoporosis is often called the "silent disease" because bone loss occurs without symptoms. People often do not know they have osteoporosis until their bones become so weak that a sudden bump or fall causes a fracture or a vertebra to collapse. Every year, there are 1.5 million bone fractures caused by osteoporosis of all women and one-eighth of all men, age 50 or older, will suffer a bone fracture due to osteoporosis.

Osteoporosis is a progressive condition that has no known cure; therefore, early prevention and treatment are key. The Early Detection and Prevention of Osteoporosis and Related Bone Diseases Act of 1997 seeks to combat osteoporosis, and related bone diseases like Paget's disease and osteogenesis imperfecta, in two ways.

First, the bill requires private health plans to cover bone mass measurement tests for qualified individuals who are at risk for developing osteoporosis. Bone mass measurement is the only reliable method of detecting osteoporosis in its early stages. The test is non-invasive and painless and is as predictive of future fractures as high cholesterol and blood pressure of heart disease or stroke. This provision is similar to a provision in the Balanced Budget Act of 1997 that requires Medicare coverage of bone mass measurements.

Second, the Early Detection and Prevention of Osteoporosis and Related Bone Diseases Act authorizes $1,000,000 to fund an information clearinghouse and $50,000,000 in each fiscal year 1999 through 2001 for the National Institutes of Health to expand and intensify its effort to combat osteoporosis and other bone-related diseases.

Funding for research on osteoporosis and related bone diseases is severely constrained at key research institutes like the National Institute on Aging. Further research is needed to improve prevention and treatment of these devastating diseases.

Money spent now on prevention and treatment will help defray the enormous costs associated with the future. Currently, osteoporosis costs the United States $13,000,000,000 every year. The average cost of repairing a hip fracture, a common effect of osteoporosis, is $22,000.

Because osteoporosis is a progressive condition and affects primarily aging individuals, reductions in the incidence or severity of osteoporosis will likely significantly reduce osteoporosis-related costs under Medicare.

Medical experts agree that osteoporosis and related bone diseases are highly preventable, if the toll of these diseases is to be reduced, the commitment to prevention and treatment must be significantly increased. With increased research and access to preventive testing, the future for definitive treatment and prevention is bright.

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. 1536

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Early Detection and Prevention of Osteoporosis and Related Bone Diseases Act of 1997." Section 114 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1862 note) is amended by inserting in lieu of subsection (a) the following:

"(b) FINDINGS.—Congress makes the following findings:

(1) NATURE OF OSTEOPOROSIS.—

(A) Osteoporosis is a disease characterized by low bone mass and structural deterioration of bone tissue leading to bone fragility and increased susceptibility to fractures of the hip, spine, and wrist.

(B) Osteoporosis has no symptoms and typically remains undiagnosed until a fracture occurs.

(C) Once a fracture occurs, the condition has usually advanced to the stage where the likelihood is high that another fracture will occur.

(D) There is no cure for osteoporosis, but drug therapy has been shown to reduce new hip and spine fractures by 50 percent and other treatments, such as nutrition therapy, have also proven effective.

(2) INCIDENCE OF OSTEOPOROSIS AND RELATED BONE DISEASES.—

(A) 28 million Americans have (or are at risk for) osteoporosis, 80 percent of which are women.

(B) Osteoporosis is responsible for 1.5 million bone fractures annually, including more than 300,000 hip fractures, 700,000 vertebral fractures and 300,000 fractures of the wrists.

(C) Half of all women and one-eighth of all men, age 50 or older will have a bone fracture due to osteoporosis.

(D) Between 3 and 4 million Americans have Paget's disease, osteogenesis imperfecta, hyperparathyroidism, and other related metabolic bone diseases.

(3) IMPACT OF OSTEOPOROSIS.—The impact of treating osteoporosis is significant:

(A) The annual cost of osteoporosis in the United States is $33.8 billion and is expected to increase precipitously because the proportion of the population of older persons is expanding and each generation of older persons tends to have a higher incidence of osteoporosis than preceding generations.

(B) The average cost in the United States of repairing a hip fracture due to osteoporosis is $22,000.

(C) Fractures due to osteoporosis frequently result in disability and institutionalization of individuals.

(D) Because osteoporosis is a progressive condition and affects primarily aging individuals, reductions in the incidence or severity of osteoporosis, particularly for post-menopausal women before they become eligible for Medicare, has a significant potential of reducing osteoporosis-related costs under the Medicare program.

(4) USE OF BONE MASS MEASUREMENT.—

(A) Bone mass measurement is the only reliable method of detecting osteoporosis at an early stage.

(B) Low bone mass is as predictive of future fractures as is high cholesterol or high blood pressure of heart disease or stroke.

(C) Bone mass measurement is a non-invasive, painless, and reliable way to diagnose osteoporosis before costly fractures occur.

(D) Under section 4106 of the Balanced Budget Act of 1997, Medicare will provide coverage, effective July 1, 1998, for bone mass measurement for qualified individuals who are at risk of developing osteoporosis.

(5) RESEARCH ON OSTEOPOROSIS AND RELATED BONE DISEASES.—

(A) Technology now exists, and new technology is developing, that will permit the early diagnosis and prevention of osteoporosis and related bone diseases as well as management of these conditions once they develop.

(B) Funding for research on osteoporosis and related bone disease is severely constrained at key research institutes, including the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute on Aging, the National Institute of Diabetes and Digestive and Kidney Diseases, the National Institute of Dental Research, and the National Institute of Child Health and Human Development.

(C) Further research is needed to improve medical knowledge concerning:

(i) cellular mechanisms related to the processes of bone resorption and bone formation, and the effect of different agents on bone remodeling;

(ii) risk factors for osteoporosis, including newly discovered risk factors, risk factors related to groups not ordinarily studied (such as men and minority groups), and factors related to genes that help to control skeletal metabolism, and risk factors relating to the relationship of aging processes to the development of osteoporosis;

(iii) bone mass measurement technology, including more widespread and cost-effective techniques for making more precise measurements and for interpreting measurements;

(iv) calcium (including bioavailability, intake requirements, and the role of calcium in building heavier and denser skeletons),
and vitamin D and its role as an essential vitamin in adults; (v) prevention and treatment, including the efficacy of current therapies, alternative drug treatments, prevention and treatment, and the role of exercise; and (vi) rehabilitation. Further educational efforts are needed to increase knowledge and professional knowledge of the causes of, methods for avoiding, and treatment of osteoporosis.

SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASUREMENT UNDER HEALTH PLANS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by section 706(a) of Public Law 104-204, is amended by adding at the end the following new section:

SEC. 2706. STANDARDS RELATING TO BENEFITS FOR BONE MASS MEASUREMENT.

(1) IN GENERAL.—Subject to paragraph (2), no health insurance issuer offering group health insurance coverage, shall include (consistent with this section) coverage for bone mass measurement for beneficiaries and participants who are qualified individuals.

(2) QUALIFIED INDIVIDUAL.—The term ‘qualified individual’ means an individual who—

(A) is estrogen-deficient woman at clinical risk for osteoporosis;

(B) has vertebral abnormalities;

(C) is receiving chemotherapy or long-term glucocorticoid or thyroid replacement; or

(D) is being monitored to assess the response to or efficacy of approved osteoporosis drug therapy.

(3) LIMITATION.—Deductibles, coinsurance, and other cost-sharing in relation to bone mass measurement may not be imposed under paragraph (1) to the extent they exceed the deductibles, coinsurance, or other cost-sharing or other limitations that are applied to similar services under the group health plan or health insurance coverage.

(e) Requirements for Coverage of Bone Mass Measurement.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

(1) deny to an individual eligibility, or continued eligibility, to enroll or to renew health insurance coverage in connection with a group health plan, may not—

(2) impose a deductible, coinsurance, or other cost-sharing in relation to bone mass measurement.

(e) PROHIBITIONS.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

(1) deny to an individual eligibility, or

(2) impose a deductible, coinsurance, or other cost-sharing in relation to bone mass measurement.

(f) Requirements for Coverage of Bone Mass Measurement.—A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall include coverage for bone mass measurement for beneficiaries and participants who are qualified individuals.

(2) PROVIDE INCENTIVES.—Nothing in this section shall be construed as requiring a group health plan or issuer to increase public and professional knowledge of—

(A) the role of exercise; and

(B) drug therapies for prevention and treatment, including osteoporosis drug therapy.

(3) PROVIDE INCENTIVES.—Nothing in this section shall be construed as requiring a group health plan or issuer to increase public and professional knowledge of—

(A) the role of exercise; and

(B) drug therapies for prevention and treatment, including osteoporosis drug therapy.

(4) PROVIDE INCENTIVES.—Nothing in this section shall be construed as requiring a group health plan or issuer to increase public and professional knowledge of—

(A) the role of exercise; and

(B) drug therapies for prevention and treatment, including osteoporosis drug therapy.

(5) PROVIDE INCENTIVES.—Nothing in this section shall be construed as requiring a group health plan or issuer to increase public and professional knowledge of—

(A) the role of exercise; and

(B) drug therapies for prevention and treatment, including osteoporosis drug therapy.
health insurance coverage to the extent such law state provides greater benefits with respect to osteoporosis detection or prevention.

"CONSTRUCTION.—Section 731(a)(1) shall not be construed as superseding a State law described in paragraph (1)."

(b) CONFORMING AMENDMENTS.—

(i) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking "section 711" and inserting "sections 711 and 713".

(ii) Section 732(a) of such Act (29 U.S.C. 1191(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking "section 711" and inserting "sections 711 and 713".

(iii) The table of contents in section 1 of such Act is amended by inserting after the items referring to section 712 the following new item:

"Sec. 713. Standards relating to benefits for bone mass measurement.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act, as amended by section 605(a) of Public Law 104–204, is amended by inserting after section 2751 the following new section:

"SEC. 2752. STANDARDS RELATING TO BENEFITS FOR BONE MASS MEASUREMENT.

(a) In general.—The provisions of section 2706 (other than subsection (g)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(b) Notice.—A health insurance issuer under this part shall comply with the notice requirement under section 713(g) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) if such section applied to such issuer and such issuer were a group health plan.

(c) Preemption.—

"(1) IN GENERAL.—The provisions of this section do not preempt State law relating to health insurance coverage to the extent such State law provides greater benefits with respect to osteoporosis detection or prevention.

"(2) CONSTRUCTION.—Section 7262(a) shall not be construed as superseding a State law described in paragraph (1)."

(d) CONFORMING AMENDMENTS.—

(i) Section 7262(b) of such Act (42 U.S.C. 300g–62(b)(2), as added by section 605(b)(3)(B) of Public Law 104–204, is amended by striking "section 2751" and inserting "sections 2751 and 2752".

(e) EFFECTIVE DATES.—

(1) GROUP HEALTH PLANS.—The amendments made by subsection (a) shall apply with respect to group health plans for plan years ending after January 1, 2000.

(2) INDIVIDUAL MARKET.—The amendments made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

SEC. 3. OSTEOPOROSIS RESEARCH.

Subpart 4 of part C of title IV of the Public Health Service Act (29 U.S.C. 265d et seq.) is amended by adding at the end the following new section:

"RESEARCH ON OSTEOPOROSIS AND RELATED BONE DISEASES.

"(a) EXPANSION OF RESEARCH.—The Director of the Institute, the Director of the National Institute on Aging, the Director of the National Institute of Diabetes and Digestive and Kidney Diseases, the Director of the National Institute of Dental Research, and the Director of the National Institute of Child Health and Human Development shall expand and intensify research on osteoporosis and related bone diseases. The research shall be in addition to research that is authorized under any other provision of law.

"(b) MECHANISMS FOR EXPANSION OF RESEARCH.—Each of the Directors specified in subsection (a) shall, in carrying out such research, provide for one or more of the following:

"(1) Investigator-initiated research.

"(2) Funding for investigators beginning their research.

"(3) Specialized Centers of Research.

"(c) SPECIALIZED CENTERS OF RESEARCH.—

"(1) IN GENERAL.—The Director of the Institute, after consultation with the advisory council for the Institute, shall make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct research on osteoporosis and related bone diseases. Subject to the extent of amounts made available in appropriations Acts, the Director shall provide for not less than three such centers.

"(2) ACTIVITIES.—Each center assisted under this subsection—

"(A) shall, with respect to osteoporosis and related bone diseases—

"(i) conduct basic and clinical research;

"(ii) develop protocols for training physicians, scientists, nurses, and other health and allied health professionals;

"(iii) conduct training programs for such individuals;

"(iv) develop model continuing education programs for such professionals; and

"(v) disseminate information to such professionals and the public;

"(B) may use the funds to provide stipends for health and allied health professionals enrolled in training programs described in subparagraph (A)(iii); and

"(C) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

"(d) DURABLE SUPPORT.—Support of a center under this subsection may be for a period not exceeding 5 years. Such period may be extended for one or more additional periods if the Director finds that additional support of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

"(e) DEFINITION OF RELATED BONE DISEASES.—For purposes of this section, the term 'related bone diseases' includes—

"(1) Paget's disease characterized by enlargement and loss of density with bowing and deformity of the bones;

"(2) osteogenesis imperfecta, a familial disease characterized by extreme brittleness of the long bones;

"(3) hyperparathyroidism, a condition characterized by the presence of excess parathyroid hormone in the body resulting in disturbance of calcium metabolism with loss of calcium from bone and renal damage;

"(4) hypoparathyroidism, a condition characterized by the absence of parathormone resulting in disturbances of calcium metabolism;

"(5) renal bone disease, a disease characterized by metabolic disturbances from dialysis, renal transplants, or other renal disturbances;

"(f) primary or postmenopausal osteoporosis and secondary osteoporosis, such as that induced by corticosteroids; and

"(g) other general diseases of bone and matrix metabolism including abnormalities of vitamin D.

"(h) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL ANTIQUITY.—For the purpose of carrying out this section through the National Institute of Arthritis and Musculoskeletal and Skin Diseases, there are authorized to be appropriated $17,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"(2) NATIONAL INSTITUTE OF DENTAL RESEARCH.—For the purpose of carrying out this section through the National Institute of Dental Research, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"(3) NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES.—For the purpose of carrying out this section through the National Institute of Diabetes and Digestive and Kidney Diseases, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"(4) NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT.—For the purpose of carrying out this section through the National Institute of Child Health and Human Development, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"(5) NATIONAL INSTITUTE OF DIETARY RESEARCH.—For the purpose of carrying out this section through the National Institute of Dietary Research, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"(6) SPECIALIZED CENTERS OF RESEARCH.—For the purpose of carrying out subsection (c), there are authorized to be appropriated $5,000,000 for each of the fiscal years 1999 through 2001, and such sums as may be necessary for each subsequent fiscal year.

"SEC. 4. FUNDING FOR INFORMATION CLEARING-HOUSE ON OSTEOPOROSIS, PAGET'S DISEASE, AND RELATED BONE DISORDERS.

Section 409A(d) of the Public Health Service Act (42 U.S.C. 284a(d)) is amended by adding at the end the following: "In addition to other authorizations of appropriations available for the purpose of the establishment and operation of the information clearinghouse under subsection (c), there are authorized to be appropriated such sum not to exceed $3,000,000 for each of the fiscal years 2000 and 2001.

"By Mr. SANTORUM:

S. 1338. A bill to amend the Honey Research, Promotion, and Consumer Information Act to improve the honey research, promotion, and consumer information program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.
THE HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT AMENDMENTS ACT OF 1997

Mr. SANTORUM. Mr. President, I rise to offer a measure to revise the Honey Research, Promotion and Consumer Information Act, the statute under which the National Honey Board is organized.

Briefly, my bill would impose a penny per pound assessment on handlers and importers of honey. This will increase the research budget of the Honey Board by approximately $500,000; and enable the industry to fund research programs aimed at addressing the serious problems caused by viruses, parasitic mites, and Africanized bees.

The bill also changes the constitution of the National Honey Board to improve packer representation on the board to reflect the imposition of a new assessment on honey handlers. Under my amendments, packers would have a total of four seats versus the current two. Producer and importer representation on the board will not change.

In developing my legislation, I worked the American Beekeeping Federation, which represents more than 1,400 honey producers nationwide. The amendments have the support of a broad coalition including producers, packers, and importers, and I encourage my colleagues to join me in this effort by approving this legislation.

By Mr. CHAFFEE:

S. 1537. A bill to suspend until December 31, 2002, the duty on Benzonic acid, 2-[(1-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl) amino} carbonyl)-2-oxopropyl]azo]benzamide; to the Committee on Finance.

S. 1539. A bill to suspend until December 31, 2002, the duty on N-[{4-(Aminocarbonyl)phenyl}4-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl)aminon] carbonyl)-2-oxopropyl]azo]benzamide; to the Committee on Finance.

S. 1540. A bill to suspend until December 31, 2002, the duty on Benzonic acid, 2-[(1-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl)3-oxo-2-{[(trifluoromethyl)phenyl]azo}; to the Committee on Finance.

S. 1541. A bill to suspend until December 31, 2002, the duty on 1,4-Benzenedicarboxylic acid,2-[(1-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl)3-oxo-2-{[(trifluoromethyl)phenyl]azo}; to the Committee on Finance.

S. 1542. A bill to suspend until December 31, 2002, the duty on Benzonic acid, 2-{[(1-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl)3-oxo-}]-methyl ester; to the Committee on Finance.

S. 1543. A bill to suspend until December 31, 2002, the duty on Benzensulfonic acid, 4-chloro-2-[(5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]5-methyl calcium salt; (1); to the Committee on Finance.

S. 1544. A bill to suspend until December 31, 2002, the duty on 4-{15-{[(2-{(Aminocarbonyl)phenyl] amino} carbonyl)-2-methoxyphenyl]azo]-N-(5-chloro-2,4-dimethoxyphenyl)3-hydroxy-naphthalene-2-carboxamide; to the Committee on Finance.

S. 1545. A bill to suspend until December 31, 2002, the duty on Benzenesulfonic acid, 4-[(3-{[2-hydroxy-3-{[(4-methoxyphenyl) amino} carbonyl}-1-naphtha-1-yl]azo}-4-methylbenzoyl amino]- calcium salt (2:1); to the Committee on Finance.

S. 1546. A bill to suspend until December 31, 2002, the duty on Butanamide, 2,2′-[(3,3′-dichloro{1,1′-biphenyl}]-4,4′-diyl]bis[azo]N,N′-[3,3′-diaminobenzilidene]-1,1′-biphenyl]-4,4′-diyl]bis[azo]-3-oxo; to the Committee on Finance.

S. 1547. A bill to suspend until December 31, 2002, the duty on Butanamide, N,N′-[(3,3′-diaminobenzilidene)-1,1′-biphenyl]-4,4′-diyl]bis[azo]-3-oxo; to the Committee on Finance.

S. 1548. A bill to suspend until December 31, 2002, the duty on N-[{3-(2,3-Dihydro-2-oxo-1H-benzoimidazol-5-yl)5-methyl-4-(3-methylamino) sulphonyl]phenyl]azo]naphthalene-2-carboxamide; to the Committee on Finance.

S. 1549. A bill to suspend until December 31, 2002, the duty on Benzoic acid, 2-[(1-{(2,3-dihydro-2-oxo-1H-benzoimidazol-5-yl)amino} carbonyl)-2-hydroxy-1-naphthalenyl]-2-butyl ester; to the Committee on Finance.

S. 1550. A bill to suspend until December 31, 2002, the duty on Benzoic acid, 4-{[(2,5-dichlorophenyl) amino]carbonyl}-2-{[(2-hydroxy-5-{[(2-methoxyphenyl) amino]carbonyl}-1-naphthalenyl}-1-methyl ester; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

Mr. CHAFFEE. Mr. President, today I am introducing 13 bills to suspend the duty on the importation of certain products that are used by manufacturers in my home state of Rhode Island. The products in question are organic replacements for colorants that are used by manufacturers. The added cost hurts their business cost to the importing manufacturers. The added cost hurts their ability to compete, and thus their ability to maintain their workforce. Yet, given that there is no domestic industry producing the substitutes, the duties serve little purpose.

The package of bills I am introducing today would remedy this situation by suspending the duty on these thirteen products. As I say, none of these organic substitutes are produced in the United States, and therefore lifting the current duties will not result in harm to any domestic industry. Rather, suspending the duties will allow our domestic manufacturers to reduce costs, thus maintaining U.S. competitiveness and safeguarding Rhode Island jobs.

This is a critical point. I feel strongly that we in Rhode Island should do all we can to keep the state’s economy going by creating jobs, encouraging business activity, and spurring new growth. These bills will contribute to a productive manufacturing sector in Rhode Island, and aid our employers in keeping their costs down and their sales—and employment—up.

It is my hope that by introducing this package of legislation now, there will be ample time for review and comment on each bill, and that as a result, should the Senate take up comprehensive duty suspension legislation next year, these provisions will be ready for inclusion.

By Mr. CAMPBELL:

S. 1552. A bill to provide for the conveyance of an unused Air Force housing facility in La Junta, Colorado, to the city of La Junta; to the Committee on Armed Services.

THE LA JUNTA AIR BASE LAND CONVEYANCE ACT OF 1997

Mr. CAMPBELL, Mr. President, by way of legislation, I offer my support to the city of La Junta, Colorado, for its innovative and impressive response to the challenges facing the Lower Arkansas Valley. City officials have seized a unique opportunity to alleviate La Junta’s housing crisis, expand the local Head Start program and increase access to child care, and solve Otero Junior College’s dormitory problems.

The city of La Junta, in conjunction with Otero Junior College, has proposed to take over the recently closed La Junta Air Base family housing site. Until one year ago, when it was farmed out to a civilian defense contractor, the Air Force’s test range for its bomb-er pilot was housed in La Junta. Since then, several federal agencies have expressed interest in the site, but none has asserted their formal desire to reuse the facility.

Today, the taxpayers are spending nearly $100,000 annually to maintain an empty facility, while the city and residents of La Junta are losing out on a significant supplement to the local tax revenue. Thus, it is my intention to introduce legislation to convey the unused land to the city of La Junta, on the condition that it be used for the purposes for which it was designed.
base. The reuse plan I am endorsing provides for a self-sustaining and revenue generating housing and local services site, which is a well developed and cooperative solution to some very real local concerns.

Given the track of any formal initiative on the part of a federal agency, which would be given priority consideration, I support the efforts of the city. Our college, Congressman Bob Schaffer, representing Colorado’s 4th congressional district, has introduced legislation to convey the unused Air Force housing facility to the city of La Junta. Today, I am introducing a companion measure in the Senate.

It is my hope that this bill will be referred to the appropriate committee and receive expeditious consideration through next year’s authorizing and appropriations process.

By Mr. D’AMATO (for himself and Mr. MOYNIHAN)

S. 1553. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 with respect to the dumping of dredged material in Long Island Sound and for other purposes; to the Committee on Environment and Public Works.

THE LONG ISLAND SOUND PRESERVATION AND PROTECTION ACT

Mr. D’AMATO. Mr. President, I rise today to introduce legislation along with my friend and colleague, Senator MOYNIHAN, that will help guarantee that one of our Nation’s most important estuaries is no longer used as a dumping ground for polluted dredged material in Long Island Sound. As a spectacular body of water located between Long Island, New York and the State of Connecticut. Unfortunately, past dumping of dredged material of questionable environmental impact has occurred in the sound. It is high time that we put an end to any future, willful pollution of the sound.

The legislation that we are introducing today will prevent any individual of any government agency from randomly dumping sediments into the ecologically sensitive sound. Specifically, the legislation prevents all sediments that contain any constituents prohibited as other than trace contaminants, as defined by federal regulations, from being dumped into either Long Island Sound or Block Island Sound. Exceptions to the act can be made only in circumstances where the Administrator of the Environmental Protection Agency shows that the material will not cause undesirable effects to the environment of marine life.

In the fall of 1992, the U.S. Navy dumped over 1 million cubic yards of dredged material from the Thames River into the New London dump site located in the sound. Independent tests of that sediment indicated that contaminated inorganic material that now lies at the bottom of the sound’s New London dump site—contaminants such as dioxin, cadmium, pesticides, polyaromatic hydrocarbons, PCB’s, and mercury. Right now, there is a question as to the long-term impact this material will have on the aquatic life and the environment in that area of the ocean. Such concerns should not have to occur. It has taken the New York State Department of Environmental Conservation years to clean up Long Island Sound—we should not jeopardize those gains by routinely allowing the dumping of polluted sediments in these waters.

Vast amounts of federal, state, and local government projects in the State of New York in the last quarter century combating pollution in the sound. However, at times over the last 25 years, we have looked the other way when it comes to dumping in the sound. Such actions are counter-productive in our efforts to restore the sound for recreational activities such as swimming and boating as well as the economic benefits of sportfishing and the shellfish industry—all of which bring more than $5.5 billion to the region each year.

New Yorkers realize the importance of the sound and are stepping up their efforts to make sure it is cleaned up. New York voters approved an environmental bond initiative that, among other things, commits $200 million for sewage treatment plant upgrades, habitat restoration, and nonpoint source pollution controls on Long Island Sound. New York is doing its part; it is time now to get the support of the federal government. The actions taken by New York, and with the passage of the legislation Senator MOYNIHAN and I are introducing, I am confident that Long Island Sound will move steadily forward on the road to recovery. I urge my colleagues to join us in cosponsoring this bill, and I encourage its swift passage in the Senate.

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. 1553

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 “Long Island Sound Preservation and Protection Act of 1997”.

SEC. 2. DUMPING OF DREDGED MATERIALS IN LONG ISLAND SOUND.

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by striking subsection (f) and inserting the following:

“(f) DUMPING OF DREDGED MATERIAL IN LONG ISLAND SOUND.—

“(1) PROHIBITION.—No dredged material from any Federal or non-Federal project in a quantity exceeding 25,000 cubic yards that contains any of the constituents prohibited as other than trace contaminants as defined by the Federal ocean dumping criteria set forth in section 227.6 of title 40, Code of Federal Regulations, may be dumped in Long Island Sound (including Fishers Island Sound) or Block Island Sound, except in a case in which it is demonstrated to the Administrator, and the Administrator certifies by publication in the Federal Register, that the dumping of the dredged material containing the constituents will not cause significant adverse effects, including the threat associated with bioaccumulation of the constituents in marine organisms.

“(2) COMPLIANCE WITH OTHER REQUIREMENTS.—The additional requirements of this Act and notwithstanding the specific exclusion relating to dumping material of the first sentence in section 102(a), any dumping of dredged material in Long Island Sound (including Fishers Island Sound) or Block Island Sound from a Federal project pursuant to Federal authorization, or from a dumping project for a non-Federal entity, in a quantity exceeding 25,000 cubic yards, shall comply with the requirements of this Act, including the criteria established under the second sentence of section 102(a) relating to the effects of dumping.

“(3) RELATION TO OTHER LAW.—Subsection (d) shall not apply to this subsection.”.

By Mr. HATCH (for himself and Mr. LIEBERMAN)

S. 1554. A bill to provide for relief from excessive punitive damage awards in cases involving primarily financial loss by establishing rules for proportionality between the amount of punitive damages and the amount of economic loss; to the Committee on the Judiciary.

THE FAIRNESS IN PUNITIVE DAMAGES AWARDS ACT

Mr. HATCH. Mr. President, I rise today to introduce, along with Senator LIEBERMAN, the Fairness in Punitive Damages Awards Act. In general, this bill limits the amount of punitive damages that may be awarded in certain civil actions, primarily financial injury lawsuits, to three times the amount awarded to the claimant for economic loss or $250,000, whichever is greater.

These are cases where the claims essentially arise from breach of contract or insurance “bad-faith” or fraud injury. The punitive damage provision also excludes awards in cases where death, loss of limb, bodily harm, or physical injury occur. It generally does not encompass product liability and physical harm tort cases—cases where supporters of punitive damage awards contend that exemplary damages are needed to deter reckless behavior.

Thus, what sets this bill apart from previous measures is that it has been narrowly tailored to address concerns raised by the Administration and opponents of punitive damages limitations bills. We hope to attract bipartisan support because of the narrow scope of this bill, and, more significantly, because the bill addresses a major impediment to economic growth—runaway punitive damage awards, particularly in financial injury cases.

It is beyond doubt that our civil justice system is being plagued by an epidemic of punitive damage awards. In recent testimony before the Judiciary Committee, former Assistant Attorney General Theodore Olson noted that throughout the 1960’s until the mid-20th century, punitive damages were quite rare. “For example, the highest punitive damages award affirmed on appeal
in California through the 1950’s was $10,000. But the punitive damage landscape began to change dramatically in the 1960’s. California’s record for punitive damage awards affirmed on appeal soared to $15 million in the 1980’s, an increase of more than 9000 fold. In Alabama, according to Olson, an aggregate of only $409,000 in punitive damages had been affirmed on appeal during the period 1974-1978. The comparable total just 15 years later skyrocketed to $90 million. Indeed, punitive damage lawyers have largely succeeded in taking over the civil justice compensation system.

In 1960, according to a Rand study, punitive damages accounted for just 2% of total damages in civil cases in San Francisco, California. Thirty years later, according to Rand, punitive damages accounted for an amazing 59% of all damages in financial injury cases, and an even more amazing 80% in Alabama.

And the size of these awards is staggering and, I must add, irrational. Take the recent CSX Railroad case. Even though a federal probe found the railroad blameless in a tank car explosion on CSX owned tracks which caused relatively minor harm to two 20 plaintiffs in Louisiana, a state jury awarded $2.3 million in compensatory and $2.5 billion in punitive damages against CSX. Although the Louisiana Supreme Court had temporarily barred this irrational verdict—because under Louisiana law no verdict for damages may be made until all the underlying claims are decided—a far more common practice is for courts to halve or reduce the punitive portion of the award. Of course, half of $2.5 billion is still a staggering amount to pay for any private entity. From coffee spills at McDonald’s to medical malpractice, in the words of Morton Kondracke in a recent article in Roll Call, “trial lawyers seek the biggest profits by trolling for clients and convincing juries to sock it to supposedly deep-pocketed defendants. Consumers pay the bill as companies pass on their massive insurance premiums through higher prices.”

Indeed, the very efficiency of the American market has been weakened by these trends. Certainly, increased litigation and unnecessarily large punitive damage awards have increased the price of doing business. Undoubtedly, these trends have passed on these costs to consumers and have led to a decrease in productivity and a rise in unemployment. This is supported by a fairly recent study done by Representative and law professor Tom Campbell and other scholars, under the aegis of Stanford University, which demonstrated that in jurisdictions that reform the civil liability process—including placing caps on punitive damages—productivity and employment rise.

Furthermore, untenable jury verdicts create what Rand calls a “shadow effect” whereby verdicts totaling tens of billions of dollars send signals as to what other juries might do. Thousands of cases are settled, regardless of their merits, for fear of irrational verdicts. As a result of the shadow effect, consumers nationwide have been adversely affected through the withdrawal of products, producers, services, and services from the marketplace, and from excessive liability costs passed on to consumers through higher prices.

But the worst cost to our society is the delegitimization of the judicial process as a means of dispute resolution. Litigation today is often seen as an unpredictable “crap shoot,” where awards are rendered—not upon justice—but upon envy (who has the “deep pockets”) or upon blatant emotionism. So why not sue? Why not spin the wheel? Passage of this bill will help to ameliorate this misconception and restore faith in our civil justice system—which I believe is fundamentally sound.

Another reason for bipartisan support for this bill, one that I anticipate will attract many of our colleagues to the bill, is that we have addressed specific concerns about fairness. Administration has expressed about previous bills. You may recall that last year when President Clinton vetoed the products liability bill, he claimed that the bill would protect drunk drivers and terrorists. Our bill will not apply to any case where the injury was caused by a person who was committing a crime of violence, an act of terrorism, a hate crime, a felony sexual offense, or that occurred when the defendant was under the influence of alcohol or drugs. These exceptions, combined with the bill’s qualification that excludes cases where an individual has suffered a permanent physical injury or impairment, will ensure that this bill will not limit punitive damages in cases where such egregious conduct has occurred or where a serious injury has been inflicted.

Finally, we have included in the bill a provision specifically designed to protect small businesses, which form the backbone of our country’s economy. Excessive, unpredictable, and often arbitrary punitive damage awards jeopardize the financial well-being of many individuals and companies, particularly the Nation’s small businesses. Under this bill, if the claim for damages is against an individual whose net worth is less than $500,000 or against a business with less than 25 full-time employees, then punitive damages are limited to the lesser of 3 times the actual loss or $250,000.

Establishing a rule of proportionality between the amount of punitive damages awarded and the amount of economic damages would be fair to both plaintiffs and defendants. In addition, we will take a step towards resolving the constitutional objection, raised by the United States Supreme Court last year in BMW of North America v. Gore, to punitive damages that are grossly excessive in relation to the harm suffered.

Mr. President, we must restore rationality, certainty, and fairness to the award of punitive damages. This bill is an important step in that direction. I urge my colleagues to join me in cosponsoring this legislation and encourage the Senate to act expeditiously on this important bill.

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

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

S. 1554

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 “Fairness in Punitive Damage Awards Act.”

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) punitive damage awards in jury verdicts in financial injury cases are a serious and growing problem, and according to a Rand Institute for Civil Justice study in 1997 of punitive damage verdicts from calendar years 1985 through 1994 in States that represent 25 percent of the United States population, nearly 50 percent of all punitive damage awards are made in financial injury cases (those in which the plaintiff is alleging a financial injury only and is not alleging injury to either person or property);

(2) punitive damages are awarded in 1 in every 7 financial injury verdicts overall and in every 5 financial injury cases in the State of California;

(3) between calendar years 1985 through 1989 and calendar years 1990 through 1994, the average punitive damage verdict in financial injury cases increased from $3,500,000 to $7,600,000;

(B) the Rand Institute of Civil Justice calls this problem a “shadow effect” of punitive damages, whereby verdicts totaling tens of billions of dollars send signals as to what other juries might do. Thousands of cases are settled, regardless of their merits, for fear of irrational verdicts. As a result of the shadow effect, consumers nationwide have been adversely affected through the withdrawal of products, producers, services, and services from the marketplace, and from excessive liability costs passed on to consumers through higher prices.

(4) as a result of excessive, unpredictable, and often arbitrary punitive damage awards, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the marketplace, and from excessive liability costs passed on to consumers through higher prices.

(5) excessive, unpredictable, and often arbitrary punitive damage awards jeopardize the financial well-being of many individuals and companies, particularly the Nation’s small businesses, and adversely affect government and taxpayers;
(6) Individual State legislatures can create only a partial remedy to address these problems because each State lacks the power to control the imposition of punitive damages in other states.

(7) It is the constitutional role of the National Government to remove barriers to interstate commerce and to protect due process rights by placing reasonable limits on damages over and above the actual damage.

(8) There is a need to restore rationality, certainty, and fairness to the award of punitive damages in order to protect against excessive, arbitrary, and uncertain awards.

(9) Establishing a rule of proportionality, in cases that primarily involve financial injury, between the amount of punitive damages and the amount of compensatory damages, as 15 States have established, would—

(A) be fair to both plaintiffs and defendants; and

(B) address the constitutional objection of the United States Supreme Court in BMW of North America v. Gore 116 S. Ct. 1589 (1996) to punitive damages that are grossly excessive in relation to the harm suffered; and

(10) Permitting a maximum for each claimant recovery for punitive damages of the greater of 3 times the amount of economic loss or $250,000 is a balanced solution that would reduce grossly excessive punitive damage awards by as much as 40 percent, according to the Rand Institute for Civil Justice.

(b) PURPOSES.—Based on the powers contained in Article I, section 3 and section 5 of the 14th amendment of the United States Constitution, the purposes of this Act are to—

(1) Promote the free flow of goods and services and to lessen burdens on interstate commerce;

(2) Uphold constitutionally protected due process rights by placing reasonable limits on damages over and above the actual damages awarded by the available remedies.

SEC. 3. DEFINITIONS.

For purposes of this Act, the term—

(1) “Act of terrorism” means any activity that—

(A) (i) Is a violation of the criminal laws of the United States or any State; or

(ii) Would have been a criminal violation if committed in the jurisdiction of the United States or any State; and

(B) Appears to be intended to intimidate or coerce a civilian population, to influence the policy of the government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping;

(2) “Claimant” means any person who brings a civil action that is subject to this Act and any person on whose behalf such an action is brought; and

(A) (i) A claimant’s decedent if such action is brought through or on behalf of an estate; and

(ii) A claimant’s legal guardian if such action is brought through or on behalf of a minor or incompetent;

(3) “Economic loss” means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities, to the extent such recovery is allowed under applicable Federal or State law;

(4) “Injury” means any legally cognizable wrong or injury for which punitive damages may be imposed;

(5) “Interstate commerce” means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation;

(6) “Person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(7) “Punitive damages” means damage awarded against any person to punish or deter such person, or others, from engaging in similar behavior in the future; and

(8) “Qualified charity” means any organization exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code of 1986 as that exemption exists on the effective date of this Act.

SEC. 4. APPLICABILITY.

(a) General Rule—

(1) CIVIL ACTIONS COVERED.—Except as provided in subsection (b), this Act applies to any civil action brought in any Federal or State court where such action affects interstate commerce, charitable or religious activities, or implicates rights or interests that may be protected by Congress under section 5 of the 14th amendment of the United States Constitution and where the claimant seeks to recover punitive damages against a defendant that did not result in death, serious and permanent physical scarring or disfigurement, loss of a limb or organ, or serious and permanent physical impairment of a reproductive function.

Punitive damages may, to the extent permitted by applicable State law, be awarded against a person in such a case only if the claimant establishes that the harm that is the subject of the action was proximately caused by such person. Notwithstanding any other provisions of this Act, punitive damages may, to the extent permitted by applicable State law, be awarded against a qualified charity only if the claimant established by clear and convincing evidence that the harm that is the subject of the action was proximately caused by an intentionally tortious act of such qualified charity.

(2) QUESTION OF LAW.—What constitutes death, serious and permanent physical scarring or disfigurement, loss of a limb or organ, or serious and permanent physical impairment of a reproductive function shall be a question of law for the court.

(b) EXCEPTIONS.—

(1) In general.—The provisions of this Act shall not apply to any person in a civil action described in subsection (a)(1) if the misconduct for which punitive damages are awarded against that person—

(A) Constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) for which the defendant has been convicted in any court;

(B) Constitutes an act of terrorism for which the defendant has been convicted in any court;

(C) Constitutes a hate crime (as that term is used in the Hate Crime Statistics Act, Public Law 101–275; 104 Stat. 149; 28 U.S.C. 534 note) for which the defendant has been convicted in any court;

(D) Occurred at a time when the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug that may not lawfully be sold without a prescription and had been taken by the defendant other than in accordance with the terms of a lawful prescription; or

(E) Constitutes a felony sexual offense, as defined by applicable Federal or State law, for which the defendant has been convicted in any court.

(2) QUESTION OF LAW.—The applicability of this subsection shall be a question of law for determination by the court. The liability of any other person in such an action shall be determined in accordance with this Act.

SEC. 5. PROPORTIONAL AWARDS.

(a) General.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in any civil action that is subject to this Act shall not exceed the greater of—

(A) 3 times the amount awarded to the claimant for economic loss; or

(B) $250,000.

(2) SPECIAL RULE.—

(A) IN GENERAL.—Notwithstanding paragraph (1), in any civil action that is subject to this Act against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees, the amount of punitive damages shall not exceed the lesser of—

(i) 3 times the amount awarded to the claimant for economic loss; or

(ii) $250,000.

(B) APPLICABILITY.—For purposes of determining the applicability of this paragraph to any civil action, the measure of net worth shall include all employees of a subsidiary of a wholly owned corporation shall include all employees of a parent corporation or any subsidiary of that parent corporation.

(b) APPLICABILITY OF LIMITATIONS BY THE COURT.—The limitations in subsection (a) shall be applied by the court and shall not be disclosed to the jury.

SEC. 6. PREEMPTION.

Nothing in this Act shall be construed to—

(1) Create a cause of action for punitive damages;

(2) Supersede or alter any Federal law;

(3) Preempt or supersede any Federal or State law to the extent such law would further the purpose of this Act or any State law.

(4) Modify or reduce the extent of the liability or the liability of courts to order remittitur.

SEC. 7. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 8. EFFECTIVE DATE.

This Act applies to any civil action described in section 4 that is commenced on or after the date of enactment, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

By Mr. FAIRCLOTH:

S. 1555. A bill to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes; to the Committee on Finance.

THE INTERNAL REVENUE SERVICE OVERSIGHT, RESTRUCTURING AND TAX CODE ELIMINATION ACT OF 1997

Mr. FAIRCLOTH. Mr. President, today I am introducing S. 1555, the “Internal Revenue Service Oversight, Restructuring and Tax Code Elimination Act of 1997.” This legislation establishes the greater board composed of private citizens to review the policies and practices of our nation’s tax collection agency. The measure also eliminates the existing tax code by December 31, 2000, and eliminates the Internal Revenue Service by the end of the Year 2000 fiscal year.

Mr. President, the American people have been telling this Congress that all
is not right at the Internal Revenue Service, and it is time for the Congress to do something about it. Of course, no one enjoys paying their taxes, but the American people voluntarily comply with the tax code to a degree that is the envy of governments around the world. They do so because they want to do what is right. They deserve to be treated fairly, and they deserve a tax system that supports working families, not one that punishes them.

This past September, the Senate Committee on Finance held hearings in which taxpayers described the many abuses they have suffered at the hands of the Internal Revenue Service. The general theme of those hearings was an agency which has become arrogant and unresponsive to the American people, ruining businesses and causing considerable suffering to the men and women who were unlucky enough to be the focus of IRS scrutiny. For most Americans, those hearings were an all too familiar reminder of a painful episode in their own lives.

Mr. President, something must be done about the Internal Revenue Service and the massive Internal Revenue Code of 1986. Our tax code is incomprehensible to all but a few tax attorneys who make their living off of the current chaos created by our tax laws. What is worse, the agency charged with enforcing our tax laws has developed procedures to target their auditing efforts at middle class taxpayers.

The time has come to get rid of the I.R.S., get rid of our nightmarish tax code, and create an oversight board composed entirely of citizens from outside of the I.R.S. to keep watch over that agency until the date when it ceases to exist.

To carry out those objectives, I have introduced S. 1555, the Internal Revenue Service Oversight, Restructuring and Tax Code Elimination Act of 1997. This bill establishes an oversight board composed of nine members, each of whom are from the private sector, and at least one of whom must be an owner or manager of a small business. This oversight board will be responsible for reviewing the policies and practices of the Internal Revenue Service.

Among the specific areas the board will oversee are the agency’s auditing procedures and collections practices, as well as the agency’s procurement policies and information technology. Procurement at the I.R.S. has resulted in outrageous waste and misuse of taxpayer funds, such as the decision to spend nearly $4 billion to develop a new computer system, which officials now concede has been a complete failure.

Creating an oversight board to rein in the IRS is just the first step. S. 1555 also calls for the tax code to be terminated as of December 31, 2000, with exceptions for Social Security and Railroad retirement.

My bill sets out several guidelines for the structure of a new tax code. The new code should apply a low rate to all Americans; require a supermajority of both Houses of Congress to raise taxes; provide tax relief for working Americans; protect the rights of taxpayers and reduce tax collection abuses; eliminate the bias against savings and investment; promote economic growth rather than penalize marriage and families; protect the integrity of Social Security and Medicare; and provide for a taxpayer-friendly collections process to replace the Internal Revenue Service.

Mr. President, it is time to get rid of the I.R.S. and the massive and incomprehensible tax code in favor of a fairer, simpler system. I firmly believe that we will never be rid of our tax code until Congress sets out a specific deadline for its elimination. That is what my bill does. We should begin the national debate now over the form a new tax code should take. I have laid out a series of guidelines in this legislation for the new tax code. Without the incentives is the need for the I.R.S., and it is my view that this agency is too entrenched in its bureaucratic ways to be reformed. It should simply be eliminated. Until the I.R.S. is gone, an oversight board is badly needed to protect the interests of the taxpayers, and act as a watchdog over this unaccountable agency. I urge my colleagues to support this legislation.

By Mr. LEAHY:

S. 1556. A bill to improve child nutrition programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

The Child Nutrition Initiatives Act

Mr. LEAHY. Mr. President, as the ranking member of the nutrition subcommittee, I want to make very clear that I am looking forward to working with the chairman of the Agriculture, Nutrition and Forestry Committee, Senator LUGAR, with the ranking member, Senator HARKIN, and with the chairman of the nutrition subcommittee, Senator McCONNELL, on the child nutrition reauthorization bill next year.

When I was chairman of that committee, and continuing under the helm of Senator LUGAR, the Agriculture Committee worked together in a bipartisan fashion on nutrition legislation. I am proud of all the members of that committee and the many years we worked together on improving nutrition programs for children. I also had the privilege of working with the former majority leader—Senator Bob Dole—on many child nutrition matters.

The bill that I am introducing today does not represent my effort on a reauthorization bill—I will work on that bill with members of the committee, including the three leadership Members mentioned above.

Rather, this bill indicates changes that should be enacted into law regardless of other actions the Congress might take regarding child nutrition reauthorization.
Robert Dostis has done an outstanding job as the executive director of the Vermont Campaign to End Childhood Hunger. He also deserves a great deal of credit regarding the effort to get more schools on the school breakfast program. He has recently written a report on Childhood Hunger in Vermont: A Handbook for Action."

He cites some startling statistics in this report. For example, he notes that about 8,000 Vermont children are receiving food from local Vermont food shelves—which is double the figure for 1990.

In addition, nearly 222,000 meals are being served yearly at two dozen community kitchens in Vermont—that is 21 percent more than in 1994.

I will be also working with Donna Bister, as I have for years, on issues related to the WIC program and with Alison Gardner who is the Public Health Nutrition Chief, for the Vermont Department of Health.

I want to extend a special thanks to Dr. Richard Narkiewicz of Vermont who is a past president of the American Academy of Pediatrics. He recently visited me with his grandson Corey.

Most of all I want to thank the hundreds of Vermont workers who run Vermont’s Food Shelves and Community Kitchens, and all of those helping out at Vermont’s Community Action Agencies.

For many years I have watched the tremendous contributions made by the Vermont FoodBank in the fight against hunger. They have been a first line of defense against child hunger in Vermont and I look forward to working with their director, Deborah Flateman.

All of these Vermonters, and hundreds more who I have not mentioned, carry out the true Vermont tradition of extending a helping hand to neighbors in need.

My bill incorporates many ideas from Vermont. I have often designed nutrition legislation based on ideas from State and local officials from around the Nation.

Since this bill is not a full reauthorization bill—which I will cosponsor at a later date with other members of the Committee—I have not automatically extended each expiration date in current law. I will certainly support such extensions as appropriate at a later date and will support many other improvements.

Section 101 is based on an idea provided to me by Joseph Keifer of the Vermont Food Works program. It provides modest Federal funding to help integrate food and nutrition projects with elementary school curricula for a few pilot tests of this provision.

Section 102 increases the reimbursement rates for the summer food service program to a level that should encourage strong participation. At the recommendation of the Vermont Campaign to End Childhood Hunger the bill also provides special funding to help defray the costs of transporting children to the food service locations. This additional financial support—of 75 cents per day for each child transported and from school—is only applicable in very rural areas, as defined by USDA.

Vermont child care sponsors strongly recommend the additional meal supplement for children who are in a child care center for 8 hours or more. Section 103 of the bill does just that and thus helps working parents.

The bill provides for the eligibility of additional schools for the after school care meals program and expands funding for a program that provides meals to homeless preschool children in emergency shelters.

Title II of the bill creates a grant program to assist schools and others to establish or expand a school breakfast program, or a summer food service program. $5 million, per year, in mandatory funding would be made available for this effort.

The school breakfast program in Vermont, before it was terminated by Congress, was a remarkable success in part due to the hard work of Jo Busha, Bob Dostis, the Vermont School Food Service Association, and many others.

Also under Title II of the bill, the WIC Farmers’ Market Program is provided guaranteed funding. I have worked on this program for a number of years with Mary Carlson of Vermont. Mary is now the president of the association that represents State farmers’ market nutrition programs such as the WIC Farmers’ Market Program. Making this tremendous program mandatory will assure funding and avoid any appearance of being in competition with the WIC program for appropriated funds.

The bill also sets forth a sense of the Congress that the WIC program should be fully funded, now and forever, for all eligible applicants nationwide. I know that reaching this goal has taken a long time. I appreciate all the help that Donna Bister, the Vermont WIC Director, and many other Vermonters, as well as Bread for the World at the national level, have provided on the WIC program. David Beckmann and Barbara Howell of Bread for the World have worked for years toward this goal.

Finally, I have heard from Alison Gardner about the problems she is having in obtaining funding for the Nutrition, Education and Training Program. Congress made that program mandatory but then changed its status back to a program subject to appropriations. My bill will provide $10 million a year for that program and provide a State minimum grant of $85,000 per year.

I want to emphasize again that my bill represents some important child nutrition initiatives. I hope they will all be included in the reauthorization bill. I look forward to working with Senators LUGAR, HARKIN, MCCONNELL and all the other members of the Agriculture, Nutrition and Forestry Committee on this effort just as we worked together on the child nutrition provisions in the Senate-passed research bill.

I also look forward to working with all the Members of the House of Representatives Education and the Workforce Committee. I know they have a keen interest in protecting children and I have enjoyed working in the past with Chairman Goodling and with the ranking minority member Mr. BILL CLAY.

The last reauthorization bill passed both the Senate and the House of Representatives by unanimous consent. This shows how well the Congress can work together when the interests of children are at stake.

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:

[Document Text]
SEC. 101. SUBSIDY SERVICE PROGRAM FOR CHILDREN.

(a) PURPOSES.—Section 13(a)(1) of the National School Lunch Act (42 U.S.C. 1761(a)(1)) is amended in the first sentence by striking “initiate and maintain” and inserting “initiate, maintain, and expand”.

(b) AREAS IN WHICH POOR ECONOMIC CONDITIONS EXIST.—Section 13(a)(1)(C) of the National School Lunch Act (42 U.S.C. 1761(a)(1)(C)) is amended by striking “$1.97” and inserting “$2.23”.

(c) COMMERCIAL VENDORS.—Section 13(a)(2) of the National School Lunch Act (42 U.S.C. 1761(a)(2)) is amended in the first sentence—

(1) by striking “institution or” and inserting “institution and”;

(2) in clause (i), by striking “25 sites” and inserting “25 sites”;

(3) in subsection (b), by striking “subparagraph (B)” and inserting “subparagraph (B)”;

(4) in subsection (c) —

(1) in clause (v), by striking “75 cents per day for each child transported to and from a feeding site” and inserting “75 cents per day for each child transported to and from a feeding site, and from a feeding site for children who are brought to the site by the service institution or for whom transportation is arranged by the service institution”;

(ii) AMOUNT.—Subject to clause (iii), the amount of reimbursement provided to a service institution under this subparagraph may not exceed the lesser of—

(1) 75 cents per day for each child transported to and from a feeding site; or

(II) the actual cost of transporting children to and from a feeding site; and

(iii) ADJUSTMENTS.—The amounts specified in clause (i) shall be adjusted in accordance with subparagraph (C).

(g) MEALS AND SUPPLEMENTS.—Section 13(b)(2) of the National School Lunch Act (42 U.S.C. 1761(b)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(2) by striking “(2) Any service” and inserting the following:

“(2) In subsections (A) and (B),—

(A) IN GENERAL.—Any service;”;

(3) by striking “3 meals, or 2 meals and 1 supplement,” and inserting “4 meals, or 2 meals and 1 supplement,”;

(4) in paragraph (2), by striking “and” and inserting “and in the following:

(B) CAMPS AND MIGRANT PROGRAMS.—A camp or migrant program may serve a breakfast, a lunch, a supper, and meals supplemented with the assistance provided under paragraph (1) in a rural area for the unmet needs for initiation or expansion of a school breakfast or summer food service program for children; and

(ii) amounts as used with respect to a school breakfast program, that agrees to operate the school breakfast program established or expanded with the assistance provided under this subsection for a period of not less than 3 years; and

(ii) as used with respect to a summer food service program for children, that agrees to operate the summer food service program for children established or expanded with the assistance provided under this subsection for a period of not less than 3 years.

(b) SERVICE INSTITUTION.—The term ‘service institution’ means an institution or organization described in paragraph (1)(B) or (7) of section 13(a) of the National School Lunch Act (42 U.S.C. 1761(a)).

SEC. 102. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) EXTENSION.—Section 17 of the National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (c)(6)(B)(i), by striking “1998 and inserting “2003’’;

(2) in subsection (f)(3)(D)(ii)(I), by striking “$1.97” and inserting “$2.23’’; and

(3) in subsection (f), by striking “25 sites” and inserting “25 sites’’.

(b) DETERMINATION.—Section 17(a)(2)(C) of the National School Lunch Act (42 U.S.C. 1766a(a)(2)(C)) is amended by striking “(2) Any service” and inserting “(2) Service institutions to assist the in”.

(c) MEALS AND SUPPLEMENTS.—Section 17(f)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(f)(2)(B)) is amended—

(1) in subsection (c), by striking “1998’’ and inserting “2003’’;

(2) in subsection (g), by striking “1998” and inserting “2003’’;

(3) in subsection (h), by striking “1998” and inserting “2003’’; and

(4) in subsection (i), by striking “1998” and inserting “2003’’.

SEC. 103. CHILD AND ADULT CARE FOOD PROGRAM.

(a) EXTENSION.—Section 17(g) of the National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (c)(6)(B), by striking “1997’’ and inserting “2003’’;

(2) in subsection (f)(3)(D), by striking “fiscal year 1997” each place it appears and inserting “each of fiscal years 1997 through 2003’’; and

(3) in subsection (p), by striking “1996’’ each place it appears and inserting “2003’’.

(b) NUMBER OF MEALS AND SUPPLEMENTS.—Section 17(f)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(f)(2)(B)) is amended by striking “2 meals and 1 supplement” and inserting “2 meals or supplements, or 3 meals and 1 supplement”.

(c) GRANTS TO STATES TO PROVIDE ASSISTANCE.—Section 17(h)(3)(D)(ii)(I) of the National School Lunch Act (42 U.S.C. 1766(f)(3)(D)(ii)(I)) is amended by striking “$300,000’’ and inserting “$450,000’’.

SEC. 104. MEAL SUPPLEMENTS FOR CHILDREN IN AFTER-SCHOOL CARE.

Section 17(a)(2)(C) of the National School Lunch Act (42 U.S.C. 1766(a)(2)(C)) is amended by striking “on May 15, 1989’’.

SEC. 105. HOMELESS CHILDREN NUTRITION PROGRAM.

Section 17(f)(1) of the National School Lunch Act (42 U.S.C. 1766(g)(1)) is amended in the first sentence by striking “$3,700,000 for fiscal year 1999’’ and inserting “$3,970,000 for fiscal year 1999’’.

SEC. 106. BOARDER BABY AND OTHER PLOT ASSISTANCE.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended—

(1) in subsection (i), by striking “1998” and inserting “2003’’;

(2) in subsection (j)(1), by striking “1998” and inserting “2003’’;

(3) in subsection (j)(2), by striking “1998” and inserting “2003’’;

(4) in subsection (k)(1), by striking “1998” and inserting “2003’’;

(5) in subsection (k)(2), by striking “1998” and inserting “2003’’;

(6) in subsection (l), by striking “1998” and inserting “2003’’;

(7) in subsection (m), by striking “1998” and inserting “2003’’; and

(8) in subsection (n), by striking “1998” and inserting “2003’’.

SEC. 107. INFORMATION CLEARINGHOUSE.

Section 26(d) of the National School Lunch Act (42 U.S.C. 1774) is amended in subsection (a)—

(1) in the case of the school breakfast program, to school food authorities for eligible schools; and

(2) in the case of the summer food service program for children, to service institutions.

(b) AREA GRANT PROGRAM.—The Secretary may expend less than the amount described in subparagraph (A) for a fiscal year to the extent that there is an insufficient number of suitable applicants to use the funds made available under this section.

(c) PRIORITY.—The Secretary shall give priority to a grant under this section to a school serving a large number of eligible children.

(d) USE OF FUNDS.—The Secretary shall use the funds made available under subparagraph (A) to make payments under the Program—

(i) in the case of the school breakfast program, to school food authorities for eligible schools; and

(ii) in the case of the summer food service program for children, to service institutions.

SEC. 201. AREA GRANT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ‘‘Eligible school’’—The term ‘‘eligible school’’ means a school—

(i) that serves children, a significant percentage of whom—

(A) are members of low-income families, as determined by the Secretary; or

(B) live in rural areas and the unmet needs for initiation or expansion of a school breakfast or summer food service program for children; and

(ii) as used with respect to a school breakfast program, that agrees to operate the school breakfast program established or expanded with the assistance provided under this subsection for a period of not less than 3 years; and

(II) as used with respect to a summer food service program for children, that agrees to operate the summer food service program for children established or expanded with the assistance provided under this subsection for a period of not less than 3 years.

(b) SERVICE INSTITUTION.—The term ‘‘service institution’’ means an institution or organization described in paragraph (1)(B) or (7) of section 13(a) of the National School Lunch Act (42 U.S.C. 1761(a)).

(c) APPLICATION.—The Secretary shall establish a program under this section to be known as the ‘‘Area Grant Program’’ (referred to in this section as the ‘‘Program’’) to assist eligible schools and service institutions through grants to initiate or expand programs under the school breakfast program and the summer food service program for children.

(d) PRIORITY.—The Secretary shall give priority to a grant under this section to a school serving a large number of eligible children.

(e) USE OF FUNDS.—The Secretary shall use the funds made available under subparagraph (A) to make payments under the Program—

(i) in the case of the school breakfast program, to school food authorities for eligible schools; and

(ii) in the case of the summer food service program for children, to service institutions.

(f) INELIGIBLE SERVICES.—The Secretary may expend less than the amount described in subparagraph (A) for a fiscal year to the extent that there is an insufficient number of suitable applicants to use the funds made available under this section for a fiscal year.

(g) PRIORITY.—The Secretary shall make payments under the Program on a competitive basis and in the following order of priority (subject to the other provisions of this subsection):—

(1) School food authorities for eligible schools to assist schools with non-recurring expenses incurred in—

(A) initiating a school breakfast program under this section; or

(B) expanding a school breakfast program.

(2) Service institutions to assist the institutions with nonrecurring expenses incurred in—

(A) initiating a summer food service program for children; or

(B) establishing a program under this section.
Treasury not otherwise appropriated, the
authorities for eligible schools or service
insti-
minished as a result of payments received
children, as determined by the Sec-
food authority; (A), by inserting ''and each succeeding fiscal
year under this section shall be
fiscal year, 2000, and $24,000,000 for fiscal
year 2001, $30,000,000 for fiscal year 2002
and $37,000,000 for fiscal year 2003. Such funds
shall remain available for this program until
expended.

(”(ii) Entitlement to Funds.—The Sec-
tary shall be entitled to receive the funds
made available under subparagraph (A) and
shall accept the funds.”.

SEC. 203. NUTRITION EDUCATION AND TRAINING.
Section 16(i) of the Child Nutrition Act of
1966 (42 U.S.C. 1786(i)) is amended—
(1) in paragraph (2)—
(A) in the first sentence of subparagraph
(A), by inserting “and each succeeding fiscal
year” after “1997”;
(B) by striking subparagraph (B) and in-
serting the following:

(”(B) Minimum Amount.—The minimum
amount of a grant provided to a State for a
fiscal year under this section shall be
$85,000.”;

(2) by striking paragraph (3); and
(3) by redesignating paragraphs (4) and (5)
as paragraph (3) and (4), respectively.

By Mr. TORRICELLI (for himself,
Mr. AKAKA, Mr. KERRY, and
MRS. FEINSTEIN):
S. 1557. A bill to end the use of steel
jaw leghold traps on animals in the
United States; to the Committee on
Environment and Public Works.

THE STEEL JAW LEGHOLD TRAP PROHIBIT
TION ACT OF 1997
Mr. TORRICELLI. Mr. President,
today, Senators, AKAKA, FEINSTEIN,
KERRY, and I rise to introduce legisla-
tion to end the use of the steel jaw
leghold trap. I rise to draw this coun-
try’s attention to the many liabilities
of this outdated device and ask for my
colleagues support in ending its use.

This important and timely issue now
takes on added importance as the Eu-
ropean Union proposes to ban the im-
portation of U.S. fur caught with this
class of trap. By ending the use of
the leghold trap within our borders, we
will effectively set a humane standard
for trapping, as well as protect the U.S.
fur industry by keeping Europe’s doors
open to U.S. fur.

While this bill does not prohibit trap-
ning, it does outlaw a particularly sav-
gage method of trapping by prohibiting
the import or export of, and the inter-
state shipment of steel jaw leghold
traps and articles of fur from animals
caught in such traps.

The steel jaw leghold trap is a cruel
and antiquated device for which many
alternatives exist. The American Vet-
inary Medical Association and the
American Animal Hospital Association
have condemned leghold traps as inhu-
mane and the majority of Americans
oppose the use of this class of trap.

Currently, 89 nations have banned
these cruel devices, and have done so
with broad-based public support. In ad-
dition, Colorado and Massachusetts
have joined Rhode Island, Florida and
my home State of New Jersey in ban-
nning the trap.

One quarter of all U.S. fur exports,
$44 million, go to the European mar-
time country of trapping, as well as
protect the U.S. fur industry. It is im-
portant to note that since the steel-jaw leghold trap
has been banned in Europe, alter-
tatives have been provided to protect
and maintain the European fur indus-
ty.

Our Nation would be far better served
by ending the use of the archaic and in-
humane steel jaw leghold trap. By doing
so, we are not only setting a
long-overdue humane standard for
trapping, we are ensuring that the Eu-
ropean market remains open to all
American fur exports.

Mr. President, I ask unanimous con-
sent 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. 1557
Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled, (1) Article of Fur.—The term “article of fur” means—
(A) any furakin, whether raw or tanned
or dressed;

(B) any article, however produced, that
consists in whole or part of any fur.

For purposes of subparagraph (A), the terms
“furakin”, “raw”, and “tanned or dressed”
have the same respective meanings as those
terms have under headnote 1 of chapter 43 of
the Harmonized Tariff Schedule of the
United States.

(2) Customs Laws of the United States.—The term “customs laws of the United States” means any law enforced or adminis-
tered by the Customs Service.

(3) Interstate Commerce.—The term “interstate commerce” has the same
meaning as given such term in section 10 of title
18, United States Code.

(4) Import.—The term “import” means to
land on, bring into, or introduce into, any
place subject to the jurisdiction of the
United States, whether or not such landing,
introduction, or delivery is accomplished in
entry into the customs territory of the
United States.

(5) Person.—The term “person” includes
any individual, partnership, association, cor-
poration, trust, or any officer, employee,
agent, department, or instrumentality of the
Federal Government or of any State or polit-
cal subdivision thereof, or any other entity
subject to the jurisdiction of the United
States.

(6) Secretary.—The term “Secretary” means
the Secretary of the Interior.

(7) Steel Jaw Leghold Trap.—The term
“steel jaw leghold trap” means any spring-
powered pan- or seat-activated device with
a closure method of trapping, designed to
capture an animal by snapping closed upon
the animal’s limb or part thereof.

November 13, 1997 CONGRESSIONAL RECORD — SENATE S12603
SEC. 3. PROHIBITED ACTS AND PENALTIES.
(a) OFFENSES.—It is unlawful for any person knowingly:
(1) to import, export, ship, or receive in interstate commerce an article of fur if any part of the article of fur is derived from an animal that was trapped in a steel jaw leghold trap;
(2) to receive, export, deliver, carry, transport, or ship by any means whatever, in interstate commerce, any steel jaw leghold trap or
(3) to sell, receive, acquire, or purchase any steel jaw leghold trap that was delivered, carried, transported, or shipped in contravention of paragraph (2).
(b) OTHER VIOLATIONS.—Any person who violates subsection (a), in addition to any other penalty that may be imposed—
(1) for the first such violation, shall be guilty of an infraction punishable under title 18, United States Code; and
(2) for each subsequent violation, shall be imprisoned not more than 2 years, fined under title 18, United States Code, or both.

SEC. 4. REWARDS.
The Secretary shall pay to any person who furnishes information which leads to a conviction of any provision of this Act or any regulation issued thereunder, an amount equal to one half of the fine paid pursuant to the conviction. Any officer or employee of the United States, any State or local government who furnishes information or renders service in the performance of his or her official duties is not eligible for payment under this section.

SEC. 5. ENFORCEMENT.
(a) IN GENERAL.—Except with respect to violations of this Act to which subsection (b) applies, the provisions of this Act and any regulation issued pursuant thereto shall be enforced by the Secretary, who may use by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.
(b) EXPORT AND IMPORT VIOLATIONS.—
(1) IMPORT VIOLATIONS.—The importation of articles in contravention of section 3 shall be treated as a violation of the customs laws of the United States, and the provisions of law relating to violations of the customs laws shall apply thereto.
(2) EXPORT VIOLATIONS.—The provisions of the Export Administration Act of 1979 (including any modifications or amendments of such Act) shall apply with respect to the seizure and forfeiture of any article of fur or steel jaw leghold trap exported in violation of this Act and the customs laws of the United States.
(c) JUDICIAL PROCESS.—The district courts of the United States may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.
(d) ENFORCEMENT AUTHORITIES.—Any individual having authority to enforce this Act (except with respect to violations to which subsection (b) applies), may, in exercising such authority:
(1) detain for inspection, search, and seize any package, crate, or other container, including its contents, and all accompanying documents, if such individual has reasonable cause to believe that such package, crate, or other container is articles with respect to which a violation of this Act (except with respect to violations to which subsection (b) applies) has occurred, is occurring, or is about to occur;
(2) make arrests without a warrant for any violation of this Act (except with respect to violations to which subsection (b) applies) committed in his or her presence or view or if the individual has probable cause to believe that the person to be arrested has committed or is committing such a violation; and
(3) execute and serve any arrest warrant, search warrant, or other process issued by any judge or magistrate of any court of competent jurisdiction for enforcement of this Act (except with respect to violations to which subsection (b) applies).
(e) FORFEITURE.—
(1) IN GENERAL.—Except as provided in paragraph (3), any article of fur or steel jaw leghold trap, or other possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, or shipped in violation of this Act shall be subject to forfeiture to the United States.
(2) APPLICABLE LAW.—The provisions of law relating to—
(A) the seizure, summary and judicial forfeiture, and condemnation of property for violations of the customs laws,
(B) the disposition of such property or the proceeds from the sale thereof,
(C) the remission or mitigation of such forfeitures, and
(D) the compromise of claims, shall apply to seizures and forfeitures under this Act or any regulation issued thereunder, regardless of whether the act was performed by a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws.

SEC. 6. REGULATIONS.
The Secretary shall prescribe such regulations as are necessary to carry out this Act.

SEC. 7. EFFECTIVE DATE.
This Act shall take effect on the date that is 1 year after the date of enactment.

By Mr. FAIRCLOTH:
S. 1558. A bill to amend the Harmonized Tariff Schedule of the United States with respect to shadow mask steel; to the Committee on Finance.

The Shadow Mask Steel Harmonized Tariff Schedule Amendment Act of 1997

Mr. D’AMATO. Mr. President, I rise today to introduce legislation to amend the Harmonized Tariff Schedule of the United States with respect to shadow mask steel. Shadow mask steel, a vital component of color television picture tubes and computer video monitors, is used to produce “shadow masks” which prevent image distortion and enable the television and computer video monitors. Unfortunately, neither shadow mask steel, nor any viable substitute, is produced within the United States. Therefore, United States shadow mask producers must import this product from steel producers in Japan and Germany.

Domestic shadow mask production faces a difficult challenge to stay competitive in today’s shadow mask market. Competition for production of shadow masks is increasing as foreign manufacturers aggressively pursue the U.S. market. In addition, color picture tube and computer video monitor manufacturers are increasing their efforts to reduce production costs and increase competition in the television and computer markets.

These factors reinforce the vital need for competitively-priced component materials, such as shadow masks. Eliminating the duty on shadow mask steel, a product that is already subject to a gradual tariff elimination schedule, would be an important step toward enabling domestic manufacturers to remain competitive in the global market. Maintaining access to a competitive picture tube and computer video monitor manufacturers that employ thousands of workers throughout the United States rely on a consistent supply of domestically-produced shadow masks. If such companies were unable to on such a supply, we run the risk of supplanting domestic production of this product with imported shadow masks from foreign competitors, resulting in higher costs and delivery uncertainties associated with purchasing shadow mask imports.

Such increased costs and uncertainty would certainly result in reduced competitiveness of U.S. television picture tube and computer video monitor manufacturers versus foreign manufacturers. Reduced competitiveness could lead to the transfer of existing U.S. manufacturing operations abroad, and/or the closing of U.S. facilities, resulting in the loss of thousands of actual and potential U.S. jobs in the television and computer manufacturing industries.

THE ACCURATE ACCOUNTING STANDARDS CERTIFICATION ACT OF 1997

By Mr. FAIRCLOTH.
Mr. President, several times during this session, the Securities Subcommittee of the Senate Banking Committee has held hearings on the issue of the Financial Accounting Standards Board (FASB) accounting standards for derivatives and other instruments.

The hearings have demonstrated that there is great concern in the banking industry, and virtually every industry, about the FASB standards as they are presently written.

In particular, there are concerns that the FASB will finalize these standards
by the end of this year, without re-exposing its draft for further public comment. FASB has received hundreds of comment letters expressing concern about the new standards. Yet, the comments appear to go unheeded. In particular, concern in the banking industry that the standards are not taking into account the unique nature of banks. Even Alan Greenspan has taken the unusual step of expressing his concern to the FASB.

The Chairman of the Federal Reserve Board of Governors said in his letter that “FASB’s planned approach would not improve the financial reporting of derivatives activities and would contravene prudent risk management practices.”

Mr. President, I am a strong supporter of Generally Accepted Accounting Principles. I strongly believe that these standards should be set by the private sector, I mean, the FASB however, that the FASB, a private organization, is working too closely with the SEC, and therefore, is ignoring the concerns raised by bank regulators. In effect, this is not so much a dispute of a private versus public role of the FASB in the industry—but it is a dispute between two parts of our Government over how best to proceed on accounting for risk on the balance sheet. The FASB appears to be ignoring the concerns of the bank regulators, and by doing so, needlessly complicating disclosure to investors. Investors and analysts right now are fully capable of reviewing the balance sheets of depository institutions and determining who is well run and who is not.

The Securities Subcommittee issued a report this year in which it stated that “by focusing on derivatives risk exposure in isolation from the risk faced by a company, (the FASB proposals) are prone to present investors a distorted and misleading picture of company conditions and activities.”

In my view, the new standards will throw a wrench into the present accounting framework and only serve to confuse investors. It is highly ironic that financial institutions, the principal users of accounting information in order to make credit decisions, find the new standards confusing and cumbersome.

For this reason I feel compelled to introduce legislation that would provide the banking regulatory agencies with the authority to reject the standards if they believe that the new standards will not accurately reflect assets, liabilities and earnings. Further, the regulators could refuse to adopt the standards if the new rules would serve to diminish the use of the risk management techniques currently used by banks to reduce probability of joint bankruptcy and soundness in the operation of an insured depository institution.

I think this is an appropriate solution to this problem. I have great faith that the banking regulators, the primary users of financial information from banks, can make the best determination if these standards are appropriate. Thank you Mr. President.

By Mr. WARNER:
S. 1561. A bill to reform the conduct of Federal elections; to the Committee on Rules and Administration.

THE CONSTITUTIONAL AND EFFECTIVE REFORM OF CAMPAIGNS ACT

Mr. WARNER. Mr. President, today I introduce the Constitutional and Effective Reform of Campaigns Act, or “CERCA”. This legislation is the product of 2 years of hearings in the Rules Committee, with numerous experts, party officials, and candidates, and nearly two decades of participating in campaigns and campaign finance debates in the Senate. Many of the proposals in this bill have been made in some form by several of my Senate colleagues and by Members of the House, and I readily acknowledge drawing on their expertise. Most particularly, the important discussions during the meetings of this year’s task force headed by Senator Nickles, at the request of Major Leader Lott, were invaluable.

This legislation offers an opportunity for bipartisan support. It is a good faith effort to strike a middle ground between those who believe public financing of campaigns is the solution, and those who believe the solution is to remove current regulations. It offers a package of proposals which realistically can be achieved with bipartisan support and meet the desire of the majority of Americans who believe that our present system can be reformed. In my judgment, we will not succeed with any measure of campaign reform in this complicated field without a bipartisan consensus.

In drafting this legislation, I began with four premises. First, all provisions had to be consistent with the First Amendment: Congress would be acting in bad faith to adopt provisions which have a likelihood of being struck down by the federal courts. Second, I oppose public financing and mandating “free” or reduced-cost media time, which in my mind is neither free nor a good policy idea. Why should seekers of federal office get free time, while candidates for state office or local office—from governors to local sheriffs—do not receive comparable free benefits? Such an inequity and imbalance will breed friction between federal and state office seekers. Third, I believe we should try to increase the role of citizens and the political parties. Fourth, any framework for campaign legislation must respect and protect the constitutional right of individuals, groups, and organizations to participate in advocacy concerning political issues.

This bill is designed to be a “bilateral disarmament” on the tough issues of soft money and union dues: each side must give up equivalent ground. The Republicans should give ground by placing a cap on soft money which has tended to favor our side. And Democrats should give ground by allowing unions voluntarily for themselves to contribute proportion of dues which goes to political contributions in proportion of dues going to political activities.

In the Senate debates thus far, there has been much discussion about whether or not contributions would be required to obtain shareholder approval to make political contributions. This is an issue which warrants consideration. My proposal not only limits these corporate and union contributions to $100,000, it also includes a requirement that companies disclose their donations to federal political parties in their annual reports. And under current policies of the Securities and Exchange Commission, shareholders have the same rights to make recommendations to boards of directors on the propriety of political donations as they do on any business issue related to the company.

In addition, the SEC is in the process of making it easier for shareholders to raise questions related to social policy matters at annual meetings. I am monitoring how these changes are implemented: if they are insufficient to guarantee adequate rights to shareholders, I will consider amending my bill to protect these rights.

The fundamental notion that the status of union members is similar to those who belong to groups such as the National Rifle Association or the
Sierra Club. Nobody is compelled to join these types of organizations, and those that do, know or should know that their dues are going in part to political causes.

Furthermore, I considered including in this bill a narrowly-tailored disclosure requirement for individuals and groups spending large sums on public advertising affecting the public image of candidates during election seasons. However, in keeping with my first basic premise that reforms must pass the federal court test of constitutionality, I concluded that such a provision, in view of a long line of Supreme Court cases, likely would be declared unconstitutional, and thus I did not include the provision.

The McCain-Feingold bill was thoroughly debated in the Senate, and any objective observer of the Senate would agree that we are genuinely deadlocked and, for all intents and purposes, the debate of McCain-Feingold. I hope that all Members will review my bill as an objective and pragmatic approach to current problems with our campaign system. I encourage other Members to come forward, as I have, with proposals which objectively represent pragmatic approaches to what can be achieved. I do not claim to have the only solution: those with other ideas should come forward.

In addition to the issues of soft money and union dues discussed above, nine other fundamental problems—all of which can be solved in a constitutional manner—are the most pressing. Here are these problems, in no particular order, and my proposed solutions:

Problem 1: Politicians spend too much time fundraising, at the expense of their legislative duties for incumbents and, for by-elections, at the expense of debating the issues with voters.

Solution: The current individual contribution limit of $1,000 has not been raised, or even indexed for inflation, for over 20 years. This fact requires that candidates must spend more and more time seeking more and more donors. The limit should be doubled, as well as indexed for inflation.

Problem 2: The influence of voters on campaigns has been diminished by the activities of political action committees and interest groups.

Solutions: I propose a $100 tax credit for contributions made by citizens, with the funds being specified levels, to Senate and House candidates in their states: this credit should spark an influx of small dollar contributions to balance the greater ability of citizens with higher incomes to participate.

In addition, the increased individual contribution limit should balance the activities of political action committees.

Problem 3: The influence of voters on campaigns has been diminished by contributions from those not eligible to vote.

Solution: If you are not eligible to vote, you should not contribute to campaigns. My bill would prohibit contributions by those ineligible to vote, including non-citizens, children, and persons under felony convictions. It also codifies current regulations concerning political donations by domestic subsidiaries of foreign companies.

Problem 4: Incumbents, challengers face greater difficulties raising funds and communicating with voters, particularly at the outset of a campaign.

Solutions: This legislation will allow candidates to receive “seed money” contributions of up to $10,000 from individuals and political action committees. This provision should help get candidates off the ground. The total amount of these “seed money” contributions could not exceed $100,000 for House candidates or $300,000 for Senate candidates. To meet the constitutional test, this provision would apply to both challengers and incumbents alike, but in the case of an incumbent with money carried over from a prior cycle, those funds would count against the seed money limit.

Second, Senate incumbents would be barred from using the franking privilege to send out mass mailings during the election within six days of the sixty day ban in current law.

Problem 5: Candidates with personal wealth have a distinct advantage through their constitutional right to spend their own funds.

Solution: If a candidate spends more than $25,000 of his or her own money, the individual contribution limits would be raised to $10,000 so that candidates could raise money to counter that personal spending. Again, to meet constitutional review, this provision would apply to all candidates.

Problem 6: Current laws prohibiting fundraising activities on federal property are weak and insufficient.

Solution: The current ban on fundraising “soft money” was adopted before the law created such terms as “hard” and “soft” money. This bill updates this law to require that no fundraising take place on federal property.

Problem 7: Reporting requirements and public access to disclosure statements are weak and inadequate.

Solutions: Under this proposal, the FEC would be required to post reports on the Internet for all to see, and to require that candidates, and groups making independent expenditures, make faster and more complete reports. In addition, registered lobbyists would be required to report their campaign contributions and those of their employer on their lobbyist disclosure reports.

Problem 8: The Federal Election Commission is in need of procedural and substantive reform.

Solutions: This legislation contains a number of procedural and substantive reforms of the FEC, including term limits for commissioners, and increases in penalties for violations.

Problem 9: The safeguards designed to protect the integrity of our elections are compromised by weak aspects of federal laws regulating voter registration and voting.

Solutions: The investigations of contested elections in Louisiana and California have shown significant weaknesses in federal laws designed to safeguard the registration and voting process. In addition, states allow registration by mail and have underlined confidence that only qualified voters are registering to vote and only registering once: states should be allowed to decide whether to allow mail-in registrations. In addition, states should be allowed to require proof of citizenship when registering and proof of identification when voting: we require a photo ID to buy beer or cigarettes and can certainly allow states to protect the voting process by requiring a photo ID.

Problem 10: The current ban on “soft money” would allow states to purge inactive voters and to allow state law to govern whether voters who move without re-registering should be allowed to vote.

These are the problems which I believe can be solved in a bipartisan fashion. This bill is a section by section review of the legislation. I look forward to working with my colleagues to enact meaningful campaign reform, by looking at reform beyond the usual soundbites and addressing the real problems with our present system of campaigns.

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

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

CONSTITUTIONAL AND EFFECTIVE REFORM OF CAMPAIGNS ACT OF 1997

TITLE I—ENHANCEMENT OF CITIZEN INVOLVEMENT

Section 101.—Prohibits those ineligible to vote (non-citizens, minors, felons) from making contributions (“hard money”) or donations of political organizations supporting aliens making independent expenditures and codifies FEC regulations on foreign control of domestic donations.

Section 102.—Updates maximum individual contribution limit to $2,000 per election (primary and general) and indexes both individual and PAC limits in the future.

Section 103.—Provides a tax credit up to $100 for contributions to presidential candidates for Senate and House for incomes up to $60,000 ($200 for joint filers up to $120,000).

TITLE II—LEVELING THE PLAYING FIELD FOR CANDIDATES

Section 201.—Seed money provision: Senate candidates may collect $500,000 and House candidates $100,000 (minus any funds carried over from a prior cycle) in contributions up to $10,000 from individuals and PACs.

Section 202.—“Anti-millionaires” provision: when one candidate spends over $25,000 of personal funds, a candidate may accept contributions up to $10,000 from individuals and PACs up to the amount of personal spending minus a candidate’s funds carried over from a prior cycle and own use of personal funds.

Section 203.—Bans use of Senate frank for mass mailings from January 1 to election day for incumbents seeking reelection.
TITLE III—VOLUNTARINESS OF POLITICAL CONTRIBUTIONS

Section 301.—Union dues provision: Labor organizations must obtain prior, written authorization for portion of dues or fees not to be used for political purposes. Establishes civil action for agrieved employee. Requires employers to post notice of rights. Amends reporting statute to require better disclosure of expenses related to representation.

Section 302.—Corporations must disclose soft money donations in annual reports.

TITLE IV—ELIMINATION OF CAMPAIGN EXCUSES

Section 410.—Adds soft money donations to presents limits on fundraising on federal property and to other criminal statutes.

Section 420.—Hard money contributions or soft money donations totaling over $50,000 which a political committee intends to return because of illegality must be transferred to the FEC and may be given to the Treasury as part of a civil or criminal action.

Section 430.—“Soft” and “hard” money provisions. Soft money cap: no national party, congressional committee or senatorial campaign committee may accept donations from any source exceeding $100,000 per year. Hard money increases: limit raised from $25,000 to $50,000 per individual per year with no sub-limit at the state level.

Section 440.—Codifies FEC regulations banning conversion of campaign funds to personal use.

TITLE V—ENHANCED DISCLOSURE

Section 501.—Additional reporting requirements for candidates: weekly reports for last month of general election, 24-hour disclosure of large contributions extended to 90 days before election, and end of “best efforts” waiver for failure to obtain occupation of contributors over $200.

Section 502.—FEC shall make reports filed available on the Internet.

Section 503.—24-hour disclosure of independent expenditures over $1,000 in last 20 days before election, and of those over $10,000 made anytime.

Section 504.—Registered lobbyists shall include their own contributions and soft money donations and those of their employers and the employers’ coordinated PAC’s on lobbyist disclosure forms.

TITLE VI—FEDERAL ELECTION COMMISSION REFORM

Section 601.—FEC shall develop and provide for a procedure for filing reports, and shall issue regulations mandating electronic filing and allowing for filing by fax.

Section 602.—Limits commissioners to one term of eight years.

Section 603.—Increases penalties for knowing and willful violations to greater than $15,000 or 300 percent of the contribution or expenditure.

Section 604.—Requires that FEC create a schedule of penalties for minor reporting violations.

Section 605.—Establishes availability of oral arguments at FEC when requested and two commissioners agree. Also requires that FEC create index of Commission actions.

Section 606.—Changes reporting cycle for committees to election cycle rather than calendar year.

Section 607.—Classifies FEC general counsel and executive director as presidential appointees requiring Senate confirmation.

TITLE VII—IMPROVEMENTS TO NATIONAL VOTER REGISTRATION ACT

Section 701.—Repeals requirement that states allow registration by mail.

Section 702.—Requires that registrants for federal elections provide social security numbers for citizenship.

Section 703.—Provides states the option of removing registrants from eligible list of federal voters who have not voted in two federal elections and did not respond to postcard.

Section 704.—Allows states to require photo ID at the polls.

Section 705.—Repeals requirement that states allow people to change their registration at the polls and still vote.

By Mr. BAUCUS:

S. 1562. A bill to authorize an exchange of land between the Secretary of Agriculture and Secretary of the Interior and Big Sky Lumber Co.; to the Committee on Energy and Natural Resources.

THE GALLATIN RANGER CONSOLIDATION COMPLETION ACT OF 1997

Mr. BAUCUS. Mr. President, I rise today to introduce an important piece of legislation for Montana. This bill is titled “the Gallatin Range Consolidation Completion Act of 1997.”

Mr. President, this legislation is similar to a bill introduced earlier this year in the Senate by Senator Burns for Montana. While I am glad he has at last staked out a public position in favor of this exchange, I believe his approach is too little, too early. So I am introducing a bill which more accurately reflects where discussion on this exchange have progressed since Senator Burns’ earlier involvement.

Completing the Gallatin Land Exchange is a top priority for me. The land considered in this legislation is key wildlife habitat and is among some of the most beautiful anywhere. When completed, this exchange will result in improved habitat and will improve recreation opportunities in the region.

But, as with many land exchanges this will not be a simple process.

The company involved, Big Sky Lumber has been pursuing this matter for nearly 4 years. The Forest Service has collected public comment and has worked to see that concerns of all parties affected, the recreation interests, conservationists, and the business owners are all addressed.

I have been working with these groups drafting legislation with the help of the Forest Service.

I was surprised that Senator Burns introduced a draft bill today without notice. Contrary to an agreement among the State’s congressional delegation that no bill be introduced until reached agreement among ourselves and with other interested groups. The BSL land involved today is an updated version of the earlier draft I gave to Senator Burns for his review. I look forward to working with Senator Burns and all interested parties to get this process back on track so that we can pass a fair and balanced bill soon after.

CONGRESS finds that—

(a) the land north of Yellowstone National Park possesses outstanding natural characteristics and wildlife habitats that would make the land a highly valuable addition to the National Forest System;

(b) it is in the interest of the United States for the Secretary of Agriculture to enter into an Option Agreement for the acquisition of land owned by Big Sky Lumber Co.; and

(c) it is in the interest of the United States to—

(A) establish a logical and effective ownership pattern for the Gallatin National Forest, substantially reducing long-term costs for taxpayers; and

(B) consolidate the Gallatin National Forest in a manner that will enable the public to have access to and enjoy the many recreational uses of the land.

SEC. 2. FINDINGS.

Congress finds that—

(1) the land north of Yellowstone National Park possesses outstanding natural characteristics and wildlife habitats that would make the land a highly valuable addition to the National Forest System;

(2) it is in the interest of the United States for the Secretary of Agriculture to enter into an Option Agreement for the acquisition of land owned by Big Sky Lumber Co.; and

(3) it is in the interest of the United States to—

(A) establish a logical and effective ownership pattern for the Gallatin National Forest, substantially reducing long-term costs for taxpayers; and

(B) consolidate the Gallatin National Forest in a manner that will enable the public to have access to and enjoy the many recreational uses of the land.

SEC. 3. CONSIDERATION.

In this Act:

(a) the term “BSL” means Big Sky Lumber Co., an Oregon joint venture, and its successors and assigns, and any other entities having a property interest in the BSL land.

(b) BSL LAND means the term “BSL land” means the up to approximately 65,000 acres of land owned by BSL that is to be acquired by the Secretary of Agriculture, as depicted in Exhibit A to the Option Agreement.

(c) EXCHANGE AGREEMENT means the agreement entered into between BSL and the Secretary of Agriculture under section 4(e).

(d) OPTION AGREEMENT means the term “Option Agreement” means the agreement dated and entitled “Option Agreement for the Acquisition of Big Sky Lumber Co. Lands Pursuant to the Gallatin Range Consolidation and Protection Act of 1993” and the exhibits and maps attached to the agreement.

SEC. 4. GALLATIN LAND CONSOLIDATION COMPLETION.

(a) IN GENERAL. If BSL offers fee title to the BSL land, including the National Forest System; and established in Exhibit C to the Option Agreement.

(b) the Secretary of Agriculture shall accept a warranty deed to the BSL land.

(c) the Secretary of Agriculture shall convey to BSL subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed on by the Secretary of Agriculture and BSL, fee title to up to approximately 25,000 acres of National Forest System land and appurtenances thereto as depicted in Exhibit B to the Option Agreement.

(d) the Secretary of Agriculture shall grant to BSL timber harvest rights to up to approximately 50,000 acres of timber in accordance with subsection (c) and as described in Exhibit C to the Option Agreement.
CONGRESSIONAL RECORD — SENATE

November 13, 1997

S12608

(4) subject to availability of funds, the Secretary of Agriculture shall purchase land belonging to BSL in the Taylor Fork area, as depicted in Exhibit D, at a purchase price of not more than $8,000,000 and

(5) the Secretary of the Interior shall convey to BSL, by patent or otherwise, subject to valid existing rights and to such other terms, conditions, and limitations as may be agreed to by the Secretary of the Interior and BSL, fee title to approximately 1,680 acres of Bureau of Land Management land, as depicted in Exhibit B to the Option Agreement.

(b) VALUATION.—The property and other assets exchanged by BSL and the United States under subsection (a) shall be transferred in a manner as determined by the Secretary of Agriculture.

(c) TIMBER HARVEST RIGHTS.—

(1) IN GENERAL.—The Secretary of Agriculture shall prepare, grant, to BSL, and administer the timber harvest rights identified in Exhibit C to the Option Agreement, over a period of 5 consecutive years after the date of enactment of this Act.

(2) ADEQUATE TIMBER SALE PROGRAM OF THE GALLATIN NATIONAL FOREST.—Timber harvest volume shall constitute the timber sale program for the Gallatin National Forest for that period.

(3) SUBSTITUTION.—If exceptional circumstances, such as natural catastrophe, changes in law or policy, or extraordinary environmental or social circumstances prevent the Secretary of Agriculture from conveying the timber harvest rights identified in Exhibit C to the Option Agreement, the Secretary of Agriculture shall replace the value of the diminished harvest rights by—

(A) substituting equivalent timber harvest rights in a market area; or

(B) conveying national forest lands containing merchantable timber within the Gallatin National Forest;

(c) making a payment from funds made available to the Secretary of Agriculture out of the Land and Water Conservation Fund.

(4) PROCEDURES.—The following procedures shall apply to all national forest timber harvest rights identified for exchange under subsection (a):

(i) Identification of Timber.—The Secretary of Agriculture shall designate Federal timber, as depicted in Exhibit C to the Option Agreement, for exchange to BSL.

(ii) Sale.—The Secretary of Agriculture and BSL shall mutually develop and agree upon schedules for all national forest timber to be conveyed to BSL in the exchange.

(iii) Open Market.—All timber harvest rights granted to BSL in the exchange shall be offered for sale by BSL through the competitive bidding process.

(iv) Small Business.—All timber harvest rights granted to BSL in the exchange shall be subject to compliance by BSL with Forest Service small business program procedures in effect as of the date of enactment of this Act, including contractual provisions for payment schedules, harvest schedules, and bonds.

(v) Compliance with Option and Exchange Agreements.—All timber harvest rights granted to BSL in the exchange and all timber harvested from the land exchange shall comply with the terms of the Option Agreement and the Exchange Agreement.

(b) BINDING EFFECT.—The procedures under subparagraph (a) and the Option Agreement and the Exchange Agreement shall bind BSL and its assigns, contractors, and successors in interest.

(d) EXCHANGE AGREEMENT.—

(1) IN GENERAL.—The Secretary of Agriculture shall enter into an Exchange Agreement with BSL that—

(A) describes the non-Federal and Federal land volumes to be exchanged;

(B) identifies the terms, conditions, reservations, exceptions, and rights-of-way conveyed; and

(C) describes the terms for the harvest rights of timber granted under subsection (a)(3).

(2) CONSISTENCY.—The Exchange Agreement shall be consistent with this Act and the Option Agreement.

(3) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—In exchange of the Exchange Agreement, the Secretary of Agriculture shall submit the Exchange Agreement to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and each member of the Montana congressional delegation; and

(B) DELAYED EFFECTIVENESS.—The Exchange Agreement shall not take effect until 30 days after the date on which the Exchange Agreement is submitted in accordance with subparagraph (A).

(e) Rights-of-Way.—As part of the exchange under subsection (a), the Secretary of Agriculture, under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), shall convey to BSL easements in or otherwise provide access to Forest Service System lands as may be agreed to by the Secretary of Agriculture and BSL in the Exchange Agreement; and

(b) BSL shall convey to the United States such easements in or rights-of-way over land owned by BSL as may be agreed to by the Secretary of Agriculture and BSL in the Exchange Agreement.

(f) QUALITY OF TITLE.—

(1) Determination.—The Secretary of Agriculture shall review the title for the BSL land described in subsection (a) and, within 60 days after receipt of all applicable title documents from BSL, determine whether—

(A) the applicable title standards for Federal land acquisition have been satisfied or the quality of the title is otherwise acceptable to the Secretary of Agriculture;

(B) all draft conveyances and closing documents have been received and approved; and

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary of Agriculture; and

(d) except as provided in section 8(b)(1)-(iii) of the Gallatin Range Consolidation and Protection Act of 1993 (107 Stat. 992), the title includes both the surface and subsurface estates without reservation or exception (except by the United States or the State of Montana, by patent) including—

(i) minerals, mineral rights, and mineral interests; and

(ii) timber, timber rights, and timber interests;

(iii) water, water rights, and ditch conveyances; and

(iv) any other interest in the property.

(2) CONVEYANCE OF TITLE.—If the quality of title does not meet Federal standards or is otherwise determined to be unacceptable to the Secretary of Agriculture, the Secretary of Agriculture shall advise BSL regarding corrective actions necessary to make an affirmative determination under subparagraph (1) or

(c) TIMING OF IMPLEMENTATION.—

(1) EXCHANGE AGREEMENT.—The Exchange Agreement shall be completed and executed not later than 60 days after the date of enactment of this Act.

(2) LAND-FOR-TIMBER EXCHANGE.—The Secretary of Agriculture shall make the timber harvest rights described in subsection (a)(3) over 5 years following the date of enactment of this Act. Specific procedures for execution of the harvest rights shall be specified in the Exchange Agreement.

(4) PURCHASE.—The Secretary of Agriculture shall complete the purchase of BSL land under subsection (a)(4) not later than 60 days after the date on which funds are made available and an affirmative determination of quality of title is made with respect to the BSL land.

Metropolitan Areas

Dr. SMITH of Oregon (for himself, Mr. Craig, Mr. Gorton, Mr. Roberts and Mr. Grams): S. 1563. A bill to amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation; to the Committee on the Judiciary.

THE TEMPORARY AGRICULTURAL WORKER ACT OF 1997

Mr. SMITH of Oregon. Mr. President, I rise today to introduce the Temporary Agricultural Worker Act of 1997.

I am joined by Senator Craig, Gorton, and Roberts. Our bill would create a streamlined guest worker pilot program which would allow for a reliable supply of legal, temporary, agricultural immigrant workers.

Mr. President, we are facing a crisis in agriculture—a critical mismatch of an inadequate labor supply, bureaucratic red tape, and burdensome regulations. For many years, farmers and nurserymen
have struggled to hire enough legal agricultural labor to harvest their produce and plants. This issue is not new to Congress. In the past, Congress has introduced legislation to address this urgency, but no workable solution has been implemented. The agriculture industry is a competitive one, with a critical and legal supply of agricultural workers. The labor pool is tight and shortages are developing because of the limited domestic workers willing to work in agricultural fields.

The United States has historically been faced with a need to supplement the domestic work force, especially during peak harvesting periods. Since domestic workers prefer the security of full-time employment in year-round agriculture-related jobs, the shorter-term seasonal jobs are often left unfilled by domestic workers. These domestic workers also prefer the working conditions involved in packing and processing jobs, which are generally performed indoors and do not involve the degree of strenuous physical labor associated with field work.

Labor intensive agriculture is one of the most rapidly growing areas of agricultural production in this country. Its growth not only creates many production and harvest jobs, but also creates many more jobs outside of agriculture. Approximately three off-farm jobs are directed dependent upon each on-farm job.

Currently, the H-2A program is the only legal temporary foreign agricultural worker program in the United States. This program is not practicable for the agriculture and horticulture industry because it is loaded with burdensome regulations, excessive paperwork, a bureaucratic certification process, untimely and inconsistent decision-making by the U.S. Department of Labor, and costly housing requirements. The H-2A program has also been very small in relation to the total number of workers. It is estimated that out of the 2.5 million farm workers in the United States, only 23,496 H-2A job certifications have been issued by the Department of Labor this year. In my State of Oregon, only 12 shepherds and 62 shepherders are currently using the H-2A program.

It is time we address the shortfalls of current policy, and I believe that our bill is a meaningful step in that direction.

Mr. President, let me briefly summarize the purpose of our bill.

The bill would establish a procedure by which an agricultural employer anticipating a shortage of temporary or seasonal agricultural workers may file a labor condition statement, or attestation, with the state employment security agency. The attestation would provide specified terms and conditions of employment in the occupation in which a shortage is anticipated. Employers would also be required to file their job order with the local job service and give preference to all qualified U.S. domestic workers.

The Department of Labor would enforce compliance with the labor condition requirements of the program and could impose civil monetary penalties, and debarment from the program for violators.

The alien guest workers are issued an identification card, which is counterfeit- and tamper-resistant, with biometric identifiers to assure program integrity.

A portion of the alien guest workers’ earnings would be paid into an interest-bearing trust fund that would be rebated to the workers upon evidence of timely return to their home country. This would ensure that the aliens return to their countries of origin after the temporary job is completed. The alien guest workers could also be barred from future participation in the program for violating the conditions of their admission.

Our bill is endorsed by over 50 agriculture-related associations including the National Council of Agricultural Employers, American Farm Bureau, and the American Association of Nurseriesmen.

I urge my fellow colleagues to join Senators Craig, Gorton, Roberts, and me as we introduce this important legislation today.

Mr. President, I ask unanimous consent that this legislation be printed in the RECORD.

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

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 “Temporary Agricultural Worker Act of 1997.”

SEC. 2. NEW NONIMMIGRANT CATEGORY FOR PILOT PROGRAM TEMPORARY AND SEASONAL AGRICULTURAL WORKERS.


(1) by striking “or (b)” and inserting “(b)”;

(2) by striking “or (c)” and inserting “(c)”;

(3) by striking “or (d)” and inserting “(d)”;

(4) by striking “or (e)” and inserting “(e)”;

(5) by striking “or (f)” and inserting “(f)”;

(6) by striking “or (g)” and inserting “(g)”;

(7) by striking “or (h)” and inserting “(h)”;

(8) by striking “or (i)” and inserting “(i)”;

(9) by striking “or (j)” and inserting “(j)”;

(10) by striking “or (k)” and inserting “(k)”;

(11) by striking “or (l)” and inserting “(l)”;

(12) by striking “or (m)” and inserting “(m)”;

(13) by striking “or (n)” and inserting “(n)”;

(14) by striking “or (o)” and inserting “(o)”;

(15) by striking “or (p)” and inserting “(p)”;

(16) by striking “or (q)” and inserting “(q)”;

(17) by striking “or (r)” and inserting “(r)”;

(18) by striking “or (s)” and inserting “(s)”;

(19) by striking “or (t)” and inserting “(t)”;

(20) by striking “or (u)” and inserting “(u)”;

(21) by striking “or (v)” and inserting “(v)”;

(22) by striking “or (w)” and inserting “(w)”;

(23) by striking “or (x)” and inserting “(x)”;

(24) by striking “or (y)” and inserting “(y)”;

(25) by striking “or (z)” and inserting “(z)”;

(b) NO FAMILY MEMBERS PERMITTED.—Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended—

(1) by striking “or (b)” and inserting “(b)”;

(2) by striking “or (c)” and inserting “(c)”;

(3) by striking “or (d)” and inserting “(d)”;

(4) by striking “or (e)” and inserting “(e)”;

(5) by striking “or (f)” and inserting “(f)”;

(6) by striking “or (g)” and inserting “(g)”;

(7) by striking “or (h)” and inserting “(h)”;

(8) by striking “or (i)” and inserting “(i)”;

(9) by striking “or (j)” and inserting “(j)”;

(10) by striking “or (k)” and inserting “(k)”;

(11) by striking “or (l)” and inserting “(l)”;

(12) by striking “or (m)” and inserting “(m)”;

(13) by striking “or (n)” and inserting “(n)”;

(14) by striking “or (o)” and inserting “(o)”;

(15) by striking “or (p)” and inserting “(p)”;

(16) by striking “or (q)” and inserting “(q)”;

(17) by striking “or (r)” and inserting “(r)”;

(18) by striking “or (s)” and inserting “(s)”;

(19) by striking “or (t)” and inserting “(t)”;

(20) by striking “or (u)” and inserting “(u)”;

(21) by striking “or (v)” and inserting “(v)”;

(22) by striking “or (w)” and inserting “(w)”;

(23) by striking “or (x)” and inserting “(x)”;

(24) by striking “or (y)” and inserting “(y)”;

(25) by striking “or (z)” and inserting “(z)”;

(c) ESTABLISHMENT OF PILOT PROGRAM; RESTRICTION OF ADMISSIONS TO PILOT PROGRAM PERIOD.—

(1) ESTABLISHMENT OF PILOT PROGRAM; RESTRICTION OF ADMISSIONS TO PILOT PROGRAM PERIOD.—

(2) ADMISSION OF ALIENS.—No alien may be admitted to the United States pursuant to section 218 to perform temporary agricultural worker services pursuant to a labor condition attainment filed by an employer or an association for the occupation in which the alien will be employed. No alien may be admitted or provided status as a pilot program alien under this section after the last day of the pilot program period specified in subparagraph (B). (B) PILOT PROGRAM PERIOD.—The pilot program period under this subparagraph is the 24-month period beginning 6 months after the date of the enactment of the Temporary Agricultural Worker Act of 1997.

(2) ADMISSION OF ALIENS.—No alien may be admitted to the United States pursuant to section 218 to perform temporary agricultural worker services pursuant to a labor condition attainment filed by an employer or an association for the occupation in which the alien will be employed. No alien may be admitted or provided status as a pilot program alien under this section after the last day of the pilot program period specified in subparagraph (B).

(3) CONTENTS OF LABOR CONDITION ATTACHMENT.—Each labor condition attachment filed by or on behalf of, an employer shall state the following:

(A) WAGE RATE.—The employer will pay the pilot program alien wages as follows:

(B) WORKING CONDITIONS.—The employment of the pilot program alien will not adversely affect the working conditions of similarly employed workers in the area of employment.

(C) LIMITATION ON EMPLOYMENT.—A pilot program alien will not be employed in any job opportunity which is not temporary or seasonal, and will not be employed by the employer in any job opportunity for more than 10 months in the 12-consecutive-month period.

(D) NO LABOR DISPUTE.—No pilot program alien will be employed in any job opportunity which is vacant because its former occupant is involved in a strike, lockout or work stoppage in the course of a labor dispute in the occupation at the place of employment.
"(E) Notice.—The employer, at the time of filing the attestation, has provided notice of the attestation to its workers employed in the occupation in which, and at the place of employment where, pilot program aliens will be employed.

"(F) Job orders.—The employer will file one or more job orders for the occupation or occupations covered by the attestation with the State employment security agency no later than the day on which the employer first employs any pilot program aliens in the occupation.

"(G) Preference to domestic workers.—The employer will give preference to able, willing and qualified United States workers who apply for and are available at the time and place needed, for the first 25 days after the filing of the job order in an occupation or until 5 days before the date employment of workers in the occupation begins, whichever occurs later.

"(H) Limitation on number of visas.—In no case may the number of aliens who are admitted or provided status as a pilot program alien in a fiscal year exceed 25,000.

"(I) Operation of program in not less than 5 areas.—Alien admissions under this section shall be allocated equally to employers in not less than 5 geographically and agriculturally diverse areas designated by the Secretary of Agriculture. The entire United States shall be encompassed within such areas.

"(J) General accounting office report.—

"(A) In general.—The Comptroller General of the United States shall, concurrently with the operation of the pilot program established by this section, review the implementation and enforcement of the pilot program for the purpose of determining if—

"(i) the program has ensured an adequate and timely supply of qualified, eligible workers at the time and place needed for employers;

"(ii) the program has ensured that pilot program aliens are employed only in authorized employment and that they timely depart the United States when their authorized stay ends;

"(iii) the program has ensured that implementation of the program is not displacing United States agricultural workers or otherwise altering the terms and conditions of employment of United States agricultural workers; and

"(iv) an unnecessary regulatory burden has been created for employers hiring workers admitted under this section.

"(B) Export.—Not later than 90 days after the termination of the pilot program established by this section, the Comptroller General of the United States shall submit a report to Congress setting forth the conclusions of the Comptroller General from the review conducted under subparagraph (A).

"(B) Filing a labor condition attestation.—

"(1) Filing by employers.—Any employer in the United States is eligible to file a labor condition attestation.

"(2) Filing by associations on behalf of employer members.—An agricultural association may file a labor condition attestation as an agent on behalf of its members. Such an attestation filed by an agricultural association acting as an agent for its members, when accepted, shall apply to those employer members of the association that the association certifies to the State employment security agency are members of the association and have agreed in writing to comply with the requirements of this section.

"(3) Period of validity.—A labor condition attestation once issued by the State employment security agency for the period of time requested by the employer, but not to exceed 12 months.

"(4) Where to file.—A labor condition attestation shall be filed with the State employment security agency in the jurisdiction over the area of intended employment of the workers covered by the attestation. If an employer, or the members of an association of employers, is a single employer or operates in an area or areas covered by more than one such agency, the attestation shall be filed with each such agency having jurisdiction over an area where the workers will be employed.

"(5) Deadline for filing.—A labor condition attestation may be filed at any time up to 25 months prior to the date required by the employer’s estimate of need for workers in the occupation (or occupations) covered by the attestation.

"(6) Filing for multiple occupations.—A labor condition attestation may be filed for one or more occupations and cover one or more periods of employment.

"(7) Maintaining required documentation.—

"(A) By employers.—Each employer covered by an accepted labor condition attestation must maintain a file of the documentation required for each occupation included in an accepted attestation covering the employer. The documentation file shall be retained by the employer until following the expiration of an accepted attestation. The employer shall make the documentation available to representatives of the Secretary during normal business hours.

"(B) By associations.—In complying with subparagraph (A), documentation maintained by an association is a labor condition attestation on behalf of an employer shall be deemed to be maintained by the employer.

"(8) Withdrawal.—

"(A) Compliance with attestation obligations.—An employer covered by an accepted labor condition attestation for an occupation shall comply with the terms and conditions of the attestation from the date the attestation is accepted and continuing throughout the period any persons are employed in an occupation covered by such an attestation. When pilot program aliens are employed in the occupation, unless the attestation is withdrawn.

"(B) Termination of obligations.—An employer may withdraw an accepted labor condition attestation in total, or with respect to a particular occupation covered by the attestation. An association may withdraw an accepted labor condition attestation on behalf of its members. To withdraw an attestation the employer or association must notify in writing the State employment security agency of withdrawal, upon which the attestation is filed. An employer who withdraws an attestation, or on whose behalf an attestation is withdrawn by an association, shall be deemed to be maintaining the obligations undertaken in the attestation with respect to the occupation (or occupations) with respect to which the attestation was withdrawn, upon acknowledgement by the appropriate State employment security agency of receipt of the withdrawal notice. An attestation may not be withdrawn with respect to any occupation while any pilot program alien covered by that attestation is employed in the occupation.

"(C) Obligations under other statutes.—Any employee, including a pilot program alien, under any other law or regulation as a result of a requirement of United States workers under an offer of terms and conditions of employment by a State employment security agency and the prevailing wage determination received from such agency or other...
information upon which the employer or association relied to assure compliance with the prevailing wage requirement.

(2) REQUIREMENT TO PROVIDE HOUSING AND TRANSPORTATION.

(A) Effect of the attestation.—The employment of pilot program aliens shall not adversely affect the working conditions of United States workers similarly employed in the area of intended employment. The employer’s obligation not to adversely affect working conditions shall continue for the duration of employment of any pilot program aliens in the occupation and area of intended employment. The employer shall be deemed to comply with this paragraph if the employer offers at least the benefits required by subparagraphs (B) through (D).

(B) Housing required.—

(i) Housing offer.—The employer must offer to pilot program aliens and United States workers recruited from beyond normal commuting distance housing, or a housing allowance, if it is prevailing practice in the area of intended employment to offer housing or a housing allowance to workers who are recruited from beyond normal commuting distance.

(ii) Housing allowance.—An employer who offers housing to such workers shall meet (at the option of the employer) applicable Federal farm labor housing standards or applicable local or State standards for rental, public accommodation, or other substantially similar class of habitation.

(C) Charges for housing.—An employer who offers housing to such workers may charge an amount equal to the fair market value (but not greater than the employer’s actual cost) for utilities and maintenance, or the fair market value (but not greater than the employer’s actual cost) for food, rent, or other expenses at the option of the employer.

(D) Transportation.—If the employer offers housing to such workers, the employer is required to provide transportation (or occupations) at the place of employment covered by a labor condition attestation and supporting documentation, if any.

(E) Required documentation.—

(i) Housing and transportation.—No specific documentation is required to be maintained to evidence compliance with the requirements of subparagraphs (B) and (C) of this paragraph.

(ii) Workers’ compensation.—The employer shall maintain a copy of the workers’ compensation law for comparable employment, if it is prevailing practice in the area of intended employment to offer such benefit to the complainant, or that the employer was not required to offer such benefit to the complainant.

(iii) Security deposit.—The employer shall maintain copies of certificates of insurance evidence of coverage with subparagraph (D) throughout the period of validity of the labor condition attestation.

(3) REQUIREMENT TO EMPLOY ALIENS IN TEMPORARY OR SEASONAL AGRICULTURAL JOB OPPORTUNITIES.—

(A) Limitations.—

(i) In general.—The employer may employ aliens in agricultural employment which is seasonal.

(ii) Seasonal basis.—For purposes of this section, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which cannot be materially performed at any other time or in a continuous or carried on throughout the year.

(iii) Temporary basis.—For purposes of this section, a worker is employed on a temporary basis where the employment is intended to not exceed 10 months.

(B) Required documentation.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A).

(4) Requirement not to employ aliens in job opportunities vacated because of a labor dispute.—

(A) In general.—No pilot program alien may be employed in any job opportunity vacated because a labor dispute (or occupations) at the place of employment covered by a labor condition attestation and supporting documentation, if any.

(B) Required documentation.—No specific documentation is required to demonstrate compliance with the requirement of subparagraph (A).

(5) Notice of filing of labor condition attestation and supporting documentation.—

(A) In general.—The employer shall—

(i) provide notice of the filing of a labor condition attestation to the appropriate certified bargaining agent (if any) which represents workers of the employer in the occupation (or occupations) at the place of employment covered by the attestation; or

(ii) in the case where no such bargaining agent exists, post notice of the filing of such an attestation in at least two conspicuous locations where applications for employment are accepted.

(B) Period for posting.—The requirement for posting under subparagraph (A)(i) begins on the day the attestation is filed, and continues through the period during which the employer’s job order is required to remain active pursuant to paragraph (6)(A).

(6) Requirement to file a job order.—

(A) Effect of the attestation.—When the employer, or an association acting as agent for its members, shall file the information necessary to complete a local job order for each employment covered by a labor condition attestation and supporting documentation, the employer shall provide such information to the appropriate office of the State employment security agency having jurisdiction over the area of intended employment as required by paragraph (6)(A).

(B) Deadline for filing.—A job order shall be filed under subparagraph (A) no later than the date on which the employer files a petition with the Attorney General for admission or extension of stay for aliens to be employed in the occupation for which the order is filed.

(7) Requirement to file job orders.—The State office of the State employment security agency having jurisdiction over the area of intended employment as provided in paragraph (6)(A) shall file job orders with the appropriate local office of the State employment security agency having jurisdiction over the area of intended employment as required by paragraph (6)(B).

(8) Required documentation.—The office of the State employment security agency having jurisdiction over the area of intended employment provides with information necessary to file a local job order shall provide the employer with evidence that the information was provided in a timely manner, as required in paragraph (6)(A), and the employer or association shall retain such evidence for each occupation in which pilot program aliens are employed.

(9) Notice of filing of labor condition attestation and supporting documentation to qualified United States workers.—

(A) Filing 30 days or more before date of need.—If a job order is filed 30 days or more before the anticipated date of need for workers in an occupation covered by a labor condition attestation and for which the job order has been filed, the employer shall not offer to employ workers who are United States workers who apply to the employer and who will be available at the time and place needed for the job opportunities covered by the attestation until 5 calendar days before the anticipated date of need for workers in the occupation, or until the employer’s job opportunities in the occupation are filled with qualified United States workers, if that occurs more than 5 days before the anticipated date of need for workers in the occupation.

(B) Filing fewer than 30 days before date of need.—If a job order is filed fewer than 30 days before the anticipated date of need for workers in an occupation covered by such an attestation and for which a job order has been filed, the employer shall not offer to employ workers who are United States workers who are or will be available at the time and place needed during the first 5 calendar days before the anticipated date of need for workers in the occupation, or until the employer’s job opportunities in the occupation are filled with United States workers, if that occurs more than 5 days before the anticipated date of need for workers in the occupation.
regardless of whether any of the job opportunities may already be occupied by pilot program aliens.

(C) FILING VACANCIES.—An employer may fill any job order that has been approved by a State employment agency or other immigration officer at the port of entry.

(D) JOB-RELATED REQUIREMENTS.—No employer shall be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful job-related standards of conduct and performance. Failure to comply with minimum productivity standards after a 3-day break-in period.

(E) REQUIRED DOCUMENTATION.—No specific documentation is required to demonstrate compliance with the requirements of this paragraph. In the event of a complaint, the burden of proof shall be on the complainant to show that the complainant applied for the job and was available at the time and place needed. If the complainant makes such a showing, the burden of proof shall shift to the employer to show the complainant was not qualified or that the preference period had expired.

(F) REQUIREMENTS OF NOTICE OF CERTAIN HIREMENT.—

(1) IN GENERAL.—The employer (or the association acting as agent for the employer) shall notify the Attorney General within 7 days if a pilot program alien prematurely abandons the alien’s employment.

(2) OUT-OF-STATE.—A pilot program alien who abandons the alien’s employment shall be compelled to maintain an immigrant status as an alien described in section 101(a)(15)(H)(ii)(c) and leave the United States or be subject to removal under section 214A(a)(6).

(g) Responsibilities of the State Employment Security Agencies.—

(1) DISSEMINATION OF LABOR MARKET INFORMATION.—The Secretary shall disseminate labor market security agencies to disseminate non-employer-specific information about potential labor needs based on accepted job orders filed by employers. Such dissemination shall be separate from the clearance of job orders through the interstate and intrastate clearance systems, and shall create no obligations for employers except as provided in this section.

(2) REFERRAL OF WORKERS ON STATE EMPLOYMENT SECURITY AGENCY JOB ORDERS.—

(A) IN GENERAL.—Such agencies holding job orders filed by employers covered by approved labor condition attestations shall be authorized to refer any able, willing, and qualified applicant who will be available at the time and place needed and who is authorized to work in the United States, including pilot program aliens who are seeking additional work in the United States.

(B) EMPLOYMENT SECURITY AGENCY JOB ORDERS.—

(1) Employment security agencies shall review labor condition attestations and make such regulation available for public inspection.

(2) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer’s failure to meet a condition specified in subsection (a) or an employer’s misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 2 years after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(3) WRITTEN NOTICE OF FINDINGS AND OPPORTUNITY FOR APPEAL.—After an investigation has been conducted, the Secretary shall issue a written determination as to whether or not any violation described in subparagraph (A) has been committed. The Secretary’s determination shall be served on the complainant and the employer, and shall be reviewable by appeal of the Secretary’s decision to an administrative law judge, who may conduct a de novo hearing.

(4) REMEDIES.—

(A) BACK WAGES.—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or pilot program alien employed by the employer in the specific employment in question. The Secretary may determine the difference between the amount that should have been paid and the amount that actually was paid to such worker.

(B) FAILED TO PAY WAGES.—Upon a final determination that the employer has failed to pay the wages required under this section, the Secretary may assess a civil money penalty up to $1,000 for each failure, and may recommend to the Attorney General the disqualification of the employer from the employment of pilot program aliens for a period of time determined by the Secretary not to exceed 1 year.

(C) OTHER VIOLATIONS.—If the Secretary, as a result of an investigation pursuant to a complaint that an employer covered by an accepted labor condition attestation has—

(i) filed an attestation which misrepresents the terms and conditions of employment; or

(ii) failed to meet a condition specified in subsection (a), the Secretary may assess a civil money penalty not to exceed $1,000 for each violation. In determining the amount of civil money penalty to be assessed, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, and whether the employer has a financial gain from the violation, whether the violation was willful, and other relevant factors.

(D) PROGRAM DISQUALIFICATION.—Upon a second final determination that an employer has failed to pay the wages required under this section, the Secretary shall disqualify the employer from any subsequent employment of pilot program aliens.

(3) ROLE OF ASSOCIATIONS.—

(A) VIOLATION BY AN ASSOCIATION.—An employer on whose behalf a labor condition attestation is filed by an association acting as its agent is fully responsible for such attestation, and for complying with the terms and conditions of this section, as though the employer had filed the attestation itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer, and not against the association or other members of the association.

B. Violation in an Association acting as an Employer.—If an association filing a labor condition attestation on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program paragraph (2)(D), no individual member of such association may be employed in a position which results in disqualification from the program under paragraph (2)(D). Any individual member of such association whose employment results in disqualification from the program will be disqualified as an individual employee or such an attestation is filed on the employer’s behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this section.

E. PROCEDURE FOR ADMISSION OR EXTENSION OF Pilot Program Aliens.—

(1) ALIENS WHO ARE OUTSIDE THE UNITED STATES.—

(A) Petitioning for Admission.—An employer or an association acting as agent for its members who seeks the admission into the United States of pilot program aliens may submit a petition to the Director of the Immigration and Naturalization Service having jurisdiction over the location where the aliens will be employed. The petition shall be accepted only if the petitioner has established availability of the alien and currently valid labor condition attestation covering the petitioner. The petition may be for named or unnamed individual or multiple beneficiaries.

(B) EXPEDITED ADJUDICATION BY DISTRICT DIRECTOR.—If an employer’s petition for admission of pilot program aliens is not supported by the petition from the District Director of the Immigration and Naturalization Service having jurisdiction over the alien’s employment or the District Director is not satisfied with the petition, the Dir
(C) Unnamed beneficiaries selected by petitioners.—The petitioning employer or association or its representative shall approve the issuance of visas to beneficiaries who are unnamed on a petition for admission granted to the employee or association.

(D) Criteria for admissibility.—

(i) In general.—An alien shall be admissible under this section if the alien is determined to be admissible under §101(a)(15)(H)(i)(i) of the Act, or is the beneficiary of a valid labor condition attestation.

(ii) Disqualification.—An alien shall be disqualified if the alien is determined to be prohibited to enter or to remain in the United States, is subject to a final order of removal, or is debarred from entering or remaining in the United States.

(E) Period of admission.—The alien shall be admitted for the period requested by the petitioner not to exceed 10 months, or the remaining validity period of the alien’s admission number, whichever is less, plus an additional period of 14 days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien’s work authorization, the alien is not authorized to be employed unless the original petitioner or a subsequent petitioner has filed an extension of stay on behalf of the alien pursuant to paragraph (2).

(F) Design of card.—Each card issued in the Treasury of the United States a trust fund which may be sold by the Secretary of the Treasury to the Attorney General (or the designee of the Attorney General) for the purpose of providing a monetary incentive for pilot program aliens to return to their country of origin upon expiration of their visas under this section.

(G) Issuance of identification and employment eligibility document.—

(i) In general.—The Attorney General shall cause to be issued to each pilot program alien a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

(ii) Design of card.—Each card issued under this section shall contain the following:

(A) a photograph and a machine-readable data strip containing biographical information; and

(B) a digital signature of the alien.

(H) Employment eligibility document.—An alien having status as a pilot program alien may not have the status extended for a continuous period longer than 2 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which a nonimmigrant visa was issued unless the alien has resided in the United States for less than 60 days from the date of application for the extension of stay, after which time only a valid employment authorization document shall be acceptable.

(I) Limitation on an individual’s stay in pilot program status.—An alien having status as a pilot program alien may not have the status extended for a continuous period longer than 2 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which a nonimmigrant visa was issued unless the alien has resided in the United States for less than 60 days from the date of application for the extension of stay, after which time only a valid employment authorization document shall be acceptable.

(J) Trust fund to assure worker retention.—

(i) Establishment.—There is established in the Treasury of the United States a trust fund for the purpose of providing a monetary incentive for pilot program aliens to return to their country of origin upon expiration of their visas under this section.

(ii) Withholding of wages; payment into the trust fund.—(A) Employers of pilot program aliens shall:

(I) withhold from the wages of their pilot program alien workers an amount equivalent to 25 percent of the wages of each pilot program alien worker and pay such withheld amount into the trust fund in accordance with paragraph (3); and

(II) pay to the Trust Fund an amount equivalent to the Federal tax on the wages paid to pilot program alien workers.

(B) in connection with the application, the worker tenders the identification and employment authorization card issued to the worker pursuant to subsection (i)(1)(F) and the employer certifies that the worker is identified as the person to whom the card was issued based on the biometric identification information contained on the card.

(K) Administrative expenses.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(A)(i) and interest earned thereon, shall be paid to the Attorney General, the Secretary of Labor, and the Secretary of State in amounts equivalent to the expenses incurred by such officials in the administration of section 101(a)(15)(H)(ii)(c) and subsection.

(L) Regulations.—The Attorney General shall prescribe regulations to carry out this subsection.

(M) Investment of trust fund.—

(i) In general.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary’s judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired:

(A) on original issue at the price; or

(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, paid by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is less than 1 percent per centum next lower than such average rate, such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States, is not in the public interest.

(ii) Sale of obligation.—Any obligation acquired under the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(iii) Credits to trust fund.—The interest on, and the proceeds from the sale or re-deemption of, any obligations held in the Fund shall be credited to and form a part of the Trust Fund.

(iv) Report to congress.—It shall be the duty of the Secretary of the Treasury to hold a meeting of the Board of Trustees (or the Attorney General) to report to the Congress each year on the financial condition
and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed for the use and information of the Senate and a Senate document of the session of the Congress to which the report is made.

**SECOND PROVISIONS.—**

**1.** APPLICABILITY OF LABOR LAWS.—Except as provided in paragraphs (2), (3), and (4), all Federal, State, and local labor laws (including labor laws applicable to United States workers) shall also apply to pilot program aliens.

**2.** LIMITATION OF WRITTEN DISCLOSURE REQUIREMENTS OF THE SECRETARY. — Any disclosure required of recruiters under section 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) need not be given to pilot program aliens prior to the time their visa is issued permitting entry into the United States.

**3.** EXEMPTION FROM PICA AND FUTA TAXES.—The wages paid to pilot program aliens shall be excluded from wages subject to taxation under the Federal Unemployment Tax Act and under the Federal Insurance Contributions Act.

**4.** INELIGIBILITY FOR CERTAIN PUBLIC BENEFIT PROGRAMS.—

**A.** IN GENERAL.—Notwithstanding any other provision of law and except as provided in subparagraph (B), any alien provided status as a pilot program alien shall not be eligible for, or eligible in whole or in part for, any means-tested public benefit program.

**B.** EXCEPTIONS.—Subparagraph (A) shall not apply to the following:

(1) EMERGENCY MEDICAL SERVICES.—The provision of emergency medical services (as defined by the Attorney General in consultation with the Secretary of Health and Human Services).

(2) PUBLIC HEALTH IMMUNIZATIONS.—Public health assistance for immunizations with respect toimmunizable diseases and for testing and treatment for communicable diseases.

(3) SHORT-TERM EMERGENCY DISASTER RELIEF.—The provision of non-cash, in-kind, short-term emergency disaster relief.

(4) REGULATIONS. —

(1) SELECTION OF AREAS.—The Secretary of Agriculture shall select the areas under his control for pilot program aliens.

(2) PILOT PROGRAM ALIENS.—The term 'pilot program alien' means an alien admitted to the United States outside of status as a nonimmigrant under section 101(a)(15)(H)(ii)(c).

(3) SECRETARY.—The term 'Secretary' means the Secretary of Labor.

(4) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a United States citizen, a United States national, or an alien, who is legally permitted to work in the job opportunity within the United States other than an alien admitted pursuant to this section.

(5) DEFINITIONS.—For the purpose of this section:

**A.** AGRICULTURAL ASSOCIATION.—The term 'agricultural association' means any non-profit or cooperative association of farmers, growers, or ranchers incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any agricultural workers.

**B.** AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or section 3(h)(1) of the Consumer Product Safety Act of 1972 (15 U.S.C. 2054), and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

**C.** EMPLOYER.—The term 'employer' means any person or entity, including any independent contractor and any agricultural association, that employs workers.

**D.** PILOT PROGRAM ALIENS.— The term 'pilot program alien' means an alien admitted to the United States provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(c).

**E.** TRUTH IN LENDING ACT.—The term 'truth in lending act' means the Truth in Lending Act to require automatic cancellation and notice of cancellation rights with respect to private mortgage insurance which is required by a creditor as a condition for entering into a residential mortgage transaction, and for other purposes.

### ADDITIONAL COSPONSORS

S. 61

At the request of Mrs. Hutchison, her name was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related services for veterans of certain service in the United States merchant marine during World War II.

At the request of Mr. Lott, the name of the Senator from Nevada [Mr. Reid] was added as a cosponsor of S. 61, supra.

S. 318

At the request of Mr. D’Amato, the name of the Senator from New Hampshire [Mr. Gregg] was added as a cosponsor of S. 318, a bill to amend the Truth in Lending Act to require automatic cancellation and notice of cancellation rights with respect to private mortgage insurance which is required by a creditor as a condition for entering into a residential mortgage transaction, and for other purposes.

S. 364

At the request of Mr. Lieberman, the name of the Senator from Texas [Mrs. Hutchinson] was added as a cosponsor of S. 364, a bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.

S. 412

At the request of Mr. Lautenberg, the name of the Senator from Illinois [Ms. Moseley-Braun] was added as a cosponsor of S. 412, a bill to provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals.

S. 839

At the request of Mr. Lautenberg, his name was added as a cosponsor of S. 839, a bill to improve teacher mastery and use of educational technology.

S. 887

At the request of Mr. Lautenberg, the name of the Senator from Oregon [Mr. Smith] was added as a cosponsor of S. 887, a bill to establish in the National Service the National Underground Railroad Network to Freedom program, and for other purposes.

S. 942

At the request of Ms. Mikuls, her name was added as a cosponsor of S. 942, a bill to amend title 49, United States Code, to clarify the application of the Act popularly known as the "Death on the High Seas Act" to aviation accidents.

S. 951

At the request of Mr. Torricelli, the name of the Senator from New York [Mr. D’Amato] was added as a cosponsor of S. 951, a bill to reestablish the Office of Noise Abatement and Control in the Environmental Protection Agency.

S. 1062

At the request of Mr. Racket, his name was added as a cosponsor of S. 1062, a bill to amend the Andean Trade Preference Act to prohibit the provision of duty-free treatment for live plants and fresh cut flowers described in chapter 6 of the Harmonized Tariff Schedule of the United States.

S. 1204

At the request of Mr. Reed, the names of the Senator from Maryland [Ms. Mikulski] and the Senator from Maryland [Mr. Sarbanes] were added as cosponsors of S. 1204, a bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising...